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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2148**

Gennine Ann Navickas,  
Appellant,

vs.

Karl N. Quilling, et al.,  
Respondents.

**Filed July 2, 2012  
Affirmed in part, reversed in part, and remanded  
Chutich, Judge**

Carver County District Court  
File No. 10-CV-07-906

Kurt J. Niederluecke, Laura L. Myers, Fredrikson & Byron, P.A., Minneapolis, Minnesota  
(for appellant)

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Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and  
Chutich, Judge.

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

Gennine Ann Navickas challenges several orders of the district court, arguing that it erred in denying her summary judgment motion, determining the amount that respondent Karl Quilling was unjustly enriched, denying her request for preaward

interest, and granting Quilling costs and disbursements. We affirm the district court's finding that Quilling was unjustly enriched in the amount of \$10,000, but reverse and remand for additional findings on the issues of preaward interest and the granting of costs and disbursements.

## **FACTS**

In the fall of 2004, Quilling and Navickas purchased a house as joint tenants. Quilling paid \$20,000 earnest money and made a down payment of approximately \$326,255 at closing. Navickas did not contribute any money toward the purchase before or at closing. In 2005, the couple made improvements to the property, installing a swimming pool and landscaping. Navickas paid approximately \$31,550 of her own funds for the pool and approximately \$13,000 for fencing and landscaping. The parties' relationship ended in June or July 2006, and Navickas moved out of the home. During the time that the parties lived in their home, Quilling made all but two of the mortgage payments and paid most of the parties' living expenses.

In June 2007, Navickas sued Quilling, alleging breach of contract, promissory estoppel, unjust enrichment, and partition claims. Quilling asserted a counterclaim for slander of title, requested his attorney fees, and sought an order that Navickas return the engagement ring he had given her. The case was tried before a consensual special magistrate who denied all of Navickas's claims. He denied her unjust-enrichment claim, finding that Navickas's investments added little value to the home and that no evidence suggested that Quilling acted illegally or unlawfully to entice Navickas to invest her money. The magistrate ordered Navickas to deliver a quitclaim deed, relinquishing her

rights in the property, to her attorney to hold until the case was resolved. Additionally, the magistrate ordered Navickas to return the engagement ring to Quilling and awarded Quilling costs and disbursements. The district court entered judgment on the magistrate's order.

Navickas appealed the district court's judgment and this court affirmed in part and reversed in part. This court reversed and remanded the unjust-enrichment claim to the district court to determine the amount of compensation to which Navickas was entitled based on the value of her investments. *Navickas v. Quilling*, A10-145, 2010 WL 5290552, at \*7 (Minn. App. Dec. 28, 2010).

On remand, Navickas sought a \$65,886.15 "summary judgment" on her unjust-enrichment claim. She further argued that she should not be required to provide a quitclaim deed until she recovered her unjust-enrichment award and her liability on the home's mortgage was eliminated. The district court denied summary judgment, finding that genuine issues of material fact existed. On September 16, 2011, while the unjust-enrichment claim was pending, the court granted Quilling costs and disbursements pursuant to its September 2009 judgment and entered judgment against Navickas in the amount of \$9,866.50.

The parties submitted final briefs to the court on the unjust-enrichment claim. Based on the file, transcripts of the trial proceedings before the first appeal, and the parties' final briefs, the magistrate issued a written order, which was adopted by the district court, awarding Navickas \$10,000 for unjust enrichment and her costs and disbursements.

Navickas now appeals several of the district court's orders. She appeals the district court's denial of her summary judgment motion, contending that no genuine issues of material fact exist as to the amount that Quilling was unjustly enriched. In addition, Navickas appeals the district court's October 2011 judgment awarding her \$10,000, asserting that the district court improperly determined the value of her investments and erred by denying her preaward interest. Finally, Navickas appeals the district court's September 2011 order awarding Quilling costs and disbursements pursuant to the court's September 2009 judgment.

## **D E C I S I O N**

### **I. Denial of the Summary Judgment Motion**

Navickas first challenges the district court's denial of her summary judgment motion, arguing that no fact questions existed regarding the value of her investments for purposes of the unjust-enrichment award. As a threshold matter, given the procedural posture of this case, we do not believe that the district court's denial of summary judgment is within our scope of review. *See* Minn. R. Civ. App. P. 103.04 (granting appellate courts authority to review "any order . . . affecting the judgment" from which an appeal is taken); *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 917–18 (Minn. 2009) (holding that a denial of summary judgment because of a genuine factual dispute "becomes moot once the jury reaches a verdict on that issue" and thus is outside the scope of review upon appeal of the judgment); *City of North Oaks v. Sarpal*, 784 N.W.2d 857, 861 (Minn. App. 2010) (applying *Bahr* in finding that denial of a summary

judgment followed by a bench trial was outside of the scope of review), *rev'd on other grounds*, 797 N.W.2d 18 (Minn. 2011).

