

*This opinion is nonprecedential except as provided by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
A23-1964
A24-0715**

Mary Engel, as Trustee of the Blackwood Trust, et al.,
Appellants (A23-1964),
Respondents (A24-0715),

vs.

Vicky Jo Ulvestad, et al.,
Respondents (A23-1964),
Appellants (A24-0715),

New Day Financial, LLC, a Delaware limited liability company, et al.,
Defendants.

**Filed December 16, 2024
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

St. Louis County District Court
File No. 69DU-CV-17-1504

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Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

These cases are consolidated appeals arising from a multifaceted property dispute between the parties.¹ These cases stem from a dispute over the use and ownership of adjoining tracts of land in St. Louis County.

In appeal A23-1964, the trust parties argue that the district court: (1) erred by applying the doctrine of boundary by practical location in determining that their property lacked lake access; (2) abused its discretion by excluding from evidence an 1870 government plat map and testimony about the map's effect as to the property boundary; and (3) abused its discretion by allowing expert testimony and related exhibits from a geographic information systems (GIS) specialist.

Because the district court erred in not first considering the original government survey prior to applying the boundary by practical location, we reverse in part. And, as a result, we need not address whether the district court abused its discretion in excluding the original government plat map. We additionally conclude that the district court acted within its discretion to allow expert GIS evidence.

In appeal A24-0715, the Ulvestads argue that the district court: (1) erred by determining that they could not enforce a trustee's grant of a septic-system easement; and

¹ We use "trust parties" to refer to Mary Engel (a Blackwood Trust trustee), Thomas Riley (a trustee), Mark Baumann (a trustee), Kim Dahmah (a trust beneficiary), and George Dahmah (Kim Dahmah's husband and a trust beneficiary). The trust parties are the appellants in appeal A23-1964 and the respondents in appeal A24-0715. We use "Ulvestads" to refer to Vicky Jo Ulvestad and Lawrence Craig Hammonds, the respondents in appeal A23-1964 and the appellants in appeal A24-0715.

(2) abused its discretion by denying their motion to amend their complaint to add a claim for punitive damages.

Because the district court properly determined that the septic-system easement cannot be enforced and acted within its discretion to deny amendment of the complaint to add punitive damages, we affirm those issues.

We therefore affirm in part, reverse in part, and remand.

FACTS

Background

The parties own adjoining parcels of land near Prairie Lake in St. Louis County. The Ulvestads own Lot 3. The trust parties own Lot 4 and Lot 5. *See supra* note 1. Primarily at issue in this case is the location of the boundary lines of Lots 3 and 4 and the validity of an easement that allowed for the installation of a septic-system tank between the Ulvestads' Lot 3 and the trust parties' Lot 4. The following GIS image was admitted into evidence.²

² The GIS image comes from the record. The lot numbers have been added to further orient the reader to the general lot locations.



Boundary Dispute

The parties dispute whether Lot 4's boundary includes access to Prairie Lake. In 1997, the previous owner of Lot 3 retained a surveyor to complete a survey of the property. The survey showed that Lot 4 lacks access to the lake. In 2010, upon completion of a new survey by the same surveyor, the surveyor concluded that Lot 4 has access to Prairie Lake.

Pursuant to a purported oral easement granted by the Ulvestads in favor of the trust parties which would provide lake access, the trust parties began removing trees on Lot 3 to facilitate access to Prairie Lake. The Ulvestads denied granting an easement to the trust parties, told the trust parties that they may not enter Lot 3 to remove trees, and posted "no trespassing" signs on Lot 3, near Lot 4.

Septic-System Easement

The trust's terms are outlined in a trust agreement. The trust agreement contains the following restriction: "Neither the Trustees nor said beneficiaries shall have the right or

power to sell, convey, mortgage or in any way encumber said premises, except as hereinafter provided.”

In June 2002, Richard D. Baumann, one of the trustees, conveyed to the Ulvestads an easement for the installation of a septic system, a portion of which system was to be located on part of Lot 4.³ The fully executed and recorded easement provided for “[a]n easement for purposes of constructing, maintaining, repairing and updating a septic system over and across [Lot 4].”

