STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1716

Wayne E. Hukriede, et al.,
Appellants,

vs.

Melanie A. Engh-Liska, aka Melanie A. Liska, et al.,
Respondents.

Filed June 12, 2023
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Hennepin County District Court
File No. 27-CV-22-2956

Paul A. Sortland, Sortland Law Office, PLLC, Minneapolis, Minnesota (for appellants)

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Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Parents, their son, and their son's spouse (collectively appellants) challenge the district court's summary-judgment dismissal of their legal-malpractice claims against respondent-attorney, which are based on appellants' assertion that the attorney provided negligent estate-planning advice. Appellants also challenge the district court's denial of

their motion to extend the deadline for rebuttal disclosures. We affirm the district court's grant of summary judgment against parents. But we reverse the grant of summary judgment against son and his spouse and remand for further proceedings. Finally, we affirm the denial of appellants' motion to extend the rebuttal disclosure deadline, but the district court has discretion to reconsider its decision on remand.

FACTS

Appellants Helen Hukriede, Wayne Hukriede, Steven Hukriede, and John Tripp brought legal malpractice claims against respondents Melanie Liska and Tarrant & Liska PLLC (together, Liska). Their claims arose out of estate-planning services Liska provided to Steven and John.

Helen and Wayne are married. Steven is their son. John is Steven's spouse. In July 1988, Helen and Wayne conveyed their real property located on University Avenue NE, in Minneapolis to Steven, reserving a life estate for themselves (the 1988 life estate). The three Hukriedes lived together in the property until 2009, when Helen and Wayne moved out and John moved in.

In 2019, Steven and John retained Liska for estate-planning advice. Liska prepared two quitclaim deeds. The first deed extinguished the 1988 life estate. The second deed granted John an interest in the property as a joint tenant. Steven gave Helen and Wayne the deed extinguishing the 1988 life estate, and they signed it without obtaining legal advice or legal representation.

In 2021, Helen was diagnosed with dementia and moved to a nursing home. She applied for and was approved for medical assistance. Also in 2021, Steven and John

retained the services of a different attorney and executed a warranty deed conveying a life estate in the property back to Helen and Wayne. Liska was not involved in that transaction.

In January 2022, appellants sued Liska for legal malpractice, asserting theories of professional negligence and breach of fiduciary duty. The parties stipulated to, and the court adopted, a scheduling order providing that appellants' expert disclosures were due by July 1, 2022, Liska's expert disclosures were due by August 12, 2022, and rebuttal disclosures were due by September 12, 2022. Liska moved for summary judgment in July 2022. On September 12, 2022, appellants moved to amend the scheduling order and to extend the deadline for rebuttal expert disclosures. On September 21, before the district court ruled on appellants' motion to extend the disclosure deadline, appellants served the expert reports of an attorney and an appraiser. The district court denied appellants' request to extend the deadline, granted Liska's motion for summary judgment, and dismissed appellants' claims against Liska.

This appeal follows.

DECISION

I.

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). "Summary judgment is inappropriate when reasonable persons might draw different conclusions from

the evidence presented." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019) (quotation omitted).

This court reviews the district court's grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Summary Judgment Against Helen and Wayne

"[A]n attorney is liable for professional negligence only to a person with whom the attorney has an attorney-client relationship." *Marker v. Greenberg*, 313 N.W.2d 4, 5 (Minn. 1981); *see* Minn. R. Prof. Conduct 1.1 ("A lawyer shall provide competent representation to a client."). Similarly, a claim for breach of fiduciary duty requires the existence of a fiduciary relationship, like that between attorney and client. *Swenson v. Bender*, 764 N.W.2d 596, 601 (Minn. App. 2009), *rev. denied* (Minn. July 22, 2009); *see also STAR Ctrs.*, 644 N.W.2d at 77 ("An attorney-client relationship gives rise to fiduciary duties . . . ."). An attorney-client relationship can be established under a contract or tort theory.[1] *See Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261, 265 (Minn. 1992). An attorney may also be liable to a third party in limited cases under a third-party-beneficiary theory. *Marker*, 313 N.W.2d at 5.

