STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0960

Deutsche Bank National Trust Company
as Trustee for HSI Asset Securitization Corporation,
Appellant,

vs.

Wayne F. Wilson, et al.,
Respondents.

Filed February 3, 2014
Affirmed
Johnson, Judge
Concurring in part and dissenting in part, Hooten, Judge

Olmsted County District Court
File No. 55-CV-11-3229

Thomas B. Olson, Jacqueline M. Rubi, Olson & Lucas, P.A., Edina, Minnesota (for appellant)

John C. Beatty, Jennifer M. Peterson, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Smith, Judge.

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

JOHNSON, Judge

Deutsche Bank National Trust Company holds a mortgage that describes one parcel of land as security for a loan. The bank commenced this case to reform the mortgage so that it also describes an adjoining parcel of land as security for the loan. After a court trial, the district court entered judgment for the borrowers on the ground that the bank failed to prove the elements of a reformation claim. We affirm.

FACTS

Wayne F. Wilson and Mary J. Wilson reside in rural Olmsted County near the city of Eyota. They own two adjacent parcels of land. Parcel 1 contains their homestead and consists of 3.86 acres; Parcel 2 is unimproved except for one outbuilding and consists of 13.22 acres. The Wilsons purchased Parcel 1 in 1976 and Parcel 2 in 1979. Each parcel has a unique property-identification number and a unique legal description.

In 2005, the Wilsons contacted Option One Mortgage Corporation for the purpose of refinancing existing debts. In September 2005, Option One lent money to the Wilsons, and the Wilsons executed a mortgage to secure their repayment of the loan. The mortgage states the amount of the loan as $280,250. Before the closing, an appraiser valued the Wilsons' property at $305,000.

In April 2009, Option One assigned the mortgage to Deutsche Bank National Trust Company. In May 2009, the Wilsons stopped making payments on the loan.

In May 2011, Deutsche Bank commenced this action. Deutsche Bank's three-page complaint alleges that Option One and the Wilsons intended that the mortgage

would encumber both Parcel 1 and Parcel 2 as security for the loan. The complaint further alleges that, due to a scrivener's error, the legal description of the property encumbered by the mortgage is the legal description of Parcel 2 only. In its prayer for relief, Deutsche Bank requested an order reforming the legal description of the property secured by the mortgage loan so that the mortgage would describe both Parcel 1 and Parcel 2. Deutsche Bank's complaint does not allege that the mortgage would be ineffective with respect to Parcel 1 in the event of a foreclosure. The complaint simply states that the legal description of the property described in the mortgage is the legal description for Parcel 2 only, and Deutsche Bank seeks to reform the legal description so that the mortgage describes both Parcel 1 and Parcel 2.

The Wilsons did not respond to the complaint, and the district court entered default judgment in favor of Deutsche Bank. The Wilsons later moved to vacate the judgment, and the district court granted the motion. Deutsche Bank then moved for summary judgment. The district court denied the motion on the ground that "reasonable minds could reach different conclusions regarding the intentions of the parties."

The case was tried to the court on one day in December 2012. Deutsche Bank presented only one witness, the appraiser. Wayne Wilson testified on his own behalf and on behalf of his wife. In March 2013, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court found in favor of the Wilsons and entered judgment accordingly.

In April 2013, Deutsche Bank requested leave to bring a motion for reconsideration. *See* Minn. R. Gen. Prac. 115.11. Deutsche Bank sought, among other

things, an amended order correcting paragraphs 10 and 13 of the district court's order. The district court denied the request but, on its own initiative, corrected a clerical error in paragraph 10 of its order. *See* Minn. R. Civ. P. 60.01. In May 2013, the district court issued its amended findings of fact, conclusions of law, and order for judgment, and again entered judgment in favor of the Wilsons. Deutsche Bank appeals.

D E C I S I O N

I. Paragraph No. 13

Deutsche Bank first argues that the district court erred in paragraph 13 of its amended order by making the following finding: "Plaintiff seeks reformation of the mortgage. Specifically, it seeks to add *Tax Parcel 2* as security for the mortgage note." (Emphasis added.) Deutsche Bank contends that the second sentence is inaccurate because Deutsche Bank sought to add the legal description of Parcel 1, not Parcel 2.

