STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1347

Suzanne Stephens,
Respondent,

vs.

Jon Goodwin as Trustee of the Cleone J. Goodwin Revocable Trust
Agreement dated July 17, 1995,
as amended, et al.,
Respondents,

Rodney Goodwin,
Appellant.

Filed August 14, 2023
Affirmed
Kirk, Judge[*]
Dissenting, Johnson, Judge

Mower County District Court
File No. 50-CV-22-629

Courtney Sebo Savica, Sebo Savica Law Firm, P.L.L.C., Rochester, Minnesota; and

Molly R. Hamilton Cawley, Jacob Elrich, Messerli Kramer, Minneapolis, Minnesota (for respondent Suzanne Stephens)

Thomas R. Braun, Bruce K. Piotrowski, Restovich Braun & Associates, Rochester, Minnesota (for respondent Jon Goodwin)

Daniel J. Bellig, Joseph A. Gangi, Farrish Johnson Law Office, Chtd., Mankato, Minnesota (for appellant)

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

David L. Forman, Baudler, Maus, Forman & King, Austin, Minnesota (for respondent Don Peterson)

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant Rodney Goodwin[1] challenges the district court's order prohibiting him from exercising the option to purchase farmland as provided in his parents' trusts. Rodney argues the district court erred when it: (1) deprived him of due process by not holding an evidentiary hearing, (2) made findings of fact not supported by the record, and (3) ruled that the time to accept the option expired before he exercised that option. We affirm.

FACTS

Nathan Goodwin and his spouse Cleone Goodwin had four children together: Rodney, respondent/cross-appellant Jon Goodwin, respondent Suzanne Stephens, and Nancy Doucet.[2] All these children are now adults, with the youngest being approximately 66 years old as of May 2022.

Nathan and Cleone created two revocable trust agreements on July 17, 1995. Nathan and Cleone named the two trusts after themselves.[3] Nathan and Cleone were the original

[1] Since appellant and many of the other parties involved with this matter share a last name, we refer to parties by their first name after their initial introduction.

[2] The record does not convey the birth order of Nathan and Cleone's children.

[3] The two trusts are formally named: (1) the Nathan K. Goodwin Revocable Trust Agreement dated July 17, 1995, as amended; and (2) the Cleone J. Goodwin Revocable Trust Agreement dated July 17, 1995, as amended.

settlors of each of their respective trusts and the original trustees of both trusts. They funded their trusts with 500 acres of farmland. Of these 500 acres, they transferred 180 acres to Cleone's trust and 320 acres to Nathan's trust. The trusts listed the surviving spouse and the couple's four children as beneficiaries.

As relevant to this appeal, Article VIII.C. of each trust contains the following language:

> Notwithstanding any of the foregoing powers which I have granted to my trustees, I direct that my trustees shall grant to each of my sons, Rodney N. Goodwin and Jon D. Goodwin, the first right and option to purchase any farmland that comprises a part of my estate. The option to purchase shall be at fair market value as finally determined for federal estate tax purposes in connection with my estate, or, in the case any such lands are not valued for federal estate tax purposes, the federal income tax basis of such lands. If both of my sons exercise this option to purchase any such farmlands, they shall purchase the same as tenants in common, or, if they agree, they can each buy separate tracts of land in their own respective names. My trustees shall grant to my sons the right to purchase any such lands under a contract for deed amortized in equal annual installments over a period of ten years, with the interest rate at the lowest applicable rate that will not result in imputed interest to my estate or any of my heirs. This option to purchase shall only apply if my spouse does not survive me, or, if she does survive me, upon her subsequent death.

The parties and the district court refer to this language simply as "the option."[4]

[4] The district court did not receive the full trust instruments until after ruling on whether Rodney could exercise the option. However, both Suzanne and Rodney included the entire option terms in their district court brief. So, we review the option language without addressing the rest of the trust language. If any language beyond that presented to the district court at the August 22, 2022, hearing specifically addressed the time frame for exercising the option it would have been presented to the district court at that hearing.

Cleone passed away on August 27, 2008. Following Cleone's death, Nathan, Rodney, and Jon became co-trustees of Cleone's trust. On July 10, 2009, Rodney resigned as trustee of Cleone's trust.

On July 13, 2009, Nathan removed Rodney as a beneficiary of his trust and replaced Rodney with Rodney's grandchildren. On October 4, 2017, Nathan and Jon became co-trustees of Nathan's trust. Following Nathan's death, on August 12, 2019, Jon became the sole trustee of both trusts.

On April 4, 2022, Suzanne filed a verified petition seeking to invoke in rem jurisdiction over the trusts pursuant to Minn. Stat. § 501C.0201 (2022). In this petition, Suzanne described the basic details of the trusts and criticized Jon's handling of the trusts, especially his unwillingness to distribute the trusts' assets. Suzanne requested the district court to order the distribution of the trusts' assets, the appointment of an additional trustee, and the trustee(s) to provide tax information to the beneficiaries. This petition did not

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Although Suzanne included the entire trust instrument for Nathan's Trust in her appellate addendum, we will not consider the full instrument since all parties did not stipulate to our review of this document not seen by the district court at the time of its ruling. *See* Minn. R. Civ. App. P. 110.01 (noting the record on appeal consists of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any"); *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 866 (Minn. App. 2022) (refusing to consider documents submitted as part of an addendum when documents were not in the district court record). Although the dissent correctly notes that no party directly "objected" to our review of the full trust instrument, at oral arguments before this court Rodney's counsel stipulated to this court reviewing the full trust instrument *only* if we found no ambiguity in the document. *In re Tr. of Lawrence B. Schwagerl Tr. Under Agreement Dated Apr. 9, 1999*, 965 N.W.2d 772, 779-80 (Minn. 2021) (stating that trust agreements are considered ambiguous "only if their "language is reasonably susceptible of more than one interpretation" (quotation omitted)). As is evident from the dissent's diverging interpretation of the trust instrument, the trust instrument is ambiguous and therefore we do not consider it.

mention the option but noted that Rodney lived on and operated a business from one of Nathan's parcels of land.

