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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-0694, A09-0700, A09-1693**

Sandra Grazzini-Rucki,  
Appellant (A09-694, A09-1693),  
Respondent (A09-700),

vs.

Thomas A. Grazzini, et al.,  
Respondents,

Joseph M. Grazzini, et al,  
Respondents,

Ann M. Grazzini-Dunne,  
Respondent,

GFP Co.,  
Respondent (A09-694, A09-1693),  
Appellant (A09-700),

Jefry D. Flemmer, et al.,  
Respondents,

John C. Levy, et al.,  
Respondents.

**Filed April 6, 2010  
Affirmed  
Wright, Judge**

Hennepin County District Court  
File No. 27-CV-07-24406

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Douglas R. Peterson, Wade S. Davis, Leonard, Street & Deinard, Mankato, Minnesota; and

William L. Greene, Leonard, Street & Deinard, Minneapolis, Minnesota (for respondents Jeffrey Flemmer, RSM McGladrey Inc.)

Kelly A. Putney, Robin Ann Williams, Charles E. Lundberg, Bassford Remele, Minneapolis, Minnesota (for respondents John Levy, Parsinen, Kaplan, Rosberg & Gotlieb)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Crippen, Judge.\*

## UNPUBLISHED OPINION

**WRIGHT**, Judge

In this appeal arising from a partnership dispute, appellants challenge the district court's dismissal of claims against respondents, arguing that the district court erred by (1) concluding that certain respondents were not partners and, therefore, did not owe partner-based fiduciary duties; (2) relying only on appellants' complaints in granting

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

summary judgment; and (3) dismissing unjust-enrichment claims against certain respondents. Additionally, appellants contend that the district court abused its discretion by denying their motions to amend their pleadings to include professional-malpractice claims. Finally, one appellant challenges the district court's award of costs to respondents, arguing that the district court erred in its application of law and abused its discretion by awarding unauthorized costs. We affirm.

### **FACTS**

As part of their estate plan, Albert and Nina Grazzini created a series of irrevocable minors' trusts for each of their thirteen grandchildren in January 1991. Each of Albert and Nina's<sup>1</sup> children has served as trustee for one or more of the grandchildren's trusts throughout their existence. Albert and Nina also directed the establishment of Nipoti Associates (Nipoti), a general partnership, to engage in investment activities. The parties agree that appellant Grazzini Family Partnership Co. (GFP), a separate general partnership comprising Albert and Nina's seven adult children, was one of the Nipoti partners. The parties do not agree as to the remaining Nipoti partners. Appellant Sandra Grazzini-Rucki contends that the trustees of the grandchildren's trusts were partners in Nipoti. Respondents maintain that the other Nipoti partners were the trusts themselves and not the trustees of those trusts, respondents Ann Grazzini-Dunne, Thomas Grazzini, and Claire Tucker.

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<sup>1</sup> Because many of those involved in this case share the same last name, we depart from the ordinary practice and refer to members of the Grazzini family by their first names.

Albert and Nina made a series of gifts, typically marketable securities, to the trusts of their then-living grandchildren. Between 1991 and 1997, these thirteen trusts received a total of approximately \$130,000, all of which was contributed to Nipoti. Albert and Nina did not make similar gifts to GFP. Between 1993 and 1996, three additional grandchildren were born. Albert and Nina created a trust for each grandchild and made gifts to these trusts as well. Each of these trusts became a partner in Nipoti and also contributed the gifts received from Albert and Nina to Nipoti.

In 1995, because the trusts for the younger grandchildren would not receive the same gift amounts as the trusts for the older grandchildren, which had been receiving gifts for a longer duration, Albert amended his revocable trust agreement so as to distribute as part of his estate plan the “amount necessary to equalize gifts made by the Grantor during the Grantor’s lifetime to the Grantor’s grandchildren.”

Sometime after 1997, Albert and Nina decided to stop making gifts to the grandchildren’s trusts for contribution to Nipoti. In 1998, when their seventeenth grandchild, Samantha Rucki, was born, Albert and Nina created a trust for her benefit. Although Samantha’s trust also became a partner in Nipoti, it did not receive a monetary gift from Albert and Nina. As such, Samantha’s trust did not make any capital contributions to Nipoti.

Between 1991 and 1998, Steven Schadeegg prepared tax returns for Nipoti. Prior to 1993, the date when new partners began to be admitted, all of the partners except GFP made the same capital contributions to Nipoti. And all received the same amount of partnership profits and losses. When the new partners were admitted, Schadeegg allocated

the same amount of profits and losses to all partners, even though the capital accounts for the newer partners were smaller. When Albert hired new accountants, respondents RSM McGladrey, Inc. and Jeffrey Flemmer (collectively accountant respondents), they used the same accounting method.