[1] In their reply brief, appellants assert that Liska is liable under an "implicit contract theory," but they do not cite law or provide legal argument to support that assertion. This court generally will not address issues unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). We decline to so here.

After being retained by Steven and John, Liska prepared a quitclaim deed that extinguished the 1988 life estate. Steven gave Helen and Wayne the deed that Liska had prepared, and they signed it without seeking legal advice or legal representation. It is undisputed that Helen and Wayne never met or communicated with Liska. Wayne admitted, in deposition testimony, that they did not seek legal advice from Liska.

In granting summary judgment, the district court reasoned that appellants failed to raise a genuine issue of material fact regarding the existence of an attorney-client relationship between Helen and Wayne and attorney Liska. Appellants argue that there was an attorney-client relationship because it was reasonable for Helen and Wayne to rely on Liska's advice.

An attorney-client relationship arises under tort theory when a person seeks and receives legal advice on which a reasonable person would rely. *In re Disciplinary Action against Severson*, 860 N.W.2d 658, 666 (Minn. 2015). The focus is on the contact that occurred between the plaintiff and the attorney. *See Gramling v. Mem'l Blood Ctrs. of Minn.*, 601 N.W.2d 457, 460 (Minn. App. 1999) ("Courts have focused on the contact that occurred between the plaintiff and the attorney.").

In *Gramling*, this court affirmed a grant of summary judgment, reasoning that "[a]bsent a request for legal advice, we cannot conclude an attorney-client relationship existed under the tort theory of representation." *Id.* Like the circumstances in *Gramling*, Wayne and Helen did not request legal advice from Liska. Indeed, they never communicated with attorney Liska or anyone else at her firm. Because it is undisputed that Helen and Wayne did not seek legal advice from Liska, there is no basis for a reasonable

person to conclude that an attorney-client relationship existed under the tort theory of representation. *See id.*

Appellants also argue that Helen and Wayne were the "direct and intended beneficiary" of Liska's legal services. To pursue a claim for legal malpractice as a direct and intended beneficiary of legal services, a non-client third party must establish "that it was, in fact, a direct and intended beneficiary of the attorney's services." *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 500 (Minn. 2018) (quotations omitted). If that threshold requirement is met, this court looks to the factors set forth in *Lucas v. Hamm*, 364 P.2d 685, 687 (Cal. 1961), to determine the extent of the duty owed. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 547 (Minn. 2008).[2]

"A party is a direct beneficiary of a transaction if the transaction has as a central purpose an effect on the third party and the effect is intended as a purpose of the transaction." *Id.* at 547. "Requiring that the transaction directly benefit the third party properly serves to prevent nonclients who receive incidental benefits from the representation, or who only receive downstream benefits, from holding the attorney liable." *Id.* "[T]he attorney must be aware of the client's intent to benefit the third party in order for the exception to be applicable." *Id.* at 548.

[2] Those factors include "the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury, and the policy of preventing future harm." *Id.* at 546.

It is undisputed that Steven and John retained Liska for their own estate-planning advice. Liska prepared documents that eliminated Helen and Wayne's interest in the property, expanded Steven's interest, and created an interest for John. Steven and John clearly were the direct and intended beneficiaries of Liska's services. No reasonable person could conclude that the elimination of the 1988 life estate was intended to benefit Helen and Wayne. Moreover, the evidence does not suggest that Liska was aware of any purported intent to benefit Helen and Wayne. Because the threshold requirement to recognize a non-client third-party-beneficiary claim is not met, we need not address the *Lucas* factors. *See Sec. Bank & Tr. Co.*, 916 N.W.2d at 501-02.

Finally, appellants assert that Liska breached an ethical duty, citing Minn. R. Prof. Conduct 4.3(c), which provides that "when a lawyer knows or reasonably should know that [an] unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding." But "an attorney's violation of the Rules of Professional Conduct does not give rise to a private cause of action against an attorney." *In re Disciplinary Action against Montez*, 812 N.W.2d 58, 66-67 (Minn. 2012). Indeed, appellants do not provide any legal support for their assertion that a violation of rule 4.3 would give rise to their malpractice claims in the absence of an attorney-client relationship.