On May 25, 2022, the district court held a hearing to address Suzanne's petition. Suzanne reiterated the content of the petition, but also noted two additional issues. First, Suzanne questioned whether Rodney being removed as a beneficiary from Nathan's trust also removed Rodney as a beneficiary of Cleone's trust. Suzanne mentioned that Rodney had been replaced with his grandchildren because "there was a judgment that was levied against [Rodney's] assets for about $328,000 in 2008."[5] Second, Suzanne argued that Rodney and Jon should be prohibited from exercising their option to purchase the farmland because a reasonable time for them to exercise the option had already lapsed. Suzanne contended that the option became effective at the time of Nathan's passing in August 2019, so nearly three years had passed since the option became effective.

When given the opportunity to respond, Jon agreed that the trusts' assets should be distributed. In explaining his previous hesitation, Jon stated that when Nathan died, he "thought the farm ground was not at . . . a good place . . . to sell" but that "[h]e has certainly agreed that due to the increase in prices, now is a great time to sell the farm and he's willing to do that." But Jon noted "[t]here have been some concerns how [a sale] is done and if anything can or will be done to protect the interests of [Rodney] with the judgment." As

[5] In Suzanne's initial brief requesting the district court prohibit Rodney from exercising the option, she noted "Rodney Goodwin's creditor is apparently aware of these proceedings and will likely stand ready to put a lien against any real estate Rodney Goodwin inherits." In a supplemental brief, Suzanne noted that "[c]ounsel for Rodney Goodwin's creditor attended the May 25, 2022, hearing and is aware of these proceedings."

for the additional trustee, Jon indicated he was not opposed to the request despite not "understand[ing] why another trustee is required."

Although unrepresented by counsel, Rodney also made a statement at the hearing. To begin, Rodney clarified that he "live[d] on the farm and [the trusts did] get a homestead tax exemption because of the relative tax exemption on Minnesota real estate."[6] Rodney also relayed he "was the original trustee on all the previous wills and trusts of [his] parents and so [he] ha[d] a pretty good idea of what their wishes were." Rodney finally noted the parties "are in a very robust farmland market . . . [a]nd so the assets have gone up in value 30 to 40 percent since [Nathan] died." For these reasons, Rodney claimed the parties were not "at cross-purposes here" and that "all the beneficiaries have benefited greatly by not selling for the last two years." Rodney provided no indication that he intended to exercise the option at this hearing.

The district court granted all of Suzanne's requests but required more briefing regarding whether Rodney was still a beneficiary for Cleone's trust[7] and whether Rodney or Jon could still exercise the option.[8] The district court orally ordered an additional trustee

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[6] At the August hearing, Suzanne noted that Rodney had lived on the farm "since Nathan's death," and "[t]he trust, as far as [she] underst[oo]d, ha[d] been paying for his business's heating oil, and electricity, and waste management, Verizon bills, housekeeping, lawn mowing, so that he could live on the property and continue to operate his business."

[7] In their briefing, the parties agreed that Rodney remained a beneficiary of Cleone's trust.

[8] Despite not ruling on the option at the May hearing, the district court provided the following observation:

> [I]t would seem to me that going back to date-of-death values when the trustees are going to benefit from that and they're the ones that have dragged their feet for years would create a huge issue. I mean, Rodney Goodwin himself today was talking

be appointed and the trusts' assets be distributed by December 31, 2022. Later, on September 6, 2022, the district court signed a proposed order submitted by Suzanne, reiterating its oral rulings.

On August 1, 2022, Suzanne filed a motion asking the court to prohibit Rodney from exercising the option.[9] In this motion, Suzanne continued to argue that the reasonable period for Rodney to exercise the option had already lapsed. Suzanne noted that in the three years since Nathan's death Rodney "ha[d] not made an offer, he ha[d] not notified the Trustee of his intention to exercise the option, he ha[d] not done anything to put anyone on notice that he intend[ed] to exercise this option to purchase the farm, nor ha[d] he made efforts to resolve the judgment against him."

On August 2, 2022, Rodney informed the trustees that he intended to exercise his option to purchase the trusts' farmland. On August 11, 2022, Jon filed a letter stating that he also intended to exercise his option to purchase the trusts' farmland. However, Jon stated that "[t]his exercise is conditional, depending on the continuing request to exercise the

> about how everyone has benefited by the run-up in prices over recent years, and now you're telling me they've got an option to go back to date-of-death values and whoever would exercise the option would take all of that gain to themselves and leave the other three people out of it. Like I say, I don't know trust law, but there's got to be something in trust law that would prohibit a trustee—or prohibit that kind of an outcome. I don't know. I just throw that out there. Because, you know, it just—you know, red flag says that it's *unfair*.

(Emphasis added.)