In December 1998, the Nipoti partners executed “Amendment No. 1” to the Nipoti partnership agreement (partnership agreement) which formally admitted the trusts of Theodore Dunne, Dallas Tucker, Nico Rucki, and Samantha Rucki, Albert and Nina’s grandchildren who were born between 1993 and 1998. Amendment No. 1 provides that the initial capital contribution of the new partners will be \$1.00, which is the same initial contribution of the original partners. Amendment No. 1 also provides that all partners will have a 5.55 percent interest in the “profits and losses of the Partnership.” This 5.55 percent interest represents a reduction from the 7.14 percent interest established in the original agreement. Amendment No. 1 also elects Ann, Thomas, and Nancy Grazzini-Olson as “Managing Partners.”

In December 1999, respondents John Levy and Parsinen, Kaplan, Rosberg, and Gotlieb (collectively attorney respondents) drafted “Amendment No. 2” to admit as partners in Nipoti the trusts of Gianna Rucki and Savanna Tucker, Albert and Nina’s grandchildren who were born in 1999. The terms of Amendment No. 2 are the same as those of Amendment No. 1 except as to the names of the new partners and the percentage interest in profits and losses, which was reduced from 5.55 to 5 percent for each partner.

Attorney Kathleen Doar, a partner at the Parsinen law firm, was asked to perform work for Nipoti in January 2000. After reviewing Amendment No. 2, Doar determined

that execution of Amendment No. 2 by trustees of the 13 original trusts would constitute a breach of their fiduciary duties to the trust beneficiaries because the trust agreements prohibit trustees from taking any action that diminishes trust assets or income for less than adequate consideration. Admitting partners without a capital contribution and allocating a portion of the existing partners' share of profits and losses without consideration, as provided by Amendment No. 2, would run counter to the trust agreements. Therefore, Doar concluded, execution of Amendment No. 2 would constitute a breach of trust. Doar opined that the same problem existed for Amendment No. 1.

Doar's law partners agreed with her analysis. Attorney respondents and accountant respondents convened a telephone conference with Ann and Thomas to discuss the two amendments. Doar's concerns were presented, and accountant respondents indicated that gift-tax problems also may result from transferring assets from the original partners to the new partners. Based on this discussion, Ann decided that Amendment No. 2 could not be executed and that Samantha's trust must be removed from Nipoti because it had not made a capital contribution. Accountant respondents subsequently calculated the amount each partner contributed to Nipoti and adjusted the capital accounts so that profits and losses for each partner were allocated in proportion to their capital contributions.

In December 2001, Ann asked Doar whether the partnership could be terminated. According to Ann, Albert had decided to stop providing gifts to fund Nipoti after 1997 and wanted to end the partnership in order to restore family harmony and to return

control of the grandchildren's trusts to their respective parents. Doar reviewed the partnership agreement and, after consulting with another attorney, advised Ann that she had the authority as managing partner to distribute the partnership's assets to the partners, which would terminate the partnership. At Ann's direction, accountant respondents calculated the distribution amounts, and the partnership assets were distributed in proportion to the capital contributions made by each partner. The trusts that did not contribute capital to Nipoti, specifically the trusts for Samantha, Savanna, Gianna, Nia Rucki, and Gino Rucki,<sup>2</sup> did not receive a distribution. Attorney respondents sent a letter to the trustees of each partner trust and GFP advising of the distribution of Nipoti's assets and the termination of the partnership. Ann also sent a letter to the trustees of the partner trusts stating that the partnership had been terminated and advising them to open brokerage accounts to receive the partnership distributions. Sandra set up a brokerage account to receive the assets of the trust for her son, Nico.

After Nipoti's termination, Ann, who now had power of attorney for Albert, contacted attorney respondents for advice about Albert and Nina making equalization gifts to the trusts for the younger grandchildren during Albert and Nina's lifetime so that the gifts could begin appreciating. Between 2003 and 2005, Albert and Nina made equalizing gifts to the younger grandchildren's trusts so that each of their grandchildren ultimately received gifts totaling \$129,855. By operation of their terms, the trusts for respondents Susan Grazzini and Christine Grazzini Bye dissolved in 2006 upon the 35th birthdays of their beneficiaries.

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<sup>2</sup> Nia and Gino were born in 2001 and 2003, respectively.

