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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1781**

In re: Ursula E. Nelson Trust under Agreement dated 3/21/2014, as Amended.

**Filed July 10, 2023
Reversed and remanded
Bryan, Judge**

Carver County District Court
File No. 10-CV-20-699

Alan I. Silver, James C. Kovacs, Bassford Remele, P.A., Minneapolis, Minnesota; and

Mark R. Bradford, Bradford Andresen Norrie & Camarotto, Bloomington, Minnesota (for appellants)

Richard C. Landon, Brian A. Dillon, Marya P. Robben, Amy E. Erickson, Lathrop GPM, LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellants challenge the district court's decision invalidating a commercial lease under theories of undue influence and unconscionability. First, appellants contend that the district court applied the wrong legal standard for a claim of undue influence. Second, they argue that the district court applied the wrong legal standard for, and clearly erred in making factual findings concerning, its determination of unconscionability. We conclude that although the district court expressly referenced an incorrect legal standard for undue

influence, it is unclear whether and to what extent the district court actually applied this standard. We reverse and remand for the district court to reconsider its decision under the correct legal standard. We also conclude that the district court erred as a matter of both law and fact when it determined that the lease was unconscionable, and we reverse this portion of the district court's decision.

FACTS

Ursula Nelson (Ursula)¹ passed away on August 23, 2019, survived by her two children and four grandchildren. Ursula's daughter, Caroline Levine, has two sons, Charles Levine (Charlie) and Michael Levine (collectively, appellants). Ursula's son, Carl Robert Nelson, has two children, Abigail Campbell and Neil Nelson (collectively, respondents). After Ursula's death, respondents sought to enforce a trust that she established in 2014. One of the primary assets of the trust was a 180-acre farm where Ursula resided prior to her death. In 2018, Ursula (as trustee) agreed to give Charlie and his business, Hemp Acres, LLC, the right to occupy the 180-acre farm (the Hemp Acres Lease).

On September 3, 2020, respondents filed an action to enforce the trust and invalidate the Hemp Acres Lease. Respondents asserted that the Hemp Acres Lease was invalid as the result of undue influence. The district court heard testimony from Ursula's children and grandchildren, two attorneys involved at different points in Ursula's estate planning, and two neighboring farmers who had prior lease agreements with Ursula.² The Hemp

¹ Some of the individuals involved share a last name, so we use first names when necessary.

² One of the neighboring farmers testified that he had a few lease agreements with Ursula over the years to farm her property and that they covered approximately "72 acres" of the 180-acre property and lasted about two years. He testified that he paid between \$8,400 and

Acres Lease required Hemp Acres to pay the trust \$5,000 per year, to pay insurance and certain expenses, and to be responsible for certain maintenance and upkeep costs. At trial, Charlie testified that these expenses totaled approximately \$20,000 per year. The trial evidence also included testimony regarding a series of amendments that Ursula made to the trust and focused on the involvement of the two attorneys. The parties disputed the validity of the fourth and fifth amendments to the trust, and they disputed whether the Hemp Acres Lease resulted from undue influence. The parties did not, however, make any challenge to the other amendments to the trust or to the validity of the Hemp Acres Lease during the litigation and trial.

At the conclusion of trial, and after the close of evidence, the district court brought up unconscionability, asking respondents whether they were seeking to invalidate the Hemp Acres Lease on the basis of undue influence alone or on alternative grounds:

Are you arguing on the Hemp Acres Lease for the Court to consider undue influence only as a reason for finding it invalid? Or are you arguing lack of consideration, unconscionability? I mean are there contract principles that you're going to be arguing as well? Or is this solely an undue influence on the signing of the [Hemp Acres] lease?

Respondents' counsel stated that although unconscionability had not yet been raised, in counsel's opinion, the Hemp Acres Lease was unconscionable:

\$11,160 per year and was not responsible for other expenses. The other neighboring farmer testified that he rented portions of Ursula's property between 1996 and 2001 and generally helped her with repairs and the animals. He testified that they never had a formal agreement but that, per an oral agreement, he farmed about 70 acres of her property and paid between \$5,600 and \$8,400 each year. Apart from this evidence, neither party presented evidence regarding the value of the farm or what fair lease terms might include.

I do think that it is unconscionable. I do think that it is—every credible witness who has testified has testified that it is not a fair market lease, it's not an arms-length arrangement. I do think it is unconscionable. Our primary argument is that it was procured by undue influence. We will consider other arguments, Your Honor . . . we have not made those arguments yet. But it's a good idea.

