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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0883**

Kallys Albert, Sr.,
Appellant,

vs.

Pius Raini, et al.,
Respondents.

**Filed February 24, 2014
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-CV-11-25061

Kallys Albert Sr., Minneapolis, Minnesota (pro se appellant)

Michael Thomas Cain, Law Office of Michael Cain, Minneapolis, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

In this appeal from a judgment and order denying appellant's posttrial motions, appellant challenges the district court's order dismissing his claims for breach of contract and conversion. He argues that he is entitled to summary judgment; the district court's findings are clearly erroneous; the district court erred by rejecting his claim for

conversion; respondents failed to comply with discovery; and respondents' counsel should have been sanctioned for notarizing his clients' false affidavits. We affirm.

FACTS

Appellant pro se Kallys Albert brought this action in Hennepin County district court alleging breach of contract and conversion by respondents Elia Aswan, d/b/a Time Motor Sales, Inc., and Pius Raini, d/b/a Simba Collision and Glass.¹ Aswan and Raini had an informal relationship in which Aswan purchased salvage vehicles at auction, and Raini repaired those vehicles. Albert alleged that, from 2006 to 2010, he contracted with respondents to purchase certain vehicles at auction on his behalf for a \$75 service fee, plus the vehicles' cost, and to repair those vehicles, but that respondents breached those contracts and converted the vehicles by failing to make the repairs and deliver the vehicles to him. Aswan and Raini brought counterclaims relating to different vehicles and repairs for which Albert allegedly owed them payment. The district court denied Albert's motion for summary judgment and held a bench trial, at which Albert made claims relating to four vehicles.

2004 Chevy Trailblazer

Albert testified that after he purchased the Trailblazer through Raini, he delivered it to Aswan, whom he instructed to sell it and give Albert \$7,500 within two months, but that Aswan paid Albert only \$3,000. Aswan, however, testified that when Albert had

¹ The caption in the district court misspelled respondent Raini's last name. According to an affidavit he signed, the correct spelling is "Raini."

owned the Trailblazer for about a year, it needed repairs, and Albert then sold it to him for \$3,000, without an agreement to pay Albert any profit from the resold vehicle.

1999 Galant

Albert testified that he purchased the Galant from Aswan and paid Raini \$350 or \$550 to replace the engine, which he understood to be a firm bid, but that he never received the Galant back. He acknowledged that Raini invoiced him for \$1,810 for repairs on the Galant, which he never paid. Raini testified that he told Albert that it would cost \$1,810 to make the Galant roadworthy, and Albert paid him some money down to replace the engine, but he did not do the repairs, and the Galant remained at the shop for six months before he sold it and applied the downpayment to Albert's outstanding account.

1997 Blazer

Albert testified that he brought the Blazer to Aswan after receiving a bid for engine replacement of \$500, which he paid, but that he never received the vehicle back. Aswan testified that he told Albert that it would cost about \$2,200 to fix the Blazer, including \$1,500 for a new engine, and Albert gave him a \$500 advance but never paid the remaining amount or picked up the vehicle. Aswan applied the \$500 to Albert's outstanding balance. Aswan introduced evidence of his letter to Albert, stating that Albert had never paid sufficient money to fund the necessary repairs.

1999 Mirage

Albert testified that he purchased the Mirage from Raini and that, although the vehicle title also named Albert's former partner, the Mirage was never transferred to her.

He testified that after they separated, the Mirage disappeared from his driveway, and she took the vehicle without his permission. Raini testified that he performed repairs on the Mirage when Albert's partner had it towed into the shop and that he then purchased it from her for \$400 for resale.

The district court issued findings of fact, conclusions of law, and judgment, concluding that none of the parties is entitled to relief. The district court found that the parties had presented no evidence of written contracts with respect to the various vehicles and insufficient evidence of oral or implied-in-fact contracts. The district court also concluded that Albert had failed to establish a misrepresentation relating to vehicle repair costs, or conversion relating to any vehicle, and that no party had proved entitlement to relief by a preponderance of the evidence. Albert moved for amended findings or a new trial; the district court denied the motion. This appeal follows.

