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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1914**

Foos Mohamed Aden,
Appellant,

vs.

Allstate Indemnity Company,
Respondent.

**Filed May 19, 2014
Reversed
Klaphake, Judge*
Dissenting, Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-13-5114

Adam J. Heuett, Bradley D. Simon, Jed Benjamin Iverson, Iverson Law Office, P.L.C.,
St. Paul, Minnesota (for appellant)

William L. Davidson, Brian A. Wood, João C. Medeiros, Lind, Jensen, Sullivan &
Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this action to enforce an insurance settlement agreement, appellant challenges both the denial of her motion for summary judgment and the district court's grant of summary judgment to respondent insurer. Because the district court erred by applying equitable principles in construing an unambiguous contract, we reverse and direct the district court to enter judgment in favor of appellant.

DECISION

On appeal from summary judgment, we review de novo a district court's grant of summary judgment, viewing the evidence in the light most favorable to the party against whom summary judgment was granted, to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). The parties here do not dispute the essential facts.

Equitable relief

In 2012, appellant Foos Aden (Aden) entered into an agreement with respondent Allstate Insurance Company (Allstate). Although the record does not indicate whether the agreement was written or oral, the parties stated at oral argument that the agreement was oral. The parties do not dispute the validity of this agreement, which required Allstate to pay Aden \$4,000 in exchange for Aden's execution of a release. But Allstate

would not issue the settlement check without including SUMA¹ as a co-payee, claiming that it had received a notice of liens against the settlement, although that notice is not part of the record. Aden refused to accept the check with SUMA as co-payee, sued Allstate for breach of contract, and moved for summary judgment. Allstate moved for dismissal of the complaint. The district court granted Allstate's motion,² concluding that Allstate had a right to include SUMA as a co-payee to the settlement check.

The parties agree that there is a binding, valid contract and that the district court granted equitable relief, but dispute whether that relief was proper. *See Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010) (stating that “[a] settlement agreement is a contract”). Aden correctly notes that a court may not grant equitable relief when the parties' rights are governed by a valid contract. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). We agree.

Allstate argues that the mere existence of a contract does not deprive a court of its authority to afford equitable relief, such as rescission or reformation of a contract. *See SCI Minnesota Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861, 864-65 (Minn. 2011) (discussing rescission or reformation of a contract based on mutual mistake or lack of mutual assent). But here the parties do not argue that the settlement agreement fails to reflect the parties' true intent or that the settlement agreement should be voided for mistake or lack of assent. *See id.* at 865 (“In

¹ SUMA is not identified in the record, but Aden states that SUMA is “Stand-Up MultiPositional Advantage MRI, P.A.”

² Respondent moved for dismissal on the pleadings under Minn. R. Civ. P. 12.03. Because the district court considered matters outside of the pleadings, respondent's motion was treated as one for summary judgment. *Id.*

reformation, a contract is modified to reflect the parties' true intent, whereas in rescission, the entire contract is voidable.”). Thus, the equitable remedies of reformation and rescission do not apply to the facts of this action.

Allstate also argues that the district court properly fashioned a new equitable remedy because “[a] court of equity has the power to adapt its decree to the exigencies of each particular case so as to accomplish justice” and equity traditionally “possesses the flexibility and expansiveness to invent new remedies or modify old ones to meet the requirements of every case and to satisfy the needs of a progressive social condition.” *Beliveau v. Beliveau*, 217 Minn. 235, 245, 14 N.W.2d 360, 366 (1944). But courts may not grant equitable relief if the parties’ rights are governed by a valid contract. *Soderbeck v. Ctr. for Diagnostic Imaging, Inc.*, 793 N.W.2d 437, 444 (Minn. App. 2010).

Aden argues that Allstate breached the settlement agreement by including SUMA on the settlement check. According to the undisputed terms, Allstate was to pay \$4,000 to Aden; the agreement did not include an additional payee. We observe no ambiguity in this contract. Allstate therefore breached the settlement agreement by refusing to draft a check without SUMA as a co-payee.

Allstate also contends that Aden fails to meet her summary judgment burden to state a claim for breach of contract because Aden did not sign a release, thereby failing to perform a condition precedent to her right to demand performance. Allstate did not argue this before the district court, and we decline to consider arguments not presented to or considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Because the parties agree that a valid and enforceable contract governs their rights, we will enforce the contract. We conclude that Allstate may not include SUMA as a co-payee on the settlement check and Aden is therefore entitled to summary judgment.

Reversed.

SCHELLHAS, Judge (dissenting)

I respectfully dissent from the majority's decision to reverse both the district court's grant of summary judgment to Allstate and denial of summary judgment to Aden. This case is virtually identical to a case recently decided by this court in an unpublished opinion, *Adan v. Allstate Ins. Co.*, No. A13-0914, 2014 WL 30406 (Minn. App. Jan. 6, 2014), *review denied* (Minn. Mar. 18, 2014). Although the court's unpublished decisions are not precedential, their reasoning can be persuasive. I would apply the reasoning in *Adan* to this case and affirm the district court's grant of summary judgment to Allstate.

