

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Heritage Const. Companies, LLC v. Philip Keithahn

Heritage Const. Companies, LLC v. Philip Keithahn · No. 24-2333 · Decided February 2, 2026

SUMMARY

The United States Court of Appeals for the Eighth Circuit affirmed the denial of judgment as a matter of law and a new trial in a dispute arising from the financing and construction of a proposed osteopathic medical school. Applying Minnesota law, the court held that statements concerning committed financing could support a negligent misrepresentation claim even though they related to a future funding event. The court also rejected challenges based on jury instructions, alleged violations of an in limine order, trial arguments, impeachment, and cumulative error.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Benton, Circuit Judge; Kelly, Circuit Judge; Grasz, Circuit Judge
JURISDICTION	United States Court of Appeals for the Eighth Circuit
DECIDED	February 2, 2026
DOCKET	24-2333
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury found Philip Keithahn and Minnesota Medical University, LLC liable for breach of contract, indemnification, negligent misrepresentation, and fraud by omission, the defendants appealed the district court's denial of their motions for judgment as a matter of law and, alternatively, for a new trial.
STANDARD OF REVIEW	The denial of judgment as a matter of law is reviewed de novo. Judgment as a matter of law is appropriate only when all the evidence points one way and is susceptible of no reasonable inference sustaining the prevailing party's position. The denial of a motion for new trial is reviewed for abuse of discretion, and a new trial is warranted only where a prejudicial error caused a serious miscarriage of justice. Jury-instruction rulings are reviewed by examining whether the instructions, taken as a whole and in light of the evidence and applicable law, fairly and adequately submitted the issues. Evidentiary errors warrant a new trial only if they misled the jury or probably affected the verdict.

PRECEDENTIAL VALUE	published
PARTIES	Philip Keithahn, Minnesota Medical University, LLC v. Heritage Construction Companies, LLC, JAC & Sons Investments, Andrew P. Christensen, Jennifer A. Christensen

TOPICS

construction law

breach of contract

negligent misrepresentation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Keithahn's statements that the project would be funded and that \$7 million would be available after bond closing could support a negligent misrepresentation claim despite relating to a future event.
2. Whether Keithahn's alleged honest belief in the truth of his statements defeated the negligent misrepresentation claim.
3. Whether the district court erred by refusing to give a separate jury instruction that future assurances cannot constitute misrepresentation.
4. Whether alleged violations of the in limine order, statements about MMU's financial condition, and the use of deposition testimony for impeachment warranted a new trial.
5. Whether the cumulative effect of the asserted errors warranted a new trial.

HOLDINGS

1. A representation concerning a present fact susceptible of knowledge, including the existence of committed financing, remains actionable as negligent misrepresentation even when it is tied to the occurrence of a future event. Keithahn's statements concerned existing committed financing and were not merely conjectural promises conditioned on future discretionary action.
2. A defendant's honest belief in the truth of a representation is not a defense to negligent misrepresentation because that claim applies an objective standard of reasonable care or competence rather than a subjective inquiry into intent.
3. The district court did not abuse its discretion or otherwise err by refusing a separate instruction stating that future assurances cannot constitute misrepresentation because the Minnesota negligent-misrepresentation instruction fairly and adequately stated all applicable legal elements.
4. The district court did not abuse its discretion in denying a new trial because the in limine-order violation, references to MMU's financial condition, use of deposition testimony for impeachment, and any cumulative effect of those matters did not prejudice defendants or affect the verdict.

KEY QUOTATIONS

“Representations of present facts susceptible of knowledge at that time, even when tied to the occurrence of a future event, are actionable under a negligent misrepresentation claim.” (5)

“Because negligent misrepresentation has an objective standard, not a subjective inquiry into intent, a defendant’s honest belief is not a defense to negligent misrepresentation.” (6)

“Most importantly, the district court did not order separate damages for negligent misrepresentation and fraud by omission, instead finding them “duplicative,” because both claims compensated the same injury and did not support additional recovery.” (8)

FACTUAL BACKGROUND

Keithahn formed Minnesota Medical University to establish an osteopathic medical school, and Heritage was hired as general contractor. Keithahn represented to Heritage representatives that the project would be funded and that \$7 million would be available for construction after bond closing. The bond proceeds were substantially reduced by issuance costs and Keithahn's draw requests, leaving insufficient funds to pay for continuing construction; after MMU's pre-accreditation application was denied, MMU ultimately informed Heritage that it had no money. Heritage suspended construction and terminated its contract, and the jury found liability on several contract and misrepresentation theories.

