STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1457

Timothy D. Kehr, et al.,
Respondents,

vs.

Harold B. Kail as trustee for the
Bonnie L. Kail Irrevocable Trust,
and as trustee for the Carroll A. Britton
Family Trust; et al.,
Appellants.

Filed March 10, 2014
Affirmed
Hudson, Judge

Pope County District Court
File No. 61-CV-12-420

Heather L. Marx, Peter L. Crema Jr., Cozen O'Connor, Minneapolis, Minnesota (for respondents)

Belvin Doebbert, Doebbert Law Offices, Glenwood, Minnesota (for appellants)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

HUDSON, Judge

In this challenge to a denial of partial summary judgment, appellants argue that the district court lacked personal jurisdiction over respondents and subject-matter jurisdiction

over respondents' claims. Appellants also contend that respondents lacked standing to bring their claims. We affirm.

FACTS

Appellants—Harold Kail as trustee for the Carroll A. Britton Family Trust (CAB Trust) and the Bonnie L. Kail Irrevocable Trust (BLK Trust), and those trusts themselves—challenge the district court's denial of their motion for partial summary judgment against respondents Timothy Kehr and Entrust Midwest, LLC. In 2005, Kail suggested that Kehr partner with the CAB and BLK Trusts to invest in real estate, including the property central to this litigation, a farm in Pope County (the farm). Kehr, as trustee of the Timothy D. Kehr, Inc. Profit Sharing Trust (Kehr Trust), directed that trust to purchase an undivided one-half interest in the farm on August 1, 2005. The transaction was structured so that the Kehr Trust bought one-fourth of the farm from each of the CAB and BLK Trusts for $92,500 each ($185,000 total), creating a tenancy in common in which the Kehr Trust owned an undivided one-half interest and the CAB and BLK Trusts each retained an undivided one-fourth interest. While this ownership structure was in effect, the farm was rented out to tenants, who paid rent to Kail.

In 2006, Kehr directed the Kehr Trust to transfer its interest in the farm via quitclaim deed to Entrust, which continues to hold Kehr's interest in the farm in Kehr's self-directed retirement account. The quitclaim deed conveyed Kehr's interest in the farm "to Entrust Midwest, L.L.C., FBO Timothy D. Kehr IRA #6279." Kehr has the sole ability to control the assets, including his interest in the farm, in his Entrust-held IRA,

and can retain counsel and commence litigation on behalf of Entrust to protect those assets.

The relationship between Kehr and Kail soured, and respondents filed suit, seeking dissolution of the real-estate partnership that Kehr alleged had been formed between appellants and respondents to purchase the farm, distribution of that partnership's assets, and additional damages from appellants.

Appellants moved for partial summary judgment, arguing that the district court lacked personal jurisdiction over respondents and subject-matter jurisdiction over respondents' claims. Appellants also contended that respondents lacked standing to bring their claims. The district court denied appellants' motion. This appeal follows.

D E C I S I O N

We review de novo a district court's denial of a motion for summary judgment. *Stengel v. E. Side Beverage*, 690 N.W.2d 380, 383 (Minn. App. 2005), *review denied* (Minn. Feb. 23, 2005). We examine (1) whether there are any genuine issues of material fact, and (2) whether the district court erred in its interpretation of the law. *Cummings v. Koehnen*, 568 N.W.2d 418, 420 (Minn. 1997).

I

Whether personal or subject-matter jurisdiction exists constitutes a question of law that we also review de novo. *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007). Unless a lack of jurisdiction is apparent on the face of the record or shown by extrinsic evidence in a direct attack on jurisdiction, both personal and subject-

matter jurisdiction are presumed to exist. *Fulton v. Okes*, 195 Minn. 247, 251, 262 N.W. 570, 572 (1935).

Personal jurisdiction

Appellants argue that the district court lacked personal jurisdiction over Entrust, a plaintiff in the initial action, because Entrust did not properly consent to Kehr's bringing suit on its behalf.