Appellants' counsel then orally argued that respondents had waived any challenge to the Hemp Acres Lease on grounds of unconscionability. Following the hearing, both appellants and respondents submitted memorandums and proposed orders. Appellants again asserted that respondents waived any argument to challenge the Hemp Acres Lease on the basis of unconscionability. Alternatively, appellants also asserted that the Hemp Acres Lease was not unconscionable because the terms were commercially reasonable and both parties benefitted from the agreement.

On October 17, 2022, the district court issued its findings of fact, conclusions of law, and order. The district court concluded that the Hemp Acres Lease was invalid for two independent reasons: it was the product of undue influence, and it was unconscionable. The district court found that both Charlie and one of the estate-planning attorneys exerted undue influence over Ursula by “elevat[ing] Charlie’s interests above Ursula’s interests,” and inducing Ursula to enter into the Hemp Acres Lease, whose terms “unreasonably favor Hemp Acres and Charlie.” The district court also determined that “[t]he Hemp Acres Lease is unconscionable and, therefore, unenforceable,” emphasizing the fact that the Hemp Acres Lease “encumbers the *entire* Farm (including Ursula’s home), for a 20-year period, and requires rent payments of just \$5,000 per year.” The district court stated that “[n]o

person in their right mind would make such a lease, and no honest and fair person on the other side would accept such a lease.” This appeal follows.

DECISION

We reverse the district court’s decision regarding undue influence and remand for the district court to apply the proper legal standard under Minnesota law. We also reverse the district court’s decision regarding unconscionability.

I. Determination of Undue Influence

Appellants argue that the district court applied an incorrect legal standard, which required them to prove that they did not exert undue influence, rather than requiring respondents to prove that appellants did exert undue influence. This argument presents a question of law, which we review de novo. *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 785 (Minn. App. 2011).

The parties agree that a district court can invalidate a contract if a party was unduly influenced to enter into the contract. The parties also agree that Minnesota caselaw permits invalidation of a contract where the evidence presented establishes that influence was exerted over another and “that the influence was so dominant and controlling of the influenced party’s mind that, in making the contract, the influenced party ceased to act of his or her own free will, becoming a mere puppet of the wielder of that influence.” *Nelson v. Holland*, 776 N.W.2d 446, 451 (Minn. App. 2009) (quoting *In re Estate of Congdon*, 309 N.W.2d 261, 268 (Minn. 1981) (defining undue influence in the context of whether a party unduly influenced the testator when the testator drafted her will)). In *Nelson*, this court enumerated the following factors to determine whether a decedent was unduly

influenced to sell a parcel of real property: (1) the influencer's opportunity to exert influence over the decedent; (2) the degree to which the influencer actively participated in the preparation of the contract transferring the parcel of real property; (3) whether the decedent and the influencer had a confidential relationship; and (4) whether the contract terms are unreasonable or unusual. *Id.* (citing *In re Estate of Opsahl*, 448 N.W.2d 96, 100 (Minn. App. 1989) (listing undue influence factors in the context of a whether the proponents of a will unduly influenced a testator in the drafting of her will).

In this case, the district court analyzed these undue influence factors, but relied on a New Jersey Supreme Court case, *Haynes v. First Nat. State Bank of New Jersey*, 432 A.2d 890 (N.J. 1981). The district court relied on *Haynes* for the proposition that courts presume undue influence in certain cases and shift the burden of proof onto the party opposing a determination of undue influence to rebut that presumption. The *Haynes* court held that where a confidential relationship exists and gives rise to "circumstances of a suspicious character . . . the law raises a presumption of undue influence and the burden of proof is shifted to the proponent." *Id.* at 897.

