

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1209**

Molly Murillo,
Appellant,

vs.

Eric Heegaard, M. D., et al.,
Respondents,

Fairview Health Services,
d/b/a Fairview Southdale Hospital,
Respondent.

**Filed January 27, 2014
Affirmed
Chutich, Judge**

Hennepin County District Court
File No. 27-CV-12-15713

Robert D. Boedigheimer, Rene L'Esperance, Boedigheimer Law Firm, P.A., St. Paul,
Minnesota (for appellant)

Katherine A. McBride, Barbara A. Zurek, Meagher & Geer, P.L.L.P., Minneapolis,
Minnesota (for respondents Eric Heegaard, M.D. and OBGYN West, Inc.)

David D. Alsop, Jennifer M. Waterworth, Gislason & Hunter, LLP, Minneapolis,
Minnesota (for respondent Fairview Health Services)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Molly Murillo challenges the district court's dismissal of her medical-malpractice claims against respondents Eric Heegaard, M.D., Obstetrics and Gynecology West, P.A. (OBGYN West), and Fairview Health Services (Fairview). Murillo argues that the district court erred by deciding that appellant's affidavits of expert review and expert disclosure were insufficient under Minnesota Statutes section 145.682 (2012). Because the district court acted within its discretion in dismissing the case, we affirm.

FACTS

Appellant Molly Murillo has a long history of persistent abdominal and pelvic pain, discomfort, and bleeding. In March 2008, Murillo saw Dr. Eric Heegaard at OBGYN West, the clinic where he worked, because of complaints of irregular bleeding, back pain, and cramping. After a transvaginal ultrasound, the healthcare providers discovered cysts. On March 26, 2008, Dr. Heegaard discussed with Murillo the possibility of surgery, and Murillo ultimately decided to proceed with outpatient surgery: a laparoscopy and an endometrial ablation procedure.¹

On April 2, 2008, Dr. Heegaard performed these procedures. Immediately after the surgery, Murillo reported pain, and Dr. Heegaard ordered that she be admitted to the

¹ A laparoscopy is a surgical procedure in which a thin tube is inserted into the abdomen through a small incision, allowing the healthcare provider to see the patient's pelvic organs. Endometrial ablation is a medical procedure that destroys the uterine lining to treat abnormal uterine bleeding.

hospital for observation and pain management. Murillo was discharged from the hospital on Thursday, April 3, 2008, with specific instructions concerning pain management.

Murillo claimed she called OBGYN West on Monday, April 7, and Tuesday, April 8, 2008, to speak with Dr. Heegaard. Murillo reported that she was in pain, and she made an appointment to see Dr. Heegaard on Wednesday, April 9. On Wednesday, April 9, Murillo met with Dr. Heegaard. Based on her symptoms, Dr. Heegaard recommended immediate evaluation in the emergency department at the hospital.

After a CT scan at the hospital, Murillo was diagnosed with peritonitis² and had to “urgently undergo operative intervention.” Her postoperative diagnoses were: “1. Acute abdomen, suspected bowel injury following diagnostic laparoscopy and lysis of adhesions”; “2. Extensive intra-abdominal adhesions”; “3. Intra-abdominal abscess”; “4. Small bowel perforation”; and “5. Abdominal compartment syndrome.” Murillo had two further surgical procedures in April to repair her small intestine. She was eventually discharged from the hospital on April 30, 2008.

On March 30, 2012, Murillo sued respondents for medical malpractice. Her attorney included an affidavit of expert review with the summons and complaint. Murillo served an affidavit of expert disclosure on respondents on September 25, 2012, but it does not appear that this affidavit was filed with the district court.

On December 20, 2012, Dr. Heegaard, OBGYN West, and Fairview moved to dismiss the case under Minnesota Statutes section 145.682 (2012); Fairview also moved

² Peritonitis is an infection of the peritoneum, a membrane that lines the inner abdominal wall and covers the organs within the abdomen.

for summary judgment. In its supporting memorandum, Fairview included as an exhibit Murillo's affidavit of expert disclosure, signed September 25, 2012, which identifies Dr. Victor Borden as Murillo's expert. Dr. Heegaard and OBGYN West also included this affidavit as an exhibit to their supporting memorandum.

