STATE OF MINNESOTA
IN COURT OF APPEALS
A11-920

Arnold F. Koenig,
Respondent,

vs.

Michael A. Koenig, et al.,
defendants and third party plaintiffs,
Appellants,

vs.

Andrea Koenig,
third party defendant,
Respondent,

The Koenig Farm Corporation,
third party defendant,
Respondent.

Filed March 12, 2012
Affirmed
Schellhas, Judge

McLeod County District Court
File No. 43-CV-10-2278

Roger C. Justin, Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for respondent The Koenig Farm Corporation)

Donald Walser, Kraft, Walser, Hettig, Honey & Kleiman, Hutchinson, Minnesota (for respondents Arnold and Andrea Koenig)

Kenneth Hertz, Hertz Law Offices, P.A., Columbia Heights, Minnesota (for appellants)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant-tenants challenge the district court's grant of summary judgment and supplemental relief to respondents in a declaratory action concerning a lease dispute, arguing that (1) the lease-termination notice requirement and existence of other leases constitute genuine issues of material fact; (2) respondents waived their right to receive lease-termination notice; (3) the record does not support the conclusion that the parties created a tenancy at will that was properly terminated; (4) the district court erred by allowing respondents to seek eviction as a form of supplemental relief under Minn. Stat. § 555.08; and (5) the district court abused its discretion by applying collateral estoppel. We affirm.

FACTS

Respondents Arnold and Andrea Koenig are the parents of appellant Michael Koenig, who is married to appellant Cynthia Koenig. Respondents Andrea Koenig and The Koenig Farm Corporation are third-party defendants in this matter. Arnold owns 75% of the shares in The Koenig Farm Corporation, Andrea Koenig owns 13%, and Michael Koenig owns 12%.

On January 30, 2007, appellants and respondents entered into a lease agreement (Farm Agreement) in which respondents leased farming land, buildings, and storage bins to appellants. As to the farming land, the lease commenced January 1, 2007, and ended

December 31, 2007, with rent payable semi-annually on April 1 and November 1. As to the buildings and storage bins, the terms are the same, except that the dates of the lease terms are staggered. The Farm Agreement provides that the "terms of this lease shall continue in effect from year to year, unless written notice of termination is given by either party by September 1st of the fiscal year prior to expiration of this lease." The Farm Agreement provides for land rent of $150 per acre for 550 acres, which equals $82,500 annually; building rent of $12,000 annually; and storage-bin rent of $21,500 annually.

On August 22, 2008, respondents' counsel provided written notice to appellants in a letter that the Farm Agreement would terminate at the end of 2008 and that respondents wished to enter into a new lease agreement.

> As I am sure you are aware, the agreement continues on a year-to-year basis unless written notice of termination is given by either party by September 1. This letter should be considered the formal written notice of termination with respect to your farm agreement with Koenig Farm Corporation, Arnold F. Koenig and Andrea K. Koenig.
>
> With your existing agreement terminated, the corporation desires to enter into a new lease agreement for the rental of the farmland, the buildings and the storage bins.

Although the parties did not enter into a new lease agreement, appellants continued to possess the property and pay rent in amounts equivalent to those identified in the Farm Agreement, except for rent for the buildings. Beginning in April 2009, appellants paid $15,000 annually rather than $12,000 to rent the buildings.

On August 25, 2010, respondents' counsel notified appellants' counsel in a letter of respondents' termination of the tenancy at will.

> As you may know, the Farm Agreement of January 30, 2007, was terminated on August 22, 2008. . . .
>
> Since the termination of the written agreement, the arrangement between the parties has continued as a tenancy-at-will. To keep all options open, we feel it is necessary to give the statutory (504B.135(a)) notice to terminate this tenancy-at-will.
>
> This letter is notice to your clients and you that all tenancies-at-will, including lease of buildings, lease of storage bins, lease of real estate, and any other leases or agreements are terminated three months from the date of this letter.

