*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1868**

Stephen C. Cardot,
Appellant,

vs.

Synesi Group, Inc., f/k/a Portogo, Inc.,
Respondent.

**Filed September 23, 2008**
**Reversed and remanded**
**Collins, Judge[*]**

Hennepin County District Court
File No. 27-CV-06-14558

David E. Albright, 7814 131st Street West, Apple Valley, MN 55124 (for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Collins, Judge.

**U N P U B L I S H E D  O P I N I O N**

**COLLINS,** Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent, arguing that the district court erred by concluding that appellant's claims are

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

barred by a waiver and release provision, and that there are genuine issues of material fact that preclude summary judgment. We reverse and remand.

**FACTS**

Synesi Group, Inc.[1] is an inactive Minnesota corporation that currently has no assets. Synesi was formed in 1999 for the purpose of generating licensing revenue through two patents, U.S. Patent #6922720 and U.S. Patent #7020692 (the patents) relating to the securing, bonding, insurance, and underwriting of Internet transmissions. Stephen Cardot is one of the founders of Synesi, and he, along with two other individuals, authored the patents and filed provisional patent applications in September 1999, although the patents were not granted until July 26, 2005, and March 28, 2006. Cardot also was Synesi's president and chief executive officer (CEO) from its inception until March 2003.

In 2001, Marcellus Knoblach of the Marcellus P. Knoblach Revocable Trust (Knoblach) became involved with Synesi. Knoblach provided financing to Synesi, and during Cardot's tenure as president and CEO, Knoblach loaned Synesi approximately $2,000,000. Knoblach also owned stock in Synesi, and, by the summer of 2002, Knoblach had become Synesi's largest shareholder.

On May 15, 2001, Cardot entered into an "Assignment of Interest Regarding US Patents" (the first assignment) with Synesi, transferring "any and all right, title, interest or claim he has or may have" regarding the patents in exchange for Synesi's agreement to

[1] The company, which was originally named Portogo, Inc., changed its name to Synesi Group, Inc. in 2005. For clarity, we will at all times refer to the company as Synesi.

pay him a royalty of "one-third of one percent (.333%) of [Synesi's] gross revenue for a period of twelve (12) years."

Approximately two months later, Cardot entered into an "Amendment to Assignment of Interest Regarding US Patents" (the amended assignment) with Synesi. The amended assignment reaffirms the first assignment but provides that Synesi's obligation to pay royalties did not apply to its first $2,000,000 in gross revenue. It also provides that, if substantially all of Synesi's assets or the majority of its stock were sold to a third party, Cardot would agree to offer to sell his right to receive royalties for 0.333% of the gross sales price or $1,700,000, whichever is greater.[2]

On December 9, 2002, Cardot entered into an "Intellectual Property Agreement" (the IP agreement) with Synesi. The IP agreement reaffirms the first assignment and the amended assignment and provides that its purpose is to "enhance the opportunity for [Synesi] to be able to continue ongoing operations by clarifying and reaffirming existing assignment and royalty obligations and by supplementing such assignments, thereby aiding the company in attracting additional investment or increasing the marketability of [Synesi's] products and services." Further, the IP agreement provides that Cardot received "consideration in the form of potentially increasing the value of [his] stock holdings in [Synesi] or potentially increasing the possibility that [he] will obtain royalties or a buy out of [his] royalties," as set forth in the amended assignment. In exchange, Cardot "assign[ed] and reaffirm[ed] the assignment to [Synesi] of any and all intellectual

[2] The other two individuals who authored the patents, neither of whom is a party to this litigation, likewise assigned their interests in the two patents to Synesi through separate assignment agreements.

property . . . including but not limited to ideas, inventions, software, writings, discoveries, developments, plans, strategies, lists, information and data" regarding the patents and Cardot's involvement with Synesi.