[9] Suzanne's motion focused on Rodney because she asserted, "Jon Goodwin has waived his right to exercise the option to purchase the farm."

option by Rodney Goodwin" and that "[i]f Rodney Goodwin withdraws his request that the [option] be exercised, Jon Goodwin shall likewise withdraw his request that it be exercised." The same day, Jon filed a brief arguing neither he nor Rodney should be able to exercise the option, as well as acknowledging that the late effort to do so was unreasonable and the equitable doctrine of laches should apply. On August 22, 2022, the district court held a hearing regarding the motion to prohibit Rodney from exercising the option. The district court began the hearing by noting "[t]he motions are thoroughly briefed" and then asking "[d]o the parties feel that the Court has everything necessary . . . to decide this, or is there some testimony that's gonna' be necessary?" No party responded that the district court needed additional evidence to decide this issue.[10]

In addition to reiterating her previous arguments about the option, Suzanne presented several new arguments addressing fairness and prejudice. Suzanne first noted she is "reaching the age of seventy and is interested in . . . obtaining her distribution of the assets, so that she can enjoy the inheritance her parents had . . . left for her." Suzanne then mentioned that Rodney has a "judgment against his personal finances in the amount of about $700,000.00,"[11] which caused Suzanne to question whether, "if [Rodney] has the money to

[10] Later in the hearing, Rodney's newly obtained counsel stated, "I don't have all of the background that everybody else does. . . . I'm assuming the Court has a factual record as to what, actually, took place and . . . we're not making decisions based on . . . counsel's statements as to what took place." Despite this statement, Rodney did not indicate the district court should receive any additional evidence before deciding this issue, nor did he request a continuance to further prepare for the hearing.

[11] Suzanne noted the $700,000 figure "includes the interest that has accrued since the judgment was imposed in 2008." Suzanne also indicated Rodney "attempted to go through with bankruptcy" but "it didn't work[,]" which Suzanne said "presumably [means] he has no assets because he hasn't paid the creditor at all."

issue payment for this farm[,] will that money be seized by his creditor before he even pays it?" Suzanne summarized by asserting "[Rodney] just doesn't have the finances, and if he comes up with the financing then the farm itself would be his only asset that would be [able to be seized] by these creditors."

Next, Suzanne stated that allowing Rodney to purchase the farmland at the price described in the price instrument would lead to "an unreasonable windfall for him" since the property had greatly increased in value the last few years. Additionally, Suzanne argued that allowing Rodney to exercise the option now would be "greatly prejudicial to the [other] beneficiaries" because they could not benefit from the farmland's increase in value. Finally, Suzanne contended that "there's been a lot of time and expense" that the beneficiaries incurred because of Rodney invoking the option at such "a late point."

Rodney opposed Suzanne's characterization. Rodney argued the option did not trigger until July 29, 2022, when Rodney received a letter from the trustees regarding the distribution plan. Rodney, thus, contended there was no unreasonable delay since he invoked the option a few days later, on August 2, 2022. However, when asked by the court, Rodney admitted he knew about the option "probably, since his . . . father died." Additionally, Rodney contended that the terms of the option are "crystal clear"; namely, that the option "set the price as of the date of [his surviving parent's] death," offered Rodney "the right to purchase on contract for deed," and established a "ten-year" payment plan.

Rodney argued the pending judgment against him was not relevant to whether he should be prohibited from invoking the option, but he did not deny the existence or amount of the pending judgment. Specifically, Rodney's counsel contended:

> I don't think it's a concern—a proper concern for the rest of the family or the trustees to worry about a judgment that is out there. My client is perfectly capable of dealing with that, and we'll address that as needed.

However, the trusts' counsel discussed how this judgment influenced the distribution of trust assets by noting "the initial delay [in distribution] was due to the judgment [against Rodney] being very close to the ten-year period where we were hoping that the judgment would have expired." The trusts' counsel explained that the judgment was reinstated and continued to cause the delay in distribution in saying:

> We have been attempting to, you know, to some extent, protect beneficiary Rodney . . . by distributing to him in-kind, preferably, homestead property that would be exempt from creditors. And we have attempted to do that, and we haven't gotten full cooperation from him.
>
> So we're still not at a place . . . going forward we would have to get an appraisal of all the personal property and equipment before we can decide what is [Rodney's] share of Cleone Goodwin's Trust to distribute to him. . . . [W]e'd have to have the appraiser go back and tell us . . . the value of the homestead, then if he's gonna' get additional acres, you know, how many acres and that surveyed out. So there's substantial work that has to be done if we're gonna' protect him.
>
> Alternatively, we're, kind of, between a rock and a hard place because if we're going to protect him, that's gonna' create additional delay and expense to the trust. And so, we're requesting instructions from the Court. Do we just go ahead and sell everything, or do we continue to attempt to distribute-in-kind to Rodney Goodwin?

The trusts' counsel then attempted to obtain guidance from the district court on how to protect Rodney from his creditor.

The district court issued an oral ruling, which granted Suzanne's motion to prohibit Rodney from exercising the option. The district court determined that Rodney had failed to exercise the option in a timely manner and in good faith. In explaining its decision, the district court echoed many of Suzanne's arguments regarding prejudice.[12] Additionally, the district court also pushed the distribution deadline to March 31, 2023, to allow time for appraisals and for the trust to determine whether Rodney would receive in-kind distribution.

The district court asked Suzanne to submit a proposed order, which the district court then signed without change on September 9, 2022. This order's findings of fact included: (1) in the three years since Nathan's death "Rodney . . . has left the risk of loss on the other beneficiaries of the Trust Agreements"; (2) "[Suzanne] and . . . Jon . . . and Nancy . . . have suffered prejudice as a result of Rodney['s] . . . delay in exercising his option to purchase the real estate"; (3) since the option provides that Rodney may exercise his option to purchase the farmland "under a 10-year contract for deed[,]" Suzanne would "be close to 80 years old" by "the time all payments are made, if they are made"; (4) "[Suzanne], Jon . . ., and Nancy . . . have incurred a number of expenses in addressing the issue of the option to purchase the Farm that could have been avoided had Rodney . . . exercised his option to purchase the Farm in a reasonable time"; and (5) "Rodney . . . has not provided

[12] Among its other oral findings, the district court noted delaying distribution to Suzanne posed a particular prejudice due to her advanced age, saying specifically "waiting from seventy-seven to eighty . . . can be a lifetime."

any evidence that he is able to purchase the Farm" and "[a] judgment against his personal finances exists in the amount of nearly $700,000, inclusive of interest."[13]

On September 27, 2022, Rodney appealed the district court's order prohibiting him from exercising the option. The same day, Rodney moved the district court to stay enforcement of its orders. Suzanne filed a memorandum opposing the stay. Importantly, on October 17, 2022, Rodney's attorney submitted an affidavit alongside Rodney's reply memorandum. This affidavit included a series of exhibits, such as the full trust instruments and a July 2022 appraisal, which had never been introduced into evidence before.