In response, the Wilsons agree that paragraph 13 of the district court's amended order is erroneous in its reference to Parcel 2 instead of Parcel 1. But the Wilsons also argue that the error is harmless because it does not affect the district court's decision or its judgment.

We agree that the inaccuracy in paragraph 13 of the amended order is inconsequential. The inaccurate statement is not a finding of fact but, rather, a restatement of Deutsche Bank's claim for relief. The remainder of the district court's findings and legal analysis reveals that the district court properly understood Deutsche

Bank's claim and argument. The inaccurate statement in paragraph 13 did not influence the district court's decision in any way.[1]

Thus, the district court erred, but its error is a harmless error, which does not provide this court with a reason to grant appellate relief. *See* Minn. R. Civ. P. 61; *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985).

II. Reformation by Adding Parcel 1

Deutsche Bank's primary argument is that the district court erred in its findings of fact and conclusions of law with respect to its reformation claim. Deutsche Bank contends that its evidence clearly and convincingly established the elements of a claim of reformation.

In a civil case tried without a jury, this court applies a clearly erroneous standard of review to a district court's findings of fact. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). We will not reverse a district court's findings "due to mere disagreement," *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999), or because we might have made different findings, *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 780 (Minn. 1989). We also will defer to a district court's credibility determinations because a district court is in a better position to evaluate the credibility of

[1]We also note, for the convenience of the parties, that the district court's order does not accurately state the legal description of Parcel 2, apparently due to a clerical error in transcribing the parties' pleadings and arguments. Again, the mistaken description did not influence the district court's decision in any way, but we note, for future purposes, that the mistaken description was mistakenly transcribed again in appellant's brief.

witnesses. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We will conclude that a district court's findings of fact are clearly erroneous only if we are "left with the definite and firm conviction that a mistake has been made." *Goldman*, 748 N.W.2d at 284 (quotation omitted).

The doctrine of reformation allows a district court to alter or amend a written agreement to reflect the parties' true intentions at the time they entered into the agreement. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011); *Jablonski v. Mutual Serv. Cas. Ins. Co.*, 408 N.W.2d 854, 857 (Minn. 1987). "[R]eformation of a written agreement is available when parties reached an agreement, attempted to reduce it to writing, but failed to express [the agreement] correctly in the writing." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 779 N.W.2d 865, 870 (Minn. App. 2010), *aff'd*, 795 N.W.2d 855 (Minn. 2011). To prevail, a plaintiff seeking reformation must prove the following elements of the claim:

> (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.

Nichols v. Shelard Nat'l Bank, 294 N.W.2d 730, 734 (Minn. 1980). The plaintiff must prove each element of a reformation claim "by evidence which is clear and consistent, unequivocal and convincing." *Id*.

In this case, the district court concluded that Deutsche Bank failed to satisfy its burden of proof with respect to the first and third elements of its reformation claim. Deutsche Bank challenges the district court's findings with respect to both of those elements and argues further that correct findings of fact would compel a judgment in its favor.

A. First Element: Valid Agreement

To prevail, Deutsche Bank must establish the first element of its reformation claim by proving that "there was a valid agreement between the parties expressing their real intentions." *See id.* at 734. The district court made two findings relevant to the first element. First, the district court found that Deutsche Bank failed to establish the first element of its reformation claim because it did not introduce any evidence about Option One's intention with respect to which parcel or parcels should be described in the mortgage. Second, the district court found that the Wilsons intended for the mortgage to be secured by only one parcel, Parcel 1. The district court also reasoned, in the alternative, that even if Option One intended for the mortgage to be secured by two parcels, as Deutsche Bank argued, a valid agreement still would be lacking because Option One and the Wilsons did not have a "meeting of the minds."

