STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0557

James Dennis Omwenga,
Respondent,

vs.

Wallace Rasugu,
Respondent,

NewGen Contractors L.L.C.,
Appellant.

Filed January 21, 2025
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-20-15902

Evan J. Livermore, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent Omwenga)

Wallace Rasugu, Brooklyn Park, Minnesota (pro se respondent)

Fordam O. Wara, Dollard-Des-Ormeaux, Quebec, Canada (for appellant NewGen Contractors)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal from judgment after a court trial, appellant-company challenges the district court's finding of an oral contract, its determination that a settlement agreement did not alter that contract, its award of damages based on contract rescission, and its refusal to offset the damages award with the value of certain improvements. We affirm.

FACTS

Respondent James Dennis Omwenga submitted an insurance-coverage claim for his Coon Rapids home. The insurer provided a repair estimate for water damage with a total payout of $14,792. The work described in the estimate was limited to the home's interior and addressed insulation in the attic, the home's ceilings and drywall, and carpet cleaning.

Omwenga met with numerous contractors. Generally, they declined to do the work because the insurance estimate did not address the root cause of the water damage. Omwenga met respondent Wallace Rasugu, a contractor, in July 2018. Rasugu thought Omwenga had a condensation problem, and, like the other contractors, he did not believe that the work described in the insurance estimate would solve that problem. Accordingly, Rasugu told Omwenga that he intended to submit a supplemental estimate to the insurance company for additional repairs.

Rasugu also told Omwenga that he needed to be paid prior to beginning work. Omwenga gave Rasugu two checks, both dated July 18, 2018. The first was for $7,000; the second was for $7,792. At the time, Omwenga believed that he was contracting with

appellant NewGen Contractors L.L.C. (NewGen), a company formed by Rasugu's younger brother. At no point did Omwenga produce a signed contract for the work to be performed by NewGen through Rasugu.

Rasugu cashed both checks that Omwenga provided. He used more than half of the money to get materials and to pay workers to start work on Omwenga's home.

In August 2018, Rasugu submitted a supplemental estimate to the insurance company. It outlined "missing installation processes that must be done in conjunction with the existing [claim]." The additional work included removing and replacing—instead of simply cleaning—damaged carpet, installing a moisture membrane and air chutes, upgrading insulation, and removing and replacing the home's duct system and soffits. Rasugu also requested relocation expenses from the insurance company on behalf of Omwenga.

On November 6, 2018, Omwenga emailed Rasugu that he had left a copy of the estimate for Rasugu, that he wanted to "organize" with the insurance company "how to relocate from the house before any work can begin," and that once he finalized that issue with the insurance company and Rasugu had his work plan ready, he would sign a contract for execution of the work. Omwenga stated that, if the insurance company would not pay his relocation costs, then he would "cancel the claim and request them to . . . prepare a new claim."

On November 28, 2018, Omwenga sent an email to Rasugu's NewGen email address stating that it had been "over three weeks since I asked you to prepare the report that was required" by the insurance company. Omwenga stated that he had neither received

the report from Rasugu, nor heard from Rasugu. Omwenga reported that the insurance company declined to pay relocation funds, "so no repairs can be executed. Furthermore[,] the claim was closed, this means it has to be done afresh." Omwenga then asked Rasugu to return the money that he had given Rasugu for the repairs.

Rasugu exchanged emails with Omwenga in December 2018, using his NewGen email address. The emails indicate that the relationship had turned hostile. Omwenga noted that Rasugu had not completed any work on his house and "had not shown any indication of intent to do so." Rasugu noted that he had "already paid for the materials and the job was ready to go." By the end of 2018, no repairs had occurred.

In 2019, Omwenga contacted J.M., a pastor who informally mediated disputes in the community, regarding his dispute with Rasugu. In early 2019, J.M. hosted a mediation between Omwenga and Rasugu. At that meeting, it was agreed that Rasugu would do the work at Omwenga's home within two or three weeks of the meeting. However, the full scope of work to be completed at Omwenga's home was not discussed.

Approximately one week after the meeting, J.M. called Rasugu for a status update. Rasugu reported that he would be starting the work soon. At some point after the call, J.M. drove to Omwenga's home and observed that work had begun. J.M. was satisfied that everything was progressing as planned, so J.M. disposed of a written agreement that the parties had reportedly signed at their mediation.

