

NOT DESIGNATED FOR PUBLICATION

No. 125,709

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

E. CURE LAND, LLC,
Appellee,

v.

LEE IHRIG and BRANDIE IHRIG,
Appellants.

MEMORANDUM OPINION

Appeal from Sherman District Court; SCOTT SHOWALTER, judge. Submitted without oral argument. Opinion filed December 1, 2023. Affirmed.

Jerry Fairbanks, of Fairbanks Kling Law, P.A., of Goodland, for appellants.

Jeffrey M. Cure, of CureLaw, P.C., of Goodland, for appellee.

Before MALONE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: Lee and Brandie Ihrig appeal the district court's declaratory judgment interpreting a farm lease between E. Cure Land, LLC (the LLC) and the Ihrigs. The LLC notified the Ihrigs that the farm lease would terminate on December 31, 2021. The main issue on appeal is whether the written farm lease allowed the Ihrigs to plant a wheat crop on the irrigated portion of the farm ground in the fall of 2021 to be harvested in 2022. The district court interpreted the farm lease in favor of the LLC and found that the Ihrigs were not allowed to plant the wheat crop in the fall of 2021 after they had received notice that the lease would not be renewed at the end of the year. For the reasons stated here, we affirm the district court's judgment.

FACTS

On March 2, 2020, the Ihrigs, as tenants, executed a farm lease on 516 acres of cropland in Sherman County owned by Township VII South Trust (Trust). The lease gave the Ihrigs the right to farm the land, consisting of irrigated circles and unirrigated dry land. The lease referred to the dry land as "wheat ground." Under the lease, the Ihrigs were to pay annual rent of \$39,000 in three installments. The lease would renew annually unless either party gave the other notice of their intent to terminate at least 30 days before December 31. The lease included a provision stating that the lease "follows the land and shall not be terminated by the death, sale, insolvency, mortgage foreclosure, or other alienation of the property by LANDLORD." It also provided that "[t]he terms, covenants, and conditions contained herein shall apply to and be binding upon the heirs, successors, executors, trustees, and successor trustees and administrators of the parties hereto"

The lease also gave the Ihrigs a limited right to harvest wheat after termination:

"1. TERM: The term of this cash lease shall be for a period of one (1) years from and after January 1, 2020 through December 31, 2020. The parties understand and agree that TENANT shall be allowed to remove the wheat crop planted in the Fall of 2020 or the fall of any year hereafter in any renewal to be harvested the following summer. PROVIDED, FURTHER, any crop to be planted in any years of the lease including that of 2020 shall be planted on a normal rotational basis and shall not be planted fence row to fence row on a continuous crop fashion. The parties understand and agree that good husbandry of the moisture in the Northwest area of Kansas is not conducive to continuous cropping of the wheat ground, however continuous cropping shall be considered in years with adequate moisture, provided, however, written consent of the LANDLORD is required before continuous cropping can be used of the wheat crop. Of course, as to the irrigated ground continuous cropping is normal rotation."

Neither party terminated the lease in 2020, so it renewed for 2021. In 2021, the Trust sold the land that was subject to the lease to the LLC. On August 27, 2021, the

Trust gave the Ihrigs written notice of termination of the lease effective December 31, 2021. The Trust and the LLC executed a Trustees' Deed on August 31, 2021, conveying the property from the Trust to the LLC. The LLC knew of the existence and obligations of the lease upon purchasing the property.

The Ihrigs then informed the LLC, through the LLC's realtor, that they intended to plant a wheat crop on the irrigated ground, to be harvested in 2022. The Trust advised the Ihrigs on September 7, 2021, that the lease did not give them the right to plant wheat on the irrigated ground in the fall of 2021. In a text message on September 15, 2021, Gregory Cure, one of the LLC's representatives, told Lee that the Ihrigs could not plant the fall-seeded wheat crop on the irrigated land.

The deed, transferring ownership from the Trust to the LLC, was recorded on September 9, 2021. On September 15, 2021, Cure gave notice to the Ihrigs that the LLC was the new owner of the property and that the Ihrigs had no right to plant wheat on the irrigated portions of the property in the fall of 2021.

In October 2021, the Ihrigs harvested the corn crop from the irrigated ground while it was still "high moisture corn," something they had never done before. The next day the Ihrigs planted a wheat crop on the same irrigated ground.

On October 20, 2021, the Ihrigs wrote a check for the last payment due for the 2021 lease obligation through the end of the lease term for \$9,750. They sent the check to the Trust even though the LLC had acquired the property by that time. On November 17, 2021, the LLC, through Cure, made a demand to the Ihrigs for payment of the last rent payment for 2021. The Trust returned the rent check to the Ihrigs on January 12, 2022, with a note that the Trust was no longer entitled to the lease payment. The Ihrigs paid the LLC the rent balance on June 22, 2022.