Under the termination notice, the tenancy at will terminated on November 25, 2010.[1]

In early November, Arnold Koenig commenced an action against appellants, seeking partition of land not subject to the Farm Agreement or tenancy at will, which he owned as a tenant-in-common with appellants. Appellants answered, counterclaimed, and served a third-party complaint on Andrea Koenig and The Koenig Farm Corporation. Appellants alleged breach of the Farm Agreement and sought a declaratory judgment that (1) the Farm Agreement remains binding upon the parties; (2) respondents waived or revoked their August 22, 2008 notice of termination by later accepting payment of rent under the Farm Agreement; and (3) termination notice under the Farm Agreement must be given 16 or more months prior to its expiration. Appellants also alleged unjust

[1] Minnesota Statutes section 504B.135(a) (2010) provides that the length of time of notice to terminate a tenancy at will must be "the interval between the time rent is due or three months, whichever is less."

enrichment and promissory estoppel and sought partition of the land owned as tenants-in-common with Arnold Koenig.

Respondents moved for partial summary judgment, requesting that the district court dismiss all of appellants' claims, except for Arnold Koenig's partition claim, which the parties settled. Respondents argued that the court should dismiss all remaining claims because respondents had timely terminated the Farm Agreement in August 2008, appellants subsequently became tenants at will, and the tenancy at will terminated in November 2010. Appellants opposed partial summary judgment, arguing that the Farm Agreement was not terminated because respondents' termination notice was untimely, and alternatively, respondents waived notice of termination. Michael Koenig stated in a sworn affidavit that although Arnold Koenig presented him with a new lease agreement in 2009, he did not execute it. Appellants argued that no tenancy at will ever existed between the parties, and that even if respondents' counsel's written notice of August 25, 2010, constituted a termination notice, because "[i]t purports to terminate a tenancy-at-will," it fails to satisfy the Farm Agreement's termination-notice requirements.

The district court granted summary judgment to respondents, concluding that the Farm Agreement required four months' termination notice and that the August 2008 termination notice effectively terminated the Farm Agreement after December 31, 2008. The court rejected appellants' waiver argument, concluding that "[t]he concept of 'waiver' is inapplicable" because respondents' right to terminate the Farm Agreement was not dependent on a breach of the contract. The court further concluded that after "the Farm Agreement was terminated, the relationship between the parties became a tenancy

at will," and as a result of respondents' written termination notice of August 25, 2010, the tenancy at will was terminated on November 25, 2010. The court dismissed appellants' claims of promissory estoppel and unjust enrichment.

Following the district court's order, appellants continued to occupy the property, and respondents petitioned for appellants' eviction from the property as supplemental relief under Minn. Stat. § 555.08 (2010). Appellants answered and asserted the existence of a 2009 lease that had renewed by its terms and bound the parties through the end of "the 2011 'farm season.'"[2] Appellants also asserted that eviction under Minn. Stat. § 555.08 was improper because eviction actions are governed by chapter 504B (2010). The court rejected appellants' arguments, applied Minn. Stat. § 555.08, and granted respondents' requested supplemental relief, staying issuance of a writ of recovery and order to vacate to afford appellants time for appeal.

Appellants filed a notice of appeal from the district court's orders granting summary judgment and supplemental relief in the declaratory action. Because the parties disputed who was entitled to post bond and take possession of the property pending appeal, the district court issued an order establishing the bonding requirements and correcting the real-property legal descriptions contained in previous orders. The order also restrained both parties "from accessing the farm land, tilling the land, planting, or taking any action contrary to the terms of this Order."

[2] The alleged 2009 lease bore Michael Koenig's signature but was undated. This allegation contradicts Michael Koenig's sworn affidavit offered in opposing summary judgment, in which he stated, "In 2009, Arnold presented me with a draft of a new Farm Agreement, but my wife and I declined to execute it."

This appeal follows.

D E C I S I O N

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, this court asks two questions: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court reviews "de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). This court "must review the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

"Any person interested under a . . . contract . . . or whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereunder." Minn. Stat. § 555.02 (2010). "When reviewing a declaratory judgment action, we apply the clearly erroneous standard to factual findings, and review the district court's determinations of law de novo." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007) (citation omitted).

Termination of the Farm Agreement

Appellants challenge the district court's conclusion that the August 2008 notice terminated the Farm Agreement as of December 31, 2008. They assert that ambiguities in the Farm Agreement create genuine issues of material fact concerning the amount of notice required and whether the parties continue to be bound by the Farm Agreement.