In sum, we affirm the grant of summary judgment against Helen and Wayne because there is no genuine issue of material fact and the record reflects a complete lack of proof of an essential element of Helen and Wayne's claims, that is, the existence of an attorney-client relationship between Helen and Wayne and attorney Liska.

Summary Judgment against Steven and John

Whether pursued under a professional-negligence or breach-of-fiduciary-duty theory, legal-malpractice claims require proof of nonspeculative damages caused by an attorney's breach of duty. *See Mittelstaedt v. Henney*, 969 N.W.2d 634, 640 (Minn. 2022) (stating elements of breach-of-fiduciary-duty malpractice claim); *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018) (stating elements for negligence-based malpractice claim); *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977) ("[D]amages which are speculative, remote, or conjectural are not recoverable."). Steven and John's theory of causation and damages in this case is premised on the manner in which medical assistance operates in Minnesota. We thus begin with a discussion of the relevant law.

Medical assistance, which is Minnesota's Medicaid program, is governed by both state and federal law. *See Pfoser v. Harpstead*, 953 N.W.2d 507, 514 (Minn. 2021). The program "provides financial assistance to individuals who need long-term medical care, such as nursing home care, but are without the necessary funds to acquire it by allowing them to apply for and receive funds from the State (once they meet the statutory eligibility requirements) to cover the costs of such care." *In re Schmalz*, 945 N.W.2d 46, 51 (Minn. 2020). "Because Medicaid is intended to be the payor of last resort, persons must be financially eligible for Medical Assistance by having available assets valued below a statutory threshold amount." *Pfoser*, 953 N.W.2d at 514 (citation omitted).

For purposes of determining eligibility, a person's assets that were transferred for less than fair market value within 60 months (prohibited transfers) before a request for medical assistance is made will be considered. Minn. Stat. § 256B.0595, subd. 1(a) (2022).

But certain assets, including a homestead occupied by the spouse of an institutionalized person, "are not counted when totaling assets to determine eligibility." *Schmalz*, 945 N.W.2d at 51; *see also* Minn. Stat. § 256B.056, subd. 2(1) (2022). If a person's available assets exceed the statutory threshold, that person must "spend down" those assets—by using them to pay for their own care—before qualifying for medical assistance. *Schmalz*, 945 N.W.2d at 51. And prohibited transfers will result in a period of ineligibility before medical assistance may be obtained. Minn. Stat. § 256B.0595, subd. 2 (2022).

Because "[i]t is the policy of this state that individuals or couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the cost of care during or after their enrollment in the program," the medical-assistance statutes provide that a claim "shall be filed" against the estate of the survivor of a married couple, one or both of whom received medical assistance. Minn. Stat. § 256B.15, subds. 1(a), 1a (2022); *see also* Minn. Stat. § 514.981, subd. 1 (2022) (providing for medical-assistance liens based on benefits paid). For purposes of such a claim, a person's estate includes "all of the person's interests . . . in real property the person owned as a life tenant . . . at the time of the person's death." Minn. Stat. § 256B.15, subd. 1a(b)(2) (2022).

More specifically, the medical assistance statutes provide for "the continuation of a recipient's life estate or joint tenancy interest in real property after the recipient's death for the purpose of recovering medical assistance." *Id.*, subds. 1(a)(3), 1h(b) (2022). This provision "modifies common law principles holding that these interests terminate on the death of the holder" and "[is] effective only for life estates and joint tenancy interests established on or after August 1, 2003." *Id.*, subd. 1(a)(3), (d) (2022). Because a life estate

created before August 1, 2003, will not be included in the estate for purposes of a medical assistance claim, such pre-August 1, 2003 life estates are referred to by appellants' expert as "golden" life estates.

Steven and John contend that Liska deprived them of the benefits of a golden life estate by drafting documents in December 2019 that extinguished the 1988 life estate. They argue that, had the 1988 life estate not been extinguished, they would have obtained an unencumbered interest in the property after Helen's and Wayne's deaths. They further argue that because of Liska's actions, the property is now subject to a medical-assistance lien, based on the nearly $10,000 per month in medical assistance that Helen is receiving. In support of these contentions, Steven and John have offered an expert report from estate planning attorney David W. Johnson. Consistent with Steven and John's contentions, Johnson averred that "but for the actions of Melanie Liska, Steven Hukriede would have been able to receive the property without any diminishment because of any subrogation interests due and owing for medical assistance provided to Helen Hukriede during her lifetime."