The district court's first finding is supported by the evidentiary record. The parties to the mortgage were the Wilsons, as mortgagors, and Option One, as mortgagee. Deutsche Bank did not call as a witness any employee or former employee of Option One. Deutsche Bank called the appraiser, who testified that his 2005 appraisal encompassed both parcels. But on cross-examination, he admitted that he did not have

any information about the communications between Option One and the Wilsons and, thus, had no knowledge of their agreement or their respective intentions. Deutsche Bank contends that the district court should have considered "the documentary evidence of the parties' intent" and "the parties' conduct." This contention inevitably leads back to the mortgage itself, which does not support Deutsche Bank's position, as demonstrated by the fact that Deutsche Bank commenced this action for the purpose of reforming the mortgage. Thus, the district court did not clearly err by refraining from making a finding as to Option One's intention in the absence of any evidence on that issue.

The district court's second finding also is supported by the evidentiary record. Wayne Wilson testified that he and his wife intended to encumber only Parcel 1 and that they talked about such a mortgage with the mortgage broker. Wayne Wilson further testified that he and his wife made a conscious decision to encumber only Parcel 1 because they wanted to keep Parcel 2 unencumbered and because it was unnecessary to encumber it. The district court expressly found Wayne Wilson's testimony to be credible in light of "his manner, frankness, sincerity, believability, and the reasonableness of his testimony." We must defer to that credibility determination. *Carpenter ex rel. Carpenter v. Birkholm*, 242 Minn. 379, 386-87, 65 N.W.2d 250, 254 (1954). Thus, in light of Wayne Wilson's credible testimony, the district court did not clearly err by finding that the Wilsons intended to secure the mortgage with only one parcel, Parcel 1.

The district court's alternative reasoning also is a valid ground for rejecting Deutsche Bank's reformation claim. For purposes of its alternative reasoning, the district court assumed without deciding that Deutsche Bank could establish that Option One

intended to encumber both parcels, but reasoned that Deutsche Bank still would be unable to prove a valid agreement because Option One's intention differed from the Wilsons' intention. To prevail, Deutsche Bank must prove that "there was a valid agreement between the parties expressing their real intentions." *Nichols*, 294 N.W.2d at 734. To establish a valid agreement, Deutsche Bank must prove that there was "an acceptance" that was "'coextensive with the offer.'" *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008) (quoting *Podany v. Erickson*, 235 Minn. 36, 38, 49 N.W.2d 193, 194 (1951)), *review denied* (Minn. Jan. 20, 2009). In light of the district court's finding that the Wilsons intended to encumber only Parcel 1, Deutsche Bank could not establish the first element by proving that Option One intended to encumber both parcels because such proof would create an inconsistency between Option One's intention and the Wilsons' intentions. Thus, the district court's alternative reasoning is legally correct.

It is apparent from our review of the evidentiary record that Deutsche Bank's reformation claim was a difficult one to prove because several documents that were admitted as trial exhibits are either ambiguous or inconsistent with each other. The Wilsons' loan application contains only a street address, which would encompass both Parcel 1 and Parcel 2. The appraiser's notes and report appear to refer to both parcels. A title-insurance commitment describes only Parcel 2. The mortgage itself includes the street address and both property-identification numbers but the legal description for only Parcel 2. The assignment of the mortgage includes the legal description for only Parcel 1. In light of the exhibits and testimony introduced into the evidence, it would have been

difficult for the district court to agree with Deutsche Bank's contention that both parties intended to encumber both parcels of land.

B. Third Element: Mutual Mistake

To prevail, Deutsche Bank also must establish the third element of its reformation claim by proving that the failure of the parties' written instrument to express their true intentions "was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party." *See Nichols*, 294 N.W.2d at 734. Deutsche Bank seeks to establish a mutual mistake but does not seek to prove fraudulent or inequitable conduct.

A mutual mistake exists if "both parties agree as to the content of the document but . . . through a scrivener's error the document does not reflect that agreement." *Id*. Deutsche Bank's evidence cannot establish a mutual mistake because, based on its theory of the case, Deutsche Bank cannot prove that Option One and the Wilsons had the same intention. As described above, Deutsche Bank sought to prove that Option One intended to encumber both parcels, but the district court found that the Wilsons intended to encumber only one of those parcels. Given those facts, there could be no mutual mistake.

