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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1633**

RELCO, LLC,  
Appellant,

vs.

A. Kent Keller, et al.,  
Respondents,

Roger Allan Ochsner, et al.,  
Defendants

**Filed June 30, 2014  
Affirmed  
Toussaint, Judge \***

Kandiyohi County District Court  
File No. 34CV11396

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Toussaint, Judge.

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

## UNPUBLISHED OPINION

**TOUSSAINT**, Judge

Appellant RELCO, LLC challenges the district court's (1) grant of summary judgment to respondents A. Kent Keller and Keller Technology, Inc. (collectively, Keller) on RELCO's claims of misappropriation of trade secrets and confidential information and breach of contract; (2) grant of summary judgment to Keller on his counterclaim against RELCO; (3) decision to rule on the summary-judgment motions despite incomplete discovery; (4) denial of RELCO's motion to quash Keller's garnishment summons. We affirm.

### FACTS

In 2000, Keller and RELCO entered into a consulting agreement and an asset-purchase agreement to allow RELCO, which designs and manufactures systems and equipment for factories, to establish itself in the markets of lactose-processing systems and permeate-processing systems. Keller is an expert in these systems and owned and operated Whey Systems, Inc. As part of the purchase agreement, RELCO bought assets from Keller, including Whey Systems. The consulting agreement and a non-competition and non-disclosure agreement were incorporated into the purchase agreement. These agreements were in effect for 10 years, terminating on April 11, 2010.

After entering into these agreements, Keller provided RELCO with Whey System's assets. Keller maintained copies of the computer files and prints, which were based on previous projects, and he thereafter provided consulting services for RELCO. While consulting for RELCO, Keller designed and patented a process that improved the

manufacturing of certain dairy permeate. In November 2005, RELCO and Keller entered into a supplemental consulting and intellectual-property agreement (supplemental agreement), which allowed RELCO to secure sole rights to this patented process.

The supplemental agreement is “wholly separate” from the 2000 agreements and serves to “supplement” the 2000 agreements after their termination through April 11, 2015. As part of the supplemental agreement, RELCO agreed to pay Keller commissions on RELCO’s gross receipts from the sale of the dairy-permeate equipment. The parties agree that dairy-permeate and lactose-processing systems are two separate and distinct systems for processing milk by-products.

In late 2009, two RELCO employees, Roger Ochsner and Troy Gascoigne, resigned and went to work for Custom Fabricating and Repair, Inc. (CFR). While at RELCO, Ochsner and Gascoigne worked with Keller and engaged in marketing and design of the dairy-permeate and lactose-processing systems. Shortly after they started work at CFR, CFR created Cheese Systems, Inc. (CSI), a wholly-owned subsidiary that engaged in the business of designing and installing dairy-permeate and lactose-processing systems. Ochsner and Gascoigne worked for CSI, which is in direct competition with RELCO. In December 2010, Keller entered into a consulting agreement with CSI, having informed RELCO of his intention to do so, and has since worked with CSI on lactose-processing systems.

In 2011, RELCO filed suit against Keller, Ochsner, Gascoigne, CFR, and CSI. This appeal only involves the claims between Keller and RELCO. RELCO’s claims against Keller included breach of contract, misappropriation of trade secrets and

confidential information, and tortious interference with contract and economic advantage. Keller counterclaimed, alleging breach of contract for RELCO's failure to pay commissions according to the supplemental agreement.

Keller moved for summary judgment on RELCO's claims, which the district court granted. Keller later moved for summary judgment on his counterclaim against RELCO and for the costs of collection, including attorney fees. The district court granted the motion, concluding that RELCO's affirmative defense, that Keller breached the supplemental agreement, was without merit. The district court incorporated the terms of its earlier grant of summary judgment to Keller on RELCO's claims and awarded Keller \$298,105.80, which reflected unpaid commissions, attorney fees, and costs and expenses. The district court also denied RELCO's motion to compel discovery, determining that the evidence requested was not relevant because no claims remained between the parties following both grants of summary judgment. Keller was awarded the costs of defending the motion to compel, supplemental attorney fees, and prejudgment interest.

