**IN THE COURT OF APPEALS OF IOWA**

No. 23-0377
Filed February 21, 2024

**CARSON CUSICK and TRISHA CUSICK,**
Plaintiffs/Counterclaim Defendants-Appellants,

**vs.**

**ADRIENNE COOPER and BRIAN COOPER,**
Defendants/Counterclaim Plaintiffs-Appellees.

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Appeal from the Iowa District Court for Fremont County, Jeffrey L. Larson, Judge.

Carson and Trisha Cusick appeal the order granting Adrienne and Brian Cooper's motion to enforce a settlement agreement. **AFFIRMED.**

Andrew B. Howie of Shindler, Anderson, Goplerud & Weese, P.C., West Des Moines, for appellants.

Matthew D. Hammes of Locher Pavelka Dostal Braddy & Hammes, LLC, Council Bluffs, for appellees.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

**CHICCHELLY, Judge.**

Carson and Trisha Cusick appeal the order granting Adrienne and Brian Cooper's motion to enforce a settlement agreement. They challenge the enforcement of the agreement, claiming that they never agreed to settle and there is insufficient evidence to determine the material terms. Because the district court did not err when enforcing the settlement agreement, we affirm.

## *I. Background Facts and Proceedings.*

This appeal stems from the purchase of family real estate between two siblings. On November 2, 2018, the Cusicks signed a purchase agreement with the Coopers, agreeing to purchase the property on installment from the Coopers. The Cusicks ultimately sued the Coopers as a result of this transaction, requesting injunctive relief and claiming damages as a result of the Coopers' alleged failure to file an insurance claim on the property.[1] The Coopers counterclaimed, arguing the purchase agreement is "null and void" based on its express terms and requesting damages and eviction of the Cusicks from the property.

Over the life of the case, the proceedings were substantially delayed. This was due in part to the COVID-19 pandemic but also due to a temporary stay of proceedings pending final resolution of related criminal charges against Carson Cusick. During the first year, the parties filed a flurry of summary judgment motions. First, both parties filed cross motions for summary judgment. The district court granted partial summary judgment on the Coopers' frivolous filings

[1] Timothy Flahive (Adrienne Cooper's former spouse) was originally a party to this action, but he was dismissed without prejudice after he executed a quitclaim deed to the property.

counterclaim but denied the remainder. In the second round, only the Coopers moved for partial summary judgment. The district court granted this motion, finding the purchase agreement null and void and holding that the Cusicks must vacate the property. By the third round, when the Coopers filed for summary judgment again, they requested clarification on what issues were still alive. The district court explained that the only issues for trial were the Coopers' remaining counterclaims.

On September 16, 2022, the Coopers moved to enforce a settlement agreement. They alleged the parties settled on May 27, presenting evidence of the purported agreement,[2] and alleging the Cusicks' counsel failed to deliver an executed settlement agreement signed by the Cusicks. The Coopers further requested the district court to order the Cusicks to execute the agreement. The Cusicks resisted, contending they were not compelled to sign any document against their will. The district court granted the motion, finding that the Cusicks failed to dispute the existence of a settlement agreement, only unsuccessfully arguing it should not be enforced. The court also found substantial evidence supported the existence of a settlement agreement and ordered the parties to fully execute the settlement agreement. The Cusicks objected to the ruling, claiming

[2] The Coopers filed an "Affidavit of Matthew D. Hammes," their trial and appellate attorney. In it, Hammes swears under oath the settlement negotiations and agreement took place. The affidavit itself purports to include attachments, labeled Exhibits A through H, which include evidence of the negotiations and a drafted settlement agreement. But the Coopers neglected to ever file the actual exhibits themselves. Instead, they filed a supplemental exhibit list, in which they stated they would provide the exhibits to the court "directly via email." This is a clear violation of our trial rules and procedures. *See* Iowa R. Civ. P. 1.442(5) ("The filing of pleadings and other papers with the court as required by these rules *shall be made by filing them with the clerk of the court*." (emphasis added)). Nonetheless, the district court clearly considered this affidavit and the accompanying attachments because it referenced them several times in the written ruling.

the settlement agreement was unenforceable because the parties' performance was conditional on the dismissal of the criminal charges, which had not occurred.

Before the district court ruled on the objection, the Cusicks appealed. On appeal, they argue the district court erred in enforcing the settlement agreement because they never assented to the agreement and the terms are too uncertain.

## *II. Review.*

We review the enforcement of a settlement agreement for correction of errors at law. *Est. of Cox v. Dunakey & Klatt, P.C.*, 893 N.W.2d 295, 302 (Iowa 2017). The court's findings are akin to a jury verdict and therefore "binding if supported by substantial evidence." *Wende v. Orv Rocker Ford Lincoln Mercury, Inc.*, 530 N.W.2d 92, 95 (Iowa Ct. App. 1995).