Rasugu intended to work on Omwenga's home in two phases: phase one consisted of exterior work, and phase two consisted of the interior work described in the insurance estimate. Ultimately, Rasugu completed all the exterior work for phase one, including two

days of electrical work. He had seven people working at Omwenga's home for about one-and-one-half weeks. Rasugu calculated that he spent $9,500 on materials and $2,300 on labor, for a total cost of $11,800 on phase one. Rasugu estimated that he would have spent approximately $3,500 on phase two.

Omwenga was dissatisfied with the exterior work that Rasugu completed on his home. Omwenga therefore refused to allow Rasugu's workers inside the home, and Rasugu was not able to complete the phase-two interior work. Omwenga wanted Rasugu to be present for interior work, but Rasugu was at a different job site.

At some point, Omwenga submitted a letter to NewGen, directed to the attention of Rasugu. In the letter, Omwenga acknowledged that Rasugu completed exterior repairs at his home. However, Omwenga complained of "some defects . . . that need urgent attention." Those defects related to gutters, downpipes, and soffits. Omwenga asked Rasugu for his money back multiple times, but Rasugu did not return any of the funds.

Omwenga commenced a successful conciliation-court action against Rasugu, Rasugu removed the matter to district court, and Omwenga filed an amended complaint against both Rasugu and NewGen. Omwenga alleged breach of contract and unjust enrichment. In its answer, NewGen raised several affirmative defenses, including "any or all of the affirmative defenses contemplated by Rule 8 of the Minnesota Rules of Civil Procedure." However, NewGen did not raise any counterclaims.

Omwenga sought partial summary judgment, arguing that NewGen breached a contract by failing to complete the agreed-upon repairs. Omwenga claimed that the agreement between the parties "was memorialized in writing" but that he never received a

copy. Omwenga asserted that "even if the contract were only an oral contract, Minnesota law permits oral contracts." NewGen likewise moved for summary judgment, arguing, in part, that it was not a party to a contract. The district court denied both summary-judgment motions, determining that genuine issues of material fact remained.

The matter proceeded to a court trial. The district court had previously granted default judgment against Rasugu. Nonetheless, he appeared as one of several trial witnesses.

Following the trial, the district court concluded that Rasugu "acted with apparent authority to bind NewGen to a contract with Omwenga in July 2018,"[1] that Omwenga was entitled to relief on the grounds of breach of an oral contract, that Omwenga was not entitled to relief on his unjust-enrichment claim, that Omwenga was entitled to rescission of the contract, that Rasugu's exterior repairs added $10,620 worth of value to Omwenga's home, and that Omwenga was therefore entitled to judgment in the amount of $4,172.

Omwenga moved for amended findings of fact, conclusions of law, and judgment. He argued that he was entitled to damages of $14,792, the full amount that he had paid Rasugu, because Rasugu failed to complete any of the contracted-for repairs, and NewGen

[1] NewGen does not appear to challenge the district court's finding of apparent authority. Nonetheless, that finding is supported by the record. Apparent authority exists if (1) the principal holds an agent out as having authority, or knowingly permits the agent to act on the principal's behalf; (2) the party dealing with the agent has actual knowledge that the principal held out the agent or permitted the agent to act on its behalf; and (3) proof of the apparent authority is found in the conduct of the principal, not the agent. *Truck Crane Serv. Co. v. Barr-Nelson, Inc.*, 329 N.W.2d 824, 826 (Minn. 1983).

therefore was not entitled to an offset of $10,620. The district court granted Omwenga's motion and awarded him judgment in the amount of $14,792.

NewGen appeals.

DECISION

Because NewGen failed to move for a new trial, our review is limited to whether the evidence is sufficient to support the district court's findings and whether those findings support the district court's conclusions of law. *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). We review a district court's findings for clear error. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made. If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Id.* (quotation and citation omitted).

I.

NewGen contends that the district court erred in determining that there was an oral home-remodeling contract because such contracts are prohibited by Minn. Stat. § 326B.809 (2024).

We review questions of statutory interpretation de novo. *City of Oronoco v. Fitzpatrick Real Est., LLC*, 883 N.W.2d 592, 595 (Minn. 2016). Statutory interpretation begins by analyzing whether the statute's language is ambiguous on its face. *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013). "A statute is ambiguous only if

it is susceptible to more than one reasonable interpretation." *Id.* If a statute is unambiguous, reviewing courts apply the statute's plain meaning. *Id.*

Minn. Stat. §§ 326B.801-.885 (2024) govern residential contractors. *See* Minn. Stat. § 326B.801 (discussing the scope of those sections). Section 326B.809 requires the following: (1) "[a]ll agreements . . . between a licensee and a customer for the performance of a licensee's services must be in writing," (2) "[b]efore entering into an agreement, the licensee shall provide a prospective customer with written performance guidelines for the services to be performed," (3) "[a]ll agreements shall be signed and dated by the licensee and customer," and (4) "[t]he licensee shall provide to the customer, at no charge, a signed and dated document at the time that the licensee and customer sign and date the document." "Documents include agreements, performance guidelines, and mechanic's lien waivers." Minn. Stat. § 326B.809(c).