Thus, the district court did not clearly err in its findings of fact. In light of the district court's findings, the district court did not err in its legal conclusion that Deutsche Bank failed to establish its reformation claim.

III. Reformation by Substituting Parcel 1 for Parcel 2

In the alternative, Deutsche Bank argues that the mortgage should be reformed to describe Parcel 1 but not Parcel 2. Deutsche Bank's brief states, "This Court has yet

another option to grant equitable relief to Deutsche Bank by replacing [Parcel 2] on the reformed Mortgage with [Parcel 1]."

In response, the Wilsons argue that this argument is not properly before this court because it was not presented to the district court and is being raised for the first time on appeal. The Wilsons are correct. Deutsche Bank's complaint alleges that both parties intended the mortgage to describe both parcels. Deutsche Bank's complaint seeks only one form of relief: reformation of the mortgage so that its legal description of the property securing the loan contains the legal descriptions of both Parcel 1 and Parcel 2. That is the relief Deutsche Bank sought at trial. Deutsche Bank's post-trial memoranda and proposed findings sought to persuade the district court to reform the mortgage in only one way: to describe both Parcel 1 and Parcel 2. Deutsche Bank did not present an alternative theory to the district court that would have allowed the district court to reform the mortgage in any other way.

This court recently reviewed the well-established caselaw concerning the preservation of appellate arguments:

> It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court. *See, e.g.*, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Furthermore, an appellant may not "obtain review by raising the same general issue litigated below but under a different theory." *Id.* (citing *Pomush v. McGroarty*, 285 N.W.2d 91, 93 (Minn. 1979)) . . . . As a consequence, this court may consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thayer v. American Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982).

Doe ex rel. Doe v. Columbia Heights Sch. Dist., ____ N.W.2d ____, ____, No. A13-0768, slip op. at 8 (Minn. App. Jan. 21, 2014). We noted in *Doe* that the supreme court has reiterated and applied this preservation requirement on multiple occasions. *Id.* at 9 n.1 (citing cases). We further explained that the purpose of the preservation requirement is to "prevent[] litigants from suffering unfair surprise at the appellate level if they had no opportunity to address the issue in the district court." *Id.* at 10 n.1 (citing *Singleton v. Wulff*, 428 U.S. 106, 120, 96 S. Ct. 2868, 2877 (1976)). We also noted that the preservation requirement "avoids 'frequent[] remand[s] for additional evidence gathering and findings,' serves the 'need for finality in litigation and conservation of judicial resources,' and prevents appellate courts from frequently 'hold[ing] everything accomplished below for naught.'" *Id.* (alterations in original) (quoting *Lyons v. Jefferson Bank & Trust*, 994 F.2d 716, 721 (10th Cir. 1993). We noted further that a "'contrary rule could encourage a party to "sandbag" at the district court level, only then to play his "ace in the hole" before the appellate court.'" *Id.* (quoting *von Kerssenbrock-Praschma v. Saunders*, 121 F.3d 373, 376 (8th Cir. 1997)).

In its reply brief, Deutsche Bank asserts three reasons why this court should consider its alternative reformation theory despite the principles discussed above. First, Deutsche Bank contends that it preserved its alternative theory by raising it at the summary-judgment stage of the case. Deutsche Bank relies on three sentences in its reply memorandum in support of its summary judgment motion, in which it suggested that the district court should grant partial summary judgment with respect to Parcel 1.

But Deutsche Bank does not seek appellate review of the denial of its summary-judgment motion. *See Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 917-19 (Minn. 2009) (holding that appellant may not obtain appellate review of denial of summary-judgment motion after jury trial). More importantly, Deutsche Bank did not present its alternative reformation theory to the district court at trial. Thus, Deutsche Bank cannot raise the alternative theory in an appeal from the district court's post-trial decision. *See Toth v. Arason*, 722 N.W.2d 437, 442-43 (Minn. 2006) (refusing to consider alternative argument not presented to district court in court trial).

