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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1198**

Ethylon B. "E.B." Brown, et al.,
Appellants,

vs.

Jordan Area Community Council, et al.,
Respondents,

Don Samuels, et al.,
Respondents.

**Filed July 2, 2012
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-09-2277

Jill Clark, Jill Clark, LLC, Golden Valley, Minnesota (for appellants)

Diane Bratvold, David A. Schooler, Michael C. Wilhelm, Briggs and Morgan, P.A.,
Minneapolis, Minnesota (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellants, 14 former officers, directors, and members of the Jordan Area
Community Council (JACC), challenge the district court's summary-judgment dismissal

of their breach-of-fiduciary-duty, equitable-relief, and breach-of-contract claims against respondents, the JACC and four of its current officers. Because we conclude that the district court did not err by dismissing appellants' claims, we affirm.

FACTS

JACC is a neighborhood nonprofit corporation whose purpose is "to organize people, knowledge and capital for the collective empowerment of the Jordan Neighborhood residents." JACC is governed by an 11-person board of directors and a 6-person board of officers. Prior to January 2009, JACC was controlled by a board of directors that included appellants E.B. Brown, Benjamin Myers, Bob Scott, and Shannon Hartfiel. This board was referred to by the parties and the district court as the "Myers board." Pursuant to JACC's bylaws, an annual meeting was held in October 2008, at which JACC members expected to vote on open board positions. But at the meeting, a majority of the membership voted to postpone elections until January 12, 2009. In the interim, an officer election was held. The officers elected included appellants Brown, Myers, Scott, and Hartfiel.

On January 12, 2009, the election was held for six open board positions. Two of the vacancies were filled by respondents Robert Hodson and Anne McCandless. The new board was referred to by the parties and the district court as the "McCandless board." After the election, a physical fight broke out between appellant Jerry Moore, JACC's Executive Director, and two members of the McCandless board. The fight ended when Moore punched a board member with a closed fist.

Two days later, the McCandless board voted to reopen the officer elections. The officers elected were respondents Browne, Hubbard, Hodson, and McCandless. The McCandless board also voted to terminate Moore for his conduct following the January 12 meeting. The board mailed a letter to Moore on January 14, stating: “[Y]our employment is hereby terminated because of your misconduct following the JACC election meeting on January 12, 2009.”

After Moore was fired, some JACC property disappeared, and appellant Myers, who was no longer an officer, continued to write checks on JACC’s checking account. To halt the check-writing process, the McCandless board changed the signatories on the account. Thereafter, the McCandless board held regular monthly meetings.

On January 28, 2009, appellants sued respondents. As related to respondents, appellants sought equitable relief under the Minnesota Nonprofit Corporation Act, Minn. Stat. §§ 317A.001-.909 (2010), and claimed intentional interference with contract, breach of fiduciary duty, and breach of written contract. Appellants also moved the district court for a temporary restraining order to invalidate the January 12 election.

The district court denied the temporary restraining order, and appellants moved for a temporary injunction. After a nine-day evidentiary hearing, the district court denied the temporary injunction. Both appellants and respondents moved for summary judgment. The district court granted respondents’ motion and denied appellants’ motion, dismissing all of appellants’ claims against respondents. Respondents applied for taxation of costs and disbursements and attorney fees under Minn. Stat. § 317A.751, subd. 8, which the district court awarded. This appeal follows.

DECISION

A motion for 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 an appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erroneously applied the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

I.

Appellants argue that the district court erred by dismissing their fiduciary-duty claims based on a determination that they are derivative—a ground that the district court noted was “not directly argued” by respondents. Without citing any legal authority, appellants argue that the district court “should have allowed [them] to brief the derivative issue” before dismissing the claims.

When material facts are not in dispute, the district court can dismiss legally meritless claims. *Cf. Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445 n.1 (Minn. App. 2001) (“A court may, sua sponte, grant summary judgment if under the same circumstances it would grant a party’s motion for summary judgment.”); *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 280, 230 N.W.2d 588, 591-92 (1975) (stating that the authority to sua sponte grant summary judgment “is derived from the inherent power of the trial court to dispose summarily of litigation when there remains no genuine issue as to any material fact and judgment must be ordered for one of the parties as a

matter of law”). As the district court determined, appellants’ fiduciary-duty claims were not properly raised in a derivative action. *See Nw. Racquet Swim & Health Clubs, Inc. v. Deloitte & Touche*, 535 N.W.2d 612, 617 (Minn. 1995) (observing that the general rule is that “an individual shareholder may not assert a cause of action that belongs to the corporation” and that “redress must be sought in a ‘derivative’ action on behalf of the corporation rather than in a direct action by the individual shareholder”). Because the claims were not properly raised, the district court did not err by dismissing them. We also observe that the district court dismissed the claims on their merits as well, holding:

The Court . . . concludes that were it to reach the substance of the fiduciary duty claim it would accord [appellants] no remedy. The undisputed evidence establishes that both [appellants] and [respondents] used determined effort to take the organization in the direction they viewed as in its best interest, while facing opposition that felt equally strongly about controlling JACC. The substantial and voluminous evidence in this case undoubtedly establishes a dispute over how JACC should be run and who should run it, but such evidence primarily concerns differences in business judgment and decisions made to get the organization back on track in a situation where it was already in continuing violation of its own bylaws.

Because there are no genuine issues of material fact regarding these claims, and because they were not properly raised, and they are meritless, the district court did not err by dismissing appellants’ fiduciary-duty claims.

II.

Appellants argue that the district court erred by denying equitable relief. The Minnesota Nonprofit Corporation Act permits the district court to “grant equitable relief it considers just and reasonable in the circumstances.” Minn. Stat. § 317A.751, subd. 1.