In October 2007, Sandra sued siblings Joseph Grazzini, Mary Erickson, Nancy, Ann, Thomas, and Claire; nieces Christine and Susan; accountant respondents; attorney respondents; and GFP. Sandra alleges that Ann, Thomas, and Claire “owe and owed fiduciary duties to Plaintiff in their capacities as partners of Nipoti Associates” and breached those duties by (1) dissolving Nipoti without Sandra’s knowledge or consent; (2) refusing to grant Sandra access to Nipoti records; (3) failing to inform Sandra as to Nipoti activities; and (4) improperly distributing Nipoti assets to the disadvantage of Sandra’s children’s trusts. Sandra also alleges that attorney respondents and accountant respondents aided and abetted the breaches and that Christine and Susan are liable for unjust enrichment. The complaint states that Sandra included Joseph, Mary, and Nancy as defendants because they are necessary parties, but she is not alleging any claims against them. GFP asserted cross-claims against Ann, Thomas, Claire, attorney respondents, and accountant respondents, incorporating by reference the claims in Sandra’s complaint.

In November 2008, Sandra moved to amend the scheduling order and to amend the complaint to include a claim for legal malpractice. GFP also moved to amend its cross-claims to include professional-malpractice claims against attorney respondents and accountant respondents in November 2008. Attorney respondents, accountant respondents, Ann, Thomas, Claire, Christine, and Susan moved for summary judgment as to each claim alleged against them. Following a hearing on the parties’ motions, the district court granted the motions for summary judgment, concluding that Sandra was not a partner in Nipoti and could sue only as trustee on behalf of her children’s trusts; that

Ann, Thomas, and Claire were not partners in Nipoti and, therefore, did not owe partner-based fiduciary duties; and that the aiding-and-abetting claims against attorney respondents and accountant respondents were dependent on the breach of partner-based fiduciary duties. The district court also denied Sandra's and GFP's motions to amend their pleadings to include professional-malpractice claims. This appeal followed.

## DECISION

### I.

Summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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. On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

When deciding a motion for summary judgment, it is the district court's sole function to determine whether genuine factual issues exist, not to decide issues of fact. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). It is not the district court's province to weigh the evidence when determining whether to grant summary judgment. *Id.*; see also *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423, 425 (Minn. App. 2000) (citing *DLH*, 566 N.W.2d at 70, for the proposition that “on a motion for summary judgment, the [district] court may not make factual findings that require it to weigh the evidence” and reversing in part because “[t]he district court impermissibly weighed

disputed facts in its memorandum granting summary judgment”). Rather, “[t]he evidence must be viewed in the light most favorable to the non-moving party.” *Admiral Merchs. Motor Freight, Inc. v. O’Connor & Hannan*, 494 N.W.2d 261, 265 (Minn. 1992).

#### A.

We first consider Sandra’s and GFP’s (collectively appellants) arguments that the district court erred by concluding that (1) the partnership agreement was unambiguous as to the identity of the partners and (2) respondents did not owe a partner-based fiduciary duty to Sandra or her children’s trusts. Except as otherwise provided by statute, “relations among the partners . . . are governed by the partnership agreement.” Minn. Stat. § 323A.0103 (2008). When interpreting a partnership agreement, like any other contract, its unambiguous language must be given its plain and ordinary meaning. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310-11 (Minn. 1989). Such language is ambiguous when it is reasonably subject to more than one interpretation. *Columbia Heights Motors, Inc. v. Allstate Ins. Co.*, 275 N.W.2d 32, 34 (Minn. 1979). Whether the partnership agreement is ambiguous presents a question of law, which we review de novo. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982). When ambiguity exists and construction depends on extrinsic evidence, any questions of fact must be resolved by the fact-finder. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979).

The elements of a breach-of-fiduciary-duty claim are the same as those of negligence. *Padco, Inc. v. Kinney & Lange*, 444 N.W.2d 889, 891 (Minn. App. 1989), *review denied* (Minn. Nov. 15, 1989). Specifically, the plaintiff must demonstrate the

existence of a fiduciary duty, breach of that duty, causation, and damages. *See Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 157 (Minn. 1982) (identifying negligence elements). Only a party to the partnership agreement can breach that agreement and incur liability for a breach of fiduciary duty relating to partnership obligations. *Universal Lending Corp. v. Wirth Cos.*, 392 N.W.2d 322, 326 (Minn. App. 1986).