Cardot resigned as president and CEO of Synesi in March of 2003, and entered into a "Severance Agreement and Release" (the severance agreement) on March 17. At that time, the parties agreed that Synesi owed Cardot $97,166 in past-due wages. The severance agreement provided that in satisfaction of this obligation, Synesi would convert half of this amount into "a warrant . . . to purchase an aggregate of 48,583 shares of [Synesi's] common stock . . . at $1.00 per share," and that the balance would be paid "pursuant to the terms of a one-year 6% promissory note in the amount of $48,583.12." The severance agreement also provides that, in exchange for Cardot's agreement to waive any claims that he may have against Synesi, Synesi would issue Cardot two warrants to purchase 500,000 shares of common stock at a price of one dollar per share.

Also on March 17, 2003, Synesi and Knoblach entered into numerous agreements regarding loans that Knoblach had made to Synesi. Under these agreements, Synesi granted Knoblach a "first priority perfected security interest" in Synesi's intellectual property and in its interest and rights in the patents and the patent applications. The agreements provide that, in the event of a default, including a failure by Synesi to pay its loan obligations when due, Knoblach would have the right to, among other actions, take possession of Synesi's interest and rights in the patents without a judicial proceeding and sell or otherwise transfer the patents. In exchange, Knoblach made loans to Synesi in the amount of $1,596,113 and $424,446, both of which were due and payable in full on

December 17, 2003. When these agreements were entered into, Cardot was still a member of the board of directors and executed a "Written Action of the Board on March 10, 2003, approving the Amended, Restated and Consolidated Secured Convertible Term Promissory Note Due December 17, 2003 for $1,596,113.60." The written action incorporated by reference all of the other March 17, 2003 agreements.

Over the next two and one-half years, Knoblach continued to make loans to Synesi, and, ultimately, Knoblach had loaned a total of $3,583,355 to Synesi. Although it is not entirely clear from the record what happened between Cardot's departure and the initiation of this lawsuit, it appears that by December 2004 Synesi was in default on its loan obligations to Knoblach. Knoblach agreed to grant Synesi a forbearance until February 28, 2005, which the parties later extended to March 31, 2005, and then extended a second time to August 1, 2006.

By letter dated September 18, 2006, Synesi's board of directors notified the shareholders that the company was in default on its loan obligations to Knoblach, that Knoblach was unwilling to negotiate any further forbearances, and that Knoblach had requested that Synesi voluntarily agree to the foreclosure of assets pledged to Knoblach as collateral—namely, the interest and rights in the patents—but that the board of directors had refused. The letter also informed the shareholders that Synesi had no funds and did not have the ability to cure the default. On October 2, 2006, Knoblach sent a "Notice to Assemble Collateral" to Synesi requesting that the company make the collateral available to TranSurety, LLC, the company to which Knoblach had assigned its rights to the collateral. The board of directors unanimously voted to not cooperate with Knoblach's request without a court order, and it notified the shareholders of that decision.

On November 17, 2006, Cardot wrote to Synesi advising the company that he was "rescind[ing] his assignment of patent rights to [Synesi]" and that he "expects that Synesi will return the patent rights forthwith." In December 2006, TranSurety removed the patents from Synesi.

Cardot, acting pro se, filed this lawsuit against Synesi on August 1, 2006, claiming that Synesi had failed to pay him the $48,583 due on the promissory note for past wages. Cardot later hired an attorney to represent him and, in January 2007, moved the district court for leave to amend the complaint. The district court granted the motion, and Cardot filed an amended complaint adding a claim seeking to rescind his assignment of his interest and rights in the patents. The amended complaint asserts that Cardot is entitled to a rescission of the three assignment agreements, that is, the first assignment, the amended assignment, and the IP agreement (collectively, the three assignments) on the grounds that Synesi: (1) materially breached its contractual duties, including the duty of good faith and fair dealing; (2) fraudulently induced Cardot into entering into certain agreements; and (3) frustrated the purpose and hindered the performance of the three assignments. Synesi moved for summary judgment, which the district court granted, and Cardot appeals.

