This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0890

Brian's Lawn & Landscaping, Inc.
dba Rock Hard Landscape Supply,
Respondent,

vs.

Last Chance Ranch, Inc., et al.,
Appellants.

Filed January 21, 2025
Affirmed
Harris, Judge

Hubbard County District Court
File No. 29-CV-23-1007

Jared M. Nusbaum, Zlimen & McGuiness, PLLC, Roseville, Minnesota (for respondent)

Matthew P. Franzese, Wheaton, Minnesota (for appellants)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Jesson, Judge.[*]

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellants, a business and its owner, challenge summary judgment, arguing that the district court erred by entering judgment jointly and severally against appellant-business

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

owner because (1) respondent failed to properly plead piercing the corporate veil and (2) respondent failed to provide sufficient evidence on summary judgment for the district court to pierce the corporate veil. Because appellants raise these arguments for the first time on appeal, we affirm.

FACTS

Appellant Last Chance Ranch Inc. (LCRI) is a South Dakota corporation doing business in the State of Minnesota. Appellant Douglas Crosby is the president of LCRI and resides in Minnesota. In November 2022, Crosby informed respondent Brian's Lawn & Landscaping Inc. d/b/a Rock Hard Landscape Supply (RHLS) that he owned property in Laporte, Minnesota, which had boulders that he could sell to RHLS. Crosby informed respondent that LCRI had sufficient machines and crew to extract the boulders and load them onto RHLS's trucks.

Based on Crosby's representations, respondent agreed to purchase boulders from LCRI. LCRI and respondent entered a contract, which provided that respondent would purchase "Field Stone Boulders sorted by size" from LCRI. The contract was for 11,112 tons of boulders at a rate of $13.50 per ton, for a total of $150,012. Respondent agreed to pay a $75,000 down payment, then $20,000 per week until the contract amount was paid in full, with a $15,000 balance payment made in the last week. The contract also stated that LCRI would load the boulders onto respondent's trucks. The contract contained no dates.

Respondent made the down payment and LCRI provided 207.9 tons of boulders, for a total value of $2,806.65. On two occasions, respondent went to the property to retrieve

loads of boulders, but discovered that the boulders were not available and did not observe any other workers or boulder harvesting equipment on the property. On one occasion, respondent observed Crosby attempting to harvest boulders with broken equipment. Respondent emailed with Crosby about fulfilling the contract, and during these exchanges Crosby held himself out as Last Chance Ranch Arena. Last Chance Ranch Arena does not exist.

In March 2023, respondent sued appellants. The complaint alleged that LCRI was liable for breach of contract because it only provided 207.9 tons of boulders and did not relocate a four-man crew or four machines to assist in procuring the contracted boulders. Alternatively, the complaint raised a claim for quantum meruit because the $75,000 payment made by respondent conferred a substantial benefit upon LCRI, and LCRI would be unjustly enriched if it was allowed to benefit from the payment without providing the agreed upon amount of boulders. The complaint alleged that LCRI and Crosby were liable for fraud in the inducement because LCRI and Crosby made fraudulent statements that they would be able to fulfill the order for over 11,000 tons of boulders. Lastly, the complaint alleged that LCRI and Crosby were liable for negligent misrepresentation because LCRI and Crosby did not exercise reasonable care in communicating that they did not have the resources to fulfill the order and provided false information to respondent. Respondent requested to recover damages in excess of $50,000 from LCRI and Crosby, jointly and severally.

In June 2023, counsel for appellants signed a waiver of service of the summons and complaint. Appellants served an answer to respondent's counsel, but then counsel for

appellants withdrew from the case. The answer was never filed with the district court. In October 2023, respondent served discovery requests on appellants, including interrogatories, requests for production of documents, and requests for admission. Appellants did not respond to the discovery requests, so respondent sent an additional letter in November 2023 indicating that the discovery responses were delinquent. In February 2024, respondent filed a motion for summary judgment. Respondent argued it was entitled to a $72,193.35 judgment against LCRI and Crosby jointly and severally.[1]