Second, Deutsche Bank contends that its alternative reformation theory is merely a "refinement" of the argument it presented to the district court at trial, not an argument that is "different in kind." *See Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 522-23 (Minn. 2007); *Kremer v. Kremer*, 827 N.W.2d 454, 461 (Minn. App. 2013), *review denied* (Minn. Apr. 16, 2013). This contention is an inaccurate characterization of the two theories. The alternative relief that Deutsche Bank seeks on appeal is meaningfully different from the relief it sought at trial. The two alternative formulations of the legal description that Deutsche Bank raised on appeal are different from each other for essentially the same reason that each is different from the mortgage as written. Deutsche Bank's contention that the two alternative legal descriptions are not different from each other is inconsistent with the premise of its entire case: that the existing legal description is inaccurate and, thus, that reformation is necessary.

Third, Deutsche Bank contends that this court should consider its alternative theory on appeal for the first time in "the interest of justice." *See* Minn. R. Civ. App. P.

103.04. This provision of the rules of appellate procedure may allow an exception to the preservation rule in limited circumstances. *See Schober v. Commissioner of Revenue*, 778 N.W.2d 289, 294 (Minn. 2010); *Doe*, slip op. at 13-16. We decline to apply the exception in this case. Deutsche Bank had every opportunity at the commencement of the case to seek reformation so that the mortgage would describe only Parcel 1. Deutsche Bank could have pleaded that type of reformation by itself or in the alternative. *See* Minn. R. Civ. P. 8.05(b). But Deutsche Bank did not do so. Furthermore, Deutsche Bank could have sought to amend its complaint to make additional allegations and to seek additional forms of relief. *See* Minn. R. Civ. P. 15.01. Again, Deutsche Bank did not do so. Moreover, Deutsche Bank tried the case to the district court with only one theory of relief: that the mortgage should be reformed to state the legal descriptions of both Parcel 1 and Parcel 2. *See* Minn. R. Civ. P. 15.02. Not until this appeal, after retaining new counsel, did Deutsche Bank present its alternative theory. The trial already has occurred; the relevant witnesses already have testified; and the district court already has considered and resolved the arguments presented, made findings of fact and conclusions of law, and entered judgment. It is too late in the judicial process for Deutsche Bank to present its alternative theory of reformation for the first time. Thus, we decline to consider it in the interest of justice.

Deutsche Bank does not contend that this court should consider its alternative reformation theory for the first time on appeal on the ground that reformation is an equitable doctrine. The court is not aware of any authority for the proposition that equitable claims are exempt from the rules of pleading. Such a proposition would be

inconsistent with the fact that, since no later than 1951, legal claims and equitable claims have been merged together into "one form of action . . . known as [a] 'civil action,'" which is governed by the Minnesota Rules of Civil Procedure. *See* Minn. R. Civ. P. 2; *see also* Minn. Gen. Stat. ch. 66, § 1 (1866) (abolishing "distinction between actions at law, and suits in equity" in favor of "one form of action . . . called a civil action"). Furthermore, the court is not aware of any authority for the proposition that equitable claims are exempt from the preservation rule. In fact, this court has applied *Thiele* and its progeny to preclude consideration of equitable arguments that were raised for the first time on appeal. *See, e.g.*, *Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 762 (Minn. App. 2013) (declining to consider equitable-tolling argument), *review denied* (Minn. Sept. 17, 2013); *Greuling v. Wells Fargo Home Mortg., Inc.*, 690 N.W.2d 757, 762 (Minn. App. 2005) (declining to consider equitable-estoppel argument). Moreover, there does not appear to be any authority for the proposition that a district court may award equitable relief that was neither included in the pleadings nor requested at trial. In *Claussen v. City of Lauderdale*, 681 N.W.2d 722 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004), we stated merely that "we will assume for the purposes of this appeal" that it is so. *Id.* at 726. Finally, even if a district court may grant equitable relief that was not pleaded and not requested at trial, there is no authority whatsoever for the proposition that a district court commits reversible error by not doing so *sua sponte*.