The district court concluded that the partnership agreement unambiguously identifies the Nipoti partners as GFP and the grandchildren's trusts, not the *trustees* of those trusts. Accordingly, Sandra could sue on behalf of her children's trusts. But because Sandra, Ann, Thomas, and Claire were not partners in Nipoti, the district court concluded that Ann, Thomas, and Claire did not owe any partner-based fiduciary duties to appellants. The district court also concluded that, because appellants' aiding-and-abetting claims against attorney respondents and accountant respondents were dependant on a breach of partner-based fiduciary duties by Ann, Thomas, and Claire, attorney respondents and accountant respondents also were entitled to judgment as a matter of law.

To advance their argument that the partnership agreement is ambiguous as to the identity of the Nipoti partners, appellants rely on the opening section of the partnership agreement, which states that it is "by and between Nancy Grazzini-Olson and Mary N. Erickson, Trustees of the Susan A. Grazzini Irrevocable Minor's Trust" and then lists each of the trusts and their trustees in the same manner. According to appellants, this language illustrates that the trustees, not the trusts, were the partners.

Appellants' argument fails for several reasons. First, when interpreting the partnership agreement, we apply the plain and ordinary meaning of the language used. *Anderson v. Crestliner, Inc.*, 564 N.W.2d 218, 220 (Minn. App. 1997). That is the meaning derived by giving words "their ordinary sense, without referring to extrinsic indications of the author's intent." *Black's Law Dictionary* 1069-70 (9th ed. 2009). The opening paragraph of the partnership agreement clearly names the trusts as the partners, not the trustees. Appellants contend that language at the end of the opening paragraph explains that the references to the trusts throughout the partnership agreement are meant to refer to the trustees and do not indicate that the trusts are the partners. But this argument ignores the text of the partnership agreement, which states that the parties to the agreement will be "individually referred to generally as 'Partner,' collectively 'Partners,' and, where applicable, specifically as, for example, the 'Susan A. Grazzini Trust,' etc." The plain meaning of this language is that the trusts are the Nipoti partners. Any interpretation that the name of the trust is actually a shorthand reference to the trustee is contrary to the plain meaning of this provision.

Indeed, whenever the partners are listed in the partnership agreement, only the trusts and GFP are named; there is no reference to the trustees. Section 6, addressing partnership capital, for example, provides that "the amounts contained in the respective capital accounts of the Partners are as follows," and lists the names of each trust and GFP. The plain language of Section 6.1 makes evident that this is a complete list, providing that a capital account "shall be maintained for *each Partner*" and "shall consist of the Partners' contribution of capital, *as set forth in paragraph 6 above.*" (Emphasis

added.) This provision plainly expresses that the only Nipoti partners are those listed in paragraph 6, namely, the trusts and GFP. Section 6.3, which addresses the allocation of profits or losses, also clearly identifies the partners by listing the trusts and GFP under the heading “Partner.” Finally, the signature page lists the parties to the partnership agreement by naming each trust, followed by a signature line that is preceded by the word “By” with the name of the trustee listed below. Just as GFP, which is undisputedly a partner, signed the partnership agreement “By: Nancy Grazzini-Olson,” these trust partners signed the partnership agreement by the trustees. This manner of execution indicates that the trustees were signing on behalf of the trusts, rather than as individuals entering into the partnership agreement. Accordingly, the plain language of the partnership agreement unambiguously identifies the partners as the trusts, not the trustees in their individual capacities. Appellants’ interpretation that the trustees are the Nipoti partners cannot be reconciled with the plain meaning of the partnership agreement’s language.

Second, appellants’ contention that the partnership agreement is ambiguous because the language in the partnership agreement’s opening section implies that the trustees were the Nipoti partners lacks merit. The language that appellants identify as ambiguous is consistent with the legal doctrine that a trust acts through its trustee. *See* Minn. Stat. § 501B.81 (2008) (listing the powers of the trustee to act on behalf of the trust); Restatement (Third) of Trusts § 70 (2007) (stating that except as limited by statute or terms of the trust, a trustee has “the comprehensive powers . . . to manage the trust property and to carry out the terms and purposes of the trust”). Here, by listing

individuals as trustees of the trusts, the partnership agreement acknowledges that it is by and between the individuals *in their role as trustees*, not as individuals acting on their own behalf. *See Norwest Bank Minn. v. Ode*, 615 N.W.2d 91, 95 (Minn. App. 2000) (stating that “there is no legal relationship between the individual and the trustee. . . . [Respondent] as an individual and [respondent] as trustee do not have a legal relationship and, as a matter of law, are not in privity with each other”), *review denied* (Minn. Oct. 17, 2000). Because the individuals listed in the partnership agreement were acting as trustees, the partnership agreement is between the trusts; the trustees as individuals are not parties to the agreement. This construction is the only construction that is consistent with the plain meaning of the other provisions of the partnership agreement identifying the trusts as the partners. *See Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. App. 1988) (holding that all clauses and provisions of a contract should be construed to harmonize with one another).

