STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1322

Steven Paul Heng,
Appellant,

vs.

Paul Gerald Heng, et al.,
Respondents.

Filed April 8, 2013
Affirmed
Stoneburner, Judge

Red Lake County District Court
File No. 63CV1129

Kevin T. Duffy, Duffy Law Office, Thief River Falls, Minnesota (for appellant)

Michael L. Jorgenson, Charlson & Jorgenson, P.A., Thief River Falls, Minnesota (for respondents)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Crippen, Judge.*

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

STONEBURNER, Judge

Appellant challenges the order denying his motion for a continuance and granting respondents' motion in limine barring any evidence of an oral agreement between the

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

parties to convey an interest in real property. Appellant asserts that respondents' motion in limine functioned as a motion for summary judgment and did not comply with the timing requirements of a summary judgment motion, such that a continuance should have been granted. On the merits, appellant argues that because evidence of oral agreements between the parties subsequent to their written agreement shows contract modification or abandonment, the district court abused its discretion by granting the motion in limine. Because the district court did not abuse its discretion by denying appellant's motion for a continuance or by granting the motion in limine, we affirm.

FACTS

In May 2010, appellant Steve Heng (son) sued his parents, respondents Paul and Dorothy Heng (individually "father" and "mother," collectively "parents") seeking a judgment (1) declaring that an oral agreement between son and parents to convey parents' farmland to son resulted in an enforceable implied contract, (2) ordering specific performance of the implied contract, and, (3) in the alternative, awarding damages for breach of the implied contract. Son's complaint describes three parcels of farmland owned by parents and alleges that

> [i]n 1994 [son] entered into an oral agreement with [parents] where by [parents] agreed to allow [son] to farm their farmland . . . so long as he would issue them a check each year equal to their mortgage payment. . . . [Son] and [parents] further agreed once [son] paid them sufficient annual payments to pay off their mortgage that [parents] would deed the farmstead to [son], simply retaining the home and 5 acres in a life estate for [parents] until they died.

The complaint states that son relied on the oral agreement and has farmed the land, made improvements, made the annual mortgage payment on the described property through 2009, and is willing to continue making such payments. The complaint also states that father has stated that he will no longer honor their oral agreement and that son will be irreparably damaged in an amount that cannot be calculated, such that specific performance is the appropriate remedy.

Parents answered the complaint, asserting that any oral agreement for the purchase of their real estate cannot form a valid contract because it violates the statute of frauds and asserting "all affirmative defenses provided by Rule 8.03 of [Minnesota] Rules of Civil Procedure, including but not limited to the statute of limitations, statute of frauds, duress, and failure of consideration." Parents also asserted the existence of, and attached to their answer, a 1995 written lease-to-purchase agreement executed by the parties and a 2003 amendment to the written agreement. Parents denied entering into any other oral or written agreements with son concerning conveyance of any interest in their farmland. The 1995 written lease provides:

> The term of this lease shall be computed as follows: At the present time there is in existence a loan between the Lessors and Federal Land Bank, now known as AgriBank, with a current payout of approximately $92,000.00. In consideration of the Lease by the Lessors to the Lessee of the farmland, the Lessee shall pay each and every year during the duration of said loan and any refinancing of said loan thereof, the annual payment due under said loan including principal and interest due. In addition, the Lessee shall also be responsible for the payment of all real estate taxes on the farmland. . . . When the real estate loan described above has been paid in full by the Lessee, the Lessors hereby agree and covenant in exchange for the foregoing rent payments, that

> they shall convey to the Lessee free and clear of all liens the farmland subject to a payment to the Lessors in a sum equal to the appraised value of the real estate described in this lease less a twenty percent (20.0%) reduction and less the sum of Ninety-two Thousand Dollars ($92,000.00) which shall be paid to the Lessors no later than one hundred twenty (120) days upon submission of an appraisal from the Lessors to the Lessee.
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> . . . .
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> In the event the Lessee fails to pay the rent under this lease . . . the Lessors at their option may, by written notice by certified mail to the Lessee, declare this lease null and void.