To collect the judgment, Keller commenced garnishment proceedings against RELCO. The district court granted a temporary stay of the garnishment on RELCO's request. Following a hearing, the district court issued an order that directed the entry of final, appealable judgments, denied RELCO's motion to quash the garnishment summons, and amended the judgment to add additional attorney fees for Keller. Thereafter, RELCO requested and received an additional stay of the garnishment pending appeal.

## DECISION

### I. *Summary judgment on RELCO's claims*

“We review a district court’s summary judgment decision de novo.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). This court views evidence in a light most favorable to the party against whom summary judgment was granted. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citation omitted). But

there is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.

*DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

#### A. *Misappropriation of trade secrets and confidential information*

To establish a claim for misappropriation, a party must prove the existence of a trade secret or confidential information and that the secret was acquired by the opposing party “as a result of a confidential relationship and that the defendant used and disclosed the trade secret.” *Jostens, Inc. v. Nat’l Computer Sys., Inc.*, 318 N.W.2d 691, 701 (Minn. 1982); *see also Rehab. Specialists, Inc. v. Koering*, 404 N.W.2d 301, 305 (Minn. App.

1987) (using tests and statutes relating to trade secrets in evaluating a claim of misappropriation of confidential information). The supreme court's test to determine whether information is confidential or a trade secret has four elements: "(1) the protected matter is not generally known or readily ascertainable, (2) it provides a demonstrable competitive advantage, (3) it was gained at expense to the employer, and (4) it is such that the employer intended to keep it confidential." *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 90 (Minn. 1979). Minnesota has adopted the Uniform Trade Secrets Act, which further defines "trade secret" as

a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Minn. Stat. § 325C.01, subd. 5 (2012). "Mere variations in general processes known in the field which embody no superior advances are not protected." *Jostens*, 318 N.W.2d at 698. Summary judgment is appropriate when the nonmoving party "bears the burden of proof on an element essential to [that] party's case," and fails to "make a showing sufficient to establish that essential element." *Russ*, 566 N.W.2d at 71 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986)).

RELCO's allegations of misappropriation against Keller relate to (1) mass-balance sheets and (2) electronic files sold to RELCO as part of the Whey Systems transactions.

1. *Mass-balance sheets*

RELCO asserts that the nature of the mass-balance sheets is a question of fact that the district court improperly resolved and argues that Keller's possession of mass-balance sheets alone constitutes misappropriation. We disagree.

At the time of the first summary-judgment motion, the record contained affidavit and deposition evidence from RELCO's president, Loren Corle, its employee, Steven Ennenga, and its expert witness, Neil Blazey.<sup>1</sup> The record also contained deposition and affidavit evidence from Keller. Keller admitted that he retained copies of mass-balance sheets that he created while he owned Whey Systems.

Corle, Ennenga, and Keller all attested that mass-balance analysis is not unique to RELCO and that any competent engineer could compile a mass-balance sheet with information that is not exclusively held by RELCO and could ascertain and recreate the calculations in RELCO's mass-balance sheets. Yet, Ennenga testified that it is "common knowledge" that mass-balance sheets are trade secrets; Corle contended that mass-balance sheets are confidential and trade-secret information because they set out particularized engineering processes; and Blazey stated that mass-balance sheets prepared by RELCO "contain information that is of a type not generally known to others and cannot be obtained independently," concluding that mass-balance documents are confidential and trade-secret information because he is unaware of "documents of this specific type and detail in the public domain." Such conclusory statements are

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<sup>1</sup> RELCO agrees that our review is limited to the record available to the district court at the time of this motion.

insufficient to defeat summary judgment. *Nowicki v. Benson Props.*, 402 N.W.2d 205, 208 (Minn. App. 1987).

“In order to successfully oppose a motion for summary judgment, a party cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial.” *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977). The evidence in the record demonstrates that the templates or underlying calculations used to create a mass-balance sheet are not unique or generally unascertainable and that a completed and undisclosed mass-balance sheet depicting a certain process could constitute trade-secret information. RELCO did not advance any facts to establish that the mass-balance sheets it purchased from Whey Systems are confidential or trade-secret information.