In April 2024, the parties appeared for a motion hearing. Respondent was represented by counsel and Crosby appeared self-represented. The hearing was conducted via Zoom, and Crosby initially had difficulty connecting to the Zoom hearing, but was able to connect with his phone. The district court noted that Crosby did not file anything in response to the motion for summary judgment and moved forward with the hearing. Due to Crosby's failure to respond to the discovery requests, the following facts were deemed admitted by Crosby when he did not serve an answer or objection within thirty days per Minnesota Rule of Civil Procedure 36: (1) Crosby owns real estate in Laporte, Minnesota; (2) Crosby is the sole shareholder for LCRI; (3) Crosby drafted the contract at issue; (4) Crosby is not physically able to procure the contractual amount of boulders on his own; (5) Crosby did not have four men assisting him to procure the boulders and did not relocate a four-man crew or four machines to harvest the boulders; (6) Crosby only provided 207.9 tons of boulders; (7) at the time he drafted the contract, Crosby knew that he could not

[1] $72,193.35 equals the down payment paid by respondent to LCRI minus the value of the boulders provided by LCRI to respondent.

procure the contractual number of boulders; (8) Crosby could not, and has not, produced 11,112 tons of boulders; (9) Crosby has communicated under the name Last Chance Ranch Arena, which is an unregistered entity with the State of Minnesota; and (10) Crosby accepted $75,000 from RHLS and has not provided $75,000 worth of boulders. Respondent argued that there were no genuine issues of material fact that LCRI breached a contract and that LCRI and Crosby committed fraud. Respondent also argued that the fraud claim is joint and "Crosby is not protected by the company because of the fraud claim."

Crosby admitted that "there's no Last Chance Ranch Arena," and asserted that respondent made perjured statements, including the statement that "Crosby is not protected by the corporation." After listening to respondent's argument, the district court noted that no response had been filed and granted the motion for summary judgment based on the record and pleadings filed.

At no time during the motion hearing did Crosby raise the issue of piercing the corporate veil. Crosby argued that there were genuine issues of material fact, and that respondent did not fulfill their part of the contract. He stated that "every time [respondent] ever came up to get boulders, their trucks were filled, even after they stopped paying their weekly payments," and that "there's an underlying reason as to why [respondent] stopped paying."

The district court issued a written order granting respondent's motion for summary judgment, ordered that judgment be entered against LCRI and Crosby, jointly and severally, in the amount of $72,193.35, and judgment was entered. This appeal follows.[2]

DECISION

Appellants argue that we should vacate the district court's entry of judgment against Crosby because respondent did not properly raise piercing the corporate veil in the complaint and motion for summary judgment, which deprived the district court of subject matter jurisdiction. Alternatively, appellants argue that we should remand the case for a trial on the issue of piercing LCRI's corporate veil because whether the corporate veil should be pierced is a genuine issue of material fact that precludes summary judgment, and the record is insufficient for the district court to have conducted a proper analysis on whether LCRI's corporate veil was pierced.

The district court shall grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. On appeal, we review "whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We do not "weigh facts or determine the credibility of affidavits and other evidence." *Id.* (quotation omitted). And we "must view the evidence in the light most

[2] Appellants only challenge the judgment as to Crosby.

favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Before proceeding to address the substance of appllants argument, we will consider respondent's claim that appellants' arguments are not properly before us because appellants did not raise the issue of piercing the corporate veil with the district court. Appellate courts "generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). "Nor may a party obtain review by raising the same general issue litigated below but under a different theory." *Id.*

Crosby challenges summary judgment, as he did below, but raises a new theory on appeal—that the pleadings and evidence are insufficient to pierce LCRI's corporate veil. Crosby did not raise this issue at any point during the litigation in the district court, and it does not appear the issue was ever briefed and considered by the district court. Appellants did not file any documents with the district court, did not respond to any discovery requests, and did not file any documents in response to respondent's motion for summary judgment. *See* Minn. R. Civ. P. 56.05(c) (stating that if a party "fails to properly address another party's assertion of fact," the district court may grant summary judgment if the record shows that the movant is entitled to it).