The 2003 amendment, executed after parents consolidated mortgage loans, changed both references to $92,000 to $113,000, but left the remaining language unchanged and specifically stated that the amendment was made for acknowledged consideration and contained the only modifications to the 1995 agreement. Parents' answer asserts that son's payments were insufficient to cover the mortgage, and that son never paid the real estate taxes on the subject property. The answer asserts that parents, pursuant to the terms of the lease, provided written notice to son declaring the lease null and void as a result of son's defaults. Parents also asserted counterclaims against son for unlawful detainer, breach of contract, property damage, assault and battery, and unjust enrichment. Parents requested judgment dismissing son's complaint, declaring the written lease null and void, returning possession of the property to parents, and awarding damages. Son did not reply to the counterclaim and did not amend his complaint to address the written lease-to-sell agreements.

On May 8, 2012, a week before a jury trial on the dispute was scheduled to begin, parents filed a motion in limine seeking an order from the district court "excluding any

and all evidence of any alleged oral agreements that differ from the written agreements of the [p]arties, to their interest in the real estate at issue in this proceeding, and/or related to the transfer of such interests, and including references to an argument relating to such evidence." They argued that any such evidence was inadmissible parol evidence and that it was also barred by the statute of frauds. Son opposed the motion in limine. Son's affidavit, filed in opposition to the motion, asserted that the written agreement does not embody the "real" agreement between the parties, citing the conduct of the parties to support this argument. Son suggested that the parties' actions could be evidence that the written agreement was abandoned or modified. Son also asserted that he signed the 2003 amendment under duress. And son urged the district court to treat the motion in limine as a motion for summary judgment and grant a continuance to permit an adequate opportunity to respond.

The district court heard oral arguments on parents' motion in limine on the first day of trial. At the conclusion of arguments on the motion, the district court ruled from the bench. It denied son's motion for a continuance. Finding that the written agreements were unambiguous, the district court granted the motion in limine, excluding any evidence of an oral agreement between son and parents to convey the land. Because exclusion of such evidence was determinative of son's cause of action, the district court expressly directed entry of a partial final judgment against son under Minn. R. Civ. P. 54.02, allowing him to appeal immediately. The district court continued trial on parent's counter-claims until son's appeal is concluded. This appeal followed.

D E C I S I O N

I. Standard and scope of review

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997) (quotation omitted). A motion in limine is used to preclude irrelevant, prejudicial, or inadmissible evidence before it is presented to the jury. *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. App. 2003). Motions in limine are typically brought at the beginning of trial, but may also be brought during trial when evidentiary issues are anticipated by the parties. *See, e.g., State v. Smallwood*, 594 N.W.2d 144, 149 (Minn. 1999).

When a motion in limine functions as a motion for summary judgment, the motion must comply with Minn. Gen. R. Prac. 115.03 and Minn. R. Civ. P. 56.03. *Hebrink*, 644 N.W.2d at 419. A motion in limine functions as a motion for summary judgment when it makes no reference to any rules of evidence rendering the evidence inadmissible and does not argue that such evidence would be irrelevant or prejudicial. *See id.* at 418.

"The granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion." *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). "We review district court rulings on continuance and new trial motions for abuse of discretion." *Torchwood Props. LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010).

II. Motion for continuance

Son challenges the district court's denial of his motion for a continuance, arguing that parents' motion in limine was essentially a motion for summary judgment because granting it "essentially determined all the issues of law and fact in this case, thereby making it impossible for [son] to proceed with his case." Because the motion was served within one week of trial, son argued that it was untimely and that he was entitled to a continuance.

Son relies on *Hebrink* to support his argument. There, an insurance company brought a motion in limine to preclude evidence that the insured was totally disabled as defined by the policy because it was undisputed that plaintiff was not under the care of a physician for more than 90 days, as required by the policy to meet the definition of "total disability." *Hebrink*, 664 N.W.2d at 418. The district court granted the insurer's motion and sua sponte granted summary judgment to the insurer. *Id.* at 417. On appeal, this court, in relevant part, reversed the district court's grant of summary judgment, concluding that the motion in limine was essentially a motion for summary judgment, and that the district court abused its discretion by not giving appellant a "meaningful opportunity" to oppose the summary judgment motion. *Id.* at 421.

