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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1783

Camas, Inc., Co-Appellant,

Blue Lily Farms, LLC,
Appellant,

vs.

Ronald Schmidt, et al.,
Respondents.

Filed June 25, 2012
Affirmed
Ross, Judge

LeSueur County District Court
File No. 40-CV-08-138

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Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Harten, Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

This is the second appeal in this case arising out of a power controversy among the principals of appellant Blue Lily Farms, LLC. In the first appeal, we affirmed the district court's dismissal of the corporate-misconduct claims that Blue Lily and its corporate member, Camas, Inc., made against respondents, Ronald Schmidt, a member and governor of Blue Lily and shareholder of Camas, and Peter Nash, a governor of Blue Lily and shareholder of Camas. We also affirmed an order requiring Camas to buy back Nash's stock and imposing attorney-fee awards in favor of Schmidt and Nash. But we determined that there were insufficient factual findings to support certain other remedies, including the reformation of a member-control agreement to create a majority interest in Schmidt and the award of Blue Lily's building and assets to him. We therefore reversed in part and remanded for additional findings. Appellants now challenge the additional findings made and remedies granted by the district court on remand. Because the record supports the court's supplemental findings and the findings support the remedies, we affirm.

FACTS

Blue Lily was formed in 2002 to raise chickens and provide eggs for use by Camas in producing livestock feed additives. Camas and Schmidt were the only two members of Blue Lily. (As a limited liability company, Blue Lily has members rather than shareholders, *see* Minn. Stat. § 322B.03, subd. 30 (2010), and a board of governors rather than a board of directors, *see* Minn. Stat. § 322B.606, subd. 1 (2010).) Schmidt, who was a Camas employee and shareholder, owns farmland that Blue Lily leased for its operations. At its inception, Blue Lily had three governors: Schmidt; Nash, who at that time was president and CEO of Camas; and Don Robinson, a Camas officer and director.

Before forming Blue Lily, Camas and Schmidt engaged in lengthy negotiations about the ownership interest that each would hold. Schmidt's attorney advised him not to accept less than a 51% stake in Blue Lily, and he rejected multiple drafts of the member-control agreement that would have given him less. In September 2002, more than a year into the negotiations, Camas sent Schmidt a draft of the agreement under which he would begin with a 23.4% interest but with Camas periodically transferring additional shares to Schmidt until he accrued between 51% and 55% of Blue Lily. Under the terms of the draft, Schmidt was expected to own at least 51% by October 2007. Schmidt accepted this compromise.

Two months later, Schmidt met with Robinson and Nash at the offices of Camas's counsel to execute Blue Lily's member-control and operating agreements as well as a lease between Schmidt and Blue Lily. Robinson told Schmidt that the documents were the draft agreements that he had agreed to, but they were not; they did not include the interest-transfer provision to which the parties had agreed during negotiations. Schmidt did not immediately receive a copy of the documents and did not discover until months later that the interest-transfer provision was not included. He confronted Robinson, who assured him that he would correct the documents, but Robinson never did.

Blue Lily began operating in November 2002 and provided eggs to Camas for several years. But during 2006 Camas began experiencing regulatory difficulties. Nash attempted to bring Camas into administrative compliance, but was removed from the CEO position in 2007. Nash and Schmidt became concerned about their personal exposure to liability for Camas's misconduct. In January 2008, the two of them called a meeting of the Blue Lily board of governors and voted, over Robinson's objection, to terminate the lease between Schmidt and Blue Lily and to recognize Schmidt as the majority owner of Blue Lily, consistent with the interest-transfer provision of the September 2002 draft member-control agreement. Camas responded by calling a membership meeting and relying on its purported majority interest to remove Nash and Schmidt as governors. Camas appointed two new governors, and the newly constituted board reversed the resolutions passed by Nash and Schmidt.