NewGen argues that this court should construe section 326B.809 "to impose a writing requirement on all home-construction contracts" such that a homeowner who fails to obtain a written contract is "precluded from claiming the existence of an oral home-remodeling contract."

NewGen cites *Tourville v. Kowarsch*, 365 N.W.2d 298 (Minn. App. 1985), as support. That case involved Minn. Stat. §§ 513.075, .076 (1984), which concern property or financial contracts between a man and woman living together out of wedlock and expressly require a contract written and signed by the parties. *Tourville*, 365 N.W.2d at 299. Critically, under section 513.076:

> Unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear *and shall dismiss as contrary to public policy any claim* by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

(Emphasis added.)

By requiring courts to dismiss claims based on unwritten agreements, section 513.076 effectively stated that the type of unwritten agreements described therein are unenforceable. No such language appears in section 326B.809, and nothing in the plain language of section 326B.809 precludes a homeowner from enforcing an oral contract. We will "not add words to [a] statute that the [l]egislature did not supply." *Graphic Commc'ns Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 696 n.10 (Minn. 2014).

Moreover, "[w]e are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Based on the surrounding sections, section 326B.809 clearly imposes obligations on a licensee, which includes "a residential building contractor . . . licensed under sections 326B.802 to 326B.885." Minn. Stat. § 326B.802, subd. 5. Under Minn. Stat. § 326B.801, section 326B.809 applies "to residential contractors."

As noted by the district court, the statutory scheme is clearly "designed to protect the consumer and not the contractor." For example, Minn. Stat. § 326B.84(5), provides

that "[t]he commissioner may use any enforcement provision in section 326B.082" against "any individual or entity who is required by law to hold a license" if the individual or entity "has violated or failed to comply with any provision of sections 326B.802 to 326B.885." Minn. Stat. § 326B.082 (2024), in turn, authorizes the commissioner to impose penalties against a licensed person for a violation of section 326B.809, including "monetary penalties" and "a stop work order." Minn. Stat. § 326B.082, subd. 11(b)(1), also authorizes the commissioner to "suspend, limit, place conditions on, or revoke a person's . . . license" based on a violation of section 326B.809. And under Minn. Stat. § 326B.082, subd. 16, "[e]xcept as otherwise provided by law, a person who violates an applicable law is guilty of a misdemeanor."

In sum, NewGen's assertion that section 326B.809 prevents a homeowner from enforcing an alleged oral contract for home repairs finds no support in the clear language of the statute or the obvious purpose of the statutory scheme.

II.

NewGen contends that the district court's finding of an oral contract is unsupported by the evidence because "[t]here is no evidence on record of a meeting of the minds . . . on the services that were to be performed, the total contract price to be paid and the timeline for completion of the work."

Minnesota law permits oral contracts. *See, e.g.*, *Vermillion State Bank v. Tennis Sanitation, LLC*, 947 N.W.2d 456, 465 (Minn. App. 2020), *aff'd*, 969 N.W.2d 610 (Minn. 2022). "Whether a contract exists generally is a question for the fact-finder." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App.

2008), *rev. denied* (Minn. Jan. 20, 2009). Formation of a contract requires an offer, acceptance, and consideration. *Id.* There must be a "meeting of the minds on the essential terms of the agreement." *See TNT Props., Ltd. v. Tri-Star Devs. LLC*, 677 N.W.2d 94, 100-01 (Minn. App. 2004).

On the issue of contract formation, the district court found as follows:

> No party has offered a clear and eloquent recitation of the terms of this oral contract. Nonetheless, it is adequately clear that [Rasugu], as an agent of NewGen, agreed to accept Omwenga's $14,792. In return, [Rasugu], as an agent of NewGen, was obligated to make the repairs specified in the [insurance] [e]stimate. However, [Rasugu] knew that Omwenga's home had additional work that needed to be completed because [Rasugu] knew that the repairs in the [insurance] [e]stimate did not address the underlying cause of the damages. Thus, it is clear that the oral contract included an additional term: [Rasugu] would submit a supplemental estimate to [the insurer] so that [it] would provide more money to address the underlying cause of the damages. The parties agreed that [Rasugu], as an agent of NewGen, would complete the additional repairs in the supplemental estimate if [the insurer] approved the supplemental estimate.