Affirmed.

HOOTEN, Judge (concurring in part, and dissenting in part)

I concur with the majority that the following district court findings are not clearly erroneous: respondents-Wilsons owned two adjoining parcels of land; Parcel 1 is 3.86 acres and includes homestead improvements; Parcel 2 is 13.22 acres and is unimproved except for one outbuilding; the Wilsons secured financing on both parcels on multiple occasions; the Wilsons refinanced their debts with Option One; the loan application does not include a legal description of the property to be encumbered, but includes an address that the Wilsons use for both parcels; the appraisal references both parcels; the Wilsons granted a mortgage to Option One for $280,250; the mortgage recorded in the county recorder's office contains the legal description for Parcel 2; the assignment to appellant-Deutsche Bank contains the legal description for Parcel 1; the Wilsons intended the mortgage to encumber Parcel 1; and "[i]n dispute is what parcel, or parcels, the parties intended to secure with [the Option One] financing."

But because the district court clearly erred by finding that the record is devoid of Option One's intent regarding the mortgage security, abused its discretion by not making a factual finding relative to Option One's intent, and erred in failing to appreciate its authority and responsibilities as a court of equity, I dissent relative to the district court's dismissal of Deutsch Bank's action for equitable relief.

The factual issue presented to the district court in this action for reformation was not whether Option One and the Wilsons intended to place a mortgage on the Wilsons' real property. That issue was undisputed. Rather, the district court was faced with the narrow issue of which parcel or parcels the parties intended to mortgage. The district

court had three options to consider in making this determination: (1) Parcel 1, which included the homestead; (2) Parcel 2, which was undeveloped land; or (3) both parcels. The district court recognized this in its finding that "[i]n dispute is what parcel, or parcels, the parties intended to secure with said financing."

Instead of addressing this narrow issue, the district court found that "the record is devoid of evidence as to Option One Mortgage Corporation's intention regarding the security of the mortgage note with [the Wilsons'] property." This finding is clearly erroneous. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (applying clearly erroneous standard of review to district court's factual findings in a civil case tried without a jury and stating that findings are clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made" (quotation omitted)).

There was an array of evidence presented as to which parcel or parcels Option One and the Wilsons intended to mortgage. The district court found Wayne Wilson's "testimony credible" that he intended the mortgage to encumber only Parcel 1. We do not disturb credibility determinations on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). In addition to this testimony, there was other evidence, albeit circumstantial and at times conflicting, of Option One's intent, including: the mortgage was for $280,250; the loan application did not include a legal description of the property to be encumbered, but references the address that the Wilsons use for both parcels; the title insurance commitments reference Parcel 2; the appraisal includes the tax identification numbers of both parcels and references both parcels, but includes the legal description of Parcel 2; the appraiser for Option One testified at trial that he appraised

both parcels; the appraiser valued the properties at $305,000, which reflected the properties and the homestead; the appraiser testified that he would not have come up with that value had he solely appraised Parcel 2; the appraiser testified that the value of unimproved farmland in the area at the time was roughly $1,000 per acre; Parcel 2 was 13.22 acres; the recorded mortgage contains the legal description for Parcel 2, but includes the tax identification numbers of both parcels; and the assignment of the mortgage to Deutsche Bank references the legal description of Parcel 1. Because the district court failed to address the factual issue of Option One's intent, it left unreformed a mortgage that is inconsistent with the claims of both Deutsche Bank and the Wilsons regarding the intended parcel(s) to be encumbered.

In addition to making this clearly erroneous finding, the district court abused its discretion by failing to appreciate the flexibility it has as a court of equity to dispense justice. *See City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011) (stating that a district court abuses its discretion when its ruling is based on an erroneous view of the law or when its decision is against the facts in the record). Reformation is an equitable remedy predicated upon the maxim that "equity regards and treats that as done which in good conscience ought to be done." *Gilles v. Sprout*, 293 Minn. 53, 59, 196 N.W.2d 612, 615 (1972) (quotation omitted). A party seeking reformation must prove that: (1) a valid agreement between the contracting parties expressing their real intent exists; (2) the written instrument failed to express their real intent; and (3) this failure was due to a mutual mistake or a unilateral mistake accompanied by fraud or inequitable conduct. *SCI*

Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 779 N.W.2d 865, 870 (Minn. App. 2010), *aff'd*, 795 N.W.2d 855 (Minn. 2011).

