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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1911**

Ronald Lindberg,
Appellant,

vs.

Mark D. Luther, individually and/or as attorney for
Metro Land Surveying and Engineering, Inc.,
Defendant,

Darrell Darnell,
Respondent,

Joshua A. Kluver,
Defendant,

Total Freedom Realty, Inc., et. al.
Defendants,

Jason Lindberg,
Defendant,

Total Title Company, LLC,
Defendant.

**Filed September 6, 2011
Affirmed
Minge, Judge**

Hennepin County District Court
File No. 27-CV-08-18637

Ronald Lindberg, Becker, Minnesota (pro se appellant)

Laurel Pugh, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent Luther)

Brian Baumgartner, Baumgartner Law Office, Shoreview, Minnesota (for respondent Darnell)

Wynn C. Curtiss, Steiner & Curtiss, P.A., Hopkins, Minnesota (for respondent Kluver)

Daniel Stauner, Plymouth, Minnesota (for respondent Total Freedom Realty)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

In this land-development dispute, we understand pro se appellant to argue that the judgment for respondent should be reversed because: (1) the district court judge did not properly handle the proceedings; (2) the district court erred by not permitting the jury to consider certain claims; and (3) the district court abused its discretion by not granting him a new trial (a) to allow the appearance of two witnesses, and (b) to overcome juror misconduct. We affirm.

FACTS

Appellant Ronald Lindberg and his wife, Carol Lindberg, owned and resided in a home in Maple Grove, Minnesota. On June 21, 2005, the Lindbergs entered into a purchase agreement with respondent Darrell Darnell and sold their home to him for \$280,000. Darnell subsequently placed two mortgages on the property for the same amount.

Lindberg claims that the sale to Darnell was incident to Lindberg's plan to subdivide the property, and was for the purposes of obtaining Darnell's financing and

planning expertise in developing the property. As part of the sale, Lindberg and Darnell apparently executed a buyback agreement giving Lindberg the right to repurchase the property if Darnell did not successfully develop it within one year.

In less than a year, Darnell's mortgages were in default, and foreclosure proceedings had begun. At the same time, Joshua Kluver, a real estate agent at Total Freedom Realty, Inc., was searching for properties on behalf of a business known as HBC Enterprises, Ltd. In July 2006, Darnell and HBC executed a purchase agreement on Lindberg's former property and foreclosure was ultimately averted.

Before the sale between Darnell and HBC closed, Jason Lindberg, appellant's son and a real estate agent, told Darnell's real estate agent and Kluver (HBC's real estate agent) that Lindberg had an ownership interest in the property. When Kluver questioned Darnell about Jason's assertions, Darnell told Kluver there was no buyback agreement. Kluver then contacted the realty company for the July 2005 transaction and the title company that closed that sale, but neither had any documents or information regarding a buyback agreement. Lindberg subsequently claimed that Jason "allowed Darnell to rip up the [buyback agreement]." On August 9, 2006, Kluver obtained a title insurance commitment for the property from Total Title Company, LLC. The commitment did not include any exception for the buyback agreement. The following day HBC closed on its purchase of the property.

In July 2008, Lindberg filed suit against seven defendants: Darnell, Kluver, Total Freedom, Total Title Company, HBC, Jason, and Mark Luther (the attorney for a surveying firm). Lindberg's lawsuit contested his sale of the property to Darnell,

alleging, among other things, that the defendants participated in defeating his buyback rights and that defendant Luther, individually and as an attorney, committed a fraud on the court. In an April 2009 order, the district court granted motions for summary judgment brought by Luther and Kluver.

On July 24, 2009, the district court granted motions for summary judgment brought by HBC and Total Freedom. Lindberg then moved for summary judgment in his favor against the remaining defendants and moved to vacate the partial summary judgment in favor of Luther and HBC. The district court denied Lindberg's motions and found under Minn. R. Civ. P. 54.02 that there being no just reason for delay, final judgment should be entered forthwith in favor of all defendants except Darnell. Judgment pursuant to this order was entered on November 19, 2009.

Lindberg's claims against Darnell were tried to a jury. The jury issued a special verdict finding that a buyback agreement existed, but that Darnell did not breach the parties' agreement or convert appellant's property. Judgment was entered on that verdict. Lindberg moved for amended findings or a new trial, requesting a new trial based on damages only.¹ The district court denied the new-trial motion.