## D E C I S I O N

When reviewing a grant of summary judgment, this court determines whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). There is no genuine issue of material fact when the record, taken as a whole, would not permit a rational fact-finder to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). We review the record in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). All factual inferences and ambiguities must be resolved in favor of the nonmoving party. *Wistrom v. Duluth, Missabe & Iron Range Ry.*, 636 N.W.2d 611, 613 (Minn. App. 2001).

**I.**

As an initial matter, Synesi argues that Cardot's brief is "devoid of appropriate citation to the district court's record," and thus, violates Minn. R. Civ. App. P. 128.02, subd. 1(c) (requiring that statements of material fact in a party's brief be accompanied by references to the record). Although some of Cardot's factual assertions are not accompanied by specific references to the record reproduced in his appendix, others are, and, generally speaking, it is apparent what portions of the record Cardot is referring to. Further, contrary to Synesi's assertion, all of the documents in Cardot's appendix are in fact included in the district court file.

**II.**

The severance agreement that Cardot entered into contains a "Waiver and Release" provision, which states, in pertinent part:

> [Cardot] hereby unconditionally waives, releases, acquits and forever discharges [Synesi] and any entity affiliated with [Synesi], including, but not limited to, its . . . owners, officers, agents, directors, shareholders, lenders, employees and other representatives . . . from any and all past, present or future

> claims, demands, obligations, actions, damages and expenses of any nature . . . which [Cardot] now has or in the future may have. This release includes, but is not limited to, all claims on account of or in any way growing out of the employment or other relationship between the parties hereto, including, but not limited to . . . fraud or misrepresentation, breach of a covenant of good faith and fair dealing, . . . breach of contract, . . . claims arising out of or in connection with any intellectual property or other rights or property assigned by [Cardot] to [Synesi], and any other claims for unlawful employment practices . . . .
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> . . . .
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> It is the intention of the undersigned parties that the release . . . shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, . . . claims, liabilities and demands of whatsoever nature, known or unknown, suspected or unsuspected. The undersigned parties hereby acknowledge that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever settle and release all of the disputes and differences, known or unknown, suspected or unsuspected, which do now exist, may hereafter exist, or may heretofore have existed, without regard to the subsequent discovery or existence of differen[t] or additional facts.

The district court noted that the waiver "specifically states that Cardot is releasing all claims of breach of contract, breach of a covenant of good faith and fair dealing, and fraud or misrepresentation," including all of Cardot's claims arising out of the three assignments of the patents. Accordingly, the district court concluded that "Cardot released these claims that he now brings before this Court," and thus, "all of Cardot's claims fail because [they] were extinguished by the terms of the Severance Agreement."

Minnesota law "presumes that parties to a release agreement intend what is expressed in a signed writing," and any party seeking relief from a release bears the burden of establishing facts sufficient to avoid that presumption. *Sorenson v. Coast-to-Coast Stores, Inc.*, 353 N.W.2d 666, 669-70 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). In the absence of fraud, misrepresentation, or other inequitable conduct, a plainly-worded release is effective even as to unknown claims or claims that the releasing party did not specifically know it was releasing. *See id.* (holding that franchise-termination agreement discharged claims and causes of action of which party did not necessarily know or intend to release).

Cardot argues that the district court erred by concluding that his claims are barred by the severance agreement. He asserts that there are genuine issues of material fact as to whether he is entitled to an avoidance of the severance agreement, on the grounds that Synesi materially breached the severance agreement, and the severance agreement was obtained by fraudulent inducement and misrepresentation. We will address each assertion in turn.

**A. Material breach**

Cardot contends that there are genuine issues regarding whether Synesi's failure to pay him $48,583 in past due wages pursuant to the promissory note was a material breach of the severance agreement, entitling him to a rescission of the severance agreement, including the waiver-and-release provision. Synesi argues that non-payment of the $48,583 in past due wages does not amount to a material breach and, therefore, Cardot is not entitled to a rescission of the severance agreement. We agree.

