STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1421

Vermillion State Bank,
Respondent,

vs.

Tennis Sanitation, LLC,
Appellant.

Filed June 29, 2020
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-CV-17-3351

Mark R. Bradford, Lewis A. Remele, Jr., Steven M. Sitek, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Kay N. Hunt, Bryan R. Feldhaus, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Steven R. Coon, Law Offices of Steven Coon, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cochran, Judge.

S Y L L A B U S

1. The preponderance of the evidence standard applies to prove the existence of an alleged oral contract for the purchase of the assets of a business.

2. Under Minnesota's version of the Uniform Commercial Code (the UCC), Minn. Stat. §§ 336.1-101 to .10-105 (2018), the predominant-factor test applies to hybrid

contracts involving the sale of goods and non-goods, and its application to a particular contract is a question of law.

3. Minnesota's statutory provision governing the award of postjudgment interest, Minn. Stat. § 549.09, subd. 1(c)(1)-(2) (2018), does not violate equal protection.

O P I N I O N

CONNOLLY, Judge

In this appeal from a jury verdict following a breach-of-contract trial, appellant challenges the district court's denial of its motions for judgment as a matter of law (JMOL) and a new trial. It also raises a constitutional challenge to Minnesota's postjudgment-interest statute. Because we see no error in the district court's denial of these motions and because Minn. Stat. § 549.09 (2018) does not violate equal protection, we affirm.

FACTS

This case involves the existence of an oral contract between appellant Tennis Sanitation, LLC, managed by brothers G.T. and W.T., and respondent Vermillion State Bank, whose president was J.P. In September 2017, respondent sued appellant for breach of contract, breach of the duty of good faith and fair dealing, and promissory estoppel, which stemmed from an alleged agreement between the parties for respondent to buy another company's assets for appellant. The case proceeded to a jury trial, where these facts were established.

In 2010, respondent loaned money to Troje's Trash Pick-Up Inc. (Troje), and secured an interest in Troje's tangible and intangible assets. By early 2015, J.P. learned

that Troje was experiencing financial difficulties. Troje's financial problems led to it filing for chapter 11 bankruptcy in January 2016.

The bankruptcy court appointed R.G. as a financial consultant to oversee Troje's daily operations. Over the following months, respondent continued to finance Troje through debtor-in-possession financing. Once R.G. realized that Troje lacked financial sustainability, he identified other trash-collection companies as potential buyers. Appellant, one of the potential buyers, received a sale book listing Troje's assets from R.G. after contacting him in March and July 2016.

During the bankruptcy process, several companies offered to buy some or all of Troje's assets. This prompted respondent to use a "stalking-horse" bid, which entailed establishing a dummy company, Minnesota Sanitation Company LLC, to increase other bid offers. R.G. ultimately decided to sell Troje's assets at auction. Only Minnesota Sanitation Company and Republic Waste Services (Republic) submitted qualifying bids for the auction.

Before the auction, J.P. had several conversations with G.T. and W.T., who jointly manage and operate appellant's business. First, J.P. called G.T. on Saturday, August 6 and explained Troje's financial difficulties. The next day, J.P. and his son, M.P., met with G.T. and W.T. and discussed the upcoming auction. These individuals formulated numbers that represented a rough valuation of Troje's assets and placed them on a whiteboard. The total valuation of Troje's assets was $9.1 million; a value of $5.3 million was assigned to Troje's residential and commercial customer routes. G.T. and W.T. expressed interest in purchasing Troje and asked J.P. to send financial information to their accountant, T.B.

The auction was scheduled for 1:00 p.m. on Monday, August 8. That morning, J.P. and M.P. had a phone call with T.B., who opined that it was a good deal and stated that appellant had the financial capacity to complete it. Later, at 11:18 a.m., J.P. and M.P. spoke with G.T., W.T., and T.B., who expressed a willingness to buy Troje's assets, including its trucks, customer routes, and other equipment, for $6.1 million. But respondent refused appellant's request that their agreement include six natural-gas trucks (the natural-gas trucks).