## *III. Enforcement of the Alleged Settlement Agreement.*

The Cusicks first argue that no settlement agreement exists and the district court should not enforce it absent mutual assent and certain terms. "It is generally recognized that courts have authority to enforce settlement agreements made in a pending case." *Id.* at 94. Settlement agreements are not required to be in writing, but the district court can enforce an agreement by motion of one of the parties if the important facts are not in dispute. *Id.* at 94–95. Here, the Coopers moved to enforce the purported agreement.

### *A. Existence of the Purported Settlement Agreement.*

The Coopers allege that the Cusicks' argument against the existence of a settlement agreement is unpreserved. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537

(Iowa 2002). In its ruling, the district court clearly expressed the Cusicks' shortcoming and considered the issue: "The resistance filed by the Coopers on November 16, 2022, does not dispute there was a settlement agreement but argue[s] the unsigned agreement should not be enforced." The Cusicks neglected to raise the existence issue pre-appeal. In their resistance and objections, the Cusicks only challenged the enforceability of the agreement. In their objection after the enforcement ruling, the Cusicks only reiterated their previous argument. Our review of the record shows that at no point did the Cusicks dispute the existence of the settlement agreement itself until their appeal. They also neglected to counter the Coopers' evidence or offer their own. Accordingly, we find this issue "waived" and decline to consider it. *See id.* ("waiving" issues that are not preserved for appeal); *see also* Iowa R. App. P. 6.904(2)(g)(1), (3) (requiring parties to include "references to the places in the record where the issue was raised and decided" to prevent waiver). Instead, we move forward with the concession that a settlement agreement exists and only consider its enforceability.

*B. Enforcement of the Settlement Agreement.*

The finding that a settlement agreement exists does not automatically mean it is enforceable, but we generally enforce them absent exceptional circumstances. *See Arch v. White*, No. 18-0827, 2019 WL 719186, at *3 (Iowa Ct. App. Feb. 20, 2019). A settlement agreement, much like a contract, "must be definite and certain in order to be given legal effect." *Id.* (quoting *Palmer v. Albert*, 310 N.W.2d 169, 172 (Iowa 1981)). While an executed settlement agreement is not necessary for enforcement, the parties must have "manifest[ed] their mutual assent to the terms sought to be enforced." *Forbes v. Benton Cnty. Agric. Soc'y*,

No. 20-1250, 2021 WL 1907130, at *3 (Iowa Ct. App. May 12, 2021) (quoting *Sierra Club v. Wayne Weber LLC*, 689 N.W.2d 696, 702 (Iowa 2004)). "Mutual assent is present when it is clear from the *objective evidence* that there has been a meeting of the minds." *Cox*, 893 N.W.2d at 303 (emphasis added) (citation omitted).

The Cusicks first claim that the misfiled exhibits are not part of the trial record and therefore cannot be considered on appeal. *See* Iowa R. App. P. 6.801 ("Only the original documents and exhibits filed in the district court case from which the appeal is taken . . . [shall] constitute the record on appeal."); *see also Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005) (finding a lack of jurisdiction when the record was not properly before the appellate court). While generally true, the rules also allow for supplementation and correction of the record if necessary to reflect what the district court actually considered below. *See* Iowa R. App. P. 6.807 ("If anything material to either party is omitted from the record by error or accident or is misstated therein . . . , [the court of appeals] may direct that the omission or misstatement be corrected."). This process occurred at the appellate level, and the record was corrected by the parties. It is clear from the corrected record that the district court considered the missing exhibits in its determination because it referenced not only their existence but their impact on the ruling:

> The email exchange, as summarized in the affidavit of [the Coopers' trial and appellate attorney] filed November 17, 2022, clearly convinces the Court that the parties had reached an agreement on a full settlement, and the agreement simply needed to be executed. This position is supported by substantial evidence in the record. . . .
>
> The Court hereby orders that the settlement agreement [Exhibit H of Attorney Hammes's affidavit] be executed by the parties.

We therefore consider the corrected record as part of our appeal when determining enforcement.

The Cusicks next contend the Coopers did not meet their burden in enforcing the agreement, although they rely on the lack of exhibits as their justification and fail to describe specifically how the district court erred in its ruling. The district court concluded there is substantial evidence to justify enforcement of the settlement agreement, and we agree. Similar to *Wende*, the bulk of evidence in this matter constituted an attorney affidavit which detailed the settlement negotiations, and such an affidavit itself was considered sufficient in *Wende*. 530 N.W.2d at 95. But there is additional evidence here that was not present in *Wende*; for example, corroborating exhibits verify the claims made in the affidavit. The exhibits themselves detail the material terms of the agreement, including a four-page draft settlement agreement that included provisions such as the agreement conditions, consideration, required performance, and resolution of the trial proceedings. The emails exchanged between the parties' counsel show the acceptance of the parties' agreement. *See Forbes*, 2021 WL 1907130, at *3 (relying on attorney communications for a finding of "mutual assent"). Their mistaken absence from the record does not prevent our court from correcting the record and considering them on appeal, just as the district court considered them below. We therefore find the district court did not err by enforcing the settlement agreement.

## *IV. Disposition.*

Because we find the district court did not err when enforcing the settlement agreement, we affirm.

**AFFIRMED.**