"Rescission is the unmaking of a contract . . . which not only terminates the contract but abrogates it and undoes it from the beginning." *Johnny's, Inc. v. Njaka*, 450 N.W.2d 166, 168 (Minn. App. 1990). As a general rule, rescission "is justified only by a material breach or substantial failure in performance." *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). A material breach occurs when a party refuses to perform a substantial part of the contract. *Liebsch v. Abbott*, 265 Minn. 447, 451-52, 122 N.W.2d 578, 581-82 (1963). In other words, a breach is material when "one of the primary purposes" of the contract is violated. *See Steller v. Thomas*, 232 Minn. 275, 282, 45 N.W.2d 537, 542 (1950); *see also* 15 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 44:55 (4th ed. 2000) (stating that material breach "goes to the root or essence of the contract").

The "primary purpose" of the severance agreement or, in other words, its "root or essence," is the waiver, and the severance agreement expressly provides that the consideration for that waiver was the issuance of two warrants entitling Cardot to purchase 500,000 shares of common stock. Cardot has not claimed, and there is nothing in the record to suggest, that Synesi failed to perform its contractual obligation to issue the two warrants. Because the failure to pay the $48,583 in past due wages does not constitute a material breach, rescission of the severance agreement, including the waiver provision, is not appropriate. *See Anderson v. Kammeier*, 262 N.W.2d 366, 374 (Minn. 1977) (stating that nonmaterial breach of contract does not justify rescission).

Cardot also argues that the severance agreement is not supported by adequate consideration. His argument is based on the assertion that the $48,583 promissory note was the sole consideration for the severance agreement, and the severance agreement purports to release any claim he might have against Synesi for failing to pay the promissory note. But, as previously noted, the consideration for the severance agreement was the two warrants to purchase 500,000 in common stock, not the $48,583 promissory note. Furthermore, the severance agreement expressly provides that the waiver provision "shall not apply to any failure by [Synesi] to pay amounts due [Cardot] under and pursuant to the [promissory note]." Thus, contrary to Cardot's assertion, the severance agreement does not purport to release claims against Synesi for failing to satisfy the promissory note.

There are no genuine issues of material fact regarding whether Cardot is entitled to rescind the severance agreement on the ground that Synesi materially breached the severance agreement.

**B. Fraud**

To establish a claim of fraud, Cardot must demonstrate that: (1) Synesi made a "false representation of a material past or present fact susceptible of knowledge;" (2) Synesi "either knew it to be false or asserted it as [its] own knowledge without knowing whether it was true or false;" (3) Synesi intended Cardot "to act in reliance" on the representation; (4) Cardot "was induced to act in reliance on the representation;" and (5) Cardot "suffered damages which were the proximate cause of the representation." *See Rognlien v. Carter*, 443 N.W.2d 217, 220 (Minn. App. 1989), *review denied* (Minn. Sept. 21, 1989).

The district court concluded that Cardot's fraud claim failed because "Cardot has not alleged that the misrepresentation relates to a past or present fact, but rather to an expectation regarding future events." The district court explained:

> In this case, Cardot's claims are what he perceives to be as misrepresentation as to expectations of future events and not representations known to be false by Synesi . . . . Cardot alleges that Synesi failed to pursue revenue opportunities, drove away financing opportunities and conspired with other entities to convert Synesi's assets. Synesi denies these allegations and argues that these are not representations that were known to be false by Synesi at the time the Agreements were entered into . . . . All of Cardot's claims relate to his expectation of what was going to happen in the future . . . . In addition, the alleged misrepresentations . . . all relate to alleged activity that occurred after Cardot entered into the Assignments and after Cardot was out of the office.

The district court concluded, therefore, that "Cardot has no basis in either the law or facts of this case to support his claims of fraudulent inducement and misrepresentation."