These same individuals had another phone call at 12:01 p.m. and reached an oral agreement. T.B. stated that appellant would take the deal without the natural-gas trucks for $6.1 million, if respondent would bid on its behalf at the upcoming auction. Finally, J.P. asked that G.T. and W.T. confirm their agreement through email.

When the auction for Troje's assets started at 1:00 p.m., Republic had the highest bid. At 1:03 p.m., one of appellant's employees emailed M.P. a letter of intent signed by G.T. and W.T. Six minutes later, M.P. responded with an email stating "Got it. Thanks." Unlike the parties' 12:01 p.m. phone conversation, which contemplated respondent bidding for appellant without completion of due diligence, the letter of intent included a later closing date after completion of due diligence. After receiving the signed letter of intent from M.P., J.P. called G.T. twice during the auction to confirm their agreement, stating that there was no time for due diligence. G.T. reaffirmed that appellant wanted respondent to bid on its behalf at the auction for Troje's assets.

At 3:55 p.m., respondent submitted a winning $5.4 million bid for Troje's assets. When the auction ended, J.P. called G.T. to inform him that appellant had acquired Troje's

assets because respondent had submitted the high bid. That night at 6:00 p.m., J.P. and M.P. met with G.T. and W.T. During this meeting, J.P. observed that G.T. seemed nervous about the purchase while W.T. expressed excitement about operating Troje.

On Tuesday evening, the same four individuals met again along with R.G. To begin the meeting, J.P. restated the parties' agreement, after which both G.T. and W.T. nodded and said, "yes, that's what [we] agreed to." The parties then discussed financing. While G.T. acknowledged at this meeting that he had agreed to respondent bidding on appellant's behalf, he stated that he did not want to undertake running Troje's business. Shortly after the Tuesday meeting, W.T. called J.P. to inform him that G.T. did not want to close the deal and that appellant would not be purchasing Troje's assets from respondent.

After learning that appellant would not purchase Troje's assets, respondent signed an agreement to sell Troje's assets to Republic for $4 million. To execute the deal with Republic, respondent paid $1.175 million to remove the liens on the natural gas trucks.

Respondent sought over $4 million in damages. The jury found that an oral contract existed, that its predominant purpose was for the sale of Troje's customer routes, and that appellant breached the contract, which damaged respondent. The jury awarded respondent $1.92 million in damages. Appellant filed posttrial motions for JMOL and a new trial; appellant also objected to respondent's application for costs and interest. In a written order, the district court denied appellant's posttrial motions.

ISSUES

I. What standard of proof governs a breach-of-contract claim involving the alleged existence of an oral contract to purchase the assets of a business?

II. Did the district court err in denying appellant's motion for JMOL?

III. Did the district court err in denying appellant's motion for a new trial?

IV. Does Minnesota's postjudgment-interest statute violate equal protection?

ANALYSIS

Appellant challenges the denial of its motions for JMOL and a new trial. It also argues that Minnesota's postjudgment-interest statute violates its right to equal protection. We first determine the applicable standard of proof here.

I. The preponderance-of-the-evidence standard applies.

To start, appellant faults the district court's conclusion that the preponderance-of-the-evidence standard governed respondent's breach-of-contract claim, asserting that the clear-and-convincing-evidence standard applies. Determining the applicable standard of proof presents a legal question subject to de novo review. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

"The standard of proof varies depending on the type of case and serves several purposes." *Id.* First, it informs the fact-finder of our society's expected level of confidence in the correctness of the fact-finder's conclusions. *Carrillo v. Fabian*, 701 N.W.2d 763, 773-74 (Minn. 2005). Second, it assigns the risk of error between litigants to reflect the relative importance accompanying the result. *Id.* at 774. Civil cases use both the preponderance-of-the-evidence and clear-and-convincing-evidence standards, and the case circumstances dictate which standard applies. *Christie*, 911 N.W.2d at 838-39.

To satisfy the preponderance-of-the-evidence standard, it must be more probable than not that a fact exists. *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn.

