NEBRASKA COURT OF APPEALS

R. Michael Gross, M.D., and C. Michael Kelly, M.D. v. GIKK Investments, LLC, et al.

34 Neb. App. 34 (2026) · No. A-25-012 · Decided February 3, 2026

SUMMARY

The Nebraska Court of Appeals affirmed summary judgment for GIKK Investments, LLC, and related defendants in a dispute concerning former members' alleged contractual rights to proceeds from transactions involving GIKK and Midwest Surgical Hospital. The court also upheld the exclusion of the plaintiffs' expert testimony, concluding that portions of the testimony addressed legal questions and that the plaintiffs had not shown that a qualifying sale of substantially all of GIKK's units or assets occurred.

CASE DETAILS

COURT	Nebraska Court of Appeals
WRITING FOR THE COURT	Welch; Pirtle; Freeman
JURISDICTION	Nebraska Court of Appeals
DECIDED	February 3, 2026
DOCKET	A-25-012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the Douglas County District Court's order granting defendants summary judgment and excluding plaintiffs' expert testimony in a suit involving alleged breach of contract and fiduciary duties.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the record in the light most favorable to the nonmoving party and drawing reasonable inferences in that party's favor. The legal standards for admitting expert testimony are reviewed de novo, while the trial court's application of those standards is reviewed for abuse of discretion. Contract interpretation and ambiguity are reviewed as questions of law.
PRECEDENTIAL VALUE	published and precedential

PARTIES	R. Michael Gross, M.D., C. Michael Kelly, M.D. v. GIKK Investments, LLC, John A. McCarthy, M.D., Daniel L. Gaffney, M.D., Kayvon D. Izadi, M.D., Charles E. Rosipal, M.D.

TOPICS

breach of contract · contract interpretation · conditions precedent · summary judgment · expert testimony

PRACTICE AREAS

contract law · limited liability company law · commercial litigation · civil procedure · evidence

QUESTIONS PRESENTED

1. Whether the postretirement admission of new members, amendment and use of a redemption formula, and sale of 49.9 percent of GIKK's interest in MSH constituted, individually or in the aggregate, a sale of substantially all of GIKK's units or assets under the parties' agreements.
2. Whether the transactions operated in derogation of Gross's and Kelly's contractual rights under section 17.2 of GIKK's Operating Agreement.
3. Whether the district court erred in excluding Professor Morse's expert testimony under Nebraska Evidence Rule 27-702 and the applicable expert-evidence standards.
4. Whether any error in excluding the expert testimony was prejudicial.

HOLDINGS

1. The phrase substantially all is unambiguous in this contractual context and means a sale that, quantitatively or qualitatively, would result in a fundamental change in the nature of GIKK's business.
2. The transactions did not constitute a sale of substantially all of GIKK's membership units or assets, either individually or in the aggregate, and reasonable minds could not differ on that conclusion.
3. The transactions did not derogate Gross's and Kelly's contractual rights because section 17.2 preserved only a right to participate in proceeds from a future sale of substantially all of GIKK's units or assets; it did not protect the value of GIKK from reduction before such a sale.
4. The district court properly excluded portions of Professor Morse's opinions that attempted to define substantially all and derogation or otherwise offered legal conclusions concerning the meaning of the unambiguous contract.
5. Even assuming that a small portion of Professor Morse's report concerning the factual details of the transactions was admissible, its exclusion was harmless because the transactions did not constitute a sale of substantially all of GIKK's units or assets.

KEY QUOTATIONS

> *"we conclude that the phrase "all, or substantially all," as used in § 21-20,138(1)(c), means a sale of corporate assets that, quantitatively or qualitatively, would result in a fundamental change in the nature of the*

> *corporation."* (54)

> *"The only right the Original Continuing Members preserved was the right to participate in proceeds in the event of a sale of substantially all of the units or assets."* (64)

> *"Consequently "expert testimony concerning a question of law is generally not admissible in evidence.""* (66)

FACTUAL BACKGROUND

GIKK Investments, LLC, was formed by physicians associated with an orthopedic surgery practice to hold an ownership interest in Midwest Surgical Hospital, LLC. Gross and Kelly retired and had their GIKK membership interests redeemed, but agreements preserved a limited trailing right to participate in proceeds if substantially all of GIKK's units or assets were sold to a bona fide purchaser within the specified period. After their retirements, GIKK admitted new physician investors, amended its redemption formula, redeemed another physician's interest, and sold 49.9 percent of its interest in MSH while retaining a substantial minority interest. Gross and Kelly claimed these transactions collectively triggered their contractual rights or derogated those rights.

PROCEDURAL HISTORY

Gross and Kelly sued GIKK and related individual defendants after their retirement and redemption of their GIKK membership interests, alleging that later transactions triggered contractual rights to share in proceeds and derogated those rights. The district court excluded the testimony of plaintiffs' expert, Professor Edward A. Morse, and later granted defendants summary judgment. The Nebraska Court of Appeals affirmed both rulings as challenged on appeal.

DISPOSITION

affirmed

CASES CITED

- D&M Roofing & Siding v. Distribution, Inc., 319 Neb. 707, 24 N.W.3d 850 (2025)
- Konsul v. Asensio, 316 Neb. 874, 7 N.W.3d 619 (2024)
- Agri Affiliates, Inc. v. Bones, 265 Neb. 798, 660 N.W.2d 168 (2003)
- Buttercase v. Davis, 313 Neb. 1, 982 N.W.2d 240 (2022), modified on denial of rehearing, 313 Neb. 587, 985 N.W.2d 588 (2023)
- Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 291 Neb. 642, 868 N.W.2d 67 (2015)
- Kalkowski v. Nebraska Nat. Trails Museum Found., 290 Neb. 798, 862 N.W.2d 294 (2015)
- State ex rel. Columbus Metal v. Aaron Ferer & Sons, 272 Neb. 758, 725 N.W.2d 158 (2006)
- Kaiser v. Allstate Indemnity Co., 307 Neb. 562, 949 N.W.2d 787 (2020)
- Acklie v. Greater Omaha Packing Co., 306 Neb. 108, 944 N.W.2d 297 (2020)
- Kier v. County of Hall, 30 Neb. App. 1, 963 N.W.2d 74 (2021)
- Ricker v. Nebraska Methodist Health Sys., 319 Neb. 628, 24 N.W.3d 344 (2025)

- Woodmen of the World v. Nebraska Dept. of Rev., 299 Neb. 43, 907 N.W.2d 1 (2018)
- Schafersman v. Agland Coop., 262 Neb. 215, 631 N.W.2d 862 (2001)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Sterman v. Hornbeck, 156 Wis. 2d 556, 457 N.W.2d 874 (1990)