On February 6, 2013, the day before the scheduled hearing, Murillo filed and served an amended affidavit of expert disclosure. This affidavit adds to and deletes certain portions of the September 25 affidavit of expert disclosure.

On February 7, 2013, the district court held a hearing on respondents' motions to dismiss. Fairview asked the district court to consider the amended affidavit of expert disclosure only for the purpose of showing that the expert, Dr. Borden, had withdrawn his criticisms of Fairview. It further asserted that the amended affidavit fails to provide specific details of the standard of care, violation of the standard, and causation.

Dr. Heegaard and OBGYN West asked the court to disregard the amended affidavit of expert disclosure because it was untimely. They also argued that neither affidavit is sufficient under section 145.682. Murillo contended that both the original and amended affidavits of expert disclosure are sufficient to allow her to proceed with her claim of medical malpractice. Counsel for Murillo noted that the amended affidavit added a new issue "regarding the lack of informed consent."

The district court granted respondents' motions to dismiss and dismissed Murillo's complaint with prejudice. The district court determined that the amended affidavit of expert disclosure was untimely because it was not served within 180 days of the start of the lawsuit. The district court also determined that the amended affidavit was deficient

under the requirements of section 145.682 “because it fails to sufficiently state (1) the standard of care; (2) the acts that allegedly violated the standard of care; and (3) an outline of the chain of causation between the alleged negligence and the resulting injury.”

This appeal followed.

D E C I S I O N

I. Standard of Review

Murillo asserts that this court should review de novo the district court’s ruling because respondents’ motions to dismiss “rest[] upon the argument that [Murillo] could not establish a prima facie case of negligence.” She argues that the review for failure to comply with section 145.682 “is analogous to a party’s motion to dismiss for failing to state a claim for which relief can be granted under Minn. R. Civ. P. 12.02(e).”

The Minnesota Supreme Court has clearly articulated that the standard of review for dismissals for failure to comply with section 145.682 is abuse of discretion. *See Teffeteller v. Univ. of Minnesota*, 645 N.W.2d 420, 426 (Minn. 2002) (“We will reverse a district court’s dismissal of a claim pursuant to Minn. Stat. § 145.682 only if we find that the district court abused its discretion.”); *Stroud v. Hennepin Cnty. Med. Ctr.*, 556 N.W.2d 552, 555 (Minn. 1996) (reviewing district court’s dismissal of a medical malpractice action for failure to provide a legally sufficient disclosure affidavit for an abuse of discretion); *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990) (reviewing the substantive disclosure requirements of section 145.682 for abuse of discretion).

Given this established precedent, we review the district court's decision here for an abuse of discretion. Statutory construction and other questions of law, however, are subject to de novo review. *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 215 (Minn. 2007).

II. Requirements to Establish a Prima Facie Case of Medical Malpractice

To prevail on a medical-malpractice claim, the plaintiff must show: “1) the standard of care recognized by the medical community as applicable to the particular defendant's conduct; 2) that the defendant departed from that standard; 3) that the defendant's departure from that standard was a direct cause of the patient's injuries; and 4) damages.” *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 59 (Minn. 2000).

Plaintiffs in medical-malpractice cases must meet two procedural requirements when expert testimony is necessary to establish a prima facie case. *Anderson v. Rengachary*, 608 N.W.2d 843, 846 (Minn. 2000). First, the plaintiff must serve an affidavit of expert review with the summons and complaint. Minn. Stat. § 145.682, subd. 2. This affidavit must state that the attorney has reviewed the facts of the case with an expert and that, in the expert's opinion, the defendant departed from the standard of care and caused injury to the plaintiff. *Id.*, subd. 3.

Second, the plaintiff must serve an affidavit of expert disclosure within 180 days after the lawsuit begins. *Id.*, subd. 2. The parties or the court may extend the 180-day time limit for good cause. *Id.*, subd. 4(b). Failure to comply with the deadline “results, upon motion, in mandatory dismissal with prejudice of each cause of action as to which expert testimony is necessary to establish a prima facie case.” *Id.*, subd. 6(b). The

affidavit of expert disclosure must identify the expert to be called, the substance of the expert's testimony, and a summary of the grounds for the expert's opinion. *Id.*, subd. 4(a).