Limits on personal jurisdiction exist to balance a plaintiff's "power to choose the forum" against a defendant's constitutional right to avoid defending a suit in an unreasonable forum. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S. Ct. 559, 564 (1980). A party that "submits to the jurisdiction of the court by appearing or by otherwise invoking the court's jurisdiction" waives any challenge to personal jurisdiction. *Hanson v. Woolston*, 701 N.W.2d 257, 265 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). Entrust is not a defendant that has been haled into court and forced to defend itself in an unreasonable forum, but a plaintiff that brought suit in its chosen forum through its agent. As the party that chose the forum, Entrust necessarily submitted to the district court's jurisdiction. *See id.* Whether Entrust actually authorized Kehr to bring suit on its behalf is an issue of fact not appropriate for summary judgment. *See Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423 (Minn. App. 2000) (stating that the existence of an agency relationship is typically a question of fact); *Cummings*, 568 N.W.2d at 420 (stating the summary-judgment standard). Because appellants have not made a showing on the face of the record or through extrinsic evidence that personal

jurisdiction is lacking, we presume that personal jurisdiction over Entrust exists. *See Fulton*, 195 Minn. at 251, 262 N.W. at 572.

Subject-matter jurisdiction

Appellants contend that the district court lacked subject-matter jurisdiction. "A district court is a court of general jurisdiction that has, with limited exceptions, the [subject-matter jurisdiction] to hear all types of civil cases." *Anderson v. Cnty. of Lyon*, 784 N.W.2d 77, 80 (Minn. App. 2010), *review denied* (Minn. Aug. 24, 2010); *see also* Minn. Const. art. VI, § 3 ("The district court has original jurisdiction in all civil and criminal cases . . . ."). Appellants do not argue that this case is of a kind that the district court was not empowered to hear. Instead, appellants appear to argue that respondents lacked standing. Subject-matter jurisdiction and standing are different concepts. The former "concerns the court's ability to consider a question," while the latter "concerns a party's right to bring a particular action." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 433 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). Appellants have not demonstrated that the complaint was facially deficient or produced extrinsic evidence defeating subject-matter jurisdiction. They thus have not defeated the presumption that the district court had subject-matter jurisdiction to hear the case. *See Fulton*, 195 Minn. at 251, 262 N.W. at 572.

II

Appellants argue that respondents lacked standing to bring their claims. "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493

(Minn. 1996). Suffering an injury in fact—"a concrete and particularized invasion of a legally protected interest"—is sufficient to convey standing. *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007).

First, appellants contend that "Entrust Minnesota, LLC" never technically received the transfer of the farm, because the deed memorialized a transfer to "Entrust Minnesota L.L.C., FBO Timothy D. Kehr IRA #6279."[1] Appellants thus contend that "Entrust Minnesota, LLC" has no standing to bring this suit. This argument, which ignores the common understanding of words and punctuation, elevates form over substance. *See Wells v. Atkinson*, 24 Minn. 161 (1877) (holding that deeds should not be construed so that "conveyance [can] be defeated by technical or unsubstantial objections").[2]

Second, appellants argue that Kehr's power to sue on behalf of Entrust, if it existed at all, "is unsupported by the record." But when the existence of an agency relationship is subject to conflicting contentions and a lack of evidence, it is a question of

[1] Appellants also argue, without citing to specific statutory authority or provisions of the Minnesota Title Standards, that a corporate entity receiving property from natural persons requires the formality of a "corporate deed." But this court has contemplated the use of quitclaim deeds to convey property from natural persons to LLCs without questioning the validity of such transfers. *See Stone v. Jetmar Props., LLC*, 733 N.W.2d 480 (Minn. App. 2007) (invalidating transfer on other grounds); *In re Estate of Savich*, 671 N.W.2d 746 (Minn. App. 2003) (same).