DECISION

Rodney challenges the district court's order prohibiting him from exercising the option. Rodney argues the district court erred when it: (1) deprived him of due process by not holding an evidentiary hearing, (2) made findings of fact not supported by the record, and (3) ruled that the time to accept an option to purchase the trusts' farmland expired before he exercised that option.

We review a district court's findings of fact under a clearly erroneous standard and review a district court's conclusions of law de novo. *In re Est. of Short*, 933 N.W.2d 533, 537 (Minn. App. 2019) (citations omitted). When applying the clear-error standard, we view the evidence in the light most favorable to the district court's findings and do not reweigh the evidence or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see also In re Otto Bremer Tr.*, 984 N.W.2d 888,

[13] The district court also noted, "Any financing [Rodney] obtains will be immediately subjected to the judgment creditor's right to seizure."

896 (Minn. App. 2023) (applying *Kenney* to a trust case). "We will not conclude that a fact[-]finder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Kenney*, 963 N.W.2d at 221 (quotation omitted). "[F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted).

The "wholesale adoption of one party's findings and conclusions raises the question of whether the trial court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993). But "the verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Id.* When a district court adopts a proposed order, we review its findings for clear error. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *rev. denied* (Minn. Sept. 28, 2005).

I.

Rodney argues the district court's failure to hold an evidentiary hearing violated his due-process rights. We review this issue de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

"The foundational principle of the right to due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Gams v. Houghton*, 884 N.W.2d 611, 618 (Minn. 2016) (quotation omitted). On review, we ask "[1] whether the party has a protectable liberty or property interest [2] with which the state interfered and, if so . . . [3] whether the

procedures used were constitutionally sufficient." *C.O. v. Doe*, 757 N.W.2d 343, 349 (Minn. 2008).

> In evaluating whether an evidentiary hearing is required . . . we apply a three-part balancing test, considering: (1) the private interest affected; (2) the risk that the procedures used will result in erroneous deprivation of that private interest and the probable value of additional or substitute procedural safeguards; and (3) the State's interest in the procedures provided, including the administrative burden and expense that additional procedures would require.

Id. at 350.

Here, Rodney had many "opportunit[ies]" to be heard, and thus his due-process rights were not violated. *See Gams*, 884 N.W.2d at 618. Rodney received notice of the initial petition, which clearly stated, "Any objections to the Petition must be raised at the hearing or filed with the Court prior to the hearing." Although unrepresented at the time, Rodney attended the hearing held May 25, 2022, and was given an opportunity to speak. At this hearing, Rodney correctly noted the parties were not "at cross purpose," because Rodney provided no indication that he intended to invoke the option. However, the parties' purposes diverged when Rodney elected to invoke the option. After Rodney invoked the option, Rodney's counsel submitted a memorandum regarding Suzanne's motion to prohibit him from exercising his option and argued on Rodney's behalf at the August hearing. Despite all these opportunities to be heard, Rodney never requested an evidentiary hearing. Even when the district court asked if "the parties fe[lt] that the Court ha[d] everything necessary [] to decide this [issue]," Rodney did not speak up.

For these reasons, the district court did not violate Rodney's due-process rights.

II.

Rodney contends the district court clearly erred when it adopted Suzanne's proposed order verbatim, which he claims contained numerous findings of fact unsupported by admissible evidence.

"It is axiomatic that a district court's findings of fact must be supported by evidence in the record." *County of Scott v. Johnston*, 841 N.W.2d 357, 363 (Minn. App. 2013); *see* Minn. R. Civ. P. 52.01 (requiring district court to find facts when a case is tried to the court and stating that a district court's findings of fact "whether *based on oral or documentary evidence* shall not be set aside unless clearly erroneous" (emphasis added)). Although the arguments of counsel are not evidence, *State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004), "[t]here is a difference between considering arguments by counsel as evidence and considering concessions by counsel that certain evidence does or does not exist," *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 64 n.2 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). *See also Lundgren v. Eustermann*, 370 N.W.2d 877, 881 n. 1 (Minn. 1985) (providing that, "in addition to the pleadings, affidavits and depositions, the [district] court in deciding a motion may consider oral testimony, facts subject to judicial notice, stipulations, *concessions of counsel*, and any other material that would be admissible in evidence or otherwise usable at trial" (emphasis added)).

Here, the parties dispute the evidentiary value of Suzanne's verified petition. Minn. Stat. § 544.15 (2022) states:

> Every pleading may be verified . . . by the affidavit of the party, or of one or more of the parties pleading together, that the affiant knows the contents of the pleading, that the

> averments thereof are true of affiant's own knowledge, save as to such as are therein stated on information and belief, and that as to those the affiant believes them to be true.

"Verified pleadings may be considered as affidavits tending to prove or disprove the claims of the respective parties." *Indep. Sch. Dist. No. 35, Marshall Cnty. v. Engelstad*, 144 N.W.2d 245, 248 (1966); *see also* 1 Minn. Prac., Civil Rules Annotated § 11:7 (6th ed.) ("Verification is the swearing to or affirming the truth of the pleading, essentially turning the pleading into an affidavit."). Suzanne's verified petition concluded with her signature and the following language, "I declare under penalty of perjury that this Petition to Compel and all attachments have been examined by me, and that its contents are true, accurate, and complete to the best of my knowledge." Thus, her verified petition had the evidentiary force of an affidavit. *See Engelstad*, 144 N.W.2d at 248.