Appellants argue that the district court erred as a matter of law in relying on *Haynes* because *Haynes* is not binding authority and because Minnesota has not adopted a similar presumption and burden-shifting approach. We agree with appellants. The *Haynes* case is not binding legal authority. See *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (recognizing that cases from other jurisdictions are not binding). Respondents do not cite to any precedential Minnesota case adopting *Haynes* or the presumption stated therein, and we are aware of none. In addition, such a presumption

conflicts with at least one Minnesota supreme court case, *Boynton v. Simmons*, 194 N.W. 330 (Minn. 1923). In that case, the supreme court reversed a judgment entered after a jury trial because the district court instructed the jury that “an inference or presumption” of undue influence was warranted by evidence of the existence of a confidential relationship. *Id.* at 331. The supreme court reasoned that “the prevailing rule, as announced in the texts, is that the relation of trust or confidence between the testator and the beneficiary does not give rise to a presumption and is not prima facie proof of undue influence.” *Id.* (quotations omitted). Respondents direct us to no authority overruling or abrogating this decision. In *Boynton*, and in other cases since *Boynton*, Minnesota courts balance various non-exhaustive factors to determine undue influence, as listed above. *Id.*; *see also Agner v. Bourn*, 161 N.W.2d 813, 818-19 (Minn. 1968); *Nelson*, 776 N.W.2d at 452. As one of these factors, courts must consider the existence and abuse of a confidential relationship, but such a relationship does not create a presumption of undue influence or shift the burden of proof. Pursuant to these cases, the burden of proof, at least in Minnesota, remains on the party asserting undue influence.

The district court explicitly referenced the presumption and burden-shifting framework of *Haynes*. In our review of the district court’s decision, however, we are unable to determine whether the district court actually applied the presumption or actually shifted the burden. We note that when analyzing the factor concerning Charlie’s participation in preparing the Hemp Acres Lease, the district court cited *Haynes*, found that attorney involved had a “conflict of interest,” and determined that this conflict “g[ave] rise to a presumption of undue influence, which has not been rebutted by clear and convincing

evidence.” As to the other factors, however, the district court’s analysis does not expressly include a discussion of a presumption or explicitly place a burden on appellants.³ Because it is unclear whether and to what extent the district court applied *Haynes* in its analysis, we are unable to determine whether and, if so, to what extent the district court erred. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (recognizing that “[t]he function of the court of appeals is limited to identifying errors and then correcting them” and not “reweighing the evidence and finding its own facts”). Thus, we reverse and remand for the district court to weigh the evidence and apply the undue influence factors without regard to the presumption and burden-shifting framework from *Haynes*. On remand, the district court is not permitted to reopen the record. Similarly, the district court is not permitted to revise its factual findings, except as necessary to apply the correct legal standard as set forth above.

II. Determination of Unconscionability

Appellants argue that the district court erred in invalidating the Hemp Acres Lease under the alternative legal grounds of unconscionability because respondents did not timely raise this issue before the close of evidence and because appellants did not impliedly consent to try this issue. In addition, appellants assert that the district court committed both legal and factual errors in its determination of unconscionability. We reverse the district

³ The parties agree that a clear-and-convincing standard of proof applies, citing cases applying that standard. *See In re Estate of Reay*, 81 N.W.2d 277, 280 (Minn. 1957) (applying clear-and-convincing standard of proof to a party’s action to invalidate a will for undue influence); *Agner*, 161 N.W.2d at 818, 821 (applying clear-and-convincing standard to a party’s action to invalidate a decedent’s transfer of real property prior to death).

court's determination of unconscionability as a misapplication of law and based on clearly erroneous findings of fact.

As a threshold matter, we are concerned about the district court's implicit determination that appellants impliedly consented to a trial regarding unconscionability. The petition commencing this lawsuit contains no request to invalidate the Hemp Acres Lease on the basis of unconscionability, and respondents acknowledge that they did not raise unconscionability until after the close of evidence when prompted by the district court. In posttrial pleadings, appellants argued that respondents had forfeited a challenge to the Hemp Acres Lease on unconscionability grounds, but the district court proceeded to analyze unconscionability without addressing this argument. On appeal, respondents argue for the first time that appellants impliedly consented to try unconscionability.⁴

“It is fundamental that a party must have notice of a claim against him and an opportunity to oppose it before a binding adverse judgment may be rendered.” *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983) (citing *Truesdale v. Friedman*, 132 N.W.2d 854, 864-65 (Minn. 1965)). A party can, however, consent to an amendment to the complaint or other pleading by their conduct and “[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” Minn. R. Civ. P. 15.02. To determine whether a party impliedly consented, we consider the conduct of the parties during the

⁴ Given our decision reversing the district court's determination of unconscionability on the merits, we need not determine whether there are any important distinctions between the analysis applicable to forfeiture and the analysis applicable to trial by implied consent.