Legal Proceedings

The trust parties sued the Ulvestads⁴ and sought, among other remedies: (1) a declaration that Lot 4 includes lake access; (2) a judgment to quiet title to the same Lot 4 that includes lake access; and (3) a declaration that the septic-system easement was invalid because a trustee granted it in violation of the trust agreement.

The Ulvestads’ counterclaims sought, among other remedies: (1) a declaration that the septic-system easement is valid and (2) trespass damages against the trust parties for accessing their property to remove trees and access the lake.

The district court held a three-day bifurcated trial for the jury to consider only the Ulvestads’ trespass counterclaim and for the district court to consider all other claims. On the first day of trial, the Ulvestads moved to amend the complaint to include a punitive-damages claim. The district court denied the motion, citing the lack of supporting

³ Baumann, a party-defendant named in this lawsuit, died before trial.

⁴ The trust parties also originally sued entities holding liens and mortgages on Lot 3. These entities are included in the case caption but are no longer parties to the litigation.

affidavits and the untimeliness of the motion. Also, during trial, the district court (1) excluded an 1870 plat map that the trust parties sought to admit for lack of foundation and (2) allowed the Ulvestads to present rebuttal testimony from a GIS specialist and received as evidence the specialist's related exhibits.

The jury returned a verdict in favor of the Ulvestads on their trespass counterclaim and awarded them \$55,000 in damages. The trust parties subsequently moved for judgment as a matter of law or, in the alternative, a new trial on the merits of the trespass claim as well as on the trespass damages.

The district court issued an order and judgment resolving the court-trial claims as well as the trust parties' posttrial motions. Pertinent here, the district court determined that (1) the septic-system easement was invalid because it was conveyed in violation of the trust agreement and (2) the Lot 4 boundary, as evidenced by some surveys and maps, does not include access to the lake. The district court also granted the trust parties' posttrial motion for a new trial on the issue of trespass damages but denied all other posttrial motions.

Approximately six months before the new trespass-damages trial, the Ulvestads again moved to amend their counterclaim to include a claim for punitive damages. The district court denied the motion. At the second trespass-damages trial, the jury found that the Ulvestads sustained \$49,400 in damages, which the district court trebled for a judgment award of \$148,500. *See* Minn. Stat. § 561.04 (2022).

The parties filed separate appeals.

DECISION

The Trust Parties' Issues (A23-1964)

I. The district court erred by failing to first consider the original government survey to resolve this property dispute.

The trust parties argue that the district court erred by failing to consider the original government survey before applying the doctrine of boundary by practical location to resolve this boundary dispute. In so arguing, the trust parties rely on this court's decision in *Ruikkie v. Nall*, 798 N.W.2d 806 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011), contending that the original government survey is the governing frame of reference. We agree.

“Our scope of review of the district court's placement of the boundary is whether the district court's factual findings are clearly erroneous and whether the district court erred in its legal conclusions.” *Ruikkie*, 798 N.W.2d at 814.

An original government survey controls the judicial determination of boundaries. *Id.* at 815. Put differently, the boundaries that the original government survey established are the “governing frame of reference,” meaning that courts must reconcile “any errors in an original survey” with “rules, regulations, and standards established by state and federal governments, as well as judicial precedents.” *Id.*

Establishing a practical location for the boundary is “[o]nly [permissible] if a government survey, plat, or metes-and-bounds description is so flawed that there is a hopeless ambiguity in locating a boundary and if there is not a federal or state standard, caselaw principle, or surveyor's analysis available to resolve the ambiguity.” *Id.* at 816.

A subsequent survey must agree with the old survey and plat for it “to be of any use in determining’ the true boundary lines.” *Id.* at 815 (quoting *Kozak v. Weis*, 348 N.W.2d 798, 801 (Minn. App. 1984)). Therefore, only after considering the original government surveys and, if necessary, federal or state standards or caselaw to resolve any ambiguities in those original government surveys, may a district court turn to the doctrine of boundary by practical location to resolve the boundary dispute.

Here, the district court applied the doctrine of boundary by practical location, without first considering the original government survey.⁵ As a result, there are no district court findings as to (1) whether the original government survey resolved this boundary dispute; (2) whether the original government survey was flawed to the point at which there is a “hopeless ambiguity” in determining the boundary; and (3) if so, whether governing standards, caselaw, and surveyor analysis exist to help resolve the ambiguity.