(Footnote omitted.)

The district court's findings establish an offer, acceptance, and consideration, as well as a meeting of the minds concerning the contract's essential terms. And the district court's findings were supported by the evidence. For example, Omwenga testified that he met with Rasugu in July 2018, and the parties agreed that NewGen would perform the repairs set forth in the insurance estimate in exchange for payment of $14,792.

Although the contract did not contain a specific time for performance, time of performance is not always an essential term. "A binding contract can exist despite the

parties' failure to agree on a term if the term is not essential or can be supplied." *Id.* at 101. As stated in *Liljengren Furniture & Lumber Co. v. Mead*, when "a contract is silent as to the time of performance," the law implies that performance shall be "within a reasonable time." 44 N.W. 306, 308 (Minn. 1890). Generally, failure to specify a time for performance "will not defeat the formation of a contract." *Hill v. Okay Constr. Co.*, 252 N.W.2d 107, 114 (Minn. 1977).

NewGen also argues that the district court erroneously excluded material evidence and based its decision on testimony that was not credible. NewGen fails to offer adequate legal argument or analysis to show that the district court erroneously excluded material evidence. We will not consider claims that are unsupported by legal analysis or citation to legal authority. *See Stephens v. Bd. of Regents*, 614 N.W.2d 764, 769 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000). Additionally, "[i]t has long been the general rule that matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error." *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). But NewGen did not move for a new trial. For those reasons, we do not consider NewGen's assignment of error to the district court's evidentiary rulings.

As to NewGen's credibility argument, "[w]e do not reweigh the evidence that was before the district court, and we defer to a district court's credibility determinations." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019); *see also* Minn. R. Civ. P. 52.01 ("Findings of fact . . . shall not be set aside unless clearly

erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.").

In sum, the evidence supports the district court's finding of an oral contract.

III.

NewGen contends that the district court erred in disregarding the informally mediated settlement agreement. NewGen argues that the settlement agreement modified "the scope of services that were to be performed by [Rasugu], the total contract price to be paid[,] and the timeline for completion of the work." The district court disregarded the settlement agreement, reasoning that it did not alter the terms of the oral contract and that it merely restated the parties' preexisting obligations. The record supports the district court's determination. *See Minn. Dep't of Corr. v. Knutson*, 976 N.W.2d 711, 717 (Minn. 2022) (noting that "a promise to do something that one is already legally obligated to do does not constitute consideration and therefore does not give rise to an enforceable contract" (quotation omitted)).

NewGen also argues that because of the settlement agreement, the 2018 oral contract was rendered unenforceable under the statute of frauds because the contract could not be performed within one year. When the facts are not in dispute, we review de novo whether the statute of frauds applies. *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998), *rev. denied* (Minn. Feb. 24, 1999).

As a threshold matter, Omwenga argues that NewGen forfeited any statute-of-frauds argument. Although NewGen raised "any or all of the affirmative defenses contemplated by Rule 8 of the Minnesota Rules of Civil Procedure," and the statute of frauds is among

those defenses, NewGen did not raise the statute of frauds in its trial memorandum, during trial, or in its post-trial written closing argument or proposed findings of fact and conclusions of law. The issue is therefore forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988) (stating that generally, a reviewing court must only consider issues that were presented to and considered by the district court).

Even if the issue were properly before us, the statute of frauds is inapplicable. Under Minn. Stat. § 513.01(1) (2024), no action shall be maintained upon an agreement "that by its terms is not to be performed within one year from the making thereof," unless such agreement is in writing. There is nothing in the terms of the contract that extended performance beyond one year. Therefore, the statue is inapplicable. *See Bolander v. Bolander*, 703 N.W.2d 529, 547 (Minn. App. 2005) ("The test is simply whether the contract by its terms is capable of full performance within a year, not whether such occurrence is likely." (quotation omitted)), *petition for rev. dismissed* (Minn. Oct. 28, 2005).

NewGen also argues that the frustration-of-purpose doctrine applies because Omwenga would not allow NewGen's workers into his home to complete the interior repairs. The frustration-of-purpose doctrine applies if (1) "[t]he party's principal purpose in making the contract is frustrated," (2) "without that party's fault," and (3) "by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made." *Nat'l Recruiters, Inc. v. Toro Co.*, 343 N.W.2d 704, 707 (Minn. App. 1984). Again, this issue is not properly before us because it was not raised and considered in the district court; the district court's findings, conclusions, and order for judgment do

not mention the frustration-of-purpose doctrine. *See Thiele*, 425 N.W.2d at 582. Regardless, the evidence does not suggest that NewGen was without fault. *See Nat'l Recruiters, Inc.*, 343 N.W.2d at 707. As the district court stated in its amended findings, Rasugu's "decision to expand the scope of the work to address the underlying exterior causes of the water issue" was "not attributable" to Omwenga, and Omwenga "objected to the exterior work and complained about its quality."