Lindberg appeals from the judgments regarding all the defendants. In an order dated June 1, 2011, a special-term panel of this court dismissed Lindberg's appeal as

¹ Lindberg appears to have also made a motion for what he termed a "continuance," but the substance of that motion, the other motions appellant made, and documents he submitted at the same time, suggest that Lindberg sought a new trial, and not a continuance. The motion for a "continuance" was made on May 24, 2010, after the trial was finished, and the district court treated Lindberg's motion(s) as if he was seeking amended findings or a new trial.

untimely as it pertains to all parties except Darnell. This opinion addresses Lindberg's appeal and arguments only as they pertain to Darnell.

D E C I S I O N

As an initial matter, we note that appellant Lindberg cites to law that is not relevant to his arguments, does not identify relevant law, and does not include specific facts or provide citations to the record to support his arguments. Pro se litigants are held to the same standards as attorneys. *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). When a brief does not contain citations to legal authority in support of the issues raised, such issues are deemed waived. *Id.* “[I]f an allegation is outside of the record, it must be disregarded.” *Id.* Although we endeavor to consider the arguments that we understand are presented in Lindberg's brief, the unfocused and disorganized nature of the brief has made it difficult to discern his arguments. To the extent that we have not specifically addressed any of his assertions, they are deemed waived due to improper briefing.

I. Judicial Conduct

A threshold claim by Lindberg is that the district court judge was not competent during the course of these proceedings, and that her condition is the only possible explanation for why the district court “commit[ed] so many errors of law.” Lindberg's allegation appears to focus on his unhappiness with the outcome of the case and is not accompanied by any evidence of incapacity. Lindberg provides no citations to the record indicating judicial incapacity or other support for his assertion beyond noting his own personal experience unrelated to this case. Our review of the record does not indicate any

evidence of judicial misconduct or of incapacity. On the contrary the district court judge appears to have been attentive to trial matters and conducted herself in a proper judicial manner. Without any record support, we conclude that this argument by Lindberg is without merit.

II. Privity and Related Matters

Second, we understand Lindberg to claim that the district court erred because it did not “address the legal claims of privity as to . . . Darnell.” Lindberg does not further explain this argument, and we presume he is referring to the buyback agreement that he alleged existed between himself and Darnell. Our review of the record indicates that this issue was squarely addressed at the jury trial. According to the special-verdict form, the jury specifically found that an agreement existed, and that therefore privity *did* exist between Lindberg and Darnell. Although the jury also found that Darnell *did not breach* the agreement, that is not the same as finding that *no privity* existed between the two parties. Lindberg also argues that the district court “failed to address privity or damages related to fraud on the court,” citing to his own “ongoing efforts . . . to get the [district court] to address all the Defendants and all the issues.” Insofar as this argument relates to Darnell, once again, the issues of whether an agreement existed, whether it was breached, and whether Lindberg was entitled to any damages were all clearly presented to and addressed by the jury during the trial, as evinced by the special-verdict form.

Lindberg argues that the district court “failed or refused to let the jury address facts in dispute as to . . . Darnell aid[ing] and abett[ing] fraud in [Darnell’s] divorce proceedings.” Lindberg does not further explain this assertion, nor does he indicate

where in the record the district court “refused to let the jury address” such “facts in dispute.” The trial transcript discloses that Lindberg successfully introduced Darnell’s divorce decree at the jury trial as an exhibit. If the alleged fraud that Lindberg alleges occurred in Darnell’s divorce proceeding had any relevance to Lindberg’s case against Darnell, the time at which the divorce decree was introduced into evidence would have been an opportune time for Lindberg to bring up any relevant facts. However, Lindberg did not do so. Furthermore, Darnell testified at trial, and after Darnell’s attorney completed direct examination, the district court specifically asked Lindberg if he had any questions for Darnell. Lindberg stated that he did not, declining the opportunity to cross-examine Darnell. If relevant, this would have been another opportune time to address Darnell’s alleged “fraud in his divorce proceedings.”

Given the undeveloped record on the existence or relevance of fraud, we conclude that Lindberg has not shown how the district court’s alleged failure to allow the jury to address such information prejudiced him. *See Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that “error without prejudice is not ground for reversal” (quotation omitted)). Based on this record, we conclude that Lindberg’s assertions that we should reverse the district court because of the privity and divorce-proceeding assertions are without merit.