Even assuming that the mass-balance sheets *prepared by RELCO* are confidential or trade-secret information, as RELCO asserts, the evidence advanced by RELCO does not support the conclusion that Keller possessed mass-balance sheets that RELCO prepared. At most, it proves that he retained copies of Whey Systems’s mass-balance sheets, which Keller readily admits. “[T]he party resisting summary judgment must do more than rest on mere averments.” *Russ*, 566 N.W.2d at 71.

Viewing the evidence in a light most favorable to RELCO, it establishes that Keller retained Whey Systems mass-balance sheets which he used while working with CSI. But, even if these mass-balance sheets are the rightful property of RELCO, RELCO did not establish any facts suggesting that they are trade secrets or confidential information because they were not prepared by RELCO. And RELCO provided no

evidence that Keller provided the process information contained on these sheets to CSI or anyone else; instead, the evidence advanced by RELCO supports the conclusion that Keller used the Whey Systems mass-balance sheet as a template.

2. *Whey Systems's documents*

Aside from mass-balance sheets, RELCO does not specify which Whey Systems files retained by Keller constitute confidential or trade-secret information, but states more generally that RELCO's core business information routinely generated and used in its business constitutes information protected under the trade-secrets statute.

To establish a claim for misappropriation, RELCO was required to present evidence that the information retained by Keller was confidential or trade-secret information.<sup>2</sup> RELCO cites Blazey's and Corle's affidavits as proof that the information was confidential or a trade secret, but these affidavits only address documents produced by RELCO and do not address the Whey Systems documents retained by Keller. Aside from general claims about documents that constitute confidential or trade-secret information, RELCO did not advance evidence to establish this element. *See Nowicki*, 402 N.W.2d at 208 (stating that conclusory statements are insufficient to defeat summary judgment).

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<sup>2</sup> RELCO contends that the district court erred by concluding that Keller was entitled to have all Whey Systems' files returned to him when the agreement expired. But, even accepting RELCO's argument that the termination clause does not apply to the expiration of the agreement, RELCO was required to establish each element of misappropriation to withstand summary judgment. *See Russ*, 566 N.W.2d at 71 (stating that summary judgment is appropriate when the nonmoving party has the burden of proof and fails to present sufficient evidence to establish an essential element of its claim).

Additionally, there is no evidence in the record that Keller disclosed the files he retained. RELCO states that the circumstantial evidence “was highly suggestive of a collective effort by the various Defendants to misappropriate and use for the benefit of CSI/CFR the confidential business information purchased and developed by RELCO . . . .” But because RELCO did not provide any example of information that Keller disclosed, summary judgment was appropriate. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 376 (Minn. 2008) (“[M]ere speculation is not enough to survive a summary judgment motion.”).

B. *Breach of contract*

RELCO asserts that the non-disclosure and non-compete provisions of the supplemental agreement were breached by Keller’s relationship with CSI and that summary judgment on its breach-of-contract claim was erroneous.

1. *Non-compete provision*

RELCO argues that the supplemental agreement is ambiguous as to the restrictions imposed on Keller and that the meaning of the non-compete clause should be interpreted based on the parties’ intent.

Contract language is ambiguous if it is susceptible to more than one reasonable interpretation. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). If a contract is ambiguous, its interpretation is a question of fact. *City of Virginia v. Northland Office Props. Ltd. P’ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). “When the language is clear and unambiguous, we

enforce the agreement of the parties as expressed in the language of the contract.” *Dykes*, 781 N.W.2d at 582.

The non-compete provision of the supplemental agreement states, in part: “In order to protect Company’s legitimate business interests, neither Consultant nor its Affiliates will, during the Term, directly or indirectly (a) engage in soliciting, attempting to solicit or accepting business competitive with the Business of Company from a Customer or Prospect . . . .” RELCO argues that the district court overlooked the definition of “competitive” and that, because the term is ambiguous, the court should have considered extrinsic evidence of RELCO’s intent. RELCO claims that the contract language prohibits Keller from working with RELCO’s competitors and contends that “[b]y working with CSI/CFR, Keller was undeniably accepting business competitive with the Business of Company.” We disagree.