A lease is a contract. *Amoco Oil Co. v. Jones*, 467 N.W.2d 357, 360 (Minn. App. 1991). The interpretation of a contract is a question of law. *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). "The plain and ordinary meaning of the contract language controls, unless the language is ambiguous." *Id.* "The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). The language of the contract must be read as a whole and in a manner that gives meaning to all of its provisions. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). The contract terms may not be construed to yield a harsh or absurd result. *Id.*

"The construction and effect of a contract are questions of law for the court, but where there is ambiguity and construction depends upon extrinsic evidence and a writing, there is a question of fact for the jury." *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). Language is ambiguous if it is subject to more than one reasonable interpretation. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). If a contract is unambiguous, a party cannot alter its language based on

"speculation of an unexpressed intent of the parties." *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991).

The first lease term of the Farm Agreement ran from January 1, 2007, through December 31, 2007. The Farm Agreement provides that its terms

> shall continue in effect from year to year, unless written notice of termination is given by either party by September 1st of the fiscal year prior to expiration of this lease. The lease shall automatically renew subject to the same terms and conditions if not terminated, reviewed and/or modified by September 1st of each fiscal year.

Appellants argue that the Farm Agreement is ambiguous as to whether it requires 4 or 16 months' advance notice before termination is effective and therefore there is a genuine issue of material fact for trial.

The district court concluded that the plain language of the Farm Agreement unambiguously requires 4 months' advance notice for termination, not 16. The court noted that even if it agreed with appellants' argument that the Farm Agreement requires 16 months' notice, the issue of when the termination notice became effective is moot because, as of the date of the court's order in the declaratory action, March 30, 2011, more than 16 months had passed since August 22, 2008, the date on which respondents' counsel sent the termination notice.

We agree that whether the Farm Agreement requires 4 months' or 16 months' notice is not dispositive of whether the Farm Agreement remains in effect because at the time of the summary-judgment motion in February 2011, more than 16 months had passed since delivery of the termination notice on August 22, 2008. Even if 16 months'

notice were required, the Farm Agreement would have ceased to bind the parties after December 31, 2009. Consequently, under either interpretation of the Farm Agreement, at the time of the summary-judgment motion, the termination was effective. We therefore conclude that the amount of notice required to terminate the Farm Agreement is not a genuine issue of material fact.

Moreover, the plain language of the Farm Agreement unambiguously requires four months' advance notice to terminate the Farm Agreement. The first term began January 1, 2007, and ended December 31, 2007. The agreement "automatically renew[s]" "from year to year" unless written termination notice was provided "by September 1st of each fiscal year." Nothing in this language supports appellants' construction that 16 months' notice must be given under the terms of the Farm Agreement. In fact, such an interpretation would render other provisions of the agreement meaningless because if one of the parties desired to terminate or modify the lease after the first year, it would have had to give notice by September 1, 2006, four months before the parties executed the Farm Agreement.

That respondents' counsel sent a termination notice by letter to appellants on August 22, 2008, is undisputed. The letter states the following:

> This letter should be considered the formal written notice of termination with respect to your farm agreement with Koenig Farm Corporation, Arnold F. Koenig and Andrea K. Koenig.
>
> With your existing agreement terminated, the corporation desires to enter into a new lease agreement for the rental of the farmland, the buildings and the storage bins.

On this record, the district court did not err by concluding that the Farm Agreement was terminated after December 31, 2008, and at the time of summary judgment was not binding on the parties.

Appellants argue that respondents waived the effectiveness of the August 2008 termination notice by accepting rent after the alleged termination date. When the facts are not in dispute, the question of waiver may be reviewed de novo as a matter of law. *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 304 (Minn. 1990); *see also Westminster Corp. v. Anderson*, 536 N.W.2d 340, 341 (Minn. App. 1995) (reviewing de novo whether acceptance of housing-assistance payments constituted waiver of landlord's right to terminate lease), *review denied* (Minn. Oct. 27, 1995). "A waiver is a voluntary and intentional relinquishment or abandonment of a known right." *Montgomery Ward*, 450 N.W.2d at 304. Under Minnesota law, a landlord may waive or revoke notice to terminate a lease. *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1046, 1047 (1913). Waiver occurs when the landlord's conduct sufficiently demonstrates an intent to allow the tenant to stay in possession of the property. *Arcade Inv. Co. v. Gieriet*, 99 Minn. 277, 279, 109 N.W. 250, 250 (1906).