III. Affidavit of Expert Review

Murillo claims that she complied with the requirements of section 145.682 regarding the first affidavit, the affidavit of expert review. The affidavit of expert review states that Murillo's attorney

thoroughly reviewed the facts of this case with an expert whose qualifications provide a reasonable expectation, that the expert's opinions could be admissible at trial and that, in the opinion of this expert, each of the above-named Defendants deviated from the applicable standard of care and by that action caused injury to Plaintiff.

Murillo submitted this affidavit with her summons and complaint.

The district court found that this affidavit was timely and satisfied the requirements for an affidavit of expert review under subdivision three of section 145.682. The district court held that this affidavit (referred to in the order as "first affidavit") failed to satisfy subdivision four of section 145.682, which requires an affidavit of expert disclosure.

Contrary to Murillo's assertions, the district court's determination that this "first" affidavit failed to satisfy subdivision four is not reversible error. While the district court wrongly evaluated an affidavit of expert review under subdivision four, which applies only to affidavits of "expert disclosure," the district court did not end its analysis based on the perceived inadequacy of this "first affidavit." The district court then considered

the later-filed affidavit of expert disclosure under subdivision four in determining that the case should be dismissed. Because the “first affidavit” of expert review complied with the requirements of subdivision three, and the district court did not dismiss the case because of a perceived insufficiency of this affidavit, no reversible error occurred.

IV. Affidavit of Expert Disclosure

Murillo next contends that the district court erred by finding the amended affidavit of expert disclosure (1) untimely and (2) insufficient under section 145.682. Murillo also argues that the district court erred by failing to rule on the sufficiency of the original affidavit of expert disclosure served September 25, 2012.

A. Timeliness of Amended Disclosure Affidavit

The failure to comply with the requirements for an affidavit of expert disclosure results in mandatory dismissal of the lawsuit with prejudice, provided that (1) “the motion to dismiss the action identifies the claimed deficiencies in the affidavit or answers to interrogatories”; (2) “the time for hearing the motion is at least 45 days from the date of service of the motion”; and (3) “before the hearing on the motion, the plaintiff does not serve upon the defendant an amended affidavit or answers to interrogatories that correct the claimed deficiencies.” Minn. Stat. § 145.682, subd. 6(c). This requirement that the plaintiff be given 45 days to cure the claimed deficiencies before dismissal is mandatory is referred to as the “safe-harbor provision.” *See Wesely v. Flor*, 806 N.W.2d 36, 40 (Minn. 2011). The legislature added this provision in 2002 “because of a perception that meritorious medical malpractice claims were being dismissed where the expert disclosure

affidavit was only missing some technical information that could be corrected.” *Id.* (quotations omitted).

The district court determined that the amended disclosure affidavit was untimely because it was not served within 180 days of the start of the lawsuit. Murillo asserts that serving and filing the amended disclosure affidavit on February 6, 2013, one day before the motion hearing, was timely under the safe-harbor provision.

Respondents filed their motions to dismiss December 20, 2012, which was 49 days before the motion hearing. Dr. Heegaard’s motion identified the alleged deficiencies as failing “to set forth in sufficient detail how any alleged breaches of the standard of care by defendants Dr. Heegaard and OBGYN West caused Molly Murillo’s alleged injuries” and failing to “identify the standards of care that a reasonable physician must follow under the circumstances of this case.” Fairview’s motion identified the deficiencies as: “Plaintiff failed to serve any expert affidavit with respect to Fairview Health Services that identifies the specific applicable standard of care, specific breaches of the standard of care, and a specific chain of causation between the alleged negligence of any particular employee of Fairview Health Services and Plaintiff’s claimed injuries.”

The amended disclosure affidavit consists of the contents of the original disclosure affidavit with details added to breaches alleged in the original affidavit, as well as the addition of a new allegation against Dr. Heegaard of a lack of informed consent. Concerning Fairview, the amended disclosure affidavit deleted certain allegations. Some of Murillo’s changes were attempts to correct respondents’ claimed deficiencies. For

example, Murillo added more detail to the contentions that “a closer more vigilant follow-up was mandatory” and that an “unacceptable delay” occurred.