“The determination of whether a contract is unambiguous depends on the meaning assigned to the words and phrases in accordance with the apparent purpose of the contract as a whole.” *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). The supplemental agreement relates only to dairy-permeate systems and defines “Competitor or Competitive” as “any person or entity engaged in or about to engage in the Business of Company or that in any way resembles or competes with any product or service of the Business of Company.” “Business of Company” is defined as “the

business of designing, manufacturing, and installing dairy permeate concentrating and/or drying equipment for the dairy or food industries.”<sup>3</sup>

RELCO argues that the key portion of the “competitive” definition is “or that in any way resembles or competes with any product or service of the Business of Company.” RELCO seems to suggest that this portion must be read to prevent Keller from working with any business competitive *with RELCO*, not just competitive with the business of dairy-permeate concentrating or drying equipment. But it is the business itself (as in the *work*, not a company) that must be “competitive.” To constitute a breach, the *business* that Keller solicited or accepted must “resemble or compete with any product or service of” the business of designing, manufacturing, and installing dairy permeate concentrating and/or drying equipment for the dairy or food industries. In other words, the work the Keller seeks or performs must be related to dairy-permeate concentrated or drying equipment. Contrary to RELCO’s arguments, this clearly does not state that Keller cannot work for any company that competes with RELCO.

Moreover, the non-compete provision limits the entities with which Keller is prohibited from working to RELCO’s customers and prospects. (“[N]either Consultant nor its Affiliates will . . . engage in soliciting, attempting to solicit or accepting business competitive with the Business of Company *from a Customer or Prospect.*”) This provision does not preclude Keller from working with competitors, no matter how the

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<sup>3</sup> In its reply brief, RELCO argues that “dairy permeate,” as referred to in the definition of “Business of Company,” is ambiguous. This argument was not raised in RELCO’s principal brief and, therefore, is waived. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (stating that issues not raised or argued in appellant’s principal brief cannot be revived in a reply brief), *review denied* (Minn. Sept. 28, 1990).

word is defined, and CSI does not fall within the definitions provided in the agreement for “customer” or “prospect.” The non-compete clause is not ambiguous, and it does not restrict Keller from working on lactose-processing systems.

2. *Nondisclosure provision*

As part of its misappropriation claim, RELCO argues that there is a factual dispute as to whether Keller violated the confidentiality provision of the supplemental agreement by working with CSI and that the district court erred by conflating trade secrets and confidential information without analyzing this nondisclosure covenant. We disagree.

Confidential information and trade secrets are not synonymous, so the Minnesota Uniform Trade Secrets Act does not necessarily apply to all confidential information. *Saliterman v. Finney*, 361 N.W.2d 175, 178-79 (Minn. App. 1985) (“It is not necessary that information be a trade secret to be protected. . . . ‘A trial court may issue an injunction against a party who has, in violation of an explicit agreement or a common law duty, wrongfully used confidential information or trade secrets obtained from his employer.’” (quoting *Cherne Industrial*, 278 N.W.2d at 92)). The non-disclosure provision of the supplemental agreement provides: “Consultant will not, during the Term and for a period of 5 years thereafter, disclose Confidential Information or Trade Secret information, directly or indirectly, except as required in the course of Consultant’s performance of his work under the Supplemental Agreement.” The agreement defines “Confidential Information and Trade Secrets” as

all information, research processes, production processes, computer software, methods, practices, product descriptions, technical plans, equipment designs, drawings, blue prints,

Customer and supplier lists, business and marketing plans, financial information, and all other compilations and/or documentation of the foregoing information *relating to the Business of Company* that has not been disclosed by Company to the general public or which does not exist in the public market.

(Emphasis added.)

RELCO seems to allege that these provisions apply to information regarding both permeate-related and lactose-related matters. But that interpretation overlooks the definition of “Business of Company,” which limits the nondisclosure provision to restrict Keller’s use of information relating to “the business of designing, manufacturing, and installing dairy permeate concentrating and/or drying equipment for the dairy or food industries.” This does not include information relating to lactose-processing systems and does not apply to Keller’s work with CSI.

II. *Summary judgment on Keller’s counterclaim based on earlier summary-judgment decision*

In opposition to Keller’s summary-judgment motion on his breach-of-contract claim against RELCO for unpaid commissions under the supplemental agreement, RELCO argued that the commissions went unpaid because Keller breached the agreement by working with CSI. RELCO argues that the district court erred by failing to consider the facts on record, including evidence submitted between summary-judgment motions, and by relying on its earlier summary-judgment ruling to award judgment in favor of Keller on his counterclaims. We disagree.

