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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1618**

City of Orono,
Respondent,

vs.

Jay T. Nygard, et al.,
Appellants.

**Filed May 1, 2017
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-11-5626

Soren M. Mattick, Shana N. Conklin, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellants argue that the district court abused its discretion in awarding attorney fees to respondent under Minn. Stat. § 588.11 (2016). Because we conclude that the

district court did not err in determining that attorney fees are losses or damages under section 588.11 (2016) and in granting the attorney-fees award, we affirm.

FACTS

Appellants Jay and Kendall Nygard (the Nygards) constructed a wind turbine in their backyard in violation of respondent City of Orono's (Orono) residential zoning code. The Nygards applied for a permit to construct the wind turbine, which Orono denied. The Nygards nonetheless constructed the turbine. The Nygards challenged Orono's denial of their permit application in district court. The district court affirmed Orono's decision.

The Nygards filed an appeal in which this court reversed and remanded. *City of Orono v. Nygard*, No. A12-0711, 2012 WL 5188078 (Minn. App. Oct. 22, 2012). We determined that the Orono ordinance describing lawful accessory uses was not exhaustive, and therefore Orono could not support its decision to deny the Nygards' permit application based solely on Orono's interpretation of a single provision of its zoning code. *Id.* at *3–4. We remanded the case “to [Orono] for further consideration of the Nygards' permit application.” *Id.*

After re-examining the Nygards' application, Orono again denied the permit, determining that their wind turbine did not comply with Orono's zoning code. In the ongoing district court action, both parties moved for summary judgment. In May 2013, the district court granted summary judgment to Orono and denied the Nygards' summary-judgment motion. The district court ordered the Nygards to remove the turbine, pad, and footings within 30 days. This court dismissed the Nygards' appeal of the district court's

judgment because it was untimely. *See City of Orono v. Nygard*, No. A13-1459 (Minn. App. Nov. 5, 2013) (order).

In early 2014, Orono alerted the district court to the Nygards' refusal to comply with the district court's order to remove the wind turbine and supporting structures. The district court ordered the Nygards to show cause for their failure to timely comply with its order. Orono filed a motion asking the district court to find the Nygards in constructive civil contempt of court for refusing to remove the turbine, and the district court granted the motion after a hearing. The district court then ordered the Nygards to remove the turbine and support pole within 20 days, while providing them 60 days to remove the concrete pad and footings.

Instead of complying with the district court's order, the Nygards requested a stay of the contempt proceedings two months after the district court's deadline for removing the turbine had passed. The district court again ordered the Nygards to remove the turbine and found them guilty of constructive contempt of court for failing to comply with the prior orders. The district court also awarded Orono its reasonable costs and attorney fees in bringing the contempt motion.

The Nygards again appealed, and this court affirmed the district court's order. *City of Orono v. Nygard*, No. A14-1062, 2015 WL 2467194 (Minn. App. June 1, 2015). After the decision, Orono verified that the Nygards removed their wind turbine, but the Nygards would not permit Orono to access their property to verify that the concrete pad and footings were removed. Orono attempted to verify removal of the concrete pad and footings for several months, with no success. After Orono notified the district court of

these attempts, the district court issued another order to show cause, set a hearing date, and required the Nygards to appear.

At the hearing, the district court found that the Nygards were continuing in willful and intentional civil contempt and ordered appellant Jay Nygard imprisoned. The district court ordered that Jay Nygard not be released until submission of evidence of full compliance, which Kendall Nygard provided a few days later. The district court awarded Orono attorney fees and costs in prosecuting this contempt action.

Orono filed an affidavit pursuant to Minn. R. Gen. Pract. 119 seeking \$8,015.22 in attorney fees, costs, and disbursements. The district court awarded Orono \$6,912.40 in attorney fees, costs, and expenses for Orono's prosecution of the civil contempt of court claim. This appeal follows.

D E C I S I O N

I. The district court did not err in determining that attorney fees constitute a loss or injury under section 588.11.

The Nygards argue that the district court erred in its interpretation of the first clause of Minn. Stat. § 588.11 because the statute's plain meaning "requires that the actual damage or injury is the cause of the contempt proceeding." (Emphasis omitted.) We disagree.

This court reviews the construction of a statute de novo. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984). Minn. Stat. § 588.11 allows for the recovery of attorney fees incurred from the prosecution of a person's contempt of court:

If any actual loss or injury to a party in an action or special proceeding, prejudicial to the person's right therein, is *caused*

by such contempt, the court or officer, in addition to the fine or imprisonment imposed therefor, may order the person guilty of the contempt to pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party's costs and expenses, including a reasonable attorney's fee incurred in the prosecution of such contempt, which order, and the acceptance of money thereunder, shall be a bar to an action for such loss and injury.