2004). In contrast, clear and convincing evidence exists when "the truth of the facts asserted is 'highly probable.'" *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). Most civil cases use the preponderance-of-the-evidence standard as proportional to society's concern with resolving private suits. *Carrillo*, 701 N.W.2d at 774. But some civil matters "involving allegations of fraud or other quasi-criminal wrongdoing" use the clear-and-convincing-evidence standard because the defendant has a heightened interest at stake. *Id.*

In general, the preponderance-of-the-evidence standard applies when interpreting contracts or analyzing the elements of a contract claim. *Bolander v. Bolander*, 703 N.W.2d 529, 541 (Minn. App. 2005), *review dismissed* (Minn. Nov. 15, 2005). *Christie* reaffirmed that the clear-and-convincing-evidence standard applies to claims seeking damages for breach of an oral contract for the sale of land. 911 N.W.2d at 840. Other situations when the clear-and-convincing-evidence standard applies include oral modifications of a written contract, specific performance of an oral contract for a will, and reformation of a written contract based on mutual mistake. *Id.*

Appellant argues that *Christie* controls here, but respondent's breach-of-contract claim does not match any of the situations listed in *Christie*. *See id.* And dictum in *Christie* both limits its holding and weakens appellant's argument. *See id.* ("In so holding, we note only that claims for breach of other oral contracts may not necessarily present the same considerations."). Appellant also cites *Kavanagh v. The Golden Rule* to support its standard of proof argument. 33 N.W.2d 697, 700 (Minn. 1948) (holding that claims involving oral modification of a written contract require proof by clear and convincing

evidence). But respondent never claimed that the parties here had a written contract, making *Kavanagh* distinguishable.

To prove a breach-of-contract claim involving an oral contract, a party must prove the existence of an oral contract by a preponderance of the evidence. The facts here do not match any of the special considerations described in *Christie*. For example, the sale of Troje's assets does not carry the special status that Minnesota affords to land sale contracts. *See Christie*, 911 N.W.2d at 839-40. And this case does not present concerns about fraud that would require applying the clear-and-convincing-evidence standard. For these reasons, we conclude that the district court correctly applied the preponderance-of-the-evidence standard.

II. The district court properly denied appellant's JMOL motion.

Having concluded that the preponderance standard applies, we now consider the district court's denial of appellant's motion for JMOL. When presented with a post-verdict motion for JMOL, a district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law." Minn. R. Civ. P. 50.02. An appellate court reviews de novo a district court's denial of JMOL. *Isaac v. Vy Thanh Ho*, 825 N.W.2d 379, 383 (Minn. 2013). A reviewing court uses the same standard as the district court and views the evidence in the light most favorable to the verdict. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). The jury's verdict must stand

if any reasonable theory within the record lends support. *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998).

Here, appellant asserts that JMOL was improperly denied because (A) the parties never formed a legally enforceable contract; (B) the UCC's statute of frauds, Minn. Stat. § 336.2-105(1), required written evidence of the contract; and (C) G.T. lacked authority to unilaterally form a contract on appellant's behalf. We address these issues in turn.

A. The jury could reasonably find that the parties formed an oral contract.

First, appellant argues that no enforceable contract existed.[1] Parties form a contract when they (1) exchange bargained-for promises, (2) show mutual assent to this exchange, and (3) support their exchange of promises with consideration. *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 857 N.W.2d 695, 701 (Minn. 2014). When the parties dispute the existence and terms of a contract, these issues become questions for the fact-finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992); *see also Roske v. Ilykanyics*, 45 N.W.2d 769, 776 (Minn. 1951) (applying this principle to an alleged oral contract).

Appellant asserts that the evidence does not support the jury's finding that the parties had mutual assent. To form a contract, mutual assent must exist, which "entails a meeting of the minds concerning a contract's essential elements." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011)

[1] A breach-of-contract claim requires proof of (1) a contract, (2) the plaintiff's performance of any conditions precedent, and (3) breach by the defendant. *Briggs Transp. Co. v. Ranzenberger*, 217 N.W.2d 198, 200 (Minn. 1974). Appellant challenges only the existence of a contract.