The LLC sued the Ihrigs for breach of contract and unjust enrichment. The LLC later sought and was granted leave to file an amended petition, which added claims for declaratory judgment and eviction. The Ihrigs answered claiming that they had a right, under the written language in the lease, to plant a wheat crop on the irrigated ground in the fall of 2021 for harvesting in 2022.

The district court held an evidentiary hearing and reviewed written briefs by the parties. By this time the wheat crop had been harvested by Lee Ihrig and placed in a bonded elevator at the district court's direction. Edward Cure and Gregory Cure testified for the LLC, and Lee Ihrig testified for the defense. There was a recording malfunction and Lee's original testimony was not recorded. The parties retook his testimony later to have a complete record of the hearing.

Edward Cure is a member manager with authority to act on behalf of the LLC. He testified to the legal description of the land that the LLC purchased from the Trust, consisting of two irrigated circles, some dry land farm ground, and some grass. Cure understood that the LLC would be subject to the lease because it ran through December 31, 2021, and the LLC purchased the property in September 2021. He stated that both irrigated circles had corn growing when he executed the contract to buy the property.

Edward testified that he did not believe the terms of the lease allowed the Ihrigs to plant 2021 corn on the irrigated circles, harvest that corn, and plant 2022 wheat in the fall of 2021. Edward said, "He's only paid for one crop year and he's receiving two crops." He estimated that the windfall to the Ihrigs, if allowed to profit from the wheat planted on the irrigated ground in 2021, would be around \$100,000. He understood the provision allowing for removal of a wheat crop after termination is that it extended the term for land on which rent was paid, but no crop was planted under summer fallow.

Gregory Cure is a managing partner of the LLC. He testified that he reached out to the Ihrigs on or about September 15 to let them know that the LLC had purchased the ground, and he was told that the Ihrigs intended to put wheat on the irrigated circles. Gregory notified Lee Ihrig that he could not plant wheat on the irrigated land in the fall of 2021 for harvesting the next spring, under the terms of the farm lease.

Lee Ihrig testified that his father-in-law had farmed this same ground under a lease, and that in 2020 he and his wife, Brandie, executed a lease to farm the ground. He said that he worked with his father-in-law farming this property for "[p]robably 20 years." In 2020 the Ihrigs planted corn on the irrigated land and wheat on the dry ground, and the wheat was harvested in 2021. Lee admitted that under the lease "wheat ground" means "dryland." In 2021, they again planted corn on the irrigated land.

Lee said that sometime in the 2000s his father-in-law had planted wheat on the irrigated circles. That would have been the last time before the fall of 2021. He also testified that he harvested the corn on the irrigated circles in the fall of 2021 early when it was "high moisture." He admitted that he had never done that before. He testified that after the lease was terminated in 2021, he planted wheat on the irrigated ground "[t]o get another crop" because he believed he had the right to do that.

Lee admitted that the Trust notified him by writing on September 7, 2021, that he did not have the right to plant wheat on the irrigated circles in the fall of 2021. He also admitted that when referring to a 2021 crop, one would be referring to the year it is harvested—not when planted. He stated that he planted corn on the irrigated circles in the 2021 crop year and made a good profit doing so. He admitted that "when farmers enter into cash leases in Sherman County, their intent is to pay cash rent to get a crop yield." Lee also admitted that by harvesting a wheat crop in 2022, he would be getting a 2022 crop from the farm lease without paying any rent for the 2022 crop.

On August 12, 2022, the district court issued a memorandum decision granting the LLC's request for declaratory judgment finding that the farm lease "did not allow—nor did the original parties intend—for [the Ihrigs] to plant the wheat crop on irrigated ground in the fall of 2021 to be harvested in 2022." The district court based its ruling on the "plain language" of the farm lease, but also recognized that when a written contract is ambiguous, a court may turn to extrinsic or parol evidence to ascertain the parties' original intent. The district court found that the Ihrigs were isolating one sentence from the farm lease that allowed the tenant to remove any wheat crop planted in the fall to be harvested the following summer. But the district court focused on the fact that the farm lease distinguished between irrigated ground and wheat ground. The district court found that allowing the Ihrigs to harvest the wheat crop in 2022 without paying rent for the 2022 crop year "would result in a windfall for them" that was never intended under the lease. The district court also found that "the purchase of property by [the LLC] gives [the LLC] all the rights and responsibilities of the seller of the property," thus rejecting the Ihrigs' claim that the LLC was barred from bringing the action because it lacked privity of contract with the Ihrigs. The district court granted ownership of the 2022 wheat crop to the LLC but granted Lee Ihrig reasonable harvesting expenses for harvesting the crop. The Ihrigs timely appealed the district court's judgment.