As in *Adan*, the parties do not dispute the following: Aden and Allstate agreed to settle Aden's automobile-accident claim against Allstate's insured—a tortfeasor-driver, Aden agreed to provide a release of claims and Allstate agreed to make a settlement payment to Aden. The majority accurately notes that SUMA's lien notice is not part of the record. In fact, as noted by Allstate in its brief, “[t]he record neither contains the settlement agreement nor indicates whether the agreement was verbal or reduced to writing. Correspondence in the record *suggests some of the terms* of the agreement.” (Emphasis added.)

Similar to *Adan*, prior to settling her claims against Allstate and its insured, Aden obtained medical services from SUMA and signed an agreement purporting to grant to SUMA an assignment and lien. Later, SUMA notified Allstate that it claimed a lien against any settlement and Allstate then informed Aden that it would name SUMA as a co-payee on the settlement check unless Aden provided a lien release. In its order granting summary judgment to Allstate, the district court stated that “[p]laintiff does not

dispute that[, before receiving treatment at SUMA, following the accident in this case,] she willingly signed the document allowing the lien to be placed on any future recovery.” But Aden refused to accept a check with SUMA named as a co-payee and sued Allstate for breach of the settlement agreement. Both parties brought motions for dispositive relief.

The district court found that no disputed material facts existed, that the facts stated in the court’s order were the essential facts to which the parties agreed, and that the parties only disagreed about “whether or not the lien/assignment included in the SUMA contract, signed by [Aden], require[d] that the settlement check be made to both [Aden] and SUMA.” Aden argued that “SUMA was not a party to this case or the prior case where the settlement was reached [and] . . . further claim[ed] that the lien/assignment at issue in this case is not valid, as it would not be allowed under the Uniform Commercial Code.” Allstate argued that “it [was] bound to honor the lien or face potential suit from SUMA, pursuant to the terms of the lien itself.” Noting “that this very issue has been raised before other judicial officers in this district on several occasions,” the court concluded that “it need not address the . . . actual validity of the lien involved, as SUMA [was] not a party to this lawsuit” and “that the evidence [was] sufficient to demonstrate that SUMA’s lien may be valid.” The court further said,

Given this, and given [Aden] freely made [the] decision to sign such a lien, the Court finds that [Allstate] has the right to include SUMA as a party on the settlement check and thereby honor the terms of the lien and avoid exposing itself to further litigation for the failure to do so.

In *Adan*, “[w]ithout deciding whether Allstate breached the contract, i.e., the oral settlement agreement, the district court sua sponte granted summary judgment to Allstate,” reasoning “that, because Allstate *could* incur liability to SUMA, ‘thereby potentially paying the settlement amount twice,’ Allstate ‘was . . . entitled to include SUMA’s name on the check.’” 2014 WL 30406, at *1. As in this case, “[t]he district court did not determine the validity of the authorization and assignment and purported lien,” *id.*, and “the parties agree that their rights are governed by a valid and enforceable (oral) contract,” *id.* at *2. We therefore interpreted the contract, as follows:

“Contract interpretation is a question of law that we review de novo.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012). “We review the language of a contract to determine the intent of the parties.” *Id.* “When the language of a contract is clear and unambiguous, we enforce the agreement of the parties as expressed in the contract. But if the language is ambiguous—that is, susceptible to more than one reasonable interpretation—parol evidence may be considered to determine the intent of the parties.” *Id.* (citation omitted). “Whether a contract is ambiguous is a question of law that we review de novo.” *Id.* (quotation omitted). A contract and several writings related to the same transaction are construed with reference to each other. *See Sayer v. Minn. Dep’t of Transp.*, 790 N.W.2d 151, 157 (Minn. 2010) (construing a request for proposals and accompanying instructions “with reference to each other” because they “relate to the same project”).

Id. We disagreed with *Adan*’s argument that she was entitled to summary judgment “because the oral settlement agreement unambiguously require[d] Allstate to issue her a check that name[d] only her, her attorney, or both, as co-payees,” stating

In consideration of the undisputed contents of the oral contract, when construed with reference to the written release, we agree with the district court that Allstate is entitled to

include SUMA as a co-payee to avoid potentially paying the settlement amount twice. We need not, and do not, determine the validity of the authorization and assignment and purported lien.

Id.

To the extent that the district court applied equity to reach its determination in this case, we review a district court's equitable determinations for an abuse of discretion, *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011), and I would conclude that the district court did not abuse its discretion. Allstate and Aden did not have an outstanding agreement regarding the existence and enforceability of SUMA's claimed lien. Their contract was incomplete and did not cover that circumstance.

For the reasons stated in *Adan*, I would affirm in this case.