Third, when construing a partnership agreement, we must avoid an interpretation that would render a provision meaningless. *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990). The partnership agreement provides that “seven (7) Partners shall be required to conduct a Partnership meeting.” When the partnership agreement was signed, the only trustees were Nancy and Mary. If the trustees, rather than the trusts, were the partners, only Nancy, Mary, and GFP would have been partners in the early stages of Nipoti. The meeting-quorum provision of the partnership agreement would be rendered meaningless under appellants’ theory of construction because there would not have been seven partners in existence.

Finally, appellants argue that language in later sections of the partnership agreement supports their contention that the trustees were the partners because this language implies that the partners were people, not legal entities.<sup>3</sup> To the contrary, consistent with the plain language of the partnership agreement in its entirety, these provisions reflect the partnership agreement's accommodation of the possibility of additional partners at some future time who are not legal entities. That the partnership agreement allows for partners that are neither trusts nor GFP does not indicate that such partners existed during the partnership. Because the plain language of the partnership agreement, when read as a whole, establishes that the trusts, not the trustees, are the partners, appellants' construction of the partnership agreement fails. *See Columbia Heights Motors, Inc.*, 275 N.W.2d at 34 (defining an ambiguous contract as one that is "reasonably subject to more than one interpretation").

After a comprehensive review of the partnership agreement's language, we conclude that the partnership agreement unambiguously defines the partners as the grandchildren's trusts and GFP, not the trustees.<sup>4</sup> Accordingly, the district court did not err by concluding that Ann, Thomas, and Claire, who were not partners, did not owe

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<sup>3</sup> For example, language in the partnership agreement states that a partner may transfer interest in the partnership by will, describes involuntary transfers upon the entry of a marriage dissolution decree, refers to life insurance on the lives of the partners, and refers to the death or adjudication of incompetency of a partner.

<sup>4</sup> We observe that, although reliance on extrinsic evidence is unnecessary because the partnership agreement's language is unambiguous as to the identity of the partners, there is ample extrinsic evidence in the record to support our conclusion that GFP and the trusts, not the trustees, were the Nipoti partners. For example, Nipoti tax records list the trusts as the partners and include Schedule K-1 forms that report each partner's share of income and identify the trust as the partner.

partner-based fiduciary duties to appellants.<sup>5</sup> Appellants' claims against Ann, Thomas, and Claire are dependent on their breach of partner-based fiduciary duties owed "in their capacities as partners." Therefore, the district court did not err by granting summary judgment in favor of these defendants.

Appellants' claims against attorney respondents and accountant respondents alleging aiding and abetting tortious conduct are derivative of the claims against Ann, Thomas, and Claire. Because these claims are contingent on a finding of tortious conduct by Ann, Thomas, or Claire, the district court properly granted summary judgment in favor of the accountant respondents and attorney respondents on the aiding-and-abetting claims.<sup>6</sup>

## B.

Appellants next argue that the district court erred by relying only on Sandra's complaint, which GFP incorporated by reference, in granting summary judgment to Ann, Thomas, and Claire because other papers before the district court demonstrated that Ann,

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<sup>5</sup> Appellants also argue that Ann owed partner-based fiduciary duties because she was a partner by virtue of her role as "managing partner." But a person does not become a partner solely by holding the title "managing partner." Rather, "[a] person may become a partner only with the consent of all of the partners," Minn. Stat. § 323A.0401(i) (2008), which is not evident here. The managing agent of a partnership has a fiduciary duty to the partnership, not to the individual partners. *Midland Nat'l Bank of Minneapolis v. Perranoski*, 299 N.W.2d 404, 414 (Minn. 1980). As such, appellants' claim against Ann under this theory also fails.

<sup>6</sup> GFP also argues that the district court erred by failing to rule that GFP has standing to sue as a partner in Nipoti. But the district court dismissed GFP's counterclaim, which had incorporated Sandra's complaint by reference, for the same reasons it dismissed Sandra's complaint. In light of the district court's ruling, GFP's standing for purposes of respondents' motions was implied, and the district court's silence on the issue is not dispositive on appeal.