In performing their duties as courts of equity, the district courts "are clothed with large discretion to model their judgments to fit the exigencies of the particular case." *United States v. E. I. du Pont de Nemours & Co*., 353 U.S. 586, 607–08, 77 S. Ct. 872, 885 (1957) (quotation omitted). "It is traditional and characteristic of equity that it possesses the flexibility and expansiveness to invent new remedies or modify old ones to meet the requirements of every case and to satisfy the needs of a progressive social condition." *Beliveau v. Beliveau*, 217 Minn. 235, 245, 14 N.W.2d 360, 366 (1944). The form an equitable remedy may take is "as unlimited as the powers of such courts to shape relief awarded in accordance with the circumstances of the particular case." *Prince v. Sonnesyn*, 222 Minn. 528, 538, 25 N.W.2d 468, 474 (1946). The district court has the discretion to order a more "narrow" remedy than that requested. 1 Dan B. Dobbs, *Law of Remedies* § 2.4(6), at 113 (2d ed. 1993). This power also encompasses the authority to sua sponte grant equitable relief so long as such action does not prejudice the opposing party by failing to give it an opportunity to present evidence in opposition to the relief ultimately given. *Claussen v. City of Lauderdale*, 681 N.W.2d 722, 726 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004).

Based on these principles, a district court acts within its discretion if it determines that the elements of reformation are met; crafts a remedy that is reflective of the contracting parties' intent, legally sound, and consistent with the facts in the record; and affords prejudiced parties an opportunity to present evidence in opposition to the

remedy. Here, the district court limited its consideration of the intent of Option One and the Wilsons to only one of the three options—whether they intended the mortgage to encumber both parcels. In doing so, the district court failed to deal with the equitable issue of whether the mortgage was intended to cover only one of the parcels, and, if so, whether the mortgage could be reformed to reflect the contracting parties' intent. The district court's decision leaves Deutsche Bank with virtually no remedy to recover the loan and gives the Wilsons, in effect, a retroactive windfall security-free loan on Parcel 1. This result places Deutsche Bank in an even more inequitable situation than when it first brought its complaint for "reformation" or "such further relief as the Court deems just and equitable."

The majority affirms the district court's decision primarily upon the basis that, at trial, Deutsche Bank argued that the mortgage encumbered both parcels and failed to formally present its alternative theory that the mortgage encumbered only Parcel 1. But Deutsche Bank raised this theory in its reply brief at summary judgment and the district court noted this alternative theory in its denial of summary judgment. More importantly, the contracting parties' intent as to Parcel 1 was explicitly and implicitly addressed throughout the trial, as evidenced by Wayne Wilson's testimony that Parcel 1 was to be mortgaged and the district court's specific finding that the dispute was "what parcel, or parcels," were to be mortgaged. Even if Deutsche Bank's alternative theory was a new issue, we could review it because it "was 'implicit in' or 'closely akin to' the arguments below." *Blume Law Firm PC v. Pierce*, 741 N.W.2d 921, 926 (Minn. App. 2007), *review*

denied (Minn. Feb. 19, 2008) (quoting *Watson v. United Servs. Auto Ass'n*, 566 N.W.2d 683, 688 (Minn. 1997)).

It is undisputed that Option One and Wilson intended that the mortgage would encumber either one or both parcels. But the district court failed to address the possibility that Option One and the Wilsons intended that the mortgage encumbered only Parcel 1 even though it was presented with evidence indicating the same. Accordingly, I would remand this matter to the district court for a finding as to Option One's intent and instruct the district court to reform the mortgage if the elements of reformation are met.