It provides more specifically that “[a] court may grant equitable relief . . . when it is established that . . . the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.” *Id.*, subd. 3(2). But equitable relief is only appropriate when there is no adequate remedy at law available. *Stocke v. Berryman*, 632 N.W.2d 242, 245-46 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2011). Absent a clear abuse of discretion, we will not reverse the district court’s decision to deny equitable relief. *Id.* at 245.

Appellants argue that equitable relief is warranted because the directors in control of the organization acted fraudulently, illegally, and in an unfairly prejudicial manner. *See* Minn. Stat. § 317A.751, subd. 3(2). Specifically, appellants allege that it was “deceitful” (and therefore unfairly prejudicial) “for directors to trick attendance at a meeting, not notifying that they planned an ouster.” Appellants also argue that holding a telephonic meeting (one day after the contested election) violated the corporate bylaws and was therefore illegal and that numerous acts and omissions constituted illegal, fraudulent conduct. The specific relief that appellants sought ranged from asking the district court to invalidate the January 14 officer elections to voiding all checks issued by the current JACC officers.

The district court determined that equitable relief is not warranted. The district court reasoned that “the regularly scheduled board and officer elections obviated any need for judicial intervention in the operation of the corporation.” It stated that “[i]n light

of all the facts, the Court concludes that no intervention is warranted.” The district court also observed:

[D]uring the pendency of this matter, JACC held a new round of regularly scheduled board and officer elections, which provided the membership an opportunity to weigh in on the dispute over control of the organization. A majority of the board seats were up for election. In the Court’s view this governance dispute is better left to the processes provided by JACC’s bylaws, which provided natural remedies to [appellants].

The district court did not abuse its discretion by denying equitable relief.

III.

Moore argues that the district court erred by dismissing his breach-of-contract claim. “A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). The district court dismissed Moore’s breach-of-contract claim for failure to submit evidence sufficient to establish the essential element of breach. Moore challenges the district court’s determination on procedural and substantive grounds.

Procedurally, Moore argues that, because JACC never moved for summary judgment on the breach-of-contract claim, the district court “lacked the authority to dismiss a claim that [JACC] did not move to dismiss.” This argument has no merit because Moore moved for summary judgment on the claim, representing that the material

facts were undisputed and that JACC breached the contract as a matter of law. The district court did not err by ruling that the contract was not breached as a matter of law.

Substantively, Moore argues that the district court “failed to apply the specific language of [the employment] contract” when ruling that there was no breach. This argument also lacks merit. The district court observed the following specific language from the written contract: “Upon cancellation, JACC must disclose to Executive the act or omission upon which the cancellation of this Agreement is based.” Observing that “[t]he contract had no specificity requirement,” the district court concluded that JACC’s letter to Moore, indicating that Moore’s employment was being terminated “because of [Moore’s] misconduct following the JACC election meeting on January 12, 2009” satisfied the requirement of disclosure because the letter stated “the act” on which the termination was based. Moore’s assertion that JACC was required to include more detail about the nature of the act is without support.

IV.

Appellants argue that the district court erred by awarding attorney fees, costs, and disbursements under Minn. Stat. § 317A.751, subd. 8, which provides: “If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorneys fees and disbursements, to any of the other parties.” The district court found that “[appellants’] conduct in bringing this lawsuit support[s] a finding that [they] have acted in a manner not in good faith in bringing some or all of their claims against [respondents],” and awarded respondents \$15,000 in attorney fees and \$25,887.37 in

costs and disbursements. We review a district court's decision to award attorney fees, costs, and disbursements under an abuse-of-discretion standard. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987) (attorney fees); *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006) (costs and disbursements), *review denied* (Minn. Aug. 23, 2006).

We first address appellants' contention that the district court failed to consider their objections to the costs. Appellants were required to file written objections to costs and disbursements within seven days of respondents' submission of their sworn application for costs and disbursements. Minn. R. Civ. P. 54.04(c). Appellants never made written objections. Because they did not properly object, they have waived the issue on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Appellants also cite no legal authority in support of their argument that the costs and disbursements awarded are inappropriate.

Appellants argue that the district court's award of attorney fees is "so vague as to be meaningless." The district court's finding that not all of appellants' claims were brought in good faith is supported by the record. After nine days of evidentiary hearings, appellants were unable to support a single claim. Moreover, aside from asserting unsupported claims, there is evidence in the record of misconduct by appellants. The district court found "that at least one [appellant] had a hand in obstructing the work of the JACC board and in violating the JACC bylaws, precipitating many of the actions that [appellants] now complain of," and that "[a]fter the [contested election], certain JACC property became missing. The property includes a JACC checkbook, computers, a

printer, and certain business documents (such as donor contracts). Benjamin Myers wrote two checks on the JACC account after [the contested election].” On this record, the district court did not err by finding bad faith.

Appellants also argue that the award of \$15,000 is “excessive.” Respondents requested \$191,153 in attorney fees. These fees were incurred over more than one year of litigation, which culminated in a nine-day evidentiary hearing. After reviewing the record, and, in particular, respondents’ attorney’s affidavit explaining his attorney fees, we conclude that the district court’s award of \$15,000 is not excessive. Appellants also assert, without citation to the record or legal support, that “[t]here were numerous unnecessary motions and hearings, and Respondents protracted the litigation. It is [appellants] who should be awarded fees.” We find no support for these assertions.

V.

Appellants waived the legal issue of whether respondents’ attorney had a conflict of interest in representing JACC and its officers. Appellants did not properly raise the issue to the district court or brief the issue on appeal. *See id.* (holding that an appellate court will not consider matters not argued to district court); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived).

Affirmed.