Hebrink is distinguishable from this case. In *Hebrink*, the nature of the motion in limine was found to function as a motion for summary judgment because the insurer did not make any evidentiary argument or cite any evidentiary rules in its motion. But parent's motion in limine asserts that the evidence of an oral agreement to convey land is inadmissible parol evidence and is barred by the statute of frauds. The nature of parents'

motion in limine plainly involved evidentiary issues. That the effect of the district court's order granting the motion was to eliminate son's cause of action does not convert the motion in limine into a summary judgment motion. Son's reliance on *Hebrink* is misplaced.

Son argued to the district court that a continuance was necessary to allow him to present evidence of "how the parties, through their actions and words, modified their 1995 written contract and the 2003 modification of the same." But the motion sought to exclude evidence of the oral agreement asserted in son's complaint, and parents asserted both the parol evidence rule and the statute of frauds in their answer, giving son ample opportunity to address those defenses before trial. On this record, we cannot conclude that the district court abused its discretion by denying son's motion for a continuance.

III. Motion in limine

Son also challenges the district court's grant of parents' motion in limine. The district court ordered that son was "barred from presenting any evidence of an alleged oral agreement which terms differ from that expressed in the 1995 and 2003 written agreements of the Parties," and directed partial judgment against son because the order barring the presentation of such evidence left son without a cause of action to pursue. The district court cited both the parol evidence rule and the statute of frauds as support for its decision to exclude any such evidence.

A. Statute of frauds

Under the statute of frauds, "[n]o estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any

manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless . . . by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same." Minn. Stat. § 513.04 (2012). The statute of frauds also requires that "[e]very contract for the leasing for a longer period than one year or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the lease or sale is to be made." Minn. Stat. § 513.05 (2012). "The purpose of the statute of frauds is to 'defend against frauds and perjuries by denying force to oral contracts of certain types which are peculiarly adaptable to those purposes.'" *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423 (Minn. App. 2000) (quotation omitted).

Because the alleged oral agreement involved conveyance of interests in land in the form of a lease exceeding one year followed by transfer of title, the alleged 1994 oral agreement is void as a matter of law. *See* Minn. Stat. § 513.05. Because the alleged oral agreement is void under the statute of frauds, evidence of such an agreement is not relevant, and the district court did not abuse its discretion by barring son from presenting evidence of the alleged oral agreement. *See* Minn. R. Evid. 402 ("Evidence which is not relevant is not admissible."); Minn. R. Evid. 401 (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

B. Parol evidence

Additionally, because the parties entered into unambiguous contracts concerning conveyance of interests in the land, any evidence relating to the alleged oral 1994 agreement is excluded under the parol evidence rule.

1. Unambiguous language

Contract interpretation is a question of law that we review de novo. *Valspar Revinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). We review the language of a contract to determine the intent of the parties. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 418 (Minn. App. 2008). We will not rewrite or modify a contract when the plain meaning is clear and unambiguous. *Id.* But if the contract language is ambiguous, the fact finder may consider parol evidence to determine the intent of the parties. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012). "Whether a contract is ambiguous is a question of law that we review de novo." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010).

Son and parents agree that the 1995 lease and 2003 amendment are free of ambiguity, and the district court found that the agreements are not ambiguous. Because the parol evidence rule prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements to clarify the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing, the district court did not err by concluding that the parol evidence rule bars son from presenting any evidence relating to the alleged 1994 oral agreement between the parties. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003)

(stating that the parol evidence rule bars admission of extrinsic evidence of prior or contemporaneous oral agreements to explain the meaning of a contract when the parties have reduced their agreement to an "unambiguous integrated writing").

2. Subsequent behavior

Son argues on appeal that "all parties AFTER the entry of the 1995 [written] contract, made [oral] agreements and, through their conduct, modified the 1995 contract and the 2003 addendum relating thereto." "Parol evidence may be admitted to explain the parties' conduct subsequent to the written agreement." *Alexander v. Holmberg*, 410 N.W.2d 900, 901 (Minn. App. 1987).

Son's original complaint, however, alleged only that son and parents entered into an *oral* agreement in 1994 wherein parents "agreed to allow [son] to farm their farmland . . . so long as he would issue them a check each year equal to their mortgage payment." The complaint sought a declaratory judgment "[d]etermining that there exist[s] an Implied Contract between [son] and [parents] whereby [parents] shall transfer to [son] the real property . . . upon [son] completing the annual payments on the mortgage" and "ordering specific performance by [parents] of the Implied Contract for sale with [son]."