(quotation omitted). In Minnesota, courts use an objective standard to assess whether mutual assent exists. *Id.* Courts will not enforce a vague or indefinite contract when it requires speculation about the parties' intent. *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 52 (Minn. 1961).

A review of the record supports the jury's verdict. First, testimony established that the parties agreed on a price of $6.1 million for which appellant would receive most of Troje's assets but not the natural-gas trucks. Second, the parties agreed that respondent would bid for appellant at the auction. Third, the jury heard testimony that G.T. and W.T. nodded when John explained the parties' deal at the Tuesday evening meeting. Based on this evidence, the district court correctly denied appellant's JMOL motion. *See Pouliot*, 582 N.W.2d at 224 (stating that an appellate court will not overturn a jury's verdict "[u]nless the evidence is practically conclusive against [it]"). Our review requires special deference here because the jury reached its decision after hearing conflicting testimony. *See Covey v. Detroit Lakes Printing Co.*, 490 N.W.2d 138, 141 (Minn. App. 1992) ("Because it is the jury's function to determine credibility, review of a jury verdict is even more limited when the decision rests upon weighing the credibility of witnesses.").

In urging us to reach the opposite conclusion, appellant asserts that the letter of intent defeats any purported contract. But the letter of intent did not accurately reflect the parties' oral contract: it called for due diligence and a later closing date. Unlike the oral agreement, the parties did not agree on the terms of the letter of intent. Indeed, W.T. testified that he did know that the document he signed was a letter of intent. And once

M.P. gave J.P. the emailed letter of intent, J.P. called G.T. to reaffirm that appellant wanted respondent to bid on its behalf and explained that there was no time for due diligence.

Appellant also cites J.P.'s testimony to support its argument that the letter of intent terminated any earlier agreement, relying on this exchange:

> Q: And then you got this letter of intent signed by both of them which plainly states an understanding wholly different from that which you claim to have had, right?
> A: That's right.

But this exchange does not support appellant's point. For one thing, J.P.'s subjective belief is irrelevant because Minnesota courts use an objective approach when analyzing contract formation. *See SCI*, 795 N.W.2d at 864. And the jury's verdict reflects that it discredited the letter-of-intent argument.

Appellant also contrasts the lack of details in the oral agreement to the detailed agreement respondent later entered into with Republic when selling Troje's assets. But different parties may form different types of contracts; the written contract respondent later made with Republic does not disprove the existence of an earlier oral contract between appellant and respondent. Finally, appellant disputes the characterization of the oral contract as selling Troje's customer routes because respondent was only bidding on Troje's assets, then sold them to appellant. Yet when the parties were discussing a potential deal, they worked together in placing numbers on a whiteboard to value Troje's customer routes, signaling that they contemplated these routes in negotiating their agreement.

B. The UCC's statute of frauds did not apply to this contract because its predominant purpose involved the sale of an intangible asset.

Second, appellant asserts that the district court should have granted JMOL because the UCC's statute of frauds applied. Minnesota has adopted the UCC's statute of frauds, which requires written evidence of an agreement for contracts involving the sale of goods over $500. *See* Minn. Stat. § 336.2-201(1). In this context, "goods" includes anything movable "at the time of identification to the contract for sale" except money, investment securities, and things in action. Minn. Stat. § 336.2-105(1). The writing requirement in the statute of frauds ensures that the parties had a contract for sale. *Glacial Plains Corp. v. Lindgren*, 759 N.W.2d 661, 664 (Minn. App. 2009).

In general, whether the UCC applies to a contract presents a legal question. *Valley Farmers' Elevator v. Lindsay Bros. Co.*, 398 N.W.2d 553, 556 (Minn. 1987), *overruled on other grounds by Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990). Minnesota uses the "predominant factor" test to determine whether the UCC applies to a hybrid contract involving goods and services. *Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 854 (Minn. 1994). Under this test, if the sale of goods represents a contract's predominant purpose, the UCC applies; if rendering services represents the predominant purpose, the UCC does not apply. *McCarthy Well Co. v. St. Peter Creamery, Inc.*, 410 N.W.2d 312, 315 (Minn. 1987).