The district court concluded that waiver is inapplicable because respondents' right to terminate the Farm Agreement was not dependent on appellants' breach of the lease. We agree. By its terms, the Farm Agreement provided that either party could terminate the lease with written notice. Respondents' right to terminate was therefore created by the terms of the lease, not by any breach of the lease by appellants and therefore the concept of waiver is inapplicable.

Although appellants cite *Pappas* as supporting authority, *Pappas* is distinguishable. In *Pappas*, the landlord asserted his right to terminate the lease based on the tenant's breach of the lease. 123 Minn. at 82, 142 N.W. at 1047. But because the landlord accepted rent for a period beginning after the termination date, the court held that the landlord "destroyed the effect of the notice." *Id.* at 83, 142 N.W. at 1047. Here, respondents did not terminate the lease because of appellants' breach.

Appellants also argue that because the Farm Agreement's terms provide different start and end dates for the lease of the three different items—the farmland, buildings, and storage bins—there is a genuine issue of material fact as to which leased items the 2008 letter terminated. But appellants failed to make this argument to the district court at summary judgment in the declaratory action or in opposing supplemental relief. We therefore decline to address it. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate court must limit its review to issues presented and considered by district court).

Creation of the tenancy at will

Appellants argue that the evidence does not support the district court's conclusion that after respondents terminated the Farm Agreement, the relationship between the parties became a tenancy at will. A tenancy at will is "a tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date." Minn. Stat. § 504B.001, subd. 13 (2010). "The chief characteristics of this form of tenancy are (1) uncertainty respecting the term, and (2) the right of either party to terminate it by proper notice . . . ." *Thompson v. Baxter*, 107 Minn. 122, 124, 119 N.W. 797, 798 (1909).

A tenancy at will can arise by implication of law when a tenant "holds over pending negotiations for a new lease." *Id.* 119 N.W. at 797–98.

The undisputed evidence in the record supports a conclusion that after the Farm Agreement no longer bound the parties, the parties' relationship became a tenancy at will. In their Farm Agreement termination notice, respondents did not request that appellants vacate the property but stated that they sought to enter into a new agreement. Appellants therefore continued to occupy the property with the permission of respondents, and because the parties never executed a new lease, they did not establish a fixed ending date for the tenancy.

In challenging the district court's conclusion that the parties created a tenancy at will, appellants point to no evidence in the record. They point only to the court's description of the parties' relationship as "year-to-year leases" in the section of the court's order considering, and dismissing, appellants' unjust-enrichment claim. Appellants argue that the court's description of appellants being in possession of the land in 2009 and 2010 under "year-to-year leases" is inconsistent. We conclude that the court's description does not usurp its conclusion that a tenancy at will existed during this time. Significantly, the court made the statement after concluding that a tenancy at will existed between the parties in 2009 and 2010, in its analysis of a different claim, and in a different section of its order. The court's language in dismissing appellant's unjust-enrichment claim does not negate its conclusion that a tenancy at will existed between the parties in 2009 and 2010.

Termination of the tenancy at will

A tenancy at will cannot be terminated by either party unless the terminating party gives notice that is "at least as long as the interval between the time rent is due or three months, whichever is less." Minn. Stat. § 504B.135(a). The Minnesota Supreme Court has interpreted an older version of this statute as requiring a termination notice to "fix with reasonable exactness" the time at which the tenancy terminates. *Grace v. Michaud*, 50 Minn. 139, 141, 52 N.W. 390, 391 (1892).