litigation or trial. *Folk*, 336 N.W.2d at 267-68; *Roberge v. Cambridge Cooperative Creamery Co.*, 67 N.W.2d 400, 403 (Minn. 1954) (“[C]onsent to try an issue outside the pleadings cannot be implied where the evidence is pertinent to issues actually made by the pleadings.”); *see also, e.g., Buller v. A.O. Smith Harvestore Prod., Inc.*, 518 N.W.2d 537, 542 (Minn. 1994) (noting that we review a district court’s finding that a party impliedly consented to litigate or try a nonpleaded issue for clear error). Based on our review of the record, we are concerned that appellants’ trial conduct does not indicate consent to a trial on unconscionability. Even assuming, however, that the district court did not err in making the implicit determination that appellants impliedly consented to a trial on the issue of unconscionability, we conclude that the district court erred as a factual and legal matter when it determined that the Hemp Acres Lease was unconscionable.

A contract is unconscionable if it is one that no person “not under delusion would make on the one hand” and no honest and fair person “would accept on the other.” *In re Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. App. 1987) (quoting *Hume v. United States*, 132 U.S. 406, 411 (1889)), *rev. denied* (Minn. Jan. 28, 1988). Inadequate consideration is only sufficient to establish unconscionable contract terms if it is “so great as to shock the conscience.” *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 505-06 (Minn. App. 2007), *rev. denied* (Minn. Feb. 28, 2007). Where “[b]oth parties obtained real and tangible benefits from the execution of [a] contract,” we generally conclude that a contract is not unconscionable. *Overholt Crop Ins. Serv. Co., Inc. v. Bredeson*, 437 N.W.2d 698, 702 (Minn. App. 1989) (holding an employment contract was not unconscionable where the employee received income and the employer received the

employee's work product). The question of unconscionability relates to the time that the parties entered into the contract and not to conduct that occurs afterwards. *Hoffbeck*, 415 N.W.2d at 449. We review the district court's underlying factual findings regarding unconscionability for clear error, but we review a determination that a contract is unconscionable de novo. *Id.*

We conclude that the district court erred as a matter of law for two reasons. First, the district court addressed whether the contract terms were reasonable, concluding that “[t]he Hemp Acres Lease is unconscionable because the terms of the Lease unreasonably favor Hemp Acres and Charlie.” As noted above, however, to be properly characterized as unconscionable, a contract must be more than merely unreasonable; the contract terms must be so unreasonable as to shock the conscience. *Peterson*, 726 N.W.2d at 505. Second, the district court's analysis compared the terms of the Hemp Acres Lease to the terms of prior leases, disregarding several clear differences. For example, none of the previous leases that the district court considered were entered into between Ursula and a family member, *cf. id.* at 505-06 (concluding that “[i]t is not a ‘shock to the conscience’ that a business would be transferred from grandmother to granddaughter for \$1, which would be considered inadequate consideration in other circumstances”), and none of previous lessees had made any—much less significant—investments in the property. Likewise, none of the prior leases required the lessee to pay the expenses that were required in the Hemp Acres Lease. We also observe that in addition to these differences, none of the previous lessees were also the sole devisee of the property at the time the leases were agreed to. The parties agree that at the time of the execution of the Hemp Acres Lease, Charlie was the sole

beneficiary of the property being leased, and they do not dispute the validity of the amendment to the trust that was effective at that time. The district court erred by analyzing the prior leases to determine unconscionability because these prior leases are not comparable to the Hemp Acres Lease. For these reasons, the district court did not correctly apply the law regarding unconscionability.

We also conclude that the district court's underlying factual findings were clearly erroneous for two reasons. First, the district court found that the value of the Hemp Acres Lease to Ursula was "just \$5,000 per year." While it is correct that Hemp Acres agreed to pay rental income of \$5,000, the evidence presented indicates that the value of the lease included more than the rent. The lease terms included requirements that Hemp Acres pay certain expenses and maintenance, which Charlie estimated to be around \$20,000 per year. The district court clearly erred when it did not attribute any value to these lease terms. Second, the record does not include any evidence regarding the fair market value of a comparable lease. Appellants correctly question the factual findings of the district court in light of an absence of an appraisal, a valuation, or any expert testimony concerning what lease terms might reasonably be agreed to in a hypothetical, fair-market negotiation. In the absence of such evidence, the record does not support the factual findings underlying the determination that the Hemp Acres Lease was unconscionable.

Reversed and remanded.