Appellant asserts that the predominant-factor test cannot apply because the contract here did not involve goods and services. We disagree. It is true that the contract involved the sale of Troje's trucks and other equipment, which are goods, and its customer routes,

an intangible asset which is a non-good. *See Fink v. DeClassis*, 745 F. Supp. 509, 516 (N.D. Ill. 1990) (characterizing corporation's intangible assets as non-goods under Illinois's predominant-factor test in asset-acquisition case). While Minnesota courts have applied the predominant-factor test only to contracts involving goods and services, no Minnesota case has limited the test to these types of hybrid contracts. Indeed, services represent just one example of a non-good. If the UCC does not apply to a contract mainly for services, it logically has no application to a contract mainly for non-goods.

In sum, Minnesota law does not limit application of the predominant-factor test to contracts involving goods and services. To hold otherwise would frustrate the test's entire purpose—whether the UCC applies to a given contract.[2]

Lastly, appellant asks us to apply the reasoning from *Foster v. Col. Radio Corp.*, a Tenth Circuit decision that divided a hybrid contract and applied the UCC to only the goods portion. 381 F.2d 222, 226-27 (10th Cir. 1967). *Foster* is inconsistent with Minnesota's use of the predominant-factor test and appears to represent a minority position that other courts have found inconsistent with the predominant-factor test. *See BMC Indus., Inc. v. Barth Indus., Inc.*, 160 F.3d 1322, 1329 n.13 (11th Cir. 1998) (stating that "most courts" use the predominant-factor test and noting that "a few courts" use the *Foster* analysis); *see*

[2] We note that courts in other jurisdictions have applied the predominant-factor test to hybrid contracts involving the sale of goods and non-goods. *See, e.g.*, *Korangy v. Mobil Oil Corp.*, 84 F. Supp. 2d 660, 667 (D. Md. 2000); *Midwest Mfg. Holding, LLC v. Donnelly Corp.*, 975 F. Supp. 1061, 1067 (N.D. Ill. 1997); *Morgan Publ'ns, Inc. v. Squire Publishers, Inc.*, 26 S.W.3d 164, 173 (Mo. Ct. App. 2000); *MBH, Inc. v. John Otte Oil & Propane, Inc.*, 727 N.W.2d 238, 246 (Neb. Ct. App. 2007); *Hudson v. Town & Country True Value Hardware, Inc.*, 666 S.W.2d 51, 53 (Tenn. 1984).

also Insul-Mark Midwest, Inc. v. Modern Materials, Inc., 612 N.E.2d 550, 554 (Ind. 1993) (choosing to adopt the "predominant thrust approach" over the bifurcation analysis and observing that this approach better preserves the contracting parties' expectations); *Hudson*, 666 S.W.2d at 54 (declining to follow the bifurcation rule because it would be difficult to segregate assets in contracts for the sale of a business).

Next, we consider whether the district court erred by allowing the jury to decide the contract's predominant purpose. The special verdict form asked: "Was the predominant factor of the oral contract the purchase of Troje's customer routes?" The jury answered this question affirmatively. But relevant Minnesota caselaw requires that the district court, not the jury, determine the applicability of the UCC in a given case. *See, e.g.*, *Valley Farmers Elevator*, 398 N.W.2d at 556. As a result, we hold that district courts should decide the legal question of whether the UCC applies by looking to a contract's predominant purpose.

But the fact that a jury rather than the district court decided the contract's predominant purpose here is not a basis for reversal. We consider this legal question de novo and conclude that the record contains ample evidence that the customer routes were the main purpose of the parties' contract. To make such a determination, courts consider the contract language, the supplier's business, and the "intrinsic value" of the goods at issue. *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 386 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004). Courts applying the predominant-factor test commonly compare the relative cost between the goods and services (non-goods here) in the contract. *Id.* at 387.