The district court's findings that are not supported by Suzanne's petition were effectively conceded by Rodney. As stated above, Rodney did not respond when the district court asked, "Do the parties feel that the Court has everything necessary . . . to decide this, or is there some testimony that's gonna' be necessary?" So, he effectively stipulated the district court could decide this issue without further testimony. Thus, the district court could consider Rodney's concession as evidence. Among these concessions, Rodney noted that the parties "are in a very robust farmland market . . . [a]nd so the assets have gone up in value 30 to 40 percent since [Nathan] died." Although Rodney claimed this meant that "all the beneficiaries have benefited greatly by not selling for the last two years," this conceded increase in value also supports the district court's concern that Rodney alone would benefit if he were allowed to exercise the option and purchase the farmland at the "fair market

value as finally determined for federal estate tax purposes in connection with [Nathan or Cleone's] estate." Similarly, Rodney effectively admitted to the existence of a pending judgment against him. Rather than deny this judgment, Rodney's counsel stated the judgment was not "a proper concern for the rest of the family or the trustees to worry about." Thus, Rodney's various concessions provide evidentiary support for the district court's findings of fact. *See Monson*, 759 N.W.2d at 64 n.2.

Since Suzanne's verified petition and Rodney's concession support the district court's findings of fact, the district court did not clearly err. *See Engelstad*, 144 N.W.2d at 248; *Monson*, 759 N.W.2d at 64 n.2.

III.

Rodney argues the district court erred when it ruled that the time to accept the option to purchase the farmland had expired before he exercised the option. Rodney contends that the option was not triggered until the trustees formally tendered notice to him in summer 2022, not when Nathan passed away in 2019.

"This court applies a de novo standard of review to a district court's interpretation of a trust agreement." *In re G.B. Van Dusen Marital Tr.*, 834 N.W.2d 514, 520 (Minn. App. 2013) (citation omitted), *rev. denied* (Minn. June 26, 2013). A court's "purpose in construing a trust agreement is to ascertain and give effect to the grantor's intent." *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012). "Where the language of the trust instrument is not ambiguous, the intent of the settlor must be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent." *In re Tr. Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985). "Therefore, the

first step in the analysis of a trust instrument is to determine the intent of the settlor from the plain language of the instrument." *Id.* at 45.

The plain language of the trust instrument and case law demonstrate the option was triggered when Nathan passed away in 2019. To begin, the trust instrument indicates the price of the option is the "fair market value as finally determined for federal estate tax purposes in connection with [Nathan or Cleone's] estate." Since the price of the option is determined at the time of the surviving-spouse's death, it follows that Nathan's death would be the triggering event for the option.[14] Additionally, Minnesota caselaw has generally held that "subject to administration, property rights vest in the legatees and devisees in the decedent's will or in the heirs of one who dies intestate at the date of death of the decedent." *In re Est. of Breole*, 212 N.W.2d 894, 896 (Minn. 1973); *see also In re Tr. of Moreland*, ___ N.W.2d ___, ___, 2023 WL 4480560, at *4 (Minn. July 12, 2023) (noting "the rules of construction of wills also apply to the construction of trusts"). Thus, all the property rights in the trust instruments vested at the time of Nathan's death, including this option. By distributing the farm rent to the beneficiaries, Jon recognized Suzanne and the other beneficiaries—including himself and Rodney—as the income beneficiaries. The options should have been exercised before that time so that the farm income remained with the trust for payment to Jon and/or Rodney as owners.

[14] The trust instrument also says, "This option to purchase shall only apply if my spouse does not survive me, or, if she does survive me, upon her subsequent death." So, the option only "appl[ies]" at the time of the surviving-spouse's death.

We are unpersuaded by Rodney's argument that he needed to receive "notice" of the option for the option to be triggered. This argument conflicts not only with the language of the trust and caselaw, but also with the record related to Rodney's actual knowledge of the option. At the August hearing, Rodney conceded he knew about the option "probably, since his . . . father died." But, having acted as a trustee, Rodney had actual notice of the option, not only at the time of their father's death, but for many years before that date.

The dissent focuses on the option's use of the phrase "my trustees shall *grant* to each of my sons . . . the first right and option"[15] to argue the settlors intended for their trustees to take an affirmative act, like providing notice, in order for the option to trigger. However, this language does not provide the clear guidance the dissent claims, especially when considering the history of this trust. To begin, nothing in the trust instruments conflates the term "grant" with a need for formal notice. *See Black's Law Dictionary* (11th ed. 2019) (defining "grant" as "1. To give or confer (something), with or without compensation . . . 2. To formally transfer (real property) by deed or other writing . . . 3. To permit or agree to . . . 4. To approve, warrant, or order (a request, motion, etc.)). Therefore, the term "grant" does not resolve when the option must be exercised, so this question can only be resolved by looking to other language within the option; namely, the language setting the price of the option at Nathan's death. Finally, as noted above, Jon and Rodney

[15] While the dissent treats the option as a right of first refusal, this interpretation conflicts with the language of the trust which grants Rodney and Jon "the first right and option to purchase any farmland that comprises a part of [the trust's] estate." We agree with the district court and all the parties that this language is appropriately treated as an "option," not a right of first refusal.

were both trustees at one point and therefore had actual notice of the option. To interpret the trust to require Jon or Rodney to give themselves formal notice for them to exercise the option would lead to an absurd result. Thus, the district court did not err in determining that, by the language of the trust, the option was offered as of the time of the father's death.