Thomas, and Claire had notice that they were being sued in all capacities, “including but not limited to as trustee partners of Nipoti, trustees of possible trust partners of Nipoti, managing partners of Nipoti, and partners of a partner of Nipoti (GFP).” For example, appellants contend that (1) the pleadings of other parties alleged that the wrongdoing was committed by Ann, Thomas, and Claire acting as trustees of the trusts; (2) an expert affidavit states that the partnership agreement is ambiguous and respondents owed fiduciary duties in multiple capacities; (3) discovery encompassed all possible claims; (4) exhibits include a letter from Sandra’s attorney to adverse parties stating that she was suing in every capacity; (5) Sandra argued that the partnership agreement was ambiguous and that she was suing in every capacity in her motions to compel discovery; and (6) the district court’s protective order states that Sandra claimed that the trusts are the partners.

We first observe that, although appellants contend that the district court relied solely on the complaint in reaching its decision to grant summary judgment, the district court did, in fact, consider additional materials in the record. For example, in its summary-judgment order, the district court refers to Sandra’s subsequent submissions and to the letter from Sandra’s attorney to adverse parties that she was suing “in every capacity.”

A complaint is required to “contain a short and plain statement of the claim showing that the pleader is entitled to relief.” Minn. R. Civ. P. 8.01. Its purpose is to provide adverse parties fair notice of the theory for a claim. *Geob v. Tharaldson*, 615 N.W.2d 800, 818 (Minn. 2000). But a party is not required to name the theory for a

claim explicitly, as long as the factual allegations provide fair notice of that theory. *Barton v. Moore*, 558 N.W.2d 746, 749-50 (Minn. 1997).

Sandra's complaint stated that she was suing Ann, Thomas, and Claire in their capacities as partners in Nipoti for breach of their partner-based fiduciary duties. Specifically, Sandra's complaint alleged that they breached their fiduciary duties by (1) purporting to dissolve Nipoti without Sandra's knowledge or consent; (2) refusing Sandra access to Nipoti records; (3) failing to inform Sandra about Nipoti activities; and (4) improperly distributing Nipoti assets to the disadvantage of the trusts. These claims do not provide adequate notice that Ann, Thomas, and Claire are being sued in all of their alleged fiduciary capacities. Rather, they are consistent with the theory of a breach of "partner-based fiduciary duties," which was expressly pleaded.

The various components of the record that appellants contend provided notice largely reference their argument that the trustees are the partners and that the partnership agreement was ambiguous. But respondents' understanding that whether Ann, Thomas, and Claire were partners was a contested issue does not establish notice that appellants were asserting claims on alternative bases.

Appellants' argument claiming adequate notice based on the broad assertion in Sandra's attorney's letter that she was suing Ann, Thomas, and Claire "in every capacity" also is unavailing. This argument relies on *Howerton v. Designer Homes by Georges, Inc.*, 950 F.2d 281 (5th Cir. 1992), in which plaintiffs were permitted to amend their complaint to sue "in every capacity." As an initial matter, we observe that *Howerton* lacks precedential value because opinions from foreign jurisdictions are not binding on

this court. *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984). Moreover, its legal analysis is distinguishable. The *Howerton* court did not hold that pleading liability derived from “every capacity” was fair notice of the theory for a claim. Rather, it held that the corporate defendant, which argued that it had not been sued in its capacity as a corporation, waived that argument by failing to raise it until after the entry of judgment. *Howerton*, 950 F.2d at 283. Here, Ann, Thomas, and Claire answered the complaint by raising the defense that they were not being sued in the correct capacity because the trusts were the partners in Nipoti and fiduciary duties arose among the partners. Contrary to the facts in *Howerton*, Ann, Thomas, and Claire never waived this argument. *Howerton* is inapposite here.

From our careful review of the record, we conclude that Ann, Thomas, and Claire were not given fair notice of claims that were not pleaded in the complaint. A plaintiff is required to clearly articulate his or her claims and in what capacity he or she is suing the defendant. *See Geob*, 615 N.W.2d at 818 (requiring that adverse parties receive fair notice of the theory for a claim). Appellants failed to provide adequate notice to Ann, Thomas, and Claire that their claims against them involved their actions in any capacity other than as partners in Nipoti.

