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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0914**

Fartun Adan,
Appellant,

vs.

Allstate Insurance Company,
Respondent.

**Filed January 6, 2014
Affirmed; motion granted
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-12-24001

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Minnesota (for appellant)

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Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and
Crippen, Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges both the denial of her motion for summary judgment and the
grant of summary judgment to respondent. We grant respondent's motion to strike extra-

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

record documents contained in appellant's appendix and references to those documents in appellant's brief, and we affirm the district court's grant of summary judgment to respondent.

FACTS

In 2010, appellant Fartun Adan was injured in an automobile accident with an insured of respondent Allstate Insurance Company (Allstate). Following the accident, Adan underwent MRI scans at Stand Up Mid America (SUMA) and entered into an agreement with SUMA that purported to grant to SUMA an assignment and lien on any proceeds arising from "any Payer" up to the amount of her debt to SUMA (authorization and assignment).

In August 2011, SUMA filed a Uniform Commercial Code (UCC) financing statement, purporting to perfect a lien on "[a]ll present or future rights, to the extent permitted by law, relating to any Proceeds as defined in the applicable [authorization and assignment]." In September 2011, SUMA sent Allstate notice of the authorization and assignment, which included the UCC financing statement and, in pertinent part, the following:

We request that you put our name on the check and mail it directly to our office. . . . Any payments to an individual or entity other than our office, made for any reason, as long as the patient's account remains open, will be deemed a breach of our Assignment / Lien / UCC Lien. If you choose not to honor our secured interest, we may be forced to protect our interests to the full extent of the law.

(Emphasis omitted.) Adan and Allstate then entered into an *oral* settlement agreement whereby Adan agreed to release all claims that arose from the 2010 accident and Allstate

agreed to pay \$6,500. The parties do not dispute the validity or enforceability of this oral settlement agreement.

In June 2012, Adan signed a release of claims against Allstate and its insured. Allstate informed Adan that it would issue a check to SUMA and her, as co-payees. Adan refused to accept the check with SUMA named as a co-payee and sued Allstate for breach of contract. Adan moved for summary judgment, and Allstate moved to enforce the oral settlement agreement but did not move for summary judgment. Without deciding whether Allstate breached the contract, i.e., the oral settlement agreement, the district court sua sponte granted summary judgment to Allstate. The court reasoned 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.” The district court did not determine the validity of the authorization and assignment and purported lien.

This appeal follows.

D E C I S I O N

Allstate’s Motion to Strike

Allstate moves to strike a July 11, 2011 arbitration award; an October 3, 2011 letter from Adan’s counsel to SUMA; a March 6, 2013 decision by the Minnesota Office of Lawyers Professional Responsibility (OLPR); and references to those documents in Adan’s brief. Adan opposes Allstate’s motion only with regard to the OLPR decision; Adan does not mention the other two documents. The OLPR decision is not a public document and is not part of the record on appeal. *See* Minn. R. Law. Prof. Resp. Bd.

20(a) (noting that, generally, OLPR decisions regarding unprofessional-conduct complaints or charges “shall be deemed confidential and shall not be disclosed”); *Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins.*, 535 N.W.2d 337, 340 n.3 (Minn. 1995) (noting that “this court may consider” cases, statutes, and other “publically available articles that were not previously presented to the district court”); *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988) (“An appellate court may not base its decision on matters outside the record on appeal . . .”). We therefore grant Allstate’s motion to strike.

Adan’s Challenge to Grant of Summary Judgment

On appeal from summary judgment, an appellate court’s “task is to determine whether genuine issues of material fact exist, and whether the district court correctly applied the law.” *Eng’g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). A district court properly grants summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. Appellate courts conduct a de novo review of the district court’s summary-judgment decision and “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013).

Here, the parties agree that their rights are governed by a valid and enforceable (oral) contract. We therefore interpret the contract. “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”).

Adan argues that she, not Allstate, was entitled to summary judgment because the oral settlement agreement unambiguously requires Allstate to issue her a check that names only her, her attorneys, or both, as co-payees. We disagree.

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.

Affirmed; motion granted.