

*This opinion is nonprecedential except as provided by  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  
A23-0307**

Jon Huseeth, et al., d/b/a Clay View Dairy, LLP,  
Appellants,

vs.

Goodhue County Cooperative Electric Association,  
Appellant on Related Appeal,

Kurt Emery,  
Respondent,

DuraTech Industries International, Inc.,  
Respondent,

Highline Manufacturing, Ltd.,  
Respondent.

**Filed April 28, 2025  
Reversed and remanded  
Johnson, Judge**

Goodhue County District Court  
File No. 25-CV-18-715

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Considered and decided by Johnson, Presiding Judge; Larson, Judge; and Smith, John, Judge.\*

### **NONPRECEDENTIAL OPINION**

**JOHNSON**, Judge

This appeal is before this court for a second time after a remand from the supreme court. The sole issue is whether the district court erred by *sua sponte* dismissing cross-claims asserted by one defendant against three other defendants. We conclude that the district court erred by not giving notice of its intention to consider dismissing the cross-claims and not giving the cross-claimant a reasonable opportunity to respond. Therefore, we reverse and remand for further proceedings.

### **FACTS**

The relevant background facts are recited in our prior opinion. *See Huseth v. Goodhue Cnty. Coop. Elec. Ass’n*, No. A23-0307, 2024 WL 1044560, at \*1-3 (Minn. App. Mar. 11, 2024), *vacated in part mem.* (Minn. Nov. 19, 2024). We need not restate those facts here.

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

## **Proceedings in the District Court**

Jon, Melissa, Ronald, and Diana Huseth are partners in a Goodhue County dairy operation, doing business as Clay View Dairy LLP (CVD). In March 2018, the Huseths and CVD (collectively, the plaintiffs) sued the Goodhue County Cooperative Electric Association (GCCEA), an electric utility, asserting claims of negligence and nuisance based on an allegation that GCCEA allowed stray voltage to emanate from its electric-distribution system and injure CVD's herd of dairy cows, thereby causing a decrease in their milk production. The plaintiffs later twice amended their complaint to assert claims against Kurt Emery, a Goodhue County farmer; DuraTech Industries International, Inc.; and Highline Manufacturing, Ltd. (collectively, the net-wrap defendants), alleging that the net-wrap defendants caused CVD's dairy cows to consume plastic net wrap, which had been used to bale hay and later was mixed in with hay that was used as feed and bedding. GCCEA responded to the amended complaint by asserting cross-claims of contribution and indemnity against the net-wrap defendants.

In November and December of 2021, each of the four defendants filed a motion for summary judgment. In June 2022, the district court denied the defendants' motions, except for one part of Emery's motion.

Soon thereafter, the net-wrap defendants filed a joint motion to exclude the plaintiffs' expert evidence concerning the alleged ingestion of plastic net wrap by CVD's herd. In December 2022, the district court granted the motion. The district court then stated:

Because Plaintiffs rely upon their expert witnesses to prove causation with respect to alleged harm from net wrap, and because Plaintiffs' expert witness opinions have fallen short of the *Frye-Mack* standard and lack the necessary foundational reliability, this Court dismisses with prejudice any and all claims (*including any cross-claims for contribution and/or indemnity*) asserted against Defendants Kurt Emery, Duratech Industries, Inc., and Highline Manufacturing, Ltd. (Emphasis added.)

The district court later granted a motion for immediate entry of a partial final judgment with respect to the order dismissing all claims against the net-wrap defendants. *See* Minn. R. Civ. P. 54.02.

### **Proceedings in the Court of Appeals**

The plaintiffs filed a notice of appeal to challenge the district court's December 2022 order excluding their expert evidence and dismissing their claims against the net-wrap defendants. GCCEA filed a notice of related appeal to challenge the district court's June 2022 order denying its motion for summary judgment and to challenge the district court's December 2022 order dismissing its cross-claims against the net-wrap defendants. Each of the net-wrap defendants filed a notice of related appeal to challenge the district court's June 2022 order denying summary judgment on the plaintiffs' claims.

