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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0396**

Kimberly Onuma,
Appellant,

Robert Onuma,
Appellant,

vs.

Nook n' Cranny Home Inspection Services, Inc., et al.,
Respondents.

**Filed January 7, 2013
Affirmed
Hudson, Judge**

Anoka County District Court
File No. 02-CV-10-1231

Kimberly Onuma, Robert Onuma, Buffalo, Minnesota (pro se appellants)

Stephen P. Laitinen, Mark A. Solheim, Larson King LLP, St. Paul, Minnesota (for respondents)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellants challenge the district court's award of statutory costs and disbursements to respondents, who were prevailing parties pursuant to Minn. Stat.

§ 549.04 (2012). Because the evidence to support respondents' request was adequate, and the district court made a sufficient finding of the reasonableness of the costs and disbursements awarded, we affirm.

FACTS

In July 2007, appellants hired respondents Mike Bruning and his solely-owned business, Nook n' Cranny Home Inspection Services, Inc., to perform a home inspection. Eight days after respondents completed the inspection, appellants purchased the home. In February 2010, appellants filed a complaint alleging that respondents negligently misrepresented the condition of the home because the inspection did not disclose that the home was sinking and at risk of structural collapse. In an October 2011 trial, the jury found for respondents.

As the prevailing parties, respondents filed an application for \$41,047.07 of costs and disbursements pursuant to Minn. Stat. § 549.04. The district court administrator awarded respondents \$965. Respondents objected to that award, and the district court awarded respondents \$27,405.73 in costs and disbursements, consisting of: \$200 for statutory costs; \$645 for filing fees; \$120 for subpoena and witness fees; \$269.17 for messenger fees; \$1,442.19 for photocopying and trial exhibits; \$1,042.90 for deposition costs; \$4.74 for telephone expenses; \$173.11 for postage; \$1,015.62 for mediator fees; and \$22,493 in expert witness fees. This appeal follows.

DECISION

Generally, an award of costs and disbursements is within the district court's sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr.*

Auth. v. Hammel, Green & Abrahamson, Inc., 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). A district court abuses discretion when it exercises its discretion in an arbitrary or capricious manner or commits an error of law. *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 306 (Minn. 1990).

Minn. Stat. § 549.04, subd. 1, provides that “[i]n every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred.” “The [district] court does not have discretion to deny costs and disbursements to the prevailing party.” *Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co.*, 510 N.W.2d 256, 260 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994). The costs and disbursements must be listed in detail and verified by affidavit. Minn. R. Civ. P. 54.04(b); *Stinson v. Clark Equip. Co.*, 473 N.W.2d 333, 336 (Minn. App. 1991), *review denied* (Minn. Sept. 13, 1991).

A nonprevailing party may file written objections to a request for costs and disbursements specifying the grounds for each objection. Minn. R. Civ. P. 54.04(c). When reviewing the prevailing party’s application for costs and disbursements, the district court must make sufficient findings to show that the costs and disbursements were reasonable. *Quade*, 510 N.W.2d at 260. In awarding costs to the prevailing party, the district court judge should “take a hard look at costs claimed.” *Stinson*, 473 N.W.2d at 338 (quotation omitted).

Appellants challenge many of the district court’s findings by citing to federal statutes, procedural rules, and caselaw. But proceedings in Minnesota state courts are governed by Minnesota law. *See* Minn. Stat. §§ 480.051, .058 (2012); *Erie R.R. Co. v.*

Tompkins, 304 U.S. 64, 78, 58 S. Ct. 817, 822 (1938) (“Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state.”). Therefore appellants’ various references to federal authorities are unavailing.

Appellants argue that they are not required to pay respondents’ costs and disbursements because of their in forma pauperis status. In March 2012, the district court granted appellants’ motion to bring this appeal in forma pauperis. *See* Minn. Stat. § 563.01 (2012). Respondents correctly point out that appellants did not have in forma pauperis status in January 2012 when the district court awarded costs and disbursements. Therefore the district court did not abuse its discretion by failing to consider appellants’ financial status. Furthermore, given the mandatory language of the authorizing statute, it would have been an abuse of discretion for the district court to deny an award of costs and disbursements based on the nonprevailing party’s financial status. *See* Minn. Stat. § 549.04 (stating that “[i]n every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred”) (emphasis added). Appellants’ remaining challenges each pertain to a specific category of expense and are considered separately below.