In comparing the relative costs between the goods and non-goods covered by the contract at issue, we have no doubt that the contract's predominant purpose was for Troje's customer routes. Most trial witnesses testified that the customer routes represented Troje's true value. The parties' figures written on the whiteboard during the meeting before the auction also support this conclusion. Based on these numbers, the customer routes predominated the contract as they represented $5.3 million of the $9.1 million total valuation that the parties formulated. While appellant notes that a 2015 appraisal gave Troje's equipment a $5.1 million fair market value and a $4.8 million liquidation value, no evidence supports the notion that the parties used this appraisal when discussing the terms of the contract. As a result, the customer routes—a non-good—represented the contract's predominant purpose.

Our conclusion that the UCC does not apply to the sale of an ongoing business's assets is not unique. For instance, the New Mexico Supreme Court applied its predominant factor test to a contract for the sale of a catalog business and concluded that the UCC did not apply. *Stewart v. Lucero*, 918 P.2d 1, 4-5 (N.M. 1996). Although that contract included the sale of inventory and display items, the court determined that the right to use the Sears name and a noncompete agreement formed the contract's basis. *Id.* Similarly, in a case involving the sale of a bar, the North Dakota Supreme Court held that the UCC did not apply because the contract's essential terms included goodwill, transferring a liquor license, assigning a lease, and the transfer or assignment of insurance policies and contracts. *D.G. Porter, Inc. v. Fridley*, 373 N.W.2d 917, 924 (N.D. 1985).

To conclude, the UCC's predominant-factor test applies to hybrid contracts involving goods and non-goods, not just those involving goods and services. Minnesota precedent reflects that whether the UCC applies to a given contract is a legal question. Our review of the record compels a conclusion consistent with the jury's finding that the contract's predominant purpose was for non-goods, so that the UCC's statute of frauds writing requirement did not apply.

C. The record does not support appellant's authority argument.

Appellant also argues that the district court erred in denying its motion for JMOL because G.T. lacked the authority to unilaterally bind it to a contract. But although the jury heard testimony and reviewed evidence showing that appellant's operating agreement precluded G.T. from unilaterally binding the company, respondent also introduced evidence that both G.T. and W.T. affirmed the oral contract. This evidence defeats any suggestion that only G.T. agreed to any oral contract. The jury's verdict impliedly shows that it rejected appellant's authority argument, and we decline to reweigh the conflicting evidence.

III. The district court properly denied appellant's new-trial motion.

An appellate court reviews a district court's decision to grant or deny a new trial for an abuse of discretion. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 625 (Minn. 2012). Here, appellant urges us to conclude that the district court should have granted the new-trial motion because the district court (A) made various errors in selecting jury instructions and (B) erred in precluding its expert from testifying.

A. The district court did not commit reversible error in selecting jury instructions.

District courts have broad discretion in selecting jury instructions, and an appellate court will not reverse its decision when the instructions as a whole correctly stated the governing law. *Christie*, 911 N.W.2d at 838. A district court's failure to give a requested jury instruction is reviewed for an abuse of discretion. *Daly v. McFarland*, 812 N.W.2d 113, 122 (Minn. 2012). When the record contains evidence to support a party's theory, a district court errs by not instructing the jury on that theory. *Oldendorf v. Eide*, 110 N.W.2d 310, 314 (Minn. 1961).

1. Jury instruction on authority

First, appellant argues that the district court erroneously denied its requested jury instruction on authority. But the jury heard testimony that both G.T. and W.T. affirmed an oral contract for respondent to bid on Troje's assets, minus the natural-gas trucks, for appellant at the auction. So G.T.'s inability to unilaterally bind appellant to a contract was not at issue. Thus, the district court did not abuse its discretion in denying appellant's requested jury instruction.

2. Jury instruction on the predominant-factor test

Second, appellant asserts that the district court erred by not instructing the jury on how to determine the contract's predominant purpose. But, as respondent notes, appellant did not request such an instruction at trial.