Finally, appellants contend that the proper remedy for any confusion about their claims was clarification, not dismissal with prejudice. “The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion.” *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004) (citing *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993)). The district

court determined that permitting appellants to change their legal claims from those clearly set forth in Sandra's complaint, and adopted by GFP, more than one year before the district court's ruling would not serve the interests of justice because only a few months remained before trial and appellants had made no effort to amend the complaint despite ample notice from the defense. Based on the length of time that had passed since the initiation of the case and appellants' receipt of defendants' answers, which provided clear notice of their claim of the pleadings' deficiency, the district court did not abuse its discretion by declining to permit appellants to amend their pleadings to clarify their claims or to add claims shortly before trial.

### C.

Sandra next argues that the district court erred by dismissing her unjust-enrichment claims against Susan and Christine. To prevail on an unjust-enrichment claim, the plaintiff must establish that the defendant knowingly received or obtained something of value for which the defendant "in equity and good conscience should pay." *ServiceMaster of St. Cloud v. GAB Business Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quotation omitted). An unjust-enrichment claim requires proof that a party "was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981).

There is no evidence in the record to support Sandra's claim that Susan knowingly received benefits to which she was not entitled. Thus, the district court properly granted summary judgment in favor of Susan based on Sandra's failure to produce evidence in support of this claim.

Sandra contends that Christine knowingly received more than she was entitled to receive from Nipoti and wrongfully helped Ann distribute assets while “knowing there had not been a partners’ meeting or vote.” The actions on which Sandra relies to prove Christine’s liability include typing letters, printing distribution checks, helping to set up investment accounts to receive Nipoti disbursements, and transferring stocks into the accounts. But Christine performed these actions at the direction of Ann, a Nipoti managing partner. The partnership agreement provides that the managing partner has “the authority to exercise the powers reasonably necessary to pursue the Partnership’s purposes.” And there is no evidence that Christine had any reason to believe that Ann was not authorized to direct these activities, including the distribution of Nipoti assets that benefited Christine.

Sandra contends that, under section 8.1 of the partnership agreement, a vote was required to distribute assets. But section 8.1 does not describe which partnership actions require a vote. Rather, it defines quorum and majority requirements for actions of the partnership that require “a vote or agreement.” Sandra has neither established that Ann’s activities were wrongful nor demonstrated that Christine knew that any of Ann’s activities were wrongful.

Because there is no evidence that supports Sandra’s claim that Christine knowingly received benefits to which she was not entitled, the district court properly dismissed Sandra’s unjust-enrichment claim against Christine.

## II.

Finding that it would not be fair or equitable to permit appellants to amend their pleadings after the scheduling order's deadline, the district court denied their motions to include professional-malpractice claims. Appellants contend that the district court's decision was an abuse of discretion. Because the district court has broad discretion when determining whether to grant leave to amend a complaint, we will not disturb its ruling absent a clear abuse of discretion. *Baxter*, 686 N.W.2d at 850 (citing *Fabio*, 504 N.W.2d at 761). Leave to amend should not be granted if amendment would prejudice an opposing party. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 332 (Minn. 2004). A scheduling order shall not be modified except by leave of the district court and a showing of good cause. Minn. R. Civ. P. 16.02.

Sandra argues that she had good cause to amend after the scheduling order's deadline because, after serving her expert affidavit stating the basis for a legal-malpractice claim, the Minnesota Supreme Court's decision in *McIntosh County Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538 (Minn. 2008), changed the law regarding who could bring a legal-malpractice action. But *McIntosh* "reaffirm[ed] the rule of law . . . that in order for a third party to proceed in a legal malpractice action, that party must be a direct and intended beneficiary of the attorney's services." 745 N.W.2d at 547. Moreover, *McIntosh* was decided on March 6, 2008, approximately five months *before* the amended deadline for nondispositive motions in this case. Consequently, even if *McIntosh* represented new law, rather than a reaffirmation of existing holdings, the timing of the decision does not justify Sandra's untimely motion.

Appellants also maintain that amendment of the pleadings would not prejudice attorney respondents because discovery covered all of the pertinent facts. But because the elements of legal malpractice are different from those of aiding and abetting a breach of fiduciary duty, appellants' contention fails to establish that additional discovery by attorney respondents would have been unnecessary to mount a defense. The record before us provides no basis on which to conclude that the district court abused its discretion by denying the motion to amend the pleadings to include professional-malpractice claims.