Liska contends, and the district court concluded, that summary judgment was appropriate because Steven and John cannot prove nonspeculative damages caused by Liska's conduct. The district court acknowledged Steven and John's contention that the amounts Helen was receiving in medical assistance—accumulating at the rate of about $10,000 per month—would be subject to a medical-assistance lien following her death, but nevertheless determined that Steven and John's damages were too speculative. The district court also determined that Steven and John's "claimed damages cannot be seen to have

been caused by" Liska because Steven chose to extinguish the 1988 life estate and because "the 2021 Transaction giving a life estate over the Property may be an intervening and superseding cause."

As to the determination that Steven and John's asserted damages are speculative, the rule against speculative damages does not preclude a party from seeking future damages:

> In a civil action the plaintiff has the burden of proving future damages to a reasonable certainty. This rule insures that there is no recovery for damages which are remote, speculative, or conjectural. However, it is not necessary that the evidence be unequivocal or that it establish future damages to an absolute certainty. Instead, the plaintiff must prove the reasonable certainty of future damages by a fair preponderance of the evidence. In short, the plaintiff is entitled to an instruction on future damages if he or she has shown that such damage is more likely to occur than not to occur.

Pietrzak v. Eggen, 295 N.W.2d 504, 507 (Minn. 1980).[3]

Here, Steven and John have offered evidence that Helen is receiving nearly $10,000 per month in medical assistance, and their expert has opined that the property will be subject to a lien in favor of Hennepin County following Helen's death that it would not have been subject to absent Liska's conduct. Although the precise amount of the lien may

[3] Notably, the supreme court has determined that a legal-malpractice claim accrues for statute-of-limitations purposes when "some damage" occurs. *Frederick*, 907 N.W.2d at 178. In *Antone v. Mirviss*, the supreme court held that a client incurred some damage from an attorney's negligence in preparing an antenuptial agreement on the date of his marriage. 720 N.W.2d 331, 337 (Minn. 2006). The court explained that when the client married, "he passed the point of no return" and was "entitled to make a claim upon a portion of any appreciation in his premarital property." *Id.* Similarly here, Steven and John incurred some damage when the 1988 life estate was extinguished because they irretrievably lost the benefits of a golden life estate.

not be known until after Helen's death, we conclude that Steven and John have presented evidence sufficient to prove future damages to a reasonable certainty. *See Pietrzak*, 295 N.W.2d at 507; *see also Leoni*, 255 N.W.2d at 826 ("Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount."). Accordingly, summary judgment is not appropriate on the ground that damages are too speculative.[4]

As to the determination that Steven and John's asserted damages were not caused by Liska and that creation of the 2021 life estate by other counsel may be a superseding intervening cause, legal-malpractice claims require proof of both proximate and but-for causation. *Frederick*, 907 N.W.2d at 173. When the claim is based on transactional work, but-for causation "turns on whether the attorney's conduct was the but-for cause of the failure to obtain a more favorable result." *Id.* (emphasis omitted). "The doctrine of superseding cause recognizes that although an actor's negligent actions may have put the plaintiff in the position to be injured, and therefore contributed to the injury, the actual injury may have been caused by an intervening event[, which] prevents the original negligent actor from being liable for the final injury." *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 113 (Minn. 1992). There are four elements that must be met for an intervening cause to be superseding and thus relieve the original negligent actor of liability:

> (1) Its harmful effects must have occurred after the original negligence; (2) it must not have been brought about by the

[4] Because we conclude that Steven and John have presented sufficient evidence of nonspeculative damages based on the exposure of the property to a medical-assistance lien, we need not reach their argument that they will incur additional damages based on the taxes they will pay on capital gains if and when they sell the property.

> original negligence; (3) it must actively work to bring about a result which would not otherwise have followed from the original negligence; and (4) it must not have been reasonably foreseeable by the original wrongdoer.

Id. "[A]n intervening cause which is a normal response to the stimulus of a situation created by the original negligence will not be considered a superseding cause such that it relieves the original negligent actor." *Id.* at 114 (quotation and alteration omitted).