Only after making such findings and, upon doing so, finding that the boundary dispute is yet unresolved, would it be proper for the district court to turn to the doctrine of boundary by practical location. *See id.* at 816 (explaining that the doctrine of boundary by practical location is used only to resolve disputes “when the boundary that is set forth in an original government survey, or a platted lot line, or a line established by a metes-and-bounds legal description is inconclusive”). Because the district court did not first consider the original government survey, we conclude that it erred by relying on the doctrine of boundary by practical location in resolving the boundary dispute.

⁵ The district court received the original government range map, which appears to set forth the original boundary lines, into evidence.

Because we remand for further proceedings during which the district court must first consider the original government survey, we need not address whether the district court abused its discretion by excluding the 1870 plat map and related testimony for lack of foundation. The impact the 1870 plat map and related testimony will have, if any, depends on the district court's analysis of the boundaries established in the original government survey. The district court has discretion to reopen the record on remand as necessary. And, if it does so, and the trust parties provide the necessary evidentiary foundation that the district court ruled was lacking, it has the discretion to admit the 1870 government plat map.

II. The district court acted within its discretion by allowing the GIS specialist's expert testimony and related exhibits.

The trust parties argue that the district court abused its discretion by allowing the GIS specialist's expert testimony and related exhibits because the Ulvestads failed to timely disclose their intent to call the GIS specialist as an expert witness. And, the trust parties argue, even if it was proper to call the GIS specialist as a rebuttal witness without disclosure, the GIS specialist exceeded the scope of rebuttal by testifying about boundary lines instead of limiting his testimony to trespass damages.

Appellate courts review a district court's evidentiary rulings for an abuse of discretion, granting a new trial only if the district court ruling was prejudicial. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015).

The Minnesota Rules of Civil Procedure generally require the party offering expert testimony in order "to contradict or rebut evidence on the same subject matter identified

by another party under Rule 26.01(b)(2) or (3)” to disclose the witness “within 30 days after the other party’s disclosure.” Minn. R. Civ. P. 26.01(b)(4)(B). However, the GIS witness was called to testify in response to a lay witness on trespass damages, not an expert witness, which is what rule 26.01(b) relates to. Moreover, even if the disclosure requirement applied, the failure to disclose rebuttal testimony from an expert witness does not necessarily require exclusion of that testimony. See *Whitney v. Buttrick*, 376 N.W.2d 274, 278 (Minn. App. 1985) (“[A]n appellant will not always know what testimony he will present on rebuttal, and he need not anticipate what rebuttal witnesses might testify to and disclose all possible rebuttal testimony in interrogatories.”), *rev. denied* (Minn. Jan. 23, 1986).

Rebuttal evidence includes evidence that “explains, contradicts, or refutes the [other party’s] evidence.” *Farmers Union Grain Terminal Ass’n v. Indus. Elec. Co.*, 365 N.W.2d 275, 277 (Minn. App. 1985), *rev. denied* (Minn. Mar. 26, 1985). Exclusion of nondisclosed rebuttal testimony from an expert witness is only justified when prejudice would result. See *Whitney*, 376 N.W.2d at 279 (holding that, because a party would not have been prejudiced by the admission of the other party’s unnoticed rebuttal testimony from an expert witness, the district court abused its discretion by excluding this testimony). The trust parties have not identified any prejudice as a result of the nondisclosure of the GSI witness and our review of the record finds none present.

Regarding the trespass-damages issue, the district court interpreted this proffered testimony as rebuttal testimony and, therefore, allowed its admission. Given the district court’s wide discretion in determining what is a proper issue for rebuttal, it properly

determined that rebuttal evidence was necessary to clarify potential contradictions in a different witness' testimony. And, because the record does not support the claim that the expert exceeded the scope of rebuttal testimony, we discern no abuse of discretion on that basis either.

The district court, thus, acted within its discretion to allow the rebuttal testimony and exhibits of the GIS expert.

The Ulvestads' Issues (A24-0715)

As a threshold matter, we address the trust parties' argument that this court lacks jurisdiction to address the merits of the Ulvestads' issues raised in appeal A24-0715 because (1) the Ulvestads filed a separate appeal rather than filing a notice of related appeal and (2) the Ulvestads filed this appeal after the time to appeal expired. We conclude that this court has jurisdiction to consider the merits of the Ulvestads' appeal.