Respondents provided proper notice of termination of the tenancy at will in the letter sent to appellants on August 25, 2010. The letter states the following:

> As you may know, the Farm Agreement of January 30, 2007, was terminated [by letter of] August 22, 2008. . . .
>
> Since the termination of the written agreement, the arrangement between the parties has continued as a tenancy-at-will. To keep all options open, we feel it is necessary to give the statutory (504B.135(a)) notice to terminate this tenancy-at-will.
>
> This letter is notice to your clients and you that all tenancies-at-will, including lease of buildings, lease of storage bins, lease of real estate, and any other leases or agreements are terminated three months from the date of this letter.

This notice complies with the statutory requirements for terminating a tenancy at will. By referencing the statute, the letter terminates the tenancy three months from the date of the letter, November 25, 2010. The district court did not err by concluding that the tenancy at will terminated on November 25, 2010.

Although appellants assert that the 2010 notice was not a proper termination, their assertion is unpersuasive because it is based solely on their arguments that (1) a tenancy at will never existed and (2) they and respondents entered into leases other than the Farm Agreement that bound the parties. We have already determined that the first argument is without merit. And the district court concluded, and we affirm in a later section of this opinion, that the second argument is barred by collateral estoppel. Finally, appellants allege that a genuine issue of material fact exists as to which leased items the 2010 termination letter terminated because the terms of the Farm Agreement provide staggered dates for the lease of the farmland, buildings, and storage bins. We reject this argument because the 2010 letter terminated the tenancy at will, not the Farm Agreement.

Supplemental relief under Minn. Stat. § 555.08

Procedural challenge

Appellants argue that the district court erred by permitting respondents to seek eviction and a writ of recovery as supplemental relief, under Minn. Stat. § 555.08, rather than requiring them to commence a separate eviction action under chapter 504B. Statutory interpretation is a question of law, which we review de novo. *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *Id.*

Appellants allege that because chapter 504B authorizes eviction actions and contains procedural requirements, a party is precluded from seeking eviction under the authority of section 555.08. We disagree.

Minnesota Statutes section 555.08 authorizes a district court to grant further relief based on a declaratory judgment or decree.

> Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

Minn. Stat. § 555.08. Aside from these limited requirements, the statute does not limit the relief that a court may grant. Moreover, appellants neither point to language in section 555.08 or chapter 504B nor any authority interpreting either statute that supports their assertion that chapter 504B precludes eviction as supplemental relief under section 555.08. We conclude therefore that the district court did not err by permitting respondents to seek eviction and a writ of recovery as supplemental relief under section 555.08.

Application of collateral estoppel

Appellants assert that the district court abused its discretion by applying collateral estoppel to the issues they raised in defense of the petition for supplemental relief. Generally, "[c]ollateral estoppel bars the relitigation of issues which are both identical to those issues already litigated by the parties in a prior action and necessary and essential to

the resulting judgment." *Pope Cnty. Bd. of Comm'rs v. Pryzmus*, 682 N.W.2d 666, 669 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Sept. 29, 2004).

> For collateral estoppel to apply, all of the following prongs must be met: (1) the issue must be identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt v. Beckingham, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted).

Whether collateral estoppel is available is a mixed question of fact and law, which we review de novo. *Falgren v. State, Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996). If the doctrine is available, the decision to apply collateral estoppel is left to the discretion of the district court. *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011). "The district court's decision to apply collateral estoppel will be reversed only upon a demonstrated abuse of discretion." *Pryzmus*, 682 N.W.2d at 669.

In defending against respondents' petition for supplemental relief seeking eviction, appellants alleged that a 2009 lease bound the parties. The district court concluded that appellants were collaterally estopped from making this argument. Appellants now argue that collateral estoppel is inapplicable because whether a 2009 lease creates a tenancy between the parties is a different issue than the "sole issue before the [district court] at summary judgment in the declaratory action, [which] was the validity of the 2007 farm lease."

This argument is unavailing. In the declaratory action, appellants sought a judicial declaration concerning their rights under the Farm Agreement: that the Farm Agreement

remained in effect and binding on the parties. In so doing, they sought to have the district court declare whether a tenancy existed between the parties. *See Howe v. Nelson*, 271 Minn. 296, 302, 135 N.W.2d 687, 692 (1965) (stating that in seeking a declaratory judgment, a party seeks "a judicial declaration as to the existence and effect of a relation between him and the [other party]. . . . The effect of a declaratory judgment is rather to make res judicata the matters declared by the judgment, thus precluding the parties to the litigation from relitigating these matters" (quotation omitted)).