With the triggering event established, the question becomes how long the option was available to Rodney following Nathan's passing. The parties agree that the option does not list a specific timeline for when it must be exercised. Although Minnesota has no caselaw directly addressing options in a trust without a deadline, in other contexts, Minnesota courts have held that if a "contract provides no deadline for accepting or rejecting the offer of sale, acceptance must be within a *reasonable time*." *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 785 (Minn. 2004) (emphasis added); *see also* 80 Am. Jur. 2d *Wills* § 1253 ("An option to purchase real property may be created by will . . . [s]uch an option must generally be exercised within the time stated, or if none is stated, within a reasonable time, or the right is lost unless a delay in exercising it is excused."). Upon receiving notice, "a lessee may have to clarify or investigate uncertainties and ambiguities of essential terms," but "such an inquiry must be done within a *reasonable time* and . . . both the lessee, in making inquiry, and the lessor, in responding to the inquiry, must act *timely, reasonably and in good faith*." *Dyrdal*, 689 N.W.2d at 785 (emphasis added). "What is a reasonable time depends on the circumstances of the particular case." John P. Ludington, *Time in which option created by will to purchase real estate is to be exercised*, 82 A.L.R.3d 790, § 2(a) (1978). Similarly, "[l]aches is an equitable doctrine applied to prevent one who has not been diligent in asserting a known right from recovering

at the expense of one who has been prejudiced by the delay." *Monaghen v. Simon*, 888 N.W.2d 324, 328 (Minn. 2016) (quotation omitted). In deciding whether to apply laches, a court must determine "whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for." *Carlson v. Ritchie*, 830 N.W.2d 887, 891 (Minn. 2013) (quotation omitted). Thus, a key factor in determining whether a time period is reasonable is the potential for prejudice. *Id.*

Here, the record supports the district court's determination that the "reasonable time" for Rodney to exercise the option had lapsed. Minnesota caselaw allows for some delay to facilitate "administration" of the estate, *Breole*, 212 N.W.2d at 896, or for the option-holder "to clarify or investigate uncertainties and ambiguities of essential terms," *Dyrdal*, 689 N.W.2d at 785, but the three-year delay seen here is beyond the "reasonable time" needed to complete these tasks. Additionally, at the August hearing, Rodney contended that the terms of the option are "crystal clear[,]"stating that the option "set the price as of the date of [his parent's] death," offered Rodney "the right to purchase on contract for deed," and established a "ten-year" payment plan. Therefore, Rodney was already aware of the "essential terms" of the sale. Finally, the fact the trust instrument links the option price with the surviving settlor's death indicates the settlors' desire to resolve the trust shortly after their passing. *See McLaughlin*, 361 N.W.2d at 44-45. Rodney's invocation of the option three years after Nathan's death conflicts with Minnesota caselaw and the trusts' purpose, as recognized by all parties, of promptly distributing the property to the beneficial heirs.

We also recognize there are equitable considerations supporting the district court's determination to deny Rodney the right to exercise the option. *See* Minn. Stat. § 501C.0106 (2022) ("The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another law of this state."); Minn. Stat. § 501C.0105(b)(11) (2022) (establishing that the terms of a trust do not prevail over "the power of the court to take such action . . . as may be necessary in the interests of justice"); *Moreland*, 2023 WL 4480560, at *7 (applying "the common law of trusts and principles of equity" in construing and interpreting a trust); *see also Black's Law Dictionary* 1817 (11th ed. 2019) (defining "trust" as "[t]he right, *enforceable solely in equity*, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary)" (emphasis added)). It is apparent from Rodney's concessions and the trust instruments' terms that Rodney exercising the option several years after Nathan's death would prejudice the other beneficiaries. As Rodney stated at the May hearing, "the assets have gone up in value 30 to 40 percent since [Nathan] died," thus Rodney purchasing the option at the "fair market value as . . . determined" at Nathan's death would allow Rodney alone to benefit from this significant increase in value. This is contrary to the settlors' intent, which would not allow Rodney or Jon to indefinitely delay invoking the option until observing a significant, multi-year increase in value.

Finally, we acknowledge a potential public policy concern which supports denying Rodney the right to exercise the option. *See* Minn. Stat. § 501C.0410 (2022) (noting "a trust terminates to the extent . . . the purposes of the trust have become unlawful, *contrary*

to public policy, or impossible to achieve"). We are concerned by the existence of the pending judgment against Rodney, especially given Rodney was replaced with his grandchildren as a beneficiary to Nathan's trust because "there was a judgment that was levied against [Rodney's] assets" and "the initial delay [of distribution] was due to the judgment being very close to the ten-year period." Additionally, the trusts' attorney confirmed that the trusts "have been attempting to . . . protect beneficiary Rodney . . . by distributing to him in-kind, preferably, homestead property that would be exempt from creditors." These details hint towards Rodney, with a great deal of help from his brother, attempting to unjustly insulate himself from his creditor. *See* Minn. Stat. § 513.44(a)(1), (b) (2022) (indicating that a "transfer made or obligation incurred by a debtor is voidable as to a creditor . . . if the debtor made the transfer or incurred the obligation . . . with actual intent to hinder, delay, or defraud any creditor of the debtor[,]" and listing, among other factors, "the transfer or obligation was to an insider[,]" "the debtor retained possession or control of the property transferred after the transfer[,]" and "the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred").

In their efforts to avoid Rodney's creditor neither of the brothers had clean hands. Jon could have easily distributed the farmland at any time after his father's death by transferring to each of the beneficiaries their per cent share as an undivided interest in the farmland. But instead, Jon delayed the distribution because of the pending judgment against Rodney, and now Rodney attempts to exercise the option to purchase the farmland.

The brothers jointly acted to insulate Rodney by attempting to distribute to him "in-kind, preferably, homestead property that would be exempt from creditors." *See* Minn. Stat.

