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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0585**

Lauren Hamilton,
Respondent,

vs.

Progressive Direct Insurance Company,
Appellant.

**Filed January 7, 2019
Reversed and remanded
Connolly, Judge
Dissenting, Smith, Tracy M., Judge**

Anoka County District Court
File No. 02-CV-16-3846

Matthew E. Steinbrink, SiebenCarey, P.A., Minneapolis, Minnesota (for respondent)

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Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's determination that respondent was the sole prevailing party in a suit for underinsured motorist coverage (UIM) and no-fault benefits, arguing that the district court abused its discretion when it based its prevailing-party determination solely on respondent's monetary award of \$242 in no-fault benefits, and when it failed to take into account appellant's complete success on the UIM claim and the overall relative success of the parties to the lawsuit. Appellant also argues that (1) it is entitled to reasonable costs and disbursements because it was the prevailing party and (2) the court abused its discretion in calculating appellant's reasonable costs and disbursements. Because the district court abused its discretion when it determined that respondent was the prevailing party, and because appellant was the sole prevailing party, we reverse and remand for further proceedings to determine appellant's reasonable costs and disbursements.

FACTS

In September 2015, respondent Lauren Hamilton (Hamilton) was involved in a car accident with another driver. Hamilton settled with the other driver for \$30,000. She then sought additional UIM and no-fault coverage and brought suit against her insurance company, Progressive Direct Insurance Company (Progressive).

Prior to trial, Progressive made a Rule 68 "total obligation" Offer of Settlement in the amount of \$8,000. Hamilton rejected that offer. The UIM claim and the no-fault claim were then tried together. The jury returned a verdict in favor of Progressive on the UIM

claim, finding that the tort thresholds were not met. Hamilton was awarded only \$242 in past medical expenses on her no-fault claim.

The district court proceeded to find Hamilton the prevailing party because she was awarded a monetary judgment on her no-fault claim. The district court also found that Hamilton's damages award plus her taxable costs and disbursements accrued prior to the total obligations offer exceeded \$8,000. The district court included the cost of two expert reports in its calculation. Because Hamilton had prevailing-party status, and her taxable costs and disbursements prior to the offer were greater than \$8,000, the district court awarded her \$28,495.01 in total costs and disbursements.

Progressive filed a notice of appeal and challenges the district court's determination that Hamilton was entitled to costs and disbursements. Progressive argues that the district court abused its discretion in finding Hamilton the prevailing party, erred when it included the expert reports as taxable costs and disbursements, and that it should be awarded taxable costs and disbursements because it was the prevailing party, or in the alternative, that Hamilton's taxable costs and disbursements were less than the total obligations offer.

D E C I S I O N

Progressive argues that the district court abused its discretion in determining that Hamilton was the prevailing party for the purpose of awarding costs and disbursements under Minn. Stat. § 549.04 (2018).¹ The district court has "discretion to determine which

¹ Progressive does not argue that the district court abused its discretion in awarding statutory costs under Minn. Stat. § 549.02 (2018) because Hamilton recovered more than \$100 "in an action for the recovery of money."

party, if any, qualifies as a prevailing party.” *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998). This court will only reverse the district court’s prevailing-party determination if the district court “abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law.” *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted). The party challenging the district court’s decision has the burden to show that “no reasonable person would agree” with the decision. *Id.* (quotation omitted).

When determining the prevailing party, “the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered. *Luna v. Zeeb*, 633 N.W.2d 540, 543 (Minn. App. 2001). Minnesota’s approach to making this determination is a “pragmatic” one that “depends on a careful weighing of the relative success of the parties to a lawsuit, a process that invests a certain amount of discretion in the district court.” *Posey*, 707 N.W.2d at 715 (emphasis added); *O’Brien v. Dombeck*, 823 N.W.2d 895, 902 (Minn. App. 2012) (the prevailing-party determination “depends on a pragmatic analysis that takes into account [a party’s] success on the merits and recovery of damages”).

In cases where only one party receives a favorable verdict or judgment, the prevailing party is typically the party that received the favorable verdict or judgment. *Borchert*, 581 N.W.2d at 840. But in cases where each party succeeds in some respect, the district court must carefully weigh the relative successes of the parties. *Posey*, 707 N.W.2d

at 714-15. In doing so, the district court has discretion to find that one party is the prevailing party, both parties are the prevailing party, or that neither party prevailed. See *Benigni*, 585 N.W.2d at 54-55 (no prevailing party); *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 128 (Minn. App. 2017), *review granted in part* (Minn. June 28, 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018) (finding multiple prevailing parties); *Haugland v. Canton*, 84 N.W.2d 274, 280 (Minn. 1957) (finding one prevailing party).

Here, it is true that the district court needed to consider the award of a judgment and money damages in its prevailing-party determination. However, because there were favorable verdicts rendered for both parties, the court should have carefully considered the relative success of the parties overall. *Posey*, 707 N.W.2d at 715. It appeared to forego such an analysis. For example, the district court stated that “[i]ntuitively, to call [Hamilton] the prevailing party seems absurd. [Hamilton] recover[ed] less than 1% of what she sought. Normally that would seem to be a victory for [Progressive].” But the district court later stated “[Progressive] offers no authority for a proposition that the costs and disbursements should be awarded on a claim-by-claim basis rather than on the basis of the judgment which was entered.” In making this statement, the court failed to undertake a pragmatic analysis and appeared to rely on *Borchert* and *Luna* for the proposition that the recovery of any amount of damages compels a finding that a party prevailed.

At oral arguments, counsel for Hamilton argued that the district court’s focus on her \$242 award on the no-fault claim did not result in an abuse of discretion. Counsel stated that under this type of approach Hamilton would still be entitled to prevailing-party status if the jury had awarded her only one dollar. But an analysis that focuses solely on a small

monetary award—on a claim for UIM and no-fault benefits—is not a pragmatic one that examines the relative success of the parties to the case, particularly when Hamilton lost completely on her UIM claim. The district court’s failure to pragmatically consider the relative overall success of the parties resulted in an abuse of discretion. *Id.*

The only logical outcome the district court could have come to, had it undertaken a pragmatic analysis and examined the relative successes of the parties, is that Progressive was the prevailing party. At the onset, Hamilton submitted to the jury