III. New Trial

A third issue that we understand Lindberg is raising is whether the district court abused its discretion in denying his motion for a new trial. In his motion for a new trial and otherwise, Lindberg claimed that (1) he was “unable to obtain the testimony of at

least two key witnesses, due to no fault of his own” and (2) there was juror misconduct. The district court may order a new trial upon a showing of irregularity in the proceedings, jury misconduct, or errors of law made by the court at trial. Minn. R. Civ. P. 59.01 (a), (b), (f). The district court’s decisions on motions for a new trial will not be disturbed absent an abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). This court should not set aside a jury’s verdict “unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Navarre v. S. Wash. Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotation omitted).

A. *Testimony of two witnesses*²

Lindberg argues that he “qualified for a continuance so as to allow testimony of two key witnesses.” According to an affidavit which Lindberg submitted on May 24, 2010, one of the witnesses could not attend trial because she “was required to keep on teaching her legal class,” and the other witness could not attend trial because he “had eye surgery.” As the district court stated, Lindberg could have subpoenaed these witnesses. Lindberg does not dispute that he knew of the trial date, which had already once been continued from September 2009 to May 2010. In its February 9, 2010 order for trial, the district court notified Lindberg of the exact parameters of the May trial block. Three weeks prior to trial, Lindberg was notified of the exact date of trial. Lindberg had ample time to prepare for trial and have witnesses ready. He could have deposed witnesses and

² This witness problem appears to also be the basis of Lindberg’s claim that he did not have enough time to complete discovery “of key material evidence needed” to prove damages.

preserved and presented their testimony through deposition. On this record, we conclude that Lindberg's arguments for a "continuance" to have these witnesses testify are without merit and that the district court did not abuse its discretion in denying Lindberg's motion for a new trial to enable him to present such witnesses.

B. *Jury Misconduct*

Lindberg argues that he is entitled to a new trial because one of the jurors engaged in misconduct. A district court has discretion to grant a new trial based on evidence of juror misconduct. *Pajunen v. Monson Trucking, Inc.*, 612 N.W.2d 173, 175 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). To justify a new trial on the basis of jury misconduct, the party challenging the verdict must prove not only misconduct, but also prejudice due to the misconduct. *State v. Peterson*, 262 N.W.2d 706, 707 (Minn. 1978). Factual findings of the district court on allegations of misconduct are reviewed for clear error. *Chafoulias v. Peterson*, 668 N.W.2d 642, 662–63 (Minn. 2003). And credibility determinations on conflicting testimony are the exclusive province of the district court. *State v. Reiners*, 664 N.W.2d 826, 837 (Minn. 2003).

What has come to be known as a *Schwartz* hearing is the proper method for considering claims of juror misconduct. *See Olberg v. Minneapolis Gas Co.*, 291 Minn. 334, 343, 191 N.W.2d 418, 424 (1971) (stating that the best procedure to follow when juror misconduct is suspected is to first present the matter to the district court, which will then determine whether the facts justify questioning the juror in court) (quoting *Schwartz v. Minneapolis Suburban Bus Co.*, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960)). "At the first suspicion of misconduct, the . . . the losing party should bring the matter to

the attention of the trial court. If this procedure is not followed, the issue may not be raised for the first time in a motion for a new trial.” *Zimmerman v. Witte Transp. Co.*, 259 N.W.2d 260, 262 (Minn. 1977). Before a motion for a *Schwartz* hearing is granted the complaining party must establish a prima facie case of jury misconduct by submitting “sufficient evidence which, standing alone and unchallenged, would warrant the conclusion of jury misconduct.” *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979). The denial of a *Schwartz* hearing is reviewed for an abuse of discretion. *State v. Church*, 577 N.W.2d 715, 721 (Minn. 1998).

Lindberg never brought a motion for a *Schwartz* hearing, and it appears from the record that Lindberg did not bring the alleged juror misconduct to the attention of the district court “at the first suspicion.” In its order denying Lindberg’s motion for a new trial, the district court states that Lindberg did not approach the court until after the trial was complete and the jury returned its verdict, and Lindberg does not suggest otherwise. In the affidavit Lindberg submitted with his motion for a new trial, he describes the juror misconduct as: “[O]ne or more jurors engaged me in conversation about damages, witnesses, more evidence or the lack thereof as to breach of the oral contract and to damages.” This vague statement does not establish a prima facie case for jury misconduct. We note that the statement would not be adequate to require a *Schwartz* hearing. Based on the record available to us on appeal, we conclude both that Lindberg failed to follow proper procedure for bringing the juror misconduct to the attention of the district court and that the vague statement regarding the alleged misconduct contained in

his affidavit does not make a prima facie showing of misconduct warranting action by the district court or this appellate court.

Affirmed.

Dated: