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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1132**

William Trueblood,
Appellant,

Cassandra Trueblood,
Appellant,

vs.

Paul D. Walters, et al.,
Respondents.

**Filed March 5, 2018
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CV-15-21692

William Trueblood, Minneapolis, Minnesota (pro se appellant)

Cassandra Trueblood, Minneapolis, Minnesota (pro se appellant)

Randall E. Gottschalk, Gottschalk Law, PLLC, St. Louis Park, Minnesota; and

Bradley N. Beisel, Minneapolis, Minnesota (for respondents)

Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

This appeal is from a judgment that awards respondents costs, including witness and mileage fees, and imposes a discovery sanction under Minn. R. Civ. P. 37.02(b). We affirm.

FACTS

Appellants William and Cassandra Trueblood purchased a home in Minneapolis in 2008. Respondents Paul Walters and Kiel Alward purchased the next-door property. In 2014, respondents told appellants that appellants' fence was located on respondents' property. In 2015, respondents removed the fence, damaged appellants' landscaping, and installed their own fence on what they claimed was the true property line.

In November 2015, appellants served a complaint on respondents, seeking a declaratory judgment, an order quieting title, a prescriptive easement, and damages for trespass and intentional infliction of emotional distress. Because of the emotional-distress claim, respondents scheduled an independent medical examination (IME) for Mrs. Trueblood on July 15, 2016. She did not appear for the examination and stated that the notice for the IME was given too late, she had no transportation, and the location was inconvenient, but she did not advise respondents until the day before the scheduled IME that she would not appear. Respondents were charged a cancellation fee of \$925. Shortly after, appellants dismissed their claim for intentional infliction of emotional distress.

The district court scheduled a jury trial for December 19, 2016. Appellants' counsel requested continuances on December 15, 16, and 19, 2016, on grounds that Mr. Trueblood "was suffering from stress-induced health issues as related to trial." Counsel clarified that Mr. Trueblood had a stroke in December 2014 and since then has struggled with his speech. The district court denied all three requests for a continuance. When Mr. Trueblood failed to appear for trial on December 19, the district court dismissed the matter without prejudice and ordered appellants to pay respondents' out-of-pocket expenses before refiling the lawsuit. Judgment was entered on December 20, 2016.

Respondents requested \$8,438.40 for costs and disbursements. Appellants did not dispute \$2,385.28¹ of that amount, including statutory costs, filing fees, medical-records fees, costs for service of pleadings and subpoenas, and preparation of exhibits. In addition to these undisputed costs, the district court awarded \$68.18 for witness fees and mileage, and \$925 as a discovery sanction for failing to attend the IME, but declined to award the additional amount requested by respondents. A judgment awarding respondents costs and disbursements in the amount of \$3,378.46 was entered on May 24, 2017.

Appellants filed a notice of appeal for both the December 20, 2016 judgment and the May 24, 2017 judgment. This court determined that the appeal from the December 20, 2016 judgment was untimely and limited the appeal to the district court's award of costs and disbursements in excess of the \$2,385.28 undisputed amount.

¹ The district court misspoke when it said, "[Appellants] agree [that respondents] are entitled to taxation of costs and disbursements in the amount of \$2,385.28." What the district court meant was that this amount includes costs that are plainly allowed and there is no basis for disputing the costs.

DECISION

We review the district court's award of costs and disbursements for an abuse of discretion. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014). "In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred, including fees and mileage paid for service of process by the sheriff or by a private person." Minn. Stat. § 549.04, subd. 1 (2016).

Generally, "[t]he prevailing party is the party in whose favor the decision or verdict is rendered and judgment entered." *Ernster v. Scheele*, 895 N.W.2d 262, 266 (Minn. App. 2017) (quotation omitted). A party who obtains a dismissal based on the other party's failure to comply with a procedural rule is not the prevailing party, because the district court has not evaluated the evidence and addressed the merits of the parties' positions. *HNA Props. v. Moore*, 848 N.W.2d 238, 243 (Minn. App. 2014). Respondents cannot claim costs and disbursements solely on the grounds that they are the prevailing party.

But when a district court dismisses a lawsuit without prejudice on procedural grounds, it may require the party against whom dismissal is granted to pay costs and fees or to perform other reasonable conditions before the lawsuit can be reinstated. See *Firoved v. Gen'l Motors Corp.*, 277 Minn. 278, 284, 152 N.W.2d 364, 369 (1967) (reversing district court's dismissal with prejudice and remanding with order to permit defendants to apply to the district court for costs and fees). This is what the district court did here: appellants were required to "pay the costs incurred by [respondents] prior to refiling this case." The

district court's award of \$68.18 for witness fees and mileage was not an abuse of discretion.²

The district court may order a party who fails to submit to an IME to pay as a sanction the reasonable expenses caused by that failure. Minn. R. Civ. P. 37.02(b). We review the district court's decision to impose a discovery sanction for an abuse of discretion. *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010). In determining whether a party should be sanctioned, the district court considers whether the party's failure to comply with discovery was "substantially justified or . . . other circumstances make an award of expenses unjust." *Id.* at 926 (quotation omitted). We review a district court's findings as to the reasonableness of expenses for clear error. *Id.*

Mrs. Trueblood asserted that she failed to attend the IME because of short notice, lack of transportation, and inconvenience of location. According to the record, Mrs. Trueblood was given notice on May 23, 2016, for an IME scheduled for June 3, 2016, but the IME was rescheduled to July 15, 2016, because appellants refused to sign medical-release authorizations. The IME location was in Minneapolis; appellants live in Minneapolis. Mrs. Trueblood did not notify respondents' attorney that she would not attend the IME until the day before the scheduled examination. The district court's

² In the analysis section of its order, the district court stated that respondents are entitled to \$65.18 for witness fees and mileage, but in its conclusion, the district court awarded respondents \$68.18 for witness fees and mileage. Respondents requested \$65.18, and the \$68.18 award appears to be a typographical error. We will not reverse because of this de minimis error.

conclusion that Mrs. Trueblood's failure to attend the IME was not substantially justified is supported by the record, and the court's decision to impose a sanction was not an abuse of discretion. The sanction imposed, \$925, was the cancellation fee charged by the examining physician; the district court's finding that this expense was reasonable is not clearly erroneous.

Affirmed.