D E C I S I O N

I

Appellant argues that the district court erred by denying summary judgment on his claims. But the Minnesota Supreme Court has held that denial of a motion for summary judgment is not properly within the scope of review on appeal from a judgment entered after trial on the merits. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). “Where a trial has been held and the parties have been given a full and fair opportunity to litigate their claims, “[i]t makes no sense whatever to reverse a judgment on the verdict where the trial evidence was sufficient merely because at summary judgment it was not.” *Id.* at 918 (quotation omitted). Although *Bahr* involved a jury

trial, the same applies after a bench trial. *See City of N. Oaks v. Sarpal*, 784 N.W.2d 857, 861 (Minn. App. 2010) (applying *Bahr*, determining that denial of summary judgment followed by a bench trial was outside the scope of review on appeal), *rev'd on other grounds*, 797 N.W.2d 18 (Minn. 2011). Therefore, on review from the judgment after trial, we decline to address Albert's challenge to the district court's denial of summary judgment.

II

Albert argues that the district court abused its discretion by failing to order discovery sanctions against respondents. A district court has broad discretion to issue discovery orders and to control courtroom proceedings. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). Although the district court may impose sanctions for failure to properly comply with requirements related to discovery, Minn. R. Civ. P. 37.02, "an order [compelling discovery] is a condition precedent to obtaining the imposition of sanctions." 1A David F. Herr & Roger S. Haydock, *Minnesota Practice*, § 37:3 (5th ed. 2010).

Albert maintains that respondents provided inadequate and untimely responses to his discovery requests. But he made those requests when he was acting pro se, before the district court assisted in securing him pro bono trial counsel, and he never moved to compel discovery. In addition, Albert cannot show that he was prejudiced by the district court's decision to relax the time requirements for completing discovery. *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995) (stating that in order to obtain a new trial based on a district court's errors in trial-management decisions, a party must

demonstrate prejudice), *review denied* (Minn. May 31, 1995). Albert also contends that he disagreed with his attorney's decision to stipulate to certain exhibits and argues that counsel was ineffective for agreeing to their admission. But a claim alleging ineffective assistance of counsel is generally not available to an unsuccessful civil litigant. *See Glick v. Henderson*, 855 F.2d 536, 541 (8th Cir. 1988).

III

Albert challenges the district court's findings and conclusions denying him relief. On appeal after a bench trial, this court will not set aside the district court's findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). If reasonable evidence exists supporting the district court's findings, this court will not disturb them. *Id.*

Albert argues that the district court clearly erred by finding that no contracts existed concerning the vehicles. "The existence of a contract is generally a question of fact." *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 202 (Minn. App. 2005). Contract formation "requires communication of a specific and definite offer, acceptance, and consideration." *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). The parties involved must express mutual assent to contract terms, as measured objectively. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). We defer to the district court's opportunity to evaluate witness credibility, Minn. R. Civ. 52.01, and based on the record, the district court did not clearly err by finding that insufficient evidence of contracts

existed relating to the vehicles. The district court also did not err by concluding that the requirements for relief on Albert's claim of fraudulent misrepresentation had not been met. *See Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007) (outlining required elements for proof of claim of fraudulent misrepresentation).²

Albert also maintains that the district court erred by concluding that he is not entitled to relief on his claim of conversion, which requires “the exercise of dominion and control” over property “inconsistent with, and in repudiation of, the owner’s rights in those goods.” *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990). A party who converts property must have wrongful intent to exercise dominion or control over it. *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 585–86 (Minn. 2003). Albert argues that he has possession of all of the motor vehicle titles, and the other parties possessed the vehicles unlawfully when they refused to release the vehicles on his demand. But the district court carefully weighed all of the evidence and did not err by determining that insufficient evidence existed to show that Raini, Aswan, or their businesses permanently or intentionally deprived Albert of the vehicles in a manner inconsistent with his rights.

IV

Albert argues that the district court abused its discretion by failing to sanction respondents’ counsel for advancing unwarranted claims, including notarizing affidavits containing “false claims and defenses,” and presenting arguments at closing that were unsupported by the evidence. An attorney may be sanctioned for submitting pleadings or

² Albert argues that because respondents’ brief contains clerical errors and an analysis supporting the district court’s reasoning, it raises new issues, which this court may not consider for the first time on appeal. This argument lacks merit.

arguments to the district court that are frivolous or being presented for an improper purpose. Minn. Stat. § 549.211, subd. 3 (2012); Minn. R. Civ. P. 11.03. But sanctions “should not be imposed when counsel has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief a pleading is well-grounded in fact and law.” *Uselman v. Uselman*, 464 N.W.2d 130, 143 (Minn. 1990), *superseded by statute on other grounds*, by Minn. Stat. § 549.21 (1990). Albert has failed to present evidence supporting his allegations that opposing counsel advanced false or frivolous claims, so as to justify sanctions. We also note that because the district court rejected respondents’ counterclaims, Albert has shown no prejudice from the district court’s consideration of respondents’ arguments relating to those claims.

Affirmed.