First, although the Ulvestads could have raised these claims by filing a notice of related appeal in appeal A23-1964, the Minnesota Rules of Civil Appellate Procedure do not require that they do so. Instead, the Ulvestads may timely file a separate appeal. Minn. R. Civ. App. P. 106 states that a respondent “*may* obtain review of a judgment or order entered in the same underlying action” by filing a notice of related appeal. (Emphasis added.) Rule 106 does not preclude a respondent in an appeal from filing a separate appeal from the same case pursuant to the procedure in Minn. R. Civ. App. P. 103.01.

This appeal is also timely. Unless otherwise provided by statute, an appeal may be taken from a judgment within 60 days after its entry. Minn. R. Civ. App. P. 104.01, subd. 1. If any party serves and files a proper and timely postdecision motion of a type specified in

Minn. R. Civ. App. P. 104.01, subd. 2, “the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding.” Minn. R. Civ. App. P. 104.01, subd. 2. “[A] post-decision motion is not timely if it is made after the expiration of the 60-day period in which to appeal from the judgment.” *Mingen v. Mingen*, 679 N.W.2d 724, 725 (Minn. 2004). If the last day of a time period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day. Minn. R. Civ. App. P. 126.01; Minn. R. Civ. P. 6.01(a)(1)(C).

The Ulvestads timely filed a postdecision tolling motion on January 27, 2024, which tolled the appeal period. *See* Minn. R. Civ. App. P. 104.01, subd. 2. The district court issued its amended order denying the Ulvestads’ postdecision motion on February 29, 2024. Because neither party served notice of filing of that order, the 60-day appeal period never restarted. *See id.* Therefore, the April 29, 2024 filing of the appeal is timely.

III. The district court did not err by determining that the septic-system easement was invalid.

To resolve this issue, we must first address the Ulvestads’ argument that the district court erred by determining that the septic-system easement is an encumbrance against property. It is this error, the Ulvestads claim, that led to the district court’s erroneous ruling that the easement is invalid as contrary to the trust agreement, which places limits on the ability of trustees to encumber the trust property.

The determination that the easement is an encumbrance against the property is significant because the trust agreement limits how the trustees may encumber the property.

On this point, the district court found that the trust agreement requires all three trustees to sign the easement. But here, only one trustee signed the septic-system easement. The Ulvestads do not contest these findings. Instead, they argue that the easement is not an encumbrance against the property. We are not persuaded.

Appellate courts review questions of law *de novo*. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). Whether property is encumbered is a legal determination. *See In re Crablex, Inc.*, 762 N.W.2d 247, 252-53 (Minn. App. 2009) (reviewing whether an easement continued to encumber real property after a mortgage foreclosure), *rev. denied* (Minn. App. Apr. 29, 2009).

Minnesota caselaw has consistently viewed easements as encumbrances against real property. *See, e.g., id.* at 253 (“Minnesota caselaw has not directly addressed whether easements receive the same treatment as other encumbrances recorded after the recorded mortgage, but we are unable to discern a reason to treat them differently.”). Because an easement is an encumbrance against real property, and the Ulvestads do not contest the district court’s finding that the terms of the trust mandate that all trustees agree and sign in order for the easement to be valid, the district court did not err by determining the septic-system easement to be invalid.

We next address the Ulvestads’ primary argument that the district court erred by determining that the trust parties were not equitably estopped from denying the validity of the septic-system easement. More specifically, the Ulvestads argue equitable estoppel prevents the trust parties from contesting the validity of the easement because one of the trustees granted them the easement in writing. And they further contend that, even though

the district court determined the easement to be invalid, they must be permitted to maintain the septic system because they reasonably relied on their agreement with the trustee when they constructed it.

“When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *In re Est. of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted). A party raising an equitable-estoppel defense bears the burden of showing: “(1) that representations were made; (2) that the party reasonably relied on such representations; and (3) that it will be harmed if estoppel is not applied.” *EEP Workers’ Comp. Fund v. Fun & Sun, Inc.*, 794 N.W.2d 126, 134-35 (Minn. App. 2011).