§ 510.01 (2022) (defining a "homestead" as "[t]he house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined" and noting that when the property of a debtor is homestead property, it is "exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing"). This attempt to distribute to Rodney homestead property further delayed distribution of the trust assets since the homestead was on property in Nathan's estate, which Rodney no longer had a property interest to since being replaced as a beneficiary. The trusts even sought guidance from the district court on how to protect Rodney from his creditor, ignoring the fact the district court has a duty to be neutral and to enforce the judgment rights of a duly entered Minnesota judgment. It is not up to this court, or the district court, to rubber stamp this long-term scheme to avoid a creditor. *See* Minn. Stat. § 501C.0201(b) (stating "interested person" for the purposes of a trust includes "a creditor").

The district court did not err when it determined the reasonable time for Rodney to exercise the option had lapsed and thus denied Rodney's motion to exercise the option. The equitable principles of fairness, laches and unclean hands, applicable in trust law, lend additional strong support for the decision of the district court.

Affirmed.

JOHNSON, Judge (dissenting)

The district court erred by depriving Rodney of his right to purchase farmland from two trusts according to the intentions of his parents, the grantors of the trusts. Rodney's option to purchase the farmland did not expire because the trustee did not grant it to him until July 2022 and because Rodney exercised it only four days later. This court should reverse the district court's decision. I respectfully dissent.

I.

Rodney's first argument—which forms the primary issue on appeal—is that the district court erred by granting Suzanne's motion to prohibit him from exercising his right to purchase farmland owned by the two trusts on the ground that his option had expired. Such a claim and request for relief was not pleaded in Suzanne's petition. The issue arose for the first time at a hearing when Suzanne's attorney raised it orally in the course of discussing Jon's dilatory performance as trustee.

A court must interpret a trust agreement to give effect to the grantor's intent, which may be discerned from the plain language of a trust agreement. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012); *In re Trust of McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985); *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *rev. denied* (Minn. June 26, 2013). "If the trust agreement is unambiguous, a court should look to the language of the agreement to discern the grantor's intent and not consider extrinsic evidence." *Van Dusen*, 834 N.W.2d at 520.

In this case, the relevant provision of the trust agreements is unambiguous. The grantors of the two trusts, Nathan and Cleone, used plain language to express their

intentions concerning the disposition of farmland owned by the trusts. Each trust agreement provides in paragraph VIII.C., "Notwithstanding any of the foregoing powers which I have granted to my trustees, I direct that *my trustees shall grant* to each of my sons, Rodney N. Goodwin and Jon D. Goodwin, *the first right and option to purchase* any farmland that comprises a part of my estate." (Emphasis added.) Paragraph VIII.C. follows paragraphs VIII.A. and VIII.B., which confer broad powers on the trustees to distribute and otherwise dispose of assets held by the trusts.[16] In essence, paragraph VIII.C. limits a trustee's general authority to sell trust assets by requiring the trustee to give Rodney an opportunity to purchase farmland pursuant to certain terms and conditions before selling the farmland to another person or persons.

For purposes of this case, the key language is "my trustees shall grant." This plain language requires the trustee of each trust to take the initiative with respect to a sale of farmland by affirmatively granting to Rodney a first right and option to purchase the farmland. Rodney's first right and option to purchase does not come into existence unless and until it is granted by the trustee. Such a grant requires some form of communication from the trustee to Rodney.

This interpretation of the plain language of the trust agreements is consistent with caselaw. Rodney's rights under paragraph VIII.C. are akin to a right of first refusal, which "is similar to an option contract" except that a right of first refusal "requires a condition

[16]The 16-page Trust Agreement of Nathan K. Goodwin and two amendments are in the addendum filed by Suzanne and are in the district court record. No party has objected to the inclusion of those documents in the appellate record.

precedent before it may be exercised," the condition precedent being the property owner's receipt of "a bona fide offer from a third party which he or she is willing to accept." *Park-Lake Car Wash, Inc. v. Springer*, 352 N.W.2d 409, 411 (Minn. 1984). Accordingly, a right of first refusal "is not an option to purchase but . . . limits the right of the owner to dispose freely of its property by compelling the owner to offer it first to the party who has the first right to buy." *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 784 (Minn. 2004) (quotation omitted). Importantly, a right of first refusal "ripens into an option when the owner receives a bona fide third party offer and notifies the holder of the right." *Id.* The supreme court has held that, to "activat[e] a right of first refusal," a property owner must give "reasonable notice of the essential terms of an offer of sale to trigger the [other party's] obligation to timely respond." *Id.* at 784-85. Accordingly, the trustee's grant of a first right and option to purchase pursuant to paragraph VIII.C. must provide "reasonable notice of the essential terms" of the option in order "to trigger [Rodney's] obligation to timely respond." *See id.*

At the time of Nathan's death, Jon was the trustee of each trust. For approximately three years after Nathan's death, Jon took no action to grant to Rodney a first right and option to purchase farmland from the trusts or to give him any notice of the essential terms of an option. It was not until July 29, 2022—approximately four months after Suzanne commenced this action—that Jon's attorney prompted Rodney to express his intentions with respect to the farmland. It is clear that the trustee did not grant Rodney a first right and option to purchase before July 29, 2022. I would agree that Jon did not timely fulfill his duty to distribute trust assets to beneficiaries following Nathan's death, as required by

paragraph VI.B.4. of the trust agreements. But that was not Rodney's fault. Jon's inaction cannot divest Rodney of his right to purchase farmland from the trusts.

Because a first right and option to purchase was not granted to Rodney before July 29, 2022, Rodney's first right and option to purchase cannot possibly have expired before then. It is undisputed that Rodney exercised the option on August 2, 2022, only four days after it was granted to him. It cannot reasonably be argued that four days is an unreasonably long period of time in which to exercise the option. It is immaterial that Rodney previously was aware of paragraph VIII.C. of the trust agreements. Rodney was not authorized to unilaterally grant himself a first right and option to purchase or to unilaterally convey farmland from the trusts to himself. Only a trustee could take those actions.