Here the district court ruled, upon Navickas's motion for summary judgment, that material issues of genuine fact existed. After further briefing and a consideration of all of the proceedings that had previously taken place, including the bench trial transcript, the court ultimately resolved those issues of fact. Thus, our review is limited to Navickas's arguments pertaining to that final judgment and not to the denial of summary judgment. This conclusion does not foreclose review of Navickas's main contention—that the district court improperly valued her investment in the property for unjust-enrichment purposes—but it merely places her arguments in the correct procedural posture—attacking the court's final judgment concerning the amount of unjust enrichment rather than challenging an earlier denial of summary judgment.

## **II. Propriety of the Unjust-Enrichment Award**

Navickas's main contention is that the district court erred in determining that the value of her investment was only \$10,000 based on the increased value of the property. “On appeal, a [district] court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Sufficient facts exist to support the district court's finding that Navickas's investments increased the property value by \$10,000. The real estate agent listing the property testified that the pool added \$10,000 to the value of the property, but also noted that approximately six out of ten potential buyers would not look at a home with a pool.

She also testified that the increase in value based on the landscaping was negligible. Navickas did not submit any evidence relating to the increase in property value due to her investments, but instead “relied on receipts and cancelled checks,” as evidence of the amount of money that she invested in the property. Thus, the court’s findings were not erroneous.

Navickas argues that this court clearly instructed the district court to award her the amount of money she invested in the property. She misreads this court’s previous opinion, however. In *Navickas*, this court stated that “[t]he recovery for unjust enrichment is measured by the value of what the enriched person has received” and noted that Quilling would “retain the long-term value that the renovations provide to the property.” 2010 WL 5290552, at \*7 (citing *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984)).

Navickas relies on *Cooley v. Major Media Management Corp.* to support her argument that recovery for unjust enrichment should be measured by the amount of money she invested in the property or, put another way, the cost of the improvements that Quilling avoided. *See* 402 N.W.2d 815, 817 (Minn. App. 1987), *review denied* (Minn. May 20, 1987). *Cooley* states, however, that “[t]he recovery for unjust enrichment can be measured in two ways. The first is that of net enrichment, i.e., what did the other party gain. The second is the cost avoided.” *Id.* (quotations omitted). This court mandated that Navickas’s recovery be measured according to the first method of enrichment, what Quilling gained from Navickas’s investments, which is the increased value of the property. *Navickas*, 2010 WL 5290552, at \*7.

Navickas now argues that evidence in the record showed that in the summer of 2006, the house was listed for more than \$200,000 over what Quilling had paid for the property in 2004. Therefore, if the district court measured the enrichment based on the increase in value, Navickas contends that the court's finding was clearly erroneous because it failed to weigh this evidence. She did not, however, raise this argument before the district court on remand; after remand, Navickas continued to assert that she was entitled to the approximately \$65,000 that she had paid for the improvements and two mortgage payments she made. Because this claim was not raised before the district court, we will not consider this argument for the first time on appeal.<sup>1</sup> *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“Nor may a party obtain review by raising the same general issue litigated below but under a different theory.”).

### **III. Prejudgment Interest Award**

Navickas argues that the magistrate misapplied the law by refusing to award her prejudgment interest on the unjust-enrichment award because her damages were not “readily ascertainable.” This court reviews interest awards under Minn. Stat. § 549.09 (2010) *de novo*. *S.B. Foot Tanning Co. v. Piotrowski*, 554 N.W.2d 413, 420 (Minn. App.1996), *review denied* (Minn. Dec. 17, 1996).

Under Minn. Stat. § 549.09, damages need not be “readily ascertainable” to award a party preaward interest. *Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79,

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<sup>1</sup> Even if we were to consider this evidence, however, given that the house did not *sell* at the listed price, the evidence of the listing price is of little use in calculating the value of the improvements, and does not show that the district court's decision was clearly erroneous.

88 (Minn. 2004); *see also Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988) (“[S]ection 549.09 was amended to allow pre-verdict interest irrespective of a defendant’s ability to ascertain the amount of damages for which he might be held liable or to stop the running of interest.”). The district court therefore erred in using the inability to ascertain Navickas’s damages to deny interest, and we reverse and remand this issue.