To preserve an assignment of error for a failure to give a requested instruction, a party must request the instruction in writing and object on the record before the district

court delivers jury instructions. Minn. R. Civ. P. 51.04(a)(2). Even if a party fails to preserve an issue, we may review the failure to give an instruction for plain error. Minn. R. Civ. P. 51.04(b). Here, appellant first raised the issue of an instruction on determining the predominant purpose of a contract in the memorandum of law supporting its new trial motion. We therefore review this issue for plain error.

To obtain relief, appellant must show (1) an error; (2) that is plain; and (3) that affected its substantial rights. *See Frazier*, 811 N.W.2d at 626. If appellant cannot satisfy all three prongs, its claim fails. *See id.* "An error is plain if it is clear or obvious," meaning that it "contravenes caselaw, a rule, or a standard of conduct." *Poppler v. Wright-Hennepin Elec. Ass'n*, 834 N.W.2d 527, 552 (Minn. App. 2013) (quotation omitted), *aff'd*, 845 N.W.2d 168 (Minn. 2014).

Appellant cannot show that the claimed error affected its substantial rights. In closing arguments, both parties presented their positions on the contract's predominant purpose, and substantial witness testimony established that Troje's customer routes were its main value. Although we clarified above that the district court, rather than the jury, should decide whether the UCC applies by applying the predominant-factor test, no reversible error resulted when appellant failed to request this instruction at trial.

3. Jury instruction on the standard of proof

Third, appellant contends that the district court used the wrong standard of proof when instructing the jury. Because the preponderance-of-the-evidence standard governs the existence of an oral contract element in a breach-of-contract claim, the district court did not err. *See Christie*, 911 N.W.2d at 840.

4. Jury instruction on letter of intent

Fourth, appellant argues that the district court erred by denying its requested jury instruction about the letter of intent not constituting a legal contract. A letter of intent does not create a contract because it merely represents an agreement to agree. *Lindgren v. Clearwater Nat'l Corp.*, 517 N.W.2d 574, 574 (Minn. 1994). So under Minnesota law, the letter of intent cannot constitute an enforceable contract.

Appellant argues this instruction was necessary because respondent argued "the only thing the letter of intent is good for is to show that [G.T. and W.T.] agreed to buy Troje's assets from [respondent] for $6.1 million." But respondent never alleged that the letter of intent represented a contract; instead, it noted that the $6.1 million purchase price in the letter mirrored the parties' phone conversations. Because neither party asserted that the letter of intent was an enforceable written contract, the district court did not err by denying appellant's requested instruction.

5. Jury instruction on UCC warranties

Fifth, appellant asserts that the district court should have given its requested jury instruction on the UCC's implied warranties of merchantability and fitness for a particular purpose. *See* Minn. Stat. §§ 336.2-315, .2-711. But our analysis on the predominant-factor test forecloses appellant's argument because the UCC does not apply here. *See* Minn. Stat. § 336.2-102 (explaining that Minnesota's statutory codification of the UCC applies to transactions in goods).

6. Jury instruction on bankruptcy law

Sixth, appellant argues that the district court should have instructed the jury on section 363 of the Bankruptcy Code. By failing to do so, appellant contends that the jury improperly considered the $1.175 million that respondent incurred to remove the lien from the natural-gas trucks.

The district court correctly ruled that such an instruction lacked relevance and would have confused jurors. And even if the district court erred in denying this instruction, no prejudice exists because the requested instruction did not directly concern whether appellant formed an oral contract with respondent and then breached it. In any event, counsel argued this point and discussed this issue when examining witnesses. For these reasons, the district court did not abuse its discretion in denying appellant's requested jury instruction on bankruptcy. *See Peterson v. BASF Corp.*, 711 N.W.2d 470, 484 (Minn. 2006) (affirming a district court's denial of a requested jury instruction).[3]

B. The district court did not abuse its discretion in precluding appellant's expert from testifying.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto in the form of an opinion or otherwise." Minn. R. Evid. 702. A district court's ruling on the admissibility of expert testimony represents an evidentiary ruling that

[3] The jury's verdict also reflects that it did not consider the cost that respondent incurred when removing the lien from the natural-gas trucks. Instead, the verdict tracks the difference between the alleged $6.1 million oral contract between the parties and the $4 million agreement respondent reached with Republic. In fact, the jury awarded less than half of the $4,068,609 in damages that respondent sought.

we review for an abuse of discretion. *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998).