Once a district court has decided an issue based on its merits, the issue need not continue to be relitigated throughout the same case, absent special circumstances, for the

purposes of judicial efficiency and finality. *See Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (resolving that even though the principles of law of the case, collateral estoppel, and res judicata do not apply “in a technical sense” to cases involving a district court’s earlier decision in the same case, “the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, clearly applies.”). While the district court has broad discretion to reconsider and revise its earlier orders before the final resolution of case, it may treat its decisions as conclusive and final with respect to issues already considered and decided. *See, e.g.*, Minn. R. Gen. Prac. 115.11 (“Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.”).

It is evident from RELCO’s opposition memorandum that it was attempting to relitigate its claims against Keller with its second summary-judgment motion, which had already been resolved by the district court. RELCO’s affirmative defense to Keller’s counterclaim was identical to its breach-of-contract claim against Keller. Moreover, the additional evidence submitted by RELCO did not relate to its asserted affirmative defense, instead relating primarily to the other defendants and only linking Keller with lactose-related work at CSI, which is not subject to the supplemental agreement. The district court did not err by refusing to consider RELCO’s breach-of-contract claim, which had already been litigated and decided on its merits.

### III. *Discovery deficiencies*

RELCO alternatively contends that summary judgment should have been denied in both motions as premature given discovery deficiencies, contending that information requested by RELCO would have supported its claims against Keller.<sup>4</sup>

We review a district court's decision to rule on a motion for summary judgment without allowing additional discovery for an abuse of discretion. *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). Minn. R. Civ. P. 56.06 provides:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had . . . .

The party requesting a continuance must provide an affidavit that is "specific about the evidence expected, the source of discovery necessary to obtain the evidence, and the reasons for failure to complete discovery to date." *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 919 (Minn. App. 2003). In considering a motion for a continuance, the district court must consider: "(1) whether the nonmoving party is 'seeking further discovery in the good faith belief that material facts will be uncovered, or is [the party] merely engaging in a fishing expedition'; and (2) whether the nonmoving party has 'been diligent in obtaining or seeking discovery' before requesting the

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<sup>4</sup> Keller contends that this appeal is improper because RELCO did not request a continuance under Minn. R. Civ. P. 56.06, but the record shows that RELCO did argue that the first summary-judgment motion was premature because of incomplete discovery and filed a motion to compel before the second summary-judgment motion was heard, which provide a basis for us to consider this argument on appeal.

continuance.” *City of Maple Grove v. Marketline Const. Capital, LLC*, 802 N.W.2d 809, 818 (Minn. App. 2011) (quoting *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1983)).

1. *First motion for summary judgment*

RELCO did not make a formal motion for a continuance of the first summary-judgment motion, but mentioned it briefly in its opposition memorandum. The district court implicitly disagreed with RELCO’s suggestion that more discovery was needed.

RELCO submitted an affidavit from its counsel stating that the deadlines for discovery had not yet arrived, it had additional depositions scheduled, and Keller had not provided all of the discovery it requested, but RELCO did not describe what information it expected to receive from conducting additional discovery or explain why the year of ongoing discovery was insufficient for it to obtain enough information to defeat summary judgment. And despite its counsel’s claims that Keller had “information outstanding in discovery that is responsive to various discovery requests served by” RELCO, including “requests seeking information about the supposedly new technology developed by Keller in conjunction with” CSI, RELCO only demonstrated one attempt, in the form of a letter sent to Keller’s counsel, to obtain unspecified additional information. Despite threatening to do so, RELCO did not bring a motion to compel, nor did it demonstrate additional contact with Keller regarding discovery in the three-month lapse between the date on the letter and RELCO’s responsive memorandum. And RELCO did not detail in its affidavit how Keller’s discovery responses were insufficient or how information about technology developed by Keller with CSI would help RELCO defend against the

summary-judgment motion. The district court's implicit refusal to grant a continuance for additional discovery was not an abuse of discretion.