In the declaratory-judgment action, the district court made several findings of fact and conclusions of law relevant to the disposition of the petition seeking eviction of appellants. The court found that the parties never entered into a written lease agreement other than the Farm Agreement. The court concluded that the Farm Agreement was terminated December 31, 2008, and that after its termination, the parties created a tenancy at will, which was terminated on November 25, 2010. As a result of the court's findings of fact and conclusions of law, the declaratory-judgment action addressed whether a tenancy existed between the parties.

The issue appellants raised in defending against the petition for supplemental relief, whether a tenancy existed between the parties, is identical to the one previously considered and adjudicated on the merits in the declaratory action. Appellants do not dispute that the other three criteria for determining whether collateral estoppel is available are satisfied, and the record shows that they are satisfied. Accordingly, the district court did not abuse its discretion by applying the doctrine.

Challenge to supplemental relief on the merits

Appellants challenge the merits of the district court's grant of eviction and a writ of recovery of the premises. Respondents sought supplemental relief based on a declaratory judgment as provided for in section 555.08. *See* Minn. Stat. § 555.08 ("Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."). Although supplemental relief was not "necessary" because appellants could have commenced a separate eviction action as authorized in chapter 504B, it was "proper" because the declaratory judgment established that no tenancy existed between the parties and appellants were therefore unlawfully in possession of the property. *See* Minn. Stat. § 504B.001, subd. 4. (defining "evict" or "eviction" as a "proceeding to remove a tenant or occupant from or otherwise recover possession of real property"). The record shows that appellants had reasonable notice; their counsel accepted service of the petition on April 26, 2011; and the hearing was held 13 days later, on May 9, 2011. *Cf.* Minn. Stat. § 504B.321, subd. 1(d) (requiring seven days' notice in eviction actions).

Additionally, the record shows that appellants failed to show cause why further relief should not be granted forthwith. *See* Minn. Stat. § 555.08 (stating that an "adverse party whose rights have been adjudicated by the declaratory judgment or decree, [must] show cause why further relief should not be granted forthwith"). In the district court, appellants opposed the eviction on two main grounds: (1) it was procedurally improper to seek eviction under section 555.08, and (2) they were entitled to a trial on the issue of whether a lease signed in 2009 bound the parties. The first argument we considered in

this appeal and determined to be without merit. The district court concluded, and we affirmed in this appeal, that the second argument is barred by collateral estoppel.

Appellants challenge the merits of the eviction on the basis that respondents waived the notice of termination of the tenancy at will by manifesting a contrary intention through their conduct. Appellants cite only to *Arcade Inv. Co.* as supporting authority, but *Arcade Inv. Co.* did not involve a tenancy at will. 99 Minn. at 278–79, 109 N.W. at 250–51. In *Arcade Inv. Co.*, the tenant defended the eviction action by arguing that, subsequent to giving notice of termination, the landlord had agreed to allow him to maintain possession of the property. *Id.* Here, appellants do not argue, and nothing in the record shows, that after terminating the tenancy at will, respondents agreed to allow appellants to remain in possession of the property.

The district court did not err by permitting respondents to seek appellants' eviction in a petition for supplemental relief under section 555.08, by applying collateral estoppel, or by granting supplemental relief.

Establishment of bonding requirements

Appellants assert two claims of error in the district court's order establishing bonding requirements, but they did not appeal from this order. Appellants' notice of appeal specifies that they appeal only from the orders granting summary judgment and supplemental relief. *See* Minn. R. Civ. App. P. 103.01, subd. 1(a) (requiring that notice of appeal specify "the judgment or order from which the appeal is taken"). Moreover, appellants filed their notice of appeal before the district court issued the bonding order. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (stating that "an appeal may be taken from a

judgment within 60 days after its entry, and from an appealable order within 60 days after service"); *Schaust v. Town Bd. of Hollywood Twp.*, 295 Minn. 571, 572–73, 204 N.W.2d 646, 648 (1973) (stating that "an appeal from a judgment prior to its entry is premature and should be dismissed"). We decline to address appellants' claims.

Affirmed.