Expert Witness Fees

Appellants challenge the district court’s award of \$22,493 in fees for the four expert witnesses who testified on respondents’ behalf. The district court awarded \$7,818 for William Bloemendal, a licensed structural engineer who testified regarding the condition of the home and the accuracy of the report provided by appellants’ expert

witness. \$2,750 was awarded for Julie Jeffrey Schwartz, an expert in real estate appraisal who testified regarding the valuation of the home and whether respondents' inspection report was the cause of the home's decrease in value. \$8,325 was awarded for Don Hedquist, a certified building official who testified that respondents followed industry standards in performing the residential home inspection. \$3,600 was awarded for Brian Wass, an expert in the field of forensic architecture who testified that the basic structural system of the home had not been altered since it was built.

Minn. Stat. § 357.25 (2012) authorizes the district court to award fees for expert witnesses so long as the fees are "just and reasonable." The district court may award fees based both on trial time as well as pretrial preparation. *Lake Superior Ctr. Auth.*, 715 N.W.2d at 483; *Quade*, 510 N.W.2d at 260. The record should provide evidence of the hourly rate of the expert, the hours actually spent at trial, and the time spent preparing for trial. *Stinson*, 473 N.W.2d at 337.

Appellants argue that respondents did not provide invoices or receipts to verify the accuracy of the expert witness fees claimed or provide evidence that the amounts listed had actually been paid. Appellants also argue that, while oral testimony established the hourly rate for each expert, the record contained no evidence showing how many hours each expert worked.

Respondents counter that they complied with the requirements of rule 54 by providing a detailed application listing the costs and disbursements incurred as well as a sworn affidavit verifying the accuracy of the application's contents. Respondents further argue that the testimony of each expert provided sufficient support for each award by

showing each witness's qualifications, the work done to prepare for trial, and the role of each witness in supporting respondents' case. Respondents' arguments are persuasive.

Respondents' application complied with the statutory requirements by providing a detailed application and a sworn affidavit verifying its contents. Minn. R. Civ. P. 54.04(b), (c). While the record does not contain statements of the number of hours worked by each expert, oral testimony established each witness's hourly rate, allowing the district court to calculate the hours claimed for each witness. *See Quade*, 510 N.W.2d at 261 (noting that although the district court failed to make findings as to each expert's normal hourly rate, the district court knew the amount of time billed and total cost, "upon which the [district] court could and did decide that the amounts were fair, reasonable, and necessary"). The district court performed a thorough analysis of the qualifications of each witness, the purpose of the witness's testimony, the work performed by each witness to prepare for trial, and an assessment of whether the amount of time billed was reasonable. The district court did not grant *carte blanche* to respondents—the district court reduced one expert's fee by \$4,763.25 and denied respondents' request for \$5,020 of professional trial consultant fees. We therefore conclude that the record contains sufficient evidence to support the district court's award of expert witness fees.

Appellants make additional challenges specific to each expert. First, appellants argue Bloemendal's fees were excessive because the amount awarded was equal to 48 hours of his time, yet Bloemendal testified that he spent approximately 30 hours preparing for trial. The district court considered this argument, concluding that Bloemendal's estimate did not include all of his time spent on the case or the work

performed by another individual at Bloemendal's firm. The district court's reasoning appears sound, and we therefore find no abuse of discretion in the award for Bloemendal's fees.

Second, appellants argue that the district court's award for Hedquist's fees was excessive because it appeared to include Hedquist's travel time. Yet Minn. Stat. § 357.22 (2012) allows an expert witness's travel expenses to be taxed as costs. *Stinson*, 473 N.W.2d at 337. The district court's award for Hedquist's fees was not an abuse of discretion.