PROCEDURAL HISTORY

Selective Insurance Company of America sued Heritage Construction Companies and related parties for indemnification. The Heritage parties filed a third-party complaint against Keithahn and Minnesota Medical University. The district court denied defendants' motion for summary judgment, and the case proceeded to trial. The jury found defendants liable on all submitted claims except fraudulent misrepresentation; the district court denied post-verdict motions for judgment as a matter of law or a new trial. The Eighth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Sanders v. Union Pacific Railroad Co., 108 F.4th 1055, 1060 (8th Cir. 2024)
- Children's Broad. Corp. v. Walt Disney Co., 357 F.3d 860, 863 (8th Cir. 2004)
- Hardin Cnty. Sav. Bank v. Hous. & Redevelopment Auth. of City of Brainerd, 821 N.W.2d 184, 191 (Minn. 2012)
- Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520, 532 (Minn. 1986)
- Zutz v. Case Corp., 422 F.3d 764, 770-71 (8th Cir. 2005)
- Cady v. Bush, 166 N.W.2d 358, 361 (Minn. 1969)
- Schoenhals v. Mains, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993)
- Freitas v. Wells Fargo Home Mortg., Inc., 703 F.3d 436, 438-39 (8th Cir. 2013)
- Meecorp Cap. Markets, LLC v. PSC of Two Harbors, LLC, 776 F.3d 557, 563-64 (8th Cir. 2015)

- Florenzano v. Olson, 387 N.W.2d 168, 173-74 (Minn. 1986)
- Keller Farms, Inc. v. McGarity Flying Serv., LLC, 944 F.3d 975, 984 (8th Cir. 2019)
- Russell v. Whirlpool Corp., 702 F.3d 450, 460 (8th Cir. 2012)
- Kansas City Power & Light Co. v. Ford Motor Credit Co., 995 F.2d 1422, 1430 (8th Cir. 1993)
- Belk v. City of Eldon, 228 F.3d 872, 878 (8th Cir. 2000)
- State v. Jones, 556 N.W.2d 903, 915 (Minn. 1996)
- State v. Jedlicka, 1998 WL 846518, at *3 (Minn. Ct. App. Dec. 8, 1998)
- State v. Pilcher, 472 N.W.2d 327, 337 (Minn. 1991)
- Morrill v. Becton, Dickinson & Co., 747 F.2d 1217, 1224 (8th Cir. 1984)
- Pullman v. Land O'Lakes, Inc., 262 F.3d 759, 762-63 (8th Cir. 2001)
- Mahaska Bottling Co., Inc. v. Bottling Grp., LLC, 6 F.4th 828, 830 (8th Cir. 2021)
- Union Elec. Light & Power Co. v. Snyder Est. Co., 65 F.2d 297, 303 (8th Cir. 1933)
- Halladay v. Verschoor, 381 F.2d 100, 112 (8th Cir. 1967)
- Griffin v. Hilke, 804 F.2d 1052, 1057 (8th Cir. 1986)
- Gearhart v. Uniden Corp. of Am., 781 F.2d 147, 153 (8th Cir. 1986)
- Harrison v. Purdy Bros. Trucking Co., 312 F.3d 346, 351 (8th Cir. 2002)
- Johnson v. Bowers, 884 F.2d 1053, 1055 (8th Cir. 1989)
- Billingsley v. City of Omaha, 277 F.3d 990, 997 (8th Cir. 2002)
- Jenkins v. Anderson, 447 U.S. 231, 239 (1980)
- United States v. Rogers, 549 F.2d 490, 496 (8th Cir. 1977)
- Krekelberg v. City of Minneapolis, 991 F.3d 949, 959-60 (8th Cir. 2021)

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