But the addition of a new alleged standard of care and breach that did not exist in the original disclosure affidavit was not an attempt to correct any claimed deficiency. The amended disclosure affidavit states, “Dr. Heegaard was required to inform Molly Murillo of the higher risks associated with laparoscopic surgery compared to an open laparotomy due to higher complications from her intra-abdominal or pelvic adhesions and anatomic distortion,” and, according to Murillo and her fiancé, “Dr. Heegaard did not discuss these risks with [her].” The original disclosure affidavit states that Dr. Heegaard discussed “the risks of bowel perforation associated with laparoscopy and/or the NovaSure uterine ablation procedure with Molly Murillo.” Notably, this statement is deleted from the amended disclosure affidavit.

The safe-harbor provision does not allow for entirely new allegations of standards of care and breaches to be added to an amended disclosure affidavit the night before a hearing on the matter, especially where the original disclosure affidavit acknowledged a discussion of risks of surgery and where the new information was available to the expert at the time the original disclosure affidavit was served. Thus, we conclude that: (1) the amended disclosure affidavit superseded the original disclosure affidavit to the extent that the contents of the amended disclosure affidavit added context to allegations asserted in the original disclosure affidavit and (2) the amended disclosure affidavit was not timely concerning the brand new negligent-nondisclosure claim.

B. Adequacy of Amended Disclosure Affidavit

The purpose of the affidavit requirement of section 145.682 is to eliminate unfounded medical-malpractice claims. *Stroud*, 556 N.W.2d at 555. The affidavit of expert disclosure, required by subdivision four of section 145.682, must:

- (1) disclose specific details concerning the expert's expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, *and* (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff's damages.

Teffeteller, 645 N.W.2d at 428 (emphasis added). The standard of care in medical-malpractice cases generally requires a physician "to exercise that degree of skill, care, knowledge, and attention ordinarily possessed and exercised by other physicians under like circumstances in the same or a similar locality." *Larsen v. Yelle*, 310 Minn. 521, 524, 246 N.W.2d 841, 844 (1976).

The disclosure affidavit should not simply state the facts from the plaintiff's medical record; rather, it "should set out how the expert will use those facts to arrive at opinions of malpractice and causation." *Sorenson*, 457 N.W.2d at 192. Conclusory statements are insufficient. *Stroud*, 556 N.W.2d at 556. A disclosure affidavit with statements such as "the defendants 'failed to properly evaluate' and 'failed to properly diagnose'" are legally insufficient because they merely state "empty conclusions which, unless shown how they follow from the facts, can mask a frivolous claim." *Lindberg v. Health Partners, Inc.*, 599 N.W.2d 572, 576 (Minn. 1999) (quotation omitted).

Murillo believes that section 145.682 “merely requires a general disclosure of plaintiff’s experts with a summary of [their] opinions and the grounds for the same.” Since deciding *Sorenson* in 1990, however, the supreme court has clearly stated that the disclosure affidavit must include specific details regarding the expert’s expected testimony. *See Teffeteller*, 645 N.W.2d at 428; *Lindberg*, 599 N.W.2d at 577. As discussed below, the district court did not abuse its broad discretion in finding the amended disclosure affidavit to be inadequate. *See Hempel v. Fairview Hosps. & Healthcare Servs., Inc.*, 504 N.W.2d 487, 490 (Minn. App. 1993) (“The exclusion of expert testimony lies within the trial court’s broad discretion.”).

1. Claims Against Dr. Heegaard and OBGYN West

The district court held that “Dr. Borden fails to identify the custom and practice within the medical community sufficient to provide the standard of care” by not explaining “with any level of specificity the general standard of care in the medical community for (1) criteria for recognizing a small bowel perforation; (2) circumstances that warranted obtaining additional diagnostic studies and/or operative intervention; and (3) proper follow-up care.” The district court determined that “Dr. Borden does not identify what symptoms Dr. Heegaard failed to recognize, what complaints Dr. Heegaard failed to follow-up on, or what ‘red flags’ he should have noticed” and that “Dr. Borden’s single statement with regard to causation does not take any particular alleged breach of the standard of care and link it to any particular injury,” concluding that “Dr. Borden has failed to connect any of the facts found in the medical records, through a chain of causation, to any injury.”