Although son, in opposing parents' motion in limine, argued to the district court that the written contracts were modified or abandoned by the parties' conduct, son failed to amend his pleadings to include a claim of contract abandonment or modification. On appeal, son argues that he should have been given the opportunity, after parents filed their motion in limine, to amend his complaint, noting correctly that parties are allowed to amend pleadings freely "when justice so requires." Minn. R. Civ. P. 15.01.

But son never attempted to amend the complaint, and a party that "fails to take advantage of [the amendment] procedure . . . is bound by the pleadings unless the other issues are litigated by consent." *Roberge v. Cambridge Coop. Creamery Co.*, 243 Minn. 230, 234, 67 N.W.2d 400, 403 (1954). And, although son argues amendment by consent on appeal, this argument was not made to the district court. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Even if we were to consider the assertion of amendment by consent, the record in this case would not support a finding of amendment by consent. *See, e.g.*, *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267–68 (Minn. 1983) (discussing the ways in which consent to litigate unpleaded issues is commonly implied and stating that "[c]onsent is not implied by mere failure to claim surprise or request a continuance . . . . [and] litigation by consent is not to be applied artificially, but rather is to be implied where the novelty of the issues sought to be raised is reasonably apparent and intent to try these issues is clearly indicated by failure to object or otherwise") (quotation omitted); *see also Harry N. Ray, Ltd. v. First Nat'l Bank of Pine City*, 410 N.W.2d 850, 854 (Minn. App. 1987) ("Consent to litigate is implied either where a party fails to object to evidence inadmissible with respect to issues raised by the pleadings or where he puts in his own evidence relating to unpleaded issues. There is a presumption that evidence is offered and received with reference to issues framed by the pleadings and consent is not implied where evidence is actually pertinent to such issues regardless of its other probative value.") (quotation omitted).

Son is limited to presenting evidence regarding the cause of action he brought before the district court. *See In re Metro Siding, Inc.*, 624 N.W.2d 303, 308 (Minn. App. 2001) ("Where the parties have limited themselves to a specific cause of action, they cannot then admit evidence that addresses another cause of action."). Son's argument that evidence of the parties' conduct shows modification or abandonment of the 1995 contract is not relevant to his action to enforce an alleged oral agreement. And the parol evidence rule bars admission of evidence of prior or contemporaneous oral agreements contrary to the unambiguous written agreement. The district court did not abuse its discretion by granting parents' motion in limine excluding evidence of an alleged oral agreement in this case.

Son argues to this court that "[e]ven though there existed two written contracts, [son] still maintained that the actions and the oral agreements of the parties supported his claim that he was to be granted the farmland in question after he paid off the underlying mortgage. Whether [son] amended his complaint, there was no misunderstanding between the parties as to what each was claiming." He asserts that, had parents argued at the district court level that son had not amended his complaint, he would have made an oral motion to amend his complaint at the hearing. Son relies on cases in which the supreme court has upheld the district court's granting of oral motions to amend a complaint. But all of these cases are distinguished from this case because in those cases there was a motion to amend.[1]

[1] Even if son had amended his complaint, the record shows that the conduct son relies on to argue modification or abandonment of the contract took place before the 2003

3. Equitable estoppel

Son also argues that the district court should have applied the doctrine of equitable estoppel. But son did not plead equitable estoppel and did not seek to amend the pleadings to add a claim of equitable estoppel. Son's argument that equitable estoppel applies in this case is also predicated on the alternative assumption that the 1995 written lease was abandoned and equitable estoppel is required to prevent son from having "sho[t] himself in the foot" by improving the property and increasing the property value. As discussed above, however, the modification or abandonment of the 1995 lease was not at issue before the district court. The district court did not abuse its discretion by failing to apply equitable estoppel to deny parent's motion in limine.

Affirmed.

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amendment affirming all but one of the terms of the 1995 agreement. Because the evidence son relies on to assert modification or abandonment is prior or contemporaneous to the 2003 amendment, the evidence is inadmissible parol evidence. *See Alpha Real Estate*, 664 N.W.2d at 312.