(Emphasis added.) “The goal of statutory interpretation is to effectuate the intent of the Legislature.” *STRIB IV, LLC v. County of Hennepin*, 886 N.W.2d 821, 824 (Minn. 2016) (citing Minn. Stat. § 645.16 (2014)). “When the words of a law in their application to an existing situation are clear and free from all ambiguity, we must give effect to the plain meaning of the law.” *Id.* (quotation omitted). Neither party argues that Minn. Stat. § 588.11 is ambiguous. Nevertheless, each party offers a different interpretation of the statute. But that does not necessarily mean that the statute is ambiguous. “Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning and will not be considered ambiguous solely because the parties dispute the proper interpretation of the terms.” *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). We conclude that Minn. Stat. § 588.11 is not ambiguous.

The Nygards misread the plain meaning of section 588.11. The Nygards interpret the statutory language “[i]f any actual loss or injury to a party . . . is *caused by* such contempt” to mean that the loss or injury must be the *cause of* the contempt. (Emphasis added.) “Cause” means to bring about a result. *See Merriam-Webster’s Collegiate Dictionary* 196 (11th ed. 2014). Accordingly, the words “caused by” mean that the

injury or loss is brought about by the contempt. Here, Orono incurred a loss in attorney fees caused by the Nygards' contempt.

This reading of section 588.11 is further supported by Minnesota caselaw. See *Hanson v. Thom*, 636 N.W.2d 591, 593 (Minn. App. 2001) (incurring attorney fees in contempt proceeding constitute a loss or damages requirement under section 588.11); *Westgor v. Grimm*, 381 N.W.2d 877, 880 (Minn. App. 1986) (same). Accordingly, the district court's determination that the attorney fees incurred by Orono is a loss or injury caused by the Nygards' contempt was not erroneous.

II. The district court's indemnification award of reasonable attorney fees to Orono was not error.

The Nygards argue that the district court may not award attorney fees to Orono because it penalized the Nygards over \$250, which is prohibited under Minn. Stat. § 588.10 (2016). We disagree.

We review the application of a statute to particular facts de novo. *Frost-Benco Elec. Ass'n*, 358 N.W.2d at 642. Under Minn. Stat. § 588.10 (2016), "if the person is adjudged guilty of the contempt charged, the person shall be punished by a fine of not more than \$250." In contrast, section 588.11, is an indemnification statute that seeks to make whole an aggrieved party who incurs an injury or loss, including attorney fees, caused by the contempt. The district court's power to indemnify a party under section 588.11 is "in addition to the fine" of no more than \$250 authorized under section 588.10. Minn. Stat. § 588.11.

This reading of section 588.11 is supported by the caselaw where this court has upheld an indemnification award of attorney fees for greater than \$250. *See Westgor*, 381 N.W.2d at 880 (affirming award of \$500 in reasonable attorney fees and costs to the aggrieved party under section 588.11); *Time-Share Sys. Inc., v. Schmidt*, 397 N.W.2d 438, 441 (Minn. App. 1986) (affirming award of \$3,000 in reasonable attorney fees and costs to aggrieved party under section 588.11). Therefore, a district court may award more than \$250 in attorney fees and costs as indemnification under section 588.11 and the award is not limited by section 588.10.

An award of attorney fees under section 588.11 is appropriate when three factors are satisfied: “First, the fees must be based on proof of actual damages. Second, the award must not penalize the contemnor. Finally, the party receiving the fees must actually incur the fees.” *Hanson*, 636 N.W.2d at 593 (citations omitted). The Nygards only challenge the second factor.

The Nygards rely on *Campbell v. Motion Picture Mach. Operators* to argue that the award by the district court was imposed on them as a penalty. 151 Minn. 238, 186 N.W. 787, (1922). In *Campbell*, the supreme court held that the contempt statute “does not authorize the court to impose a penalty on [the contemnor] for the benefit of the [aggrieved party].” *Id.* at 242, 186 N.W.2d at 789. There, the supreme court reversed an award of \$125 because it was imposed as a penalty “for the benefit of the plaintiff,” and upheld a \$100 attorney-fees award as an expense incurred as a result of litigating the contempt case. *Id.*

Consistent with Minnesota precedent, the district court evaluated the affidavits submitted by Orono's attorney and limited its award to the attorney fees Orono incurred as a result of bringing the contempt action. Therefore, the record supports the conclusion that the district court's award was not a penalty and only sought to indemnify Orono for the attorney fees it incurred. Accordingly, the district court did not err in its award of attorney fees in the amount of \$6,912.40 because the award satisfied the requirements of section 588.11.

Affirmed.