In February 2008, Camas initiated this action, asserting claims under the Minnesota Business Corporations Act (MBCA) and the Minnesota Limited Liability Company Act (MLLCA) based on allegations of improper conduct by Nash and Schmidt. Blue Lily intervened and asserted substantially identical claims against Nash and Schmidt. Nash and Schmidt asserted counterclaims against Camas and Blue Lily, alleging breach of the member-control agreement and lease as well as violations of the MBCA and MLLCA. The district court dismissed some of Camas's claims as derivative, and tried the remaining claims together with Blue Lily's claims and Nash's and Schmidt's counterclaims.

After trial, the district court found unsubstantiated Blue Lily's claims and Camas's remaining claims and found in favor of Nash and Schmidt on their counterclaims. The court found that Blue Lily had breached the lease, entitling Schmidt to terminate it. It also found that the LLC was governed by the terms of the September 2002 draft member-control agreement, effectively reforming the member-control agreement that was actually executed in November 2002. The equitable relief granted by the court and relevant here included terminating the lease between Schmidt and Blue Lily; declaring Schmidt the majority owner of Blue Lily with a 55% interest; and awarding to Schmidt the buildings and fixtures that had been constructed on the property leased to Blue Lily.

Camas and Blue Lily appealed. This court affirmed the order of the district court in part, reversed in part, and remanded for further findings. *Camas, Inc., v. Nash*, No. A10-1406, 2011 WL 1545582 (Minn. App. April 26, 2011). We reversed the district court's termination of the lease between Schmidt and Blue Lily, concluding that an arbitration clause in the lease precluded the district court from hearing the breach-of-lease claim. *Id.* at *8. We affirmed dismissal of Camas's and Blue Lily's claims against Nash and Schmidt. *Id.* at *5–8. And we affirmed most of the equitable relief granted by the district court. *Id.* at *8–13. But we determined that the district court's factual findings were insufficient to support some of the remedies granted, including, as relevant to this second appeal, the reformation of the member-control agreement and the award of Blue Lily's buildings and fixtures to Schmidt. *Id.* at *9.

With respect to reformation, we observed that, although a district court may reform a written agreement after making certain findings, the district court did not make the findings necessary to warrant reformation. *Id.* We explained that reformation requires a showing of mutual mistake or unilateral mistake coupled with fraud or inequitable conduct, and reasoned that, "[w]hile the district court found that the parties agreed to the September 2002 documents, it did not explicitly find that the November 2002 member control agreement was the result of mutual mistake or fraud." *Id.* We concluded that "[t]he absence of such a finding precludes effective appellate review." *Id.* Concerning the award of the buildings and fixtures, we observed that the district court's failure to identify which claim the award was intended to remedy also precluded effective review, and we remanded for additional findings. *Id.*

On remand, the district court made supplemental findings. With respect to the member-control agreement, the court reiterated its findings regarding the circumstances surrounding its execution. It found that the elements of reformation had been established by clear and convincing evidence. (Although the district court labeled these findings as conclusions of law, we review them as findings. *See Graphic Arts Educ. Found. v. State*, 240 Minn. 143, 145–46, 59 N.W.2d 841, 844 (1953).) It found specifically that Robinson and Camas had fraudulently represented to Schmidt that the November 2002 documents that he signed were the same as the September 2002 documents that he believed he was signing. It therefore found that the failure of the November 2002 documents to accurately reflect the parties' real intentions was due both to a unilateral mistake by Schmidt and to fraud or inequitable conduct by Camas. The court also found that the fraud and inequitable conduct continued by Robinson's acknowledging the error and promising to correct it but never doing so. And the district court found that Schmidt suffered monetary damage, in the nature of reduced ownership in Blue Lily, because of Camas's and Robinson's false representations about the November 2002 documents.

Concerning the award of Blue Lily assets to Schmidt, the district court found that Camas's and Blue Lily's conduct "constitute[d] unfairly prejudicial conduct toward Schmidt, as a shareholder of Camas and a member of [Blue Lily.]" It clarified that the award of assets to Schmidt arose from its broad equitable powers to remedy unfairly prejudicial conduct under Minnesota Statutes sections 302A.751 (2010) and 322B.833 (2010), explaining, "Due to this unfairly prejudicial conduct in attempting to manipulate the respective ownership interests in [Blue Lily,] the Court applies the provision of the lease regarding termination and dissolution of [Blue Lily] prospectively and awards [Blue Lily's] building and fixtures to Schmidt, as the majority member of [Blue Lily]."