The district court determined that equitable estoppel did not apply and, therefore, did not preclude the trust parties from claiming the septic-system easement was invalid. It found that “no testimony or other evidence was offered as to whether it was reasonable for [the Ulvestads] to rely on Trustee Richard Baumann’s purported grant of the Septic Easement.”

The district court also found that “it was not reasonable for [the Ulvestads] to rely upon Trustee Richard D. Baumann’s representation upon his unilateral authority to convey an easement to a parcel held in trust since 1921 without [the Ulvestads’] further inquiry to learn of” the restrictions the trust agreement places on the trustees. The district court added, “Trustee Baumann may have represented he had apparent authority to convey a valid easement to [the Ulvestads] as indicated by the recorded 2002 document. However, the

specific powers of every Trustee of the Blackwood Trust have been available for review in the public record since October 8, 1921.”

The record supports the district court’s findings. The record indicates that the Ulvestads hired an attorney to draft the septic-system-easement agreement. The record also indicates that the terms of the trust agreement were publicly recorded and, thus, available to the Ulvestads. Therefore, the record supports the district court’s finding that the Ulvestads’ reliance on the trustee’s unilateral representation was not reasonable. For that reason, the district court did not err by determining that equitable estoppel does not prohibit the trust parties from claiming the septic-system-easement agreement is invalid.

And, because the district court found that the terms of the trust agreement prohibit the conveyance of an easement absent the agreement of all trustees, and unanimous agreement to grant the easement did not occur, its determination that the septic-system easement is invalid is proper.

IV. The district court acted within its discretion by denying the Ulvestads’ motion to amend their complaint to include a punitive-damages claim.

The Ulvestads argue that the district court abused its discretion by denying their motion to amend their complaint to add a punitive-damages claim prior to the second trespass-damages trial. The Ulvestads claim that the motion was timely because it was brought more than six months before the second trespass-damages trial and that they alleged sufficient facts to support a punitive-damages claim.⁶

⁶ We note that the Ulvestads twice moved to amend the complaint to add a punitive-damages claim. The Ulvestads’ first motion occurred on the first day of the jury trial on the trespass issue. The district court denied this motion. The Ulvestads filed their

Appellate courts “review an order denying a motion to amend a complaint [to add punitive damages] for abuse of discretion.” *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff’d*, 742 N.W.2d 660 (Minn. 2007). *But see Swanlund v. Shimano Indus. Corp.*, 459 N.W.2d 151, 155 (Minn. App. 1990) (applying *de novo* standard of review in pretrial discretionary appeal to denial of motion to amend to add punitive-damages claim), *rev. denied* (Minn. Oct. 5, 1990).

Assuming without deciding that the Ulvestads’ motion to amend their complaint was timely, the district court acted within its discretion by determining that the Ulvestads did not allege a sufficient factual basis to support a punitive-damages claim.

Punitive damages are “an extraordinary remedy only to be allowed with caution and within narrow limits.” *J.W. ex rel. B.R.W. v. 287 Intermediate Dist.*, 761 N.W.2d 896, 904 (Minn. App. 2009). A party may receive punitive damages only if the party demonstrates through clear and convincing evidence that the defendant’s acts show “deliberate disregard for the rights or safety of others.” Minn. Stat. § 549.20, subd. 1 (2022); *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 659 (Minn. 1987). Factors relevant to determining whether punitive damages are proper include the profitability of the misconduct, the duration of the misconduct, the attitude and conduct of the defendant, and the effect of other punishment. Minn. Stat. § 549.20, subd. 4 (2022). Procedurally, the party must file a motion that shows a *prima facie* basis for punitive damages before the district court may allow the amendment. Minn. Stat. § 549.191 (2022).

second motion on March 3, 2023, just over six months before the separate trial on damages, which concluded on November 14, 2023.

The district court determined that, because the jury found that the trust parties had permission to enter the property and remove trees, the Ulvestads failed to show that the trust parties acted with the requisite deliberate disregard for the Ulvestads' rights. Because the record supports the district court's determination that the Ulvestads failed to make the required *prima facie* showing, the district court acted within its discretion to deny amendment of the complaint to add a punitive-damages claim.

In sum, we remand for further proceedings regarding the boundary dispute. Following further proceedings on remand, the district court has discretion to make a determination on the boundary dispute and determine the effect of that decision on the trespass verdict and damages award.

Affirmed in part, reversed in part, and remanded.