Section 549.09(b) provides for preaward interest on damages “from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first.” Navickas seeks preaward interest based on written notice of her claim, arguing that an e-mail dated November 17, 2006, gave Quilling notice of her claim to be reimbursed for her investment. On remand, the district court should make specific findings as to whether the November 17 e-mail satisfied the written notice requirement of Minn. Stat. § 549.09(b) or whether the interest should be calculated based on the date that Navickas began this action.<sup>2</sup>

#### **IV. Costs and Disbursements**

Navickas also argues that the district court abused its discretion by granting costs and disbursements to Quilling pursuant to its September 2009 judgment. Generally, an award of costs and disbursements is a matter within the district court’s sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr. Auth. v.*

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<sup>2</sup> Navickas requests that we direct the district court to not refer the matter to the special consensual magistrate on remand. Because she provided no basis for us to issue this directive, we leave it to the district court’s discretion upon remand. *See State Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that a party who inadequately briefs an issue waives the issue).

*Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). A trial court may award costs and disbursements even after an appeal is decided. *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000), *superseded by rule on other grounds as stated in In re Comm'r of Pub. Safety*, 735 N.W.2d 706 (Minn. 2007).

As part of its original judgment in September 2009, the magistrate granted Quilling costs and disbursements. After judgment was entered, Quilling filed an affidavit seeking \$9,886.50 in costs and disbursements, and Navickas filed an objection to Quilling's affidavit. The court administrator issued a discrepancy notice stating that it was unable to process Quilling's request due to Navickas's objection. The notice further stated that Quilling must bring a motion before the court to resolve the matter.

On September 16, 2011, before issuing its judgment on remand, the district court awarded Quilling costs and disbursements pursuant to the September 2009 judgment, stating that the court had "inadvertently overlooked [Quilling's] motion until again brought to the Court's attention by [Quilling]." Navickas requested permission to bring a motion for reconsideration of the court's order, claiming that Quilling never properly filed a motion and renewing her objections to Quilling's original affidavit of costs.

Discrepancies and inadequacies in the record regarding the district court's September 2011 order prevent proper appellate review. A factual dispute exists as to whether Quilling made a motion for costs after the court administrator issued the discrepancy notice. In its order, the court references Quilling's motion, but we find no such motion in the record. Additionally, the district court made no findings as to whether

Quilling's costs and disbursements were reasonable and necessary and did not address the specific objections that Navickas raised to Quilling's affidavit of costs. *See Beniek v. Textron, Inc.*, 479 N.W.2d 719, 724 (Minn. App. 1992) ("When reviewing a request for costs and disbursements, the district court must make sufficient findings of reasonable and necessary costs and disbursements."); *see also Illinois Farmers Ins. Co v. Brekke Fireplace Shoppe, Inc.*, 495 N.W.2d 216, 222 (Minn. App. 1993) (remanding costs and disbursements issue because district court failed to make specific findings on the reasonableness and necessity of the costs and disbursements).

Because the district court's findings are inadequate to support its order, we remand the order for additional findings. On remand, the district court should make specific findings as to whether Quilling made a proper motion for costs and disbursements, whether Quilling was the prevailing party, and if Quilling did in fact make a proper motion, what costs were reasonable and necessary.

## V. Quitclaim Deed

Finally, Navickas requests that this court place additional conditions on the district court's initial order filed on August 25, 2009, that she deliver a quitclaim deed to her attorney to hold until the case was resolved.<sup>3</sup> Specifically, Navickas argues that she should not be required to provide the deed unless and until Quilling pays Navickas the amount he was unjustly enriched and removes her name from the note on the property.

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<sup>3</sup> While this appeal was pending, Quilling moved the district court to compel Navickas to provide both the quitclaim deed and to release a notice of lis pendens she had filed on the property. On January 18, 2012, the district court entered a judgment requiring Navickas's attorney to deliver the quitclaim deed and release the notice of lis pendens. Navickas filed a separate appeal of this judgment on March 8, 2012.

In the first appeal, this court did not reverse the district court's order regarding the quitclaim deed. Accordingly, the district court properly did not address the quitclaim deed on remand. Because the district court's order that Navickas now appeals did not address the quitclaim deed, the issue is not properly before this court. *See Thiele*, 425 N.W.2d at 584.

**Affirmed in part, reversed in part, and remanded.**