After the district court entered judgment, Blue Lily filed this appeal, in which it challenges the district court's reformation of Blue Lily's member-control agreement and the award of Blue Lily's buildings and fixtures to Schmidt. Camas filed a notice of related appeal, joining Blue Lily's challenge to the reformation of the member-control agreement.

D E C I S I O N

I

We first decide whether the district court erred by reforming the member-control agreement. It did not. "Reformation is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties' true intent when they entered into the contract." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). To obtain reformation, a party must establish by evidence that is "clear and consistent, unequivocal and convincing" that "(1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party." *Id.* at 865 (quotation omitted). We review the district court's decision to grant equitable relief for an abuse of discretion and its findings of fact for clear error. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23–24 (Minn. 2011); Minn. R. Civ. P. 52.01.

Our careful review of the district court's supplemental findings and the record informs us that the findings are not erroneous and that the court did not abuse its discretion by reforming the executed member-control agreement. The district court made specific findings bearing on each reformation element, including the finding that this court found lacking in the first appeal, which is that the failure of the executed member-control agreement to reflect the parties' true intentions was caused by Schmidt's unilateral mistake and Camas's fraud or inequitable conduct. And the district court's findings with respect to the reformation elements are supported by the evidence in the record, including testimony from Nash, Schmidt, and Robinson and documents reflecting the course of the parties' negotiations.

Citing the heightened evidentiary burden applicable to reformation claims, Blue Lily and Camas argue that the district court was precluded from reforming the agreement because some conflicting evidence existed as to the parties' intent. The argument does not persuade us. The burden on the party seeking reformation is akin to a clear-and-convincing standard of proof, which requires "more than a preponderance of the evidence but less than proof beyond a reasonable doubt." *Weber v. Anderson,* 269 N.W.2d 892, 895 (Minn. 1978). Clear and convincing proof exists when the truth of the asserted facts is "highly probable." *Id*. "[E]vidence need not be uncontradicted, unequivocal, or undisputed to be clear and convincing, since the trier of facts may resolve the conflict on the basis of the credibility of the witnesses or the weight of the evidence." 32A C.J.S. *Evidence* § 1624 (2008). That the district court was required to resolve some factual disputes did not preclude it from finding that the heightened evidentiary burden had been met.

Camas challenges the district court's finding that the September 2002 draft member-control agreement reflected the parties' true intentions, relying on testimony by a Camas employee who recounted Schmidt's representation to her that the member-control agreement executed in November 2002 governed the relationship between the parties. The district court did not discuss this testimony in its finding, but it found the clear-and-convincing standard satisfied by the parties' testimony about the course of negotiations. We discern no error in the court's finding.

Blue Lily and Camas also assert that the district court's finding regarding true intent is belied by assertions in the Schmidt's pleadings. But they do not dispute that this argument was not made to the trial court, and we decline to address it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts will not consider matters not argued to and considered by the district court).

II

We last address Blue Lily's argument that the district court erred by awarding its building and fixtures to Schmidt. Blue Lily challenges the award as both unauthorized under the lease and as improperly punitive. But the district court's order on remand makes clear that the remedy is based on its equitable powers under Minnesota Statutes sections 302A.751 and 322B.833. Both statutes give the district court discretion to "grant any equitable relief" it deems "just and reasonable in the circumstances" when it finds unfairly prejudicial conduct. Minn. Stat. §§ 302A.751, subd. 1(b)(3), 322B.833, subd. 1(1)(ii). Neither Camas nor Blue Lily challenge the district court's findings that they acted in an unfairly prejudicial manner toward Schmidt, and we conclude that the district court acted within its discretion under the statutes in awarding Blue Lily's building and fixtures to Schmidt.

Affirmed.