[2] We note that respondents have attempted to remedy appellants' concerns with standing by amending the case caption to include the "FBO" clause. "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest." Minn. R. Civ. P. 17.01. Because respondents have made reasonable efforts to remedy any technical deficiencies in the case caption, dismissal for lack of standing is not appropriate.

fact that is not appropriate to resolve on a motion for summary judgment. *Smith*, 605 N.W.2d at 423.

Third, appellants argue that Entrust is a "securities intermediary" under the Uniform Commercial Code as codified in Minn. Stat. §§ 336.8-101 to .8-116 (2012). A securities intermediary is defined as "a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity." Minn. Stat. § 336.8-102(14)(ii). All interests in "financial asset[s]" held by these intermediaries are held "for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary." Minn. Stat. § 336.8-503(a). Except in situations not present here, the statutory framework specifically excludes "document[s] of title" from the definition of "financial asset." Minn. Stat. § 336.8-103(g).

The transfer was legally valid, the agency issue is a question of fact, and Entrust was not a securities holder with regard to the farm deed. Both Entrust, as the legal holder of title of the farm, and Kehr, the account holder with Entrust, had a cognizable injury in fact sufficient to confer standing. The district court did not err.[3]

[3] After oral arguments, counsel for appellants filed an affidavit alleging that Kehr had died on September 10, 2013, and that respondents were not authorized to continue with this appeal on behalf of Kehr's estate. Appellants thus objected to this court's consideration of respondents' brief. By merely submitting an affidavit, counsel did not properly move this court to strike respondents' brief. *See* Minn. R. Civ. App. P. 127 ("Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief."). But even if appellants were entitled to have this court disregard respondents' brief, we must still reach a decision on the merits. Minn. R. Civ. App. P. 142.03. On these facts, we

III

Appellants argue that respondents have not properly pleaded an action under the Minnesota Uniform Partnership Act (MUPA), Minn. Stat. §§ 323A.0801–.0807 (2012), because respondents failed to demonstrate as a matter of law that a partnership existed.

Holding real estate as tenants in common does not, by itself, create a partnership. Minn. Stat. § 323A.0202(c)(1) (2012). Instead, courts ascertain the existence of a partnership by examining evidence and circumstances to determine the intent of the parties. *McAlpine v. Millen*, 104 Minn. 289, 297-98, 116 N.W. 583, 586 (1908). An oral agreement is usually sufficient to establish a partnership. *Maras v. Stilinovich*, 268 N.W.2d 541, 544 (Minn. 1978). "[T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." Minn. Stat. § 323A.0202(a) (2012). Evidence that a party took "receipt of profits from a business . . . is prima facie evidence that the recipient is a partner in the business." *Hanson v. Nannestad*, 212 Minn. 325, 326, 3 N.W.2d 498, 498 (1942).

Respondents have produced evidence that appellants and respondents intended to become co-investors in the farm and that Kail received profits from a tenant renting it. "[S]ummary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Because a reasonable person could conclude from this evidence that a partnership

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conclude that we would have reached the same result even disregarding respondents' brief.

was formed, the district court correctly denied appellants' motion for partial summary judgment.

Appellants further argue that this case should proceed under the Partition Act, Minn. Stat. §§ 558.01–.32 (2012), instead of MUPA. Respondent-plaintiffs chose not to bring a claim under the Partition Act. "A plaintiff has the right to control his own lawsuit and to bring his claims against whomever he chooses." *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 118 (Minn. 2011). Respondent-plaintiffs, as masters of their complaint, were permitted to bring an action under MUPA without bringing a simultaneous action under the Partition Act.[4]

Affirmed.

[4] When an action for winding up a partnership requires partition but an action under the Partition Act has not been pleaded, district courts have "the power to make a judicial partition in all respects the same as if the suit was originally for partition." *Bagg v. Osborn*, 169 Minn. 126, 128, 210 N.W. 862, 863 (1926).