Appellant's expert submitted an affidavit outlining his opinion that respondent violated section 363 of the Bankruptcy Code, did not act in good faith, and that its actions constituted "a prima facie case of collusion." In a pretrial order, the district court granted respondent's motion to preclude appellant's expert witness from testifying, reasoning that the proffered testimony did not concern the asserted claims and constituted an inadmissible legal conclusion under Minn. R. Evid. 704.

Along with the requirements in Minn. R. Evid. 702, expert testimony must meet the basic admissibility requirements under the rules of evidence. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). While an expert may provide an opinion on an ultimate fact issue if that testimony will aid the fact-finder under Minn. R. Evid. 704, expert opinions that invoke legal analysis are generally considered unhelpful to the trier of fact. *See* Minn. R. Evid. 704 1977 comm. cmt.; *Conover v. N. States Power Co.*, 313 N.W.2d 397, 403 (Minn. 1981) (observing that expert testimony providing legal analysis is ordinarily inadmissible). Based on these principles, the district court did not abuse its wide discretion in excluding testimony from appellant's expert.

IV. Minn. Stat. § 549.09 does not violate equal protection.

Lastly, appellant raises an equal-protection challenge to the differing interest rates within Minnesota's postjudgment interest statute. The federal constitution forbids states from denying equal protection of the laws to any person within its jurisdiction. U.S. Const. amend. XIV. Similarly, the Minnesota Constitution guarantees that "[n]o member of this

state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. Minnesota courts apply the same analysis to both constitutional provisions. *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002).

A challenge to the constitutionality of a statute premised on an alleged equal protection violation presents a legal question that we review de novo. *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018). When, as here, a statute does not involve a fundamental right or suspect class, a court presumes it is constitutional. *Rio Vista Non-Profit Hous. Corp. v. County of Ramsey*, 335 N.W.2d 242, 245 (Minn. 1983).

Under Minnesota law, the postjudgment interest rate differs depending on the judgment or award amount. Minn. Stat. § 549.09, subd. 1(c). "For a judgment or award of $50,000 or less . . . the interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States Treasury Bills . . . ." *Id.*, subd. 1(c)(1)(i). But for judgments or awards over $50,000, "the interest rate shall be ten percent per year until paid." *Id.*, subd. 1(c)(2).

In urging us to invalidate the differing postjudgment interest rates in Minn. Stat. § 549.09, appellant contends that there is no reason to treat judgment debtors differently based on the award amount. But to prevail, a party bringing an equal-protection challenge must show differential treatment of similarly situated persons. *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012). This threshold requirement exists because the equal-protection guarantee does not require the state to apply the same treatment to differently situated persons. *Paquin v. Mack*, 788 N.W.2d 899, 906 (Minn. 2010).

Here, appellant, who faces a $1.92 million judgment, is not similarly situated to a person or entity facing a judgment or award less than $50,000. As a result, appellant's equal-protection argument fails. But even if appellant were similarly situated to a judgment debtor who owes less than $50,000, we conclude that the differing interest rates do not violate equal protection.

Under Minnesota's rational-basis test, we consider whether: (1) the classification is genuine and substantial; (2) a clear connection exists between the unique needs of the class and prescribed remedy; and (3) the state can legitimately advance the statute's purpose. *Wegan v. Village of Lexington*, 309 N.W.2d 273, 280 (Minn. 1981). Here the statute's plain terms reflect the legislature's decision to impose a fixed interest rate for larger judgments. And the statute applies a uniform ten percent interest to all judgment debtors facing an award over $50,000. The differing postjudgment interest rates in Minn. Stat. § 549.09, subd. 1, pass the rational-basis test.

D E C I S I O N

The district court correctly denied appellant's motions for JMOL and a new trial. It also properly concluded that Minn. Stat. § 549.09 does not violate equal protection by establishing different interest rates based on judgment or award amount. As a result, we affirm.

Affirmed.