Here, Steven and John offered evidence through their expert's opinion that, but for Liska's conduct, the property would not have become subject to a medical-assistance lien. The expert explains that Wayne and Helen's extinguishment of their life estate in 2019 was a prohibited transfer within the lookback period that appears to have prevented Helen from qualifying for medical assistance when she first entered the nursing home. The expert further explains that, after Wayne and Helen's life estate was reestablished in 2021, Helen became eligible for medical assistance. Steven and John's expert further avers that Liska should have been aware that extinguishing the 1988 life estate would cause the property to become subject to a medical-assistance lien.

Steven explains that when they met with new counsel in 2021 his "understanding was that we had two choices. We either have to pay the value of my mother's ownership right up front, because the extinguishment was done like a little over a year before that . . . or put the . . . deed back the way it was."

We conclude that this evidence is sufficient to create genuine issues of material fact regarding causation. Although Liska correctly asserts that the property did not become subject to a medical-assistance lien until the creation of the 2021 life estate, a reasonable

factfinder could find that the creation of the 2021 life estate—to reverse the transfer that rendered Helen ineligible for medical assistance—was brought about by Liska's negligence and was reasonably foreseeable. Thus, we cannot say that creation of the 2021 life estate was a superseding cause as a matter of law. Accordingly, summary judgment is not appropriate on the ground of causation.

In sum, we reverse the grant of summary judgment against Steven and John and remand for further proceedings consistent with this opinion.

II.

We last address appellants' argument that the district court erred by denying their motion to extend the court-ordered deadline for rebuttal disclosures.

The district court may amend a scheduling order on a showing of good cause. Minn. R. Civ. P. 16.02; *see also* Minn. R. Gen. Prac. 111.04. "The district court has broad discretion to amend scheduling-order deadlines, and we review its decision for an abuse of discretion." *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006). The district court abuses its discretion if it makes findings unsupported by the record, misapplies the law, or if its decision contradicts logic and the facts on record. *Bender v. Bernhard*, 971 N.W.2d. 257, 262 (Minn. 2022).

In this case, the parties stipulated to and the court adopted a scheduling order requiring that appellants' "[r]ebuttal disclosures shall be made by September 12, 2022." On September 12, appellants moved to extend the deadline for rebuttal disclosures. Appellants stated that they needed the extension because their appraisal was not completed in time, due to a missed communication, and because the attorney expert's affidavit was

"stuck in the 'drafts' section" of the court e-file system and not served. Liska opposed the motion as an "untimely disclosure of a new expert witness."

On September 20-21, appellants served the expert reports of an attorney and an appraiser. The district court determined that there was no good cause to extend the time for rebuttal testimony, reasoning that the "scheduling order reflects not only the agreements between the parties but also the [district] court's agreement" and that appellants' "explanations are not reasonable excuses to grant extension of time." The district court also reasoned that an extension would prejudice Liska because she did not have a chance to respond or prepare against the untimely disclosure.

Appellants argue that "Minnesota law has long allowed late disclosure of expert witnesses, where there is no prejudice to the opposing party." Appellants focus on prejudice and emphasize that the "expert reports were submitted only nine days late." Appellants cite *Dennie v. Metropolitan Medical Center*, 387 N.W.2d 401 (Minn. 1986) and *Krech v. Erdman*, 233 N.W.2d 555 (Minn. 1975), arguing that "prejudice must be stated and shown." In *Dennie*, the supreme court concluded that the district court abused its discretion by suppressing all of a party's expert testimony for failure to make a timely disclosure. 387 N.W.2d at 405. In *Krech*, the supreme court concluded that the district court did not abuse its discretion by denying a motion to suppress expert testimony. 233 N.W.2d at 557.

Because the scheduling order was agreed to by the parties and appellants had over three and half months to communicate with their appraiser and to properly file their expert reports, we cannot say that the district court abused its discretion by denying the motion to

extend the deadline for rebuttal disclosures. We therefore do not reverse the district court's ruling. However, the district court has discretion to reconsider its ruling on remand.

Affirmed in part, reversed in part, and remanded.