Third, appellants argue that Julie Jeffrey Schwartz's fees were excessive, introducing evidence on appeal that Jeffrey Schwartz's standard fee for a residential appraisal is only \$550. This evidence was not filed with the district court and is therefore not part of the record on appeal. Minn. R. Civ. App. P. 110.01. The district court did not abuse its discretion in awarding \$2,750 for Jeffrey Schwartz's fees.

Finally, appellants argue that the evidence was insufficient to support the district court's award of \$3,600 for Wass's expert witness fees. We disagree. The district court based its award on Wass's qualifications, his hourly rate, and the work he performed in preparation for trial. The evidence was sufficient to support the district court's award, and thus we conclude that the district court did not abuse its discretion in its award for Wass's fees.

Deposition Costs

Appellants challenge the district court's award of \$1,042.90 to respondents for the cost to depose four individuals. It is within the district court's discretion to award the

prevailing party the costs of taking depositions. *Stinson*, 473 N.W.2d at 337. Relying on federal law, appellants argue that the costs to depose two of the witnesses should not have been awarded because they did not testify at trial. But in Minnesota, “[t]he fact that a deposition was not used at trial does not bar deposition costs.” *Johnson v. S. Minn. Mach. Sales, Inc.*, 460 N.W.2d 68, 73 (Minn. App. 1990). It was sufficient that the district court deemed each deposition reasonable and not cumulative or duplicative. *Stinson*, 473 N.W.2d at 338.

Appellants also argue that respondents did not sufficiently document the deposition expenses. Within a sworn affidavit, respondents detailed each deponent, the date of the deposition, and the transcript costs incurred. This evidence was sufficient to support the district court’s award. *See* Minn. R. Civ. P. 54.04(b). The district court’s award of deposition costs was not an abuse of discretion.

Mediation Fees

Appellants challenge the district court’s award of \$1,015.62 to respondents for their share of court-mandated mediation costs. Appellants argue that each party is responsible for its share of mediation expenses under Minn. R. Gen. Pract. 114.11(b). While it is presumed that each party will bear its share of alternative dispute resolution costs, the district court has the authority to determine the allocation of those costs. Minn. R. Gen. Pract. 114.11(b). It is not an abuse of discretion to award mediation costs to a prevailing party. *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 541 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

Appellants also argue that because they are in forma pauperis, they are not obligated to pay respondents' mediation expenses under Minn. R. Gen. Pract. 114.11(d). Yet rule 114.11(d) states only that the district court may not require a party who is in forma pauperis to participate in alternative dispute resolution. Because appellants were not in forma pauperis when mediation was ordered, the district court did not abuse its discretion by awarding mediation costs to respondents.

Photocopying and Trial Exhibits

Appellants challenge the district court's award of \$1,442.10 to respondents for photocopying and trial exhibit costs. Photocopying expenses may be taxed under Minn. Stat. § 549.04. *Kellar v. von Holtum*, 583 N.W.2d 761, 765–66 (Minn. App. 1998), *rev'd in part on other grounds*, 605 N.W.2d 696 (Minn. 2000). “[T]he reasonable cost of exhibits shall be allowed in the taxation of costs.” Minn. Stat. § 357.315 (2012). Appellants argue that certain photocopying expenses may not be taxed, but they again rely upon inapplicable federal law. Given that this matter lasted nearly two years and eventually went to trial, the district court's award appears reasonable. We therefore conclude that the district court did not abuse its discretion in awarding respondents costs for photocopying and trial exhibits.

Messenger Fees and Postage Costs

Again relying on federal law, appellants challenge the district court's award of \$269.17 for messenger fees and \$173.11 for postage. It is within the district court's discretion to award fees for courier services. *Stinson*, 473 N.W.2d at 338. Postage expenses incurred in an action may be awarded to the prevailing party so long as they are

reasonable. *See* Minn. Stat. § 549.04. The expenses for courier services and postage were verified by affidavit, and the district court made sufficient findings of the reasonableness of these expenses. The district court therefore did not abuse its discretion in awarding messenger fees and postage costs to respondents.

Affirmed.