In sum, the district court did not err in its treatment of the settlement agreement, and NewGen's other arguments are unavailing.

IV.

NewGen contends that Omwenga was "not entitled to the equitable relief of rescission." "Rescission is the unmaking or abrogation of a contract." *Graves v. Wayman*, 859 N.W.2d 791, 799 (Minn. 2015) (quotations omitted). "A material breach of contract justifies the other party in rescinding." *Liebsch v. Abbott*, 122 N.W.2d 578, 581 (Minn. 1963). Additionally, "[t]he failure or refusal of one party to an executory contract to perform constitutes a legal justification for the other party to rescind and demand to be restored to his former position, if he is himself without fault." *Id.* "Rescission is an equitable remedy." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011). If a district court weighs the equities and makes its decision based on disputed factual findings after a court trial, we review the district court's equitable determinations for an abuse of discretion. *Herlache v. Rucks*, 990 N.W.2d 443, 450 n.4 (Minn. 2023).

NewGen cites caselaw for the proposition that rescission is only available if a contractual breach is irreparable or damages are inadequate or difficult to determine. We stated, in *Johnny's, Inc. v. Njaka*, that "[w]here the injury caused by the breach of contract is irreparable, or where the damages would be inadequate or difficult or impossible to determine, rescission is appropriate." 450 N.W.2d 166, 168 (Minn. App. 1990). But we did not state that the remedy of rescission is *limited* to those contexts.

In *Liebsch*, the supreme court stated that a material breach justifies rescission. 122 N.W.2d at 581; *see also Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281, 290 (Minn. 1967) (stating that "where one party to a contract refuses to perform a substantial part of the contract the other party may rescind it"). Here, NewGen failed to perform any of its obligations under the oral contract found by the district court. Moreover, even if the district court had erred in permitting rescission, NewGen fails to show prejudice. Regardless of rescission, Omwenga would still be entitled to a return of his money because NewGen did not complete any of the contracted-for repairs. Thus, the alleged error is harmless and must be ignored. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

NewGen also argues that Omwenga waived the remedy of rescission by permitting Rasugu "and his team to do construction work at his property for several months." Generally, a party may not sit upon his right to rescission. *See Parsons v. McKinley*, 57 N.W. 1134, 1134 (Minn. 1894). However, NewGen again fails to identify any prejudice resulting from the district court's grant of rescission. *See* Minn. R. Civ. P. 61.

V.

Finally, NewGen contends that the district court erred in declining to offset the amount of damages ordered for Omwenga by the value of the completed improvements to the exterior of Omwenga's home. NewGen argues that Omwenga "offered his own self-serving testimony that he did not benefit from [Rasugu's] work," and "the record in no way supports the [d]istrict [c]ourt's determination that the labor, skills[,] and materials that [Rasugu] and his team provided for several months [were] of absolutely no value to [Omwenga]."

The issue is not whether the exterior repairs were of value to Omwenga; the issue is whether such value should have been "offset" against the damages ordered by the district court. Black's Law Dictionary explains that "[t]he final equitable concept of 'offset' recognizes that the debtor may satisfy a creditor's claim by acquiring a claim that serves to counterbalance or to compensate for the creditor's claim." *Black's Law Dictionary* 1307 (12th ed. 2024) (quotation omitted). NewGen did not prove a claim that counterbalanced Omwenga's proven breach-of-contract claim. The only claims tried were Omwenga's claims for breach of contract and unjust enrichment; NewGen did not assert any counterclaim—either at law or in equity—based on the exterior work that Rasugu performed. Thus, NewGen was not entitled to an offset.

In conclusion, the district court's task in this case was not an easy one. As the court observed:

> [The district court's] [f]indings are an amalgam of a contradictory and confusing factual narrative offered by the parties. . . . [N]one of the witnesses were entirely credible and

> no one offered a fully believable story. Yet, it [fell] to the [district court] to distill a comprehensible narrative from the evidence offered. [The resulting] [f]indings represent the [district court's] best effort to weave a cohesive narrative from the believable facts.

Under the circumstances, the district court's findings and conclusions may not be perfect. But NewGen has not demonstrated prejudicial error justifying relief from this court.

Affirmed.