The opinion of the court reasons that Rodney's first right and option to purchase was triggered when Nathan died because that is the date by which fair market value is determined. But there is no language in paragraph VIII.C. suggesting that Rodney's first right and option to purchase came into existence immediately upon Nathan's death. The date of Nathan's death is merely a means of determining the purchase price of the option. If fair market value is used to determine the purchase price, the price cannot be known until a federal estate-tax return is filed. At oral argument, Suzanne's attorney stated that a federal estate-tax return may be filed as late as nine months after a person's death. Suzanne's attorney is correct. *See* 26 U.S.C. § 6075(a) (2018). As a practical matter, a first right and option to purchase could not have been granted to Rodney immediately after

Nathan's death because the trustee would not yet know the fair market value stated in a yet-to-be-filed estate-tax return.

The opinion of the court relies heavily on *Dyrdal* for the proposition that, if a "contract provides no deadline for accepting or rejecting the offer of sale, acceptance must be within a reasonable time." 689 N.W.2d at 785. The *Dyrdal* opinion concerned a lease agreement that provided the lessee with a right of first refusal but was silent about how the right should be exercised. *Id.* at 781-82. The primary holding of the supreme court's opinion is that, in the absence of express contractual provisions concerning a right of first refusal, the property owner is obligated to give the party holding a right of first refusal reasonable notice of the essential terms of a third-party's offer to buy the property. *Id.* at 784-85. The secondary holding of the supreme court's opinion is that, after receiving reasonable notice—and only then—the party holding the right of first refusal has a reasonable time to exercise the right to purchase the property. *Id.* It is ironic that the opinion of the court omits any mention of the primary holding of *Dyrdal* and applies only the secondary holding. Under the primary holding of *Dyrdal*, the trustee in this case failed for three years to give Rodney "reasonable notice" of his first right and option to purchase so as "to trigger [Rodney's] obligation to timely respond." *Id.* at 784-85. The *Dyrdal* opinion supports Rodney's position, not Suzanne's.

Because the trustee did not grant Rodney a first right and option to purchase before July 29, 2022, Rodney's first right and option to purchase the farmland was not triggered until that date. For that reason, the district court erred by considering whether Rodney acted reasonably by not exercising a yet-to-be-granted option during the three-year period

following Nathan's death. Consequently, the district court erred by making findings on irrelevant factual issues such as Suzanne's age, Rodney's indebtedness to a third-party, a change in market value of the farmland, and the timing of Suzanne's motion.

The opinion of the court also errs by invoking equity in such a way that it supersedes the plain language of the trust agreements. It is true that "[t]he common law of trusts and principles of equity supplement" the trust code, "except to the extent modified by this chapter or another law of this state." Minn. Stat. § 501C.0106 (2022). But Suzanne did not argue that any particular common-law or equitable principle applies, and the opinion of the court also does not specifically identify and apply any particular equitable doctrine. In that way, this case is different from *In re Trust of Moreland*, ____ N.W.2d ____, 2023 WL 4480560 (Minn. July 12, 2023), in which the supreme court applied pre-existing common-law authority for the equitable remedy of striking an unenforceable provision of a trust agreement. *Id.* at *7. The trust code also provides that "the terms of a trust" generally govern "the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary." Minn. Stat. § 501C.0105(a) (2022). The opinion of the court errs by not adhering to that statute and to the caselaw that places paramount importance on the plain language of trust agreements. *See Stisser*, 818 N.W.2d at 502; *McLaughlin*, 361 N.W.2d at 44-45; *Van Dusen*, 834 N.W.2d at 520.

Thus, I would grant appellate relief on Rodney's first argument by reversing the district court's grant of Suzanne's motion to prohibit Rodney from exercising his first right and option to purchase farmland held by the trusts.

II.

Rodney's second argument is that the district court erred by making findings of fact that are not supported by admissible evidence. Rodney's argument is focused on the nearly complete absence of a factual record. He contends that "not so much as an affidavit, deposition, or exhibit was received concerning the issues of notice, reasonableness of time in exercising the option, or prejudice to the beneficiaries." Rodney is correct. Even if Suzanne's verified petition is considered evidence, *see supra* at 15-17, there is a lack of evidence to support the district court's findings of fact. Nonetheless, the district court's unsupported findings of fact are irrelevant, for the reasons stated in part I of this dissenting opinion. If the district court had properly interpreted the trust agreement, only a few factual issues would be relevant, such as whether the trustee had granted a first right and option to purchase to Rodney, and it is undisputed that the trustee did not do so before July 29, 2022. Thus, I would conclude that it is unnecessary to grant relief on Rodney's second argument because the issue would be moot in light of the relief I would grant on his first argument, for the reasons stated in part I of this dissenting opinion.

III.

Rodney's third argument is that the district court erred by depriving him of his right to due process by not holding an evidentiary hearing. Again, I would not need to address this issue because it would be mooted by the relief I would grant on Rodney's first argument.

IV.

In his cross-appeal, Jon argues, in the alternative, that if this court concludes that Rodney may exercise a first right and option to purchase, Jon too should be allowed to do so. Neither Rodney nor Suzanne oppose Jon's cross-appeal. Accordingly, I would grant appellate relief to Jon on his cross-appeal for the same reasons I would grant appellate relief to Rodney.

V.

The opinion of the court also discusses "a potential public policy concern," which is far beyond the scope of the district court's decision and the parties' briefing. *See supra* at 22-24. In my view, the court should not gratuitously consider issues that were not briefed by the parties and are not necessary to the resolution of the appeal and the cross-appeal. To be clear, I do not join in any part of the opinion of the court.

In sum, I would conclude that Rodney and Jon should not be prevented from exercising their first rights and options to purchase farmland from the two trusts pursuant to paragraph VIII.C. of the trust agreements. Therefore, I would reverse the judgment of the district court.