The amended disclosure affidavit states that one of the risks of the laparoscopic procedure performed upon Murillo is bowel perforation. Dr. Borden does not opine that Dr. Heegaard acted negligently in performing the procedure; in fact, the affidavits state that Dr. Heegaard “utilized appropriate procedures to perform” it. Rather, the alleged breach of the standard of care was Dr. Heegaard’s failure to see the perforation of Murillo’s bowel during the procedure. The disclosure affidavits do not describe how physicians should be “attuned to symptoms and signs” of perforation, how Dr. Heegaard should have seen the perforation while performing the procedure, or what is ordinarily done to recognize complications during this type of procedure.

The amended disclosure affidavit asserts that Heegaard should have recognized that “something was amiss such as a perforation of the bowel or other organs within the peritoneal cavity” when Murillo expressed pain post-surgery. It further asserts that there “appears to be an unacceptable delay between obvious signs of perforation” and Murillo’s reports of pain on April 7, 2008, and the decision to evaluate Murillo in the hospital on April 9, 2008. The amended affidavit added that “[f]ailure to timely order Molly Murillo to an emergency room on April 7, 2008 is a breach of the standard of care” and that Heegard “breached this standard of care again on April 8, 2008 and in the morning of April 9, 2008 by failing to refer her to an emergency room.”

But the amended affidavit does not describe what is customarily done to recognize complications after this type of procedure, what symptoms Dr. Heegaard failed to recognize, or what type of pain or other signs should lead to suspicions of bowel perforation. In fact, the amended affidavit states that “[i]t is recognized that abdominal

pain *not related to perforation* can be experienced by patients following laparoscopy and endometrial ablation procedures.” (Emphasis added.) *Compare Anderson*, 608 N.W.2d at 848 (holding that affidavit insufficiently set forth the applicable standard of care where it stated that “esophageal trauma should be avoided during surgery of this type” without describing what measures should be taken by the physician), *with Demgen v. Fairview Hosp.*, 621 N.W.2d 259, 263–64 (Minn. App. 2001) (holding that standard of care was sufficiently stated where affidavit described which tests should have been performed, what the results of those tests would have been, and what action should have been taken in response to the tests that would have resulted in a different outcome for the patient), *review denied* (Minn. Apr. 17, 2001).

The disclosure affidavit states generally that if Dr. Heegaard had recognized the “possibility of perforation” earlier and had “not deviated from the standard of care,” Murillo would not have suffered additional injuries, “including, but not limited to, iatrogenic injury to the small bowel with intra[-]abdominal abscess and peritonitis resulting in and causing peritoneal abscess, acute respiratory distress syndrome, severe acute respiratory syndrome, respiratory failure and lung collapse, septicemia, compartment syndrome, [and] systemic inflammatory response syndrome.”

We do not minimize the severity of the injuries that Murillo unfortunately experienced after the laparoscopy, but the disclosure affidavit needs to show how and why these injuries were caused by Dr. Heegaard’s alleged negligence, especially because a bowel perforation is a known risk of the procedure. *See Maudsley v. Pederson*, 676 N.W.2d 8, 14 (Minn. App. 2004) (“The primary purpose of an expert affidavit is to

illustrate ‘how’ and ‘why’ the alleged malpractice caused the injury.”). Conclusory statements that “generally earlier treatment results in better outcomes” or that “every hour counts” do not sufficiently set forth the chain of causation. *Id.* We agree with the district court that Dr. Borden’s causation statements do not link “any particular alleged breach of the standard of care . . . to any particular injury.”