In March 2024, this court issued an opinion affirming in part and reversing in part. *Huseth*, 2024 WL 1044560, at \*3-11. In part I of our opinion, we concluded that the district court erred by denying GCCEA's summary-judgment motion to the extent that GCCEA argued that the plaintiffs' claims are barred by a two-year statute of limitations. *Id.* at \*3-7. In light of that conclusion, we did not consider GCCEA's other arguments for summary judgment. *Id.* at \*7. Likewise, we did not consider GCCEA's argument that the district

court erred by *sua sponte* dismissing its cross-claims against the net-wrap defendants, reasoning that “GCCEA sought contribution and indemnification from the net-wrap defendants only if [the plaintiffs’] claims against GCCEA were successful.” *Id.* In part II of our opinion, we concluded that the district court did not err by granting the net-wrap defendants’ joint motion to exclude the plaintiffs’ expert evidence and by dismissing the plaintiffs’ claims against the net-wrap defendants. *Id.* at \*7-11.

### **Proceedings in the Supreme Court**

The plaintiffs filed a petition for review in the supreme court, seeking review with respect to five issues. *See* Minn. R. Civ. App. P. 117. The supreme court denied the petition with respect to four issues, granted the petition with respect to one issue, and stayed further proceedings “pending final disposition in *Reichel v. Wendland Utz, LTD*, No. A23-0015.” *Huseth v. Goodhue Cnty. Coop. Elec. Ass’n*, No. A23-0307 (Minn. June 18, 2024) (order).

In September 2024, the supreme court issued its opinion in *Reichel v. Wendland, Utz, LTD*, 11 N.W.3d 602 (Minn. 2024). The supreme court held, in part, that if one party appeals pursuant to rule 103.03(a) of the rules of appellate procedure by filing a notice of appeal from a partial final judgment entered pursuant to rule 54.02 of the rules of civil procedure, the court of appeals’ jurisdiction is limited to the claim or claims for which the partial final judgment was entered. *Id.* at 610. In that situation, rule 103.03(a), which allows appeals from a partial final judgment entered pursuant to rule 54.02, “provides for immediate appeal only of those issues and claims resolved in the partial final judgment.” *Id.* Accordingly, if one party appeals from a partial final judgment, another party is not

entitled to file a notice of related appeal and thereby obtain appellate review of another issue or claim, unless there is an independent basis for an appeal of the other issue or claim. *See id.* The supreme court explained, “In an interlocutory appeal of a partial final judgment under Rule 54.02, the court of appeals must consider whether the related order is independently appealable under Rule 103.03.” *Id.* at 611 n.6.

In November 2024, the supreme court lifted the stay in this case, vacated part I of our prior opinion, and remanded the case to this court for reconsideration in light of the *Reichel* opinion. *Huseth v. Goodhue Cnty. Coop. Elec. Ass’n*, No. A23-0307 (Minn. Nov. 19, 2024) (order).

### **On Remand to the Court of Appeals**

This court promptly questioned jurisdiction over GCCEA’s related appeal and ordered the parties to file memoranda with respect to the court’s jurisdiction over the issues raised by the related appeal. *Huseth v. Goodhue Cnty. Coop. Elec. Ass’n*, No. A23-0307 (Minn. App. Nov. 26, 2024) (order). A special-term panel determined that this court has jurisdiction over only part of GCCEA’s related appeal. *Huseth v. Goodhue Cnty. Coop. Elec. Ass’n*, No. A23-0307, 2024 WL 5183303, \*3 (Minn. App. Dec. 17, 2024) (order). We dismissed the part of GCCEA’s related appeal seeking review of the district court’s denial of its motion for summary judgment, which was the subject of part I of our prior opinion. *Id.* But we retained jurisdiction over the part of GCCEA’s related appeal seeking review of the district court’s *sua sponte* dismissal of GCCEA’s cross-claims against the net-wrap defendants. *Id.* In a subsequent order, we permitted (but did not require) GCCEA and the net-wrap defendants to file supplemental briefs concerning the district court’s

dismissal of GCCEA's cross-claims. *Huseth v. Goodhue Cnty. Coop. Elec. Ass'n*, No. A23-0307 (Minn. App. Dec. 20, 2024) (order). The matter was resubmitted without oral argument.