2. *Second motion for summary judgment*

RELCO contends that because its motion to compel was filed simultaneously with its opposition to the second summary-judgment motion, it was improper to grant summary judgment when Keller and the other defendants were “withholding pertinent information.” The test set forth in *Rice*, 320 N.W.2d at 412, for considering a request for a continuance of a summary-judgment motion also applies to a motion to compel discovery made before a summary-judgment motion is considered. *Hasan v. McDonald's Corp.*, 377 N.W.2d 472, 475 (Minn. App. 1985).

In its motion to compel, RELCO argued that the information it sought to discover “would serve to establish whether Keller breached the [purchase agreement] and/or his noncompetition obligations to RELCO, and which is also relevant to RELCO's equitable affirmative defenses asserted in its response to Keller's Counterclaim.” The affidavit that accompanied the motion only served to admit evidence of discovery documentation and did not explain the specific information RELCO sought to defeat summary judgment. The district court's order denying the motion was issued after it granted summary judgment on Keller's counterclaim on the grounds that the discovery sought by RELCO was not relevant because Keller had prevailed on all claims involving RELCO.

While *Hasan* may establish that the district court should have considered this motion before or along with its grant of summary judgment, the information RELCO sought to discover was related to the claims already resolved by the district court in its

grant of summary judgment to Keller on RELCO's claims against him. The district court did not abuse its discretion by denying RELCO's motion to compel.<sup>5</sup>

#### IV. *Motion to quash*

RELCO argues that the district court erred by denying its motion to quash Keller's garnishment summons because none of the judgments entered by the court was final and appealable and, therefore, they could not be enforced. Because RELCO appears to challenge the district court's interpretation of the garnishment statutes, we review this issue *de novo*. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011) (“[I]nterpretation of a statute presents a question of law, which we review *de novo*.”).

“A garnishment proceeding is not an independent action but merely an ancillary proceeding, to secure and make effectual any judgment recovered in the main action.” *Amica Mut. Ins. Co. v. Wartman*, 841 N.W.2d 637, 641 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. Mar. 18, 2014). Unless otherwise provided, “the Rules of Civil Procedure for the District Courts shall apply in all proceedings under [the Garnishment] chapter.” Minn. Stat. § 571.72, subd. 1 (2012). A judgment creditor may recover money by issuing a garnishment summons “at any time after entry of a money judgment in the civil action.” Minn. Stat. § 571.71(3) (2012). “Judgment” is defined by the civil rules of procedure as “the final determination of the rights of the parties in an

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<sup>5</sup> Because we conclude that the district court's grant of summary judgment on Keller's counterclaims was proper, we do not address RELCO's argument that the district court erred by awarding attorney fees, costs, and prejudgment interest. RELCO's argument against the award of these items is based on its contention that judgment never should have been entered in favor of Keller on his counterclaim, not that the district court erred in applying the contract or statute authorizing this award.

action or proceeding.” Minn. R. Civ. P. 54.01. “[T]he court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Minn. R. Civ. P. 54.02. Any such order that does not contain this determination and direction and that does not dispose of all claims “is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties,” *id.*, and is not appealable as of right, *Pederson v. Rose Co-op. Creamery Ass’n*, 326 N.W.2d 657, 661 (Minn. 1982).

In this case, judgment was entered against RELCO on Keller’s counterclaims, which meets the minimal, plain-language requirement for garnishment set forth in Minn. Stat. § 571.71(3). By the district court’s own admission, judgment was not final because the district court’s orders did not sufficiently commence the time for appeal, but there were no outstanding claims between RELCO and Keller, the resolution of RELCO’s claims against the remaining defendants would not impact the judgment owed to Keller, and Keller had no remaining role as a party in the litigation before the district court. The purpose of garnishment is to secure payment for the party entitled to money damages, *Buysse v. Baumann-Furrie & Co.*, 448 N.W.2d 865, 870 (Minn. 1989), and the amount of the judgment was not in dispute in this case.

Though RELCO may contend that it was prejudiced because it could not appeal the order awarding damages to Keller, it had the option to move for a stay of entry of judgment, a stay of the proceedings, or certification to appeal. Moreover, the district court amended its earlier orders at the same time that it denied RELCO’s motion to

quash, making judgment final and undeniably enforceable under the garnishment statute.

The district court did not err by denying RELCO's motion to quash the garnishment.

**Affirmed.**