ANALYSIS

On appeal, the Ihrigs claim the district court erred by granting declaratory judgment for the LLC. They argue that the terms of the written farm lease allowed them to plant a wheat crop on the irrigated portion of the farm ground in the fall of 2021 to be harvested in 2022. The Ihrigs also argue that there is no contractual privity between them and the LLC to allow the LLC to enforce the farm lease originally executed between the Ihrigs and the Trust.

The LLC contends that the district court correctly interpreted the farm lease to preclude the Ihrigs from planting a fall-seeded wheat crop on irrigated ground and gaining a windfall from a crop for which they paid no rent. The LLC also contends that as the purchaser of land subject to a lease, it obtained all the rights and benefits of the lessor and that the Ihrigs cannot defend based on a lack of privity between them and the LLC.

An appellate court exercises unlimited review over the interpretation and legal effect of written instruments and is not bound by the lower court's interpretations or rulings. *Born v. Born*, 304 Kan. 542, 554, 374 P.3d 624 (2016). "The primary rule for interpreting written contracts is to ascertain the parties' intent. If the terms of the contract are clear, the intent of the parties is to be determined from the language of the contract without applying rules of construction." *Waste Connections of Kansas, Inc. v. Ritchie Corp.*, 296 Kan. 943, 963, 298 P.3d 250 (2013). But if the language of a written contract is ambiguous, then extrinsic or parol evidence can be considered. 296 Kan. at 963. The question of whether a written instrument is ambiguous is a question of law subject to de novo review. *Trear v. Chamberlain*, 308 Kan. 932, 936, 425 P.3d 297 (2018).

The Ihrigs assert that the "lease is not ambiguous and can be interpreted from its four corners." They specifically point to the provisions in the lease stating: "[T]he parties understand and agree that TENANT shall be allowed to remove the wheat crop planted in the Fall of 2020 or the fall of any year thereafter in any renewal to be harvested the following summer," and "as to the irrigated ground continuous cropping is normal rotation."

The LLC points out, and the district court found, that the Ihrigs' interpretation of the lease requires reading an isolated phrase and ignoring the lease's distinction between "wheat ground" and "irrigated ground." According to the LCC, when reading the lease as a whole, the tenants' right to harvest wheat after termination only applied to a wheat crop planted on a normal rotational basis on the non-irrigated "wheat ground."

The parties discuss *Meairs v. Webber*, No. 111,114, 2015 WL 423903 (Kan. App. 2015) (unpublished opinion). *Meairs* involved tenants who planted a wheat crop that would be harvested the summer after the termination of their lease, despite having received notice of their lease's termination before planting the wheat. 2015 WL 423903, at *1. The lease in that case contained the following provision:

"LAND PRODUCTION: TENANTS, in the exercise of their complete and independent discretion, shall have the right to plant the leased land to any crop they determine advantages [*sic*] and to pasture any crops or crop residue, and shall be entitled to all crops produced and the proceeds from the sale of all such crops or income from the pasture of livestock, together with all government payments attributable to such farm production or land use and in support of the price thereof." 2015 WL 423903, at *2.

Unlike the tenants in *Meairs*, the Ihrigs had no discretion to plant the land any way they saw fit. The Ihrigs' lease did not allow continuous cropping of the wheat ground, except continuous cropping could be considered in years with adequate moisture and with written consent of the landlord. Planting a fall wheat crop in 2021 was outside the normal rotation because the Ihrigs had harvested wheat earlier that year. *Meairs* is distinguishable and does not support the Ihrigs' claims.

The district court's memorandum decision did not expressly determine whether the "TERM" provision allowing the tenant to remove a wheat crop after termination of the lease was clear and unambiguous or whether the provision was ambiguous. The district court's analysis seemed to go both ways because it discussed the "plain language" of the farm lease, but it also considered the testimony of the witnesses and recognized that extrinsic or parol evidence can be considered by a court to determine the parties' intent when the contract language is unclear or ambiguous.

We conclude that the "TERM" provision of the farm lease addressing when the tenant can harvest a wheat crop after termination of the lease is unclear and ambiguous.