Cardot argues that the district court mischaracterized his allegations as relating only to expectations of future events. He maintains that his allegations pertain to Synesi's present intent at the time that the parties entered into the severance agreement. Specifically, he claims that, when the severance agreement was executed in March 2003, the parties had agreed, as the IP agreement signed several months earlier establishes, that moving forward, Synesi would seek to "potentially increas[e] the value of [Cardot's] stock holdings . . . or potentially increas[e] the possibility that [Cardot] will obtain royalties or a buy out" regarding his interest and rights in the patents. Contrary to this stated intent, Cardot alleges that Synesi's true intent was to prevent the company from generating any revenue on the patents, and thereby to prevent him from realizing royalty payments or any other benefit regarding the patents.

Indeed, a fraud claim can be predicated on a promise to perform at a future date. *Hayes v. Northwood Panelboard Co.*, 415 N.W.2d 687, 690 (Minn. App. 1987), *review denied* (Minn. Jan. 28, 1988). Granted, a subsequent intent to break such promise or the mere fact that the promise was not fulfilled does not constitute fraud. *Benson v. Rostad*, 384 N.W.2d 190, 195 (Minn. App. 1986). But a fraud claim will lie if there is "affirmative evidence" to show that, at the time the promise was made, the promisor had no intention to perform. *See Hayes*, 415 N.W.2d at 690.

We agree with Cardot that the allegations do not relate simply to "expectations of future events," as the district court determined, but rather to Synesi's true intent at the time the severance agreement was executed. Synesi maintains that summary judgment was nonetheless appropriate because the allegations Cardot relies on involve only speculation, conclusory statements, and bare assertions.

To withstand summary judgment, a nonmoving party cannot rely upon "mere general statements of fact" but rather must demonstrate that "specific facts are in existence which create a genuine issue for trial." *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). And affidavits that are based on "information and belief" and contain only unverified opinions and allegations are insufficient to withstand summary judgment.

*See Urbaniak Implement Co. v. Monsrud*, 336 N.W.2d 286, 287 (Minn. 1983) (stating that affidavit opposing summary judgment is not adequate if it only recites argumentative and conclusory allegations).

The critical issue here involves a question of what Synesi's true intent was when the parties executed the severance agreement. Generally speaking, intent is a fact question. *See Sackett v. Storm*, 480 N.W.2d 377, 379 (Minn. App. 1992), *review denied* (Minn. Mar. 26, 1992). And "[s]ummary judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith and other subjective feelings play dominant roles." *Pfizer, Inc. v. Int'l Rectifier Corp.*, 538 F.2d 180, 185 (8th Cir. 1976) (citing *White Motor Co. v. United States*, 372 U.S. 253, 259, 83 S. Ct. 696, 700 (1963)). Here, Cardot alleges that Synesi "secretly chased away one investor in autumn 2002," and "thereafter insulted and otherwise discouraged a myriad of investors and license seekers until Synesi's demise in November 2006." In particular, Cardot claims that Synesi refused to pursue one opportunity in which a company had allegedly offered to "assume hundreds of thousands of dollars of [Synesi's] debt, pay $85,000 in cash and a 3% royalty" to license the patent rights, and that Synesi refused to consider debt-financing opportunities under terms that were more favorable than those offered by Knoblach. Although these allegations are not direct evidence that Synesi's true intent was to prevent any revenue from being generated on the patents, they are circumstantial evidence that tend to support an inference to that effect. And when reviewing summary judgment, we must resolve all reasonable inferences in favor of the nonmoving party. *Fabio*, 504 N.W.2d at 761.

We conclude that there is a genuine issue of material fact regarding whether the severance agreement was obtained by fraud, and, therefore, the district court erred by determining that the waiver provision in the severance agreement barred Cardot's claims.

## III.

The district court also based its decision on the alternative ground that, regardless of the waiver provision in the severance agreement, Synesi is entitled to summary judgment because Cardot's claims fail as a matter of law.