## DECISION

Only one issue is before the court. GCCEA argues that the district court erred by *sua sponte* dismissing its cross-claims against the net-wrap defendants without giving GCCEA notice of its intention to do so and an opportunity to respond.

GCCEA asserts that the district court's dismissal of its cross-claims is "effectively" a summary judgment, and GCCEA cites rule 56.06 of the rules of civil procedure. Summary judgment ordinarily is raised by a party's motion, which requires the district court to determine whether the moving party has shown "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. If so, the district court grants summary judgment for the moving party. *See id.* But a district court may order summary judgment for a party that did not move for summary judgment, so long as certain requirements are satisfied. A rule captioned "Judgment Independent of the Motion," which was adopted in 2018, provides:

After giving notice and a reasonable time to respond,  
the court may:

- (a) grant summary judgment for a nonmovant;
- (b) grant the motion on grounds not raised by a party; or
- (c) consider summary judgment on its own initiative after identifying for the parties the material facts that may not be genuinely in dispute.

Minn. R. Civ. P. 56.06; *see also* Minn. R. Civ. P. 56, 2018 advisory comm. cmt.; *Bell v. St. Joseph Mutual Ins. Co.*, 990 N.W.2d 504, 508-11 (Minn. App. 2023) (interpreting rule 56.06(c)), *rev. denied* (Minn. Aug. 8, 2023).

The net-wrap defendants do not question the applicability of rule 56.06 and do not argue that the district court complied with the rule. For purposes of this non-precedential opinion, we assume without deciding that rule 56.06 applies, and we agree with GCCEA that the district court erred by not giving GCCEA notice and a reasonable time in which to respond.

The net-wrap defendants ask the court to affirm on the grounds that a party cannot be liable for contribution unless there is common liability toward a third party and that, in this case, “once the court dismissed CVD’s affirmative claims against the net-wrap defendants, GCCEA and the net-wrap defendants could never have common liability to CVD.” We construe this as an argument that the district court’s error is harmless on the ground that GCCEA does not have a viable cross-claim against the net-wrap defendants. *See* Minn. R. Civ. P. 61.

GCCEA anticipated the net-wrap defendants’ harmless-error argument by citing this court’s opinion in *Hebrink v. Farm Bureau Life Insurance Company*, 664 N.W.2d 414 (Minn. App. 2003). In that case, a defendant filed a motion *in limine* to exclude evidence, which prompted the district court both to grant that motion and, in addition, to order summary judgment *sua sponte*. *Id.* at 417-18. On appeal, this court reversed and remanded after concluding that the district court did not give the plaintiff notice of its intention to consider summary judgment *sua sponte* and a reasonable opportunity to oppose summary



judgment. *Id.* at 419-20. In doing so, we stated, “Prejudice is unavoidable when a trial court denies any opportunity to marshal evidence in opposition to a basis for summary judgment raised *sua sponte*.” *Id.* at 419 (quotation omitted).

In light of *Hebrink*, we reject the net-wrap defendants’ harmless-error argument and decline to consider the net-wrap defendants’ arguments as to whether GCCEA’s cross-claims might have merit. In addition, we are mindful that there are other claims pending in the district court. It is appropriate to allow the district court to determine, in the first instance, the most appropriate manner in which to consider and resolve all pending claims.

In sum, the district court erred by *sua sponte* dismissing GCCEA’s cross-claims against the net-wrap defendants. Thus, we reverse the dismissal of GCCEA’s cross-claims and remand for further proceedings, which shall be consistent with this opinion and with part II of our prior opinion, which affirmed the district court’s grant of the net-wrap defendants’ motion to exclude the plaintiffs’ expert evidence. *See Huseth*, 2024 WL 1044560, at \*7-11.

**Reversed and remanded.**