The second sentence in the paragraph states that the tenant "shall be allowed to remove the wheat crop planted in the Fall of 2020 or the fall of any year hereafter in any renewal to be harvested the following summer." But the same paragraph distinguishes between wheat ground and irrigated ground and provides that continuous cropping is generally not permitted on wheat ground without the landlord's consent. Planting a fall wheat crop in 2021 was outside the normal rotation because the Ihrigs had harvested a wheat crop earlier that year. But the final sentence in the paragraph states: "Of course, as to the irrigated ground continuous cropping is normal rotation." The paragraph read as a whole does not address the situation here when the Ihrigs planted a fall wheat crop in 2021 on irrigated land to be harvested in 2022, rendering the lease provision ambiguous and subject to more than one interpretation.

Kansas law provides that when the language of a written contract is ambiguous, then the district court can consider extrinsic or parol evidence to determine the parties' intent. *Waste Connections of Kansas, Inc.*, 296 Kan. at 963. This becomes a question of fact for the fact-finder. Here, the district court considered the testimony of the witnesses at the trial and found that the farm lease "did not allow—nor did the original parties intend—for [the Ihrigs] to plant the wheat crop on irrigated ground in the fall of 2021 to be harvested in 2022." An appellate court generally reviews the district court's factual findings under the substantial competent evidence standard, disregarding any conflicting evidence or other inferences that might be drawn from the evidence. *Gannon v. State*, 305 Kan. 850, 881, 390 P.3d 461 (2017). Substantial competent evidence refers to legal and relevant evidence that a reasonable person could accept as adequate to support a conclusion. *Granados v. Wilson*, 317 Kan. 34, 41, 523 P.3d 501 (2023).

The district court's finding that the original parties did not intend for the Ihrigs to plant the wheat crop on irrigated ground in the fall of 2021 to be harvested in 2022 is supported by substantial competent evidence. On August 27, 2021, the Trust gave the Ihrigs written notice of termination of the lease effective December 31, 2021. The Trust

advised the Ihrigs on September 7, 2021, that the lease did not give them the right to plant wheat on the farm ground for a 2022 harvest. Greg Cure provided the same notice on September 15, 2021. Planting a wheat crop on the wheat ground in the fall of 2021 was outside the normal rotation. Still, the Ihrigs harvested their corn crop from the irrigated ground earlier than normal that fall and planted a wheat crop on the irrigated ground the next day. Lee Ihrig conceded that he took these steps to get an extra wheat crop out of the farm lease without paying rent for a 2022 wheat crop.

The district court found that allowing the Ihrigs to harvest the wheat crop in 2022 without paying rent for the 2022 crop year "would result in a windfall for them" that was never intended under the lease. This finding is supported by substantial competent evidence and is a reasonable interpretation of the testimony presented at the trial. The district court was allowed to consider extrinsic or parol evidence to interpret the ambiguous lease provision. As a result, we conclude the district court did not err in finding that the farm lease did not allow for the Ihrigs to plant the wheat crop on irrigated ground in the fall of 2021 to be harvested in 2022 after the Ihrigs had been notified that the lease was being canceled on December 31, 2021.

As a separate issue, the Ihrigs argue that there is no contractual privity between them and the LLC to allow the LLC to enforce the farm lease originally executed between the Ihrigs and the Trust. The LLC contends that as the purchaser of the land subject to the lease, it obtained all the rights and benefits of the lessor and that the Ihrigs cannot defend based on a lack of privity between them and the LLC. As stated before, an appellate court exercises unlimited review over the interpretation and legal effect of written instruments. *Born*, 304 Kan. at 554.

The Ihrigs' argument is somewhat difficult to follow, and they cite no legal authority to support their position. Issues not adequately briefed are considered waived or abandoned. See *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018).

In any event, the Ihrigs' claim about lack of privity has no merit. The original farm lease between the Ihrigs and the Trust contains these provisions:

"11. The parties understand and agree that this agreement follows the land and shall not be terminated by the death, sale, insolvency, mortgage foreclosure, or other alienation of the property by LANDLORD.

. . . .

"16. The terms, covenants, and conditions contained herein shall apply to and be binding upon the heirs, successors, executors, trustees, and successor trustees and administrators of the parties hereto, and all such parties, including the LANDLORD and TENANT herein, shall be jointly and severally liable under its terms, covenants and conditions."

As the LLC argues, this language makes clear that upon purchasing the land subject to the farm lease, the LLC was entitled to enforce the lease terms. The farm lease provides that it binds the successors in interest of both the landlord and the tenant. As a result, the LLC is allowed to enforce the terms of the lease. We conclude the district court did not err by granting declaratory judgment for the LLC.

Affirmed.