### III.

“In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred.” Minn. Stat. § 549.04 (2008). The district court found that respondents were entitled to expert witness fees, copy costs, legal research costs, and filing fees. Sandra challenges the award of costs, arguing that the district court applied an incorrect legal standard and abused its discretion by awarding costs that are not authorized by statute, rule, or established practice. We review the district court's award of attorney fees or costs for an abuse of discretion. *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

The costs at issue here were awarded under Minn. Stat. § 549.04, subd. 1, which, prior to 1983, authorized recovery of those expenses that were *necessary*. *Casey v. State Farm Mut. Auto. Ins. Co.*, 464 N.W.2d 736, 740 (Minn. App. 1991), *review denied* (Minn. Apr. 5, 1991). But in 1983, section 549.04, subdivision 1, was amended to

authorize payment of *reasonable* disbursements. *Id.* The plain language of section 549.04, subdivision 1, provides that reasonable costs are taxable. The district court did not err by applying a reasonableness standard here.

Sandra argues that computer-assisted legal-research costs are not necessary; and legal-research costs should not be taxed simply because they are performed by computer, rather than manually. As the district court found, the vast majority of legal research is now performed with computers, and law firms incur fees based on their arrangements with legal database providers. When the cost of these services has been passed along to the client as part of a fee arrangement with the client's attorney, the costs are taxable under the statute. The district court's determination that these costs are taxable was not an abuse of discretion.

Sandra next argues that, because Minn. Stat. § 357.25 (2008) provides that expert-witness fees are taxable only when the witness is "summoned or sworn and examined as an expert," the expert fees incurred here are not taxable because the experts did not testify at trial. The district court "may award just and reasonable fees for any witness 'summoned or sworn and examined as an expert.'" *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 209 (Minn. App. 2009) (quoting Minn. Stat. § 357.25). The district court also may tax costs for pretrial preparation. *Id.* We have permitted taxation of expert-witness fees even when the expert did not testify. *See id.* at 209-10 (taxing expert fees because "it would be 'misplaced' to deny these costs because the matter was resolved by summary judgment"). Thus, Sandra's argument that taxation of these costs is precluded by the statute fails.

Sandra also contends that expert fees for legal opinions are not taxable because legal opinions generally are inadmissible. *See Safeco Ins. Co. of Am. v. Dain Bosworth Inc.*, 531 N.W.2d 867, 873 (Minn. App. 1995) (stating that legal opinions generally are inadmissible), *review denied* (Minn. July 20, 1995). But the aiding-and-abetting claims alleged here concerned professional advice rendered by accountant respondents and attorney respondents regarding the partnership agreement. In support of these claims, Sandra obtained affidavits from legal and accounting experts expressing their opinions regarding her theory of liability. It, therefore, was not only reasonable, but also necessary, for accountant respondents and attorney respondents to retain legal experts to examine and rebut the opinions of Sandra's experts. *See Blatz v. Allina Health Sys.*, 622 N.W.2d 376, 388 (Minn. App. 2001) (stating that "whether expert testimony is required depends on the nature of the question to be decided" and that expert testimony generally is required to decide claims "predicated on conduct subject to a professional standard of care"). Taxation of these expert fees was not erroneous.

Sandra also asserts that, because one of the experts submitted an affidavit after the deadline for disclosure of expert opinions, "it is likely" the district court would not have admitted his testimony. The mere possibility that the district court may not have admitted the testimony had the case proceeded to trial does not establish that the district court abused its discretion by finding that these costs were taxable as reasonable expenses.

Sandra next argues that, because the district court granted summary judgment based only on its reading of the complaint and the partnership agreement, discovery and

expert witnesses were unnecessary. Although the case ultimately was dismissed based on the lack of fiduciary duty owed under the unambiguous terms of the partnership agreement, there is no basis to conclude that respondents acted unreasonably by preparing for and defending all claims against them through the use of discovery and by obtaining expert-witness affidavits. Indeed, this course of action was both reasonable and prudent. To have waited until after the district court's summary-judgment ruling would have been improvident. The district court's taxation of costs as reasonable was not an abuse of discretion under the circumstances presented.

Finally, Sandra contends that, because Minn. Stat. § 357.315 (2008) permits taxation of copy charges only for reasonable costs of exhibits, other copy charges are overhead and not taxable. Section 357.315 provides that “[t]he cost of obtaining medical records used to prepare a claim, whether or not offered at trial, and the reasonable cost of exhibits shall be allowed in the taxation of costs.” Minn. Stat. § 357.315. Section 357.315 addresses the cost of exhibits, but it does not address or limit the taxation of copy costs in general. The record establishes that this case is particularly document intensive, involving 15 parties and seven law firms. It required the production of thousands of pages of documents and service of many of those documents on the other parties. Based on the nature of this case, the district court's determination that these costs were reasonable was neither contrary to law nor an abuse of discretion.

**Affirmed.**