The amended disclosure affidavit includes an additional standard of care and alleged breach regarding informed consent. Dr. Borden opines that Dr. Heegaard was required to, and did not, inform Murillo “of the higher risks associated with laparoscopic surgery compared to an open lapar[ot]omy due to higher complications from her intra-abdominal or pelvic adhesions and anatomic distortion.” Even if this allegation were timely, we would conclude that it is insufficient. To establish a claim for negligent nondisclosure, a plaintiff must show: (1) a physician’s duty to know of a risk or alternative treatment; (2) a duty to disclose the risk or alternative treatment; (3) that the undisclosed risk caused harm as a result of the treatment; and (4) that, had plaintiff been informed of the risk, she would not have consented to the treatment. *Kohoutek v. Hafner*, 383 N.W.2d 295, 301–02 (Minn. 1986). Expert testimony is required to establish the first three elements. *Reinhardt v. Colton*, 337 N.W.2d 88, 96 (Minn. 1983). The amended affidavit does not state whether the undisclosed risk caused harm; e.g., that if Dr. Heegaard performed an open laparotomy instead of a laparoscopy, Murillo’s bowel would not have been harmed.

In sum, the amended disclosure affidavit does not sufficiently illustrate how or why Dr. Heegaard’s claimed malpractice caused Murillo’s later injuries. Accordingly,

the district court did not abuse its discretion in granting Dr. Heegaard and OBGYN West's motion to dismiss.

2. Claims Against Fairview

The district court determined that “Dr. Borden’s only complaint of Fairview is that [it] failed to recognize ‘an appropriate index of suspicions for complications of the perforation,’” concluding that Dr. Borden failed to explain “what such index of suspicions means, or what constitutes symptoms and signs that signal complications of the perforation that Fairview failed to identify.” The district court also held that Dr. Borden failed to explain the standard of care for the Fairview nursing staff, who allegedly “missed red flags” that “should have raised concerns about a perforated bowel,” and failed to explain “how the nursing staff breached that standard.”

In the amended disclosure affidavit, most references to the “nurses and staff at Fairview Southdale Hospital” are removed. Murillo’s counsel explained at oral argument that Dr. Borden had revised his expert opinion. Any remaining references to Fairview in the amended affidavit are insufficient to establish the standard of care, deviation, and causation. The amended affidavit states that staff at Fairview should have conducted “a closer more vigilant follow-up” while Murillo was in the hospital post-surgery, but this assertion does not set forth the requisite standard of care that Fairview should have followed or the chain of causation linking Fairview’s actions or inactions to Murillo’s injuries. Thus, we conclude that the district court’s decision to grant Fairview’s motion to dismiss was within its discretion.

V. Factual Findings

Murillo also claims that the district court wrongly made factual findings based on evidence offered by respondents and wrongly ignored evidence that she offered. District courts must not rely on rebuttal evidence or outside medical reports when determining the sufficiency of a plaintiff's expert affidavit. *Demgen*, 621 N.W.2d at 266–67. “[N]on-affidavit materials . . . will not excuse or justify an affidavit of expert identification falling short of the substantive disclosure requirement.” *Lindberg*, 599 N.W.2d at 578.

The district court did not base its decision that the affidavit is insufficient on any evidence offered by respondents. The district court's analysis is limited to the contents of the amended disclosure affidavit. The order provides a “factual summary” of the case, which is based on Murillo's medical records. But these are not factual findings that affected the court's determination; rather, this summary is given as background.

In her brief, Murillo lists several “important facts” from the amended disclosure affidavit that the district court did not include in its factual summary. The decision not to include these in the factual summary does not mean that the district court ignored these points in deciding the amended affidavit's sufficiency. The district court may simply have chosen not to include them in the background section.

Murillo does not cite authority for her assertions that the district court should have considered, in a motion for dismissal under section 145.682, the non-disclosure-affidavit evidence she offered in support of her case. At this stage of the case, the district court was considering only the sufficiency of the affidavit of expert disclosure. Murillo

recognizes the correct standard of review, acknowledging in her brief that rebutting the opinions in the affidavit “is outside the scope of a [s]ection 145.682 motion.”³

In addition, nothing in the district court’s order suggests that it made any credibility determinations, as Murillo alleges. The district court correctly considered only the affidavit of expert review and the affidavit of expert disclosure in determining the sufficiency of the affidavits under section 145.682.

Affirmed.

³ Moreover, we granted respondents’ motion to strike the extra-record documents from the appendix to Murillo’s reply brief and the references to those documents in the reply brief. *Murillo v. Heegaard*, No. A13-1209 (Minn. App. Nov. 14, 2013) (order).