### A. Fraud

Cardot argues that the district court erred by granting summary judgment on his claim seeking to rescind the IP agreement because, like the severance agreement, it too was obtained by fraud. Cardot's fraud claim regarding the IP agreement is based on the same allegations as his fraud claim regarding the severance agreement—namely, that, although Synesi represented that it would seek to generate revenue on the patents, Synesi's true intent was to prevent the company from generating any such revenue. Because we have already concluded that there are fact issues concerning these allegations of fraud, summary judgment on Cardot's claim seeking to rescind the IP agreement based on the same allegations was, likewise, improper.

### B. Breach of contract

Synesi's obligation under the three assignments was to pay Cardot royalties on revenue generated through the patents. Cardot contends that Synesi "intentionally plac[ed] itself in a position where it could not perform," namely, "by putting itself in a position where it could never obtain revenues from which to pay royalties to Cardot."

Under such circumstances, Cardot claims, Synesi's conduct violated the "implied covenant of good faith" and constituted a breach of the three assignments.[3] He concludes, therefore, that fact issues exist as to whether Synesi breached its contractual obligations entitling him to a rescission of the three assignments.

In Minnesota, "every contract includes an implied covenant of good faith and fair dealing." *In re Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) "[C]ourts employ the good faith performance doctrine to effectuate the intentions of parties, or to protect their reasonable expectations." Steven J. Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 Harv. L. Rev. 369, 371 (1980). The implied covenant of good faith and fair dealing applies when one party exercises discretion, thereby controlling the other party's benefit. *Id*. at 369. "'Bad faith' is defined as a party's refusal to fulfill some duty or contractual obligation based on an ulterior motive, not an honest mistake regarding one's rights or duties." *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998).

Under the implied covenant of good faith, "a party to a contract cannot avoid its duties under the contract by . . . disabling itself from performance." *Space Center, Inc. v. 451 Corp.*, 298 N.W.2d 443, 449 (Minn. 1980); *see also Miller v. O.B. McClintock Co.*, 210 Minn. 152, 159, 297 N.W. 724, 728 (1941) ("A person may not escape liability under an agreement upon a condition by preventing the happening of the condition."). Here, Cardot alleges that Synesi acted in bad faith by rejecting potential investors and licensing

[3] In the district court, Cardot also claimed that Synesi's conduct constituted a "frustration of the purposes" of the three assignments. Cardot has conceded to us that he "withdraws this claim" because "[i]t doesn't affect the outcome of this case."

and sales opportunities. Similar to the fraud issue addressed above, Cardot's claim that Synesi breached the duty of good faith focuses on the allegations as to Synesi's true intent or motive when it decided to not pursue certain investment and business opportunities. As we have already concluded, there are unresolved issues of material facts regarding these allegations, which have at least some tendency to support an inference that, as Cardot claims, Synesi acted in bad faith. Likewise, we conclude that there are material fact issues that preclude summary judgment on Cardot's claim that Synesi breached the three assignments by putting itself in a position where it would be unable to perform its contractual obligation of paying royalties to Cardot.

On a related matter, Synesi argues that it is protected under the business-judgment rule from a determination that it breached the three assignments. Synesi claims that the three assignments, the severance agreement, and the "dealings with prospective investors were part of normal business activity conducted in good faith; accordingly Synesi cannot be held liable and its actions . . . are protected under the business judgment rule." But the business-judgment rule is irrelevant to the issues here; this is not a shareholder-derivative action involving a challenge to whether Synesi made sound business decisions, but rather an action on a contractual dispute. Moreover, as Synesi points out, the business-judgment rule applies to normal business activity conducted in "good faith." Even if the business-judgment rule were relevant, Synesi would not be protected by the rule if Cardot is ultimately able to prove his bad-faith claim.

## IV.

Finally, Synesi argues that Cardot's appeal should be dismissed as moot for failure to brief a dispositive ruling by the [district] court. Synesi claims that the dispositive ruling relates to Cardot's failure to join an indispensable party—namely, TranSurety. Although Synesi moved the district court for a dismissal on the ground that Cardot failed to join TranSurety, the district court did not rule on that motion and instead granted summary judgment. Because the indispensable-party issue was not decided by the district court, we decline to address it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

**Reversed and remanded.**