At the motion hearing, Crosby simply argued that there were genuine issues of material fact. Crosby argued that respondent did not fulfill their obligations under the contract and stated that "every time [respondent] ever came up to get boulders, their trucks were filled, even after they stopped paying their weekly payments," and that "there's an

underlying reason as to why [respondent] stopped paying." These general statements were insufficient to successfully oppose the summary judgment motion because "general assertions" are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). "In order to successfully oppose summary judgment, [a party] must extract *specific*, admissible facts from the voluminous record and particularize them for the trial judge." *Kletschka v. Abbott-Northwestern Hosp., Inc.,* 417 N.W.2d 752, 754 (Minn. App. 1988), *rev. denied* (Minn. Mar. 30, 1988).

Appellants argue that case law allows them to challenge the district court's grant of summary judgment for the first time on appeal. Appellants' arguments are unpersuasive because the cases appellants rely on are distinguishable from appellants' case.

First, appellants argue that the rule that we will not consider arguments raised for the first time on appeal is not "ironclad." *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002). While "appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action *as the interest of justice may require*," appellants' reliance on *Putz* is not persuasive. Minn. R. Civ. App. P. 103.04 (emphasis added). In *Putz*, the supreme court concluded that justice required considering the issue of child support raised by the county for the first time on appeal because "the state's interest in protecting the well-being of children [was] at stake." 645 N.W.2d at 350. No such interest exists here.

Second, appellants argue that

> [a]n appellate court may decide an issue not presented to or considered by the trial court when the issue is plainly decisive of the entire controversy on its merits, is raised prominently in the

> briefing, does not prejudice either party, or involves a question of law not dependent on new or controverted facts.

Miller v. Soo Line R.R. Co., 925 N.W.2d 642, 653 (Minn. App. 2019) (quotations omitted).

In *Miller*, this court noted that "the issue was fully briefed by the parties in district court and on appeal," and "[m]ore importantly, the issue involves a question of law and does not depend on new or controverted facts, and there is no possible advantage or disadvantage to either party in not having had a prior ruling by the trial court on the question." *Id.* at 653. In contrast, here, whether it was necessary to plead additional facts consistent with piercing the corporate veil or present additional evidence regarding piercing LCRI's corporate veil, are questions that were not briefed or considered by the district court. As such, this court is unable to evaluate the argument based on facts already present in the record. *See Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 522-23 (Minn. 2007) (concluding that appellant's claim was properly before the supreme court because appellant did not raise a new argument on appeal, but refined an argument made to the district court, and it was possible to evaluate the argument on facts already present in the record).

Appellants raise an additional argument in their reply brief relying on case law addressing parties appealing directly from a default judgment. *See Michaels v. First USA Title, LLC*, 844 N.W.2d 528 (Minn. App. 2014). Appellants argue that because appellate courts allow parties to challenge default judgments, this court should allow Crosby to challenge the district court's grant of respondent's summary judgment motion, even when

Crosby did not fully participate at the district court level. This argument is also unpersuasive.

Arguments not raised or argued in appellants' principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). And even if we were to consider appellants' argument, this matter did not proceed by default. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 337 (Minn. App. 2004) (defining a default judgment as "a judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim, often by failing to appear at trial"). Crosby appeared and participated in the motion hearing. And the district court did not grant summary judgment simply because Crosby failed to file an answer, but it determined that the summary judgment motion was supported by the record. If we were to consider the district court's grant of summary judgment as analogous to a default judgment because of Crosby's limited participation in the litigation, case law does not suggest that parties are always entitled to challenge default judgments as appellants seem to suggest. *See Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990) (stating there are a limited number of issues that may be raised for the first time on appeal from a default judgment), *rev. denied* (Minn. Apr. 13, 1990). The rule that a party "cannot deny facts or assert facts not put into issue before the district court, or raise procedural arguments not raised below" still applies. *Michaels*, 844 N.W.2d at 532.

In sum, we decline to consider appellants' new theories challenging the district court's order because the arguments about whether summary judgment was improper may depend on additional facts, and the arguments were not raised, briefed, or considered

below. We conclude that the district court's grant of respondent's summary judgment motion is supported by the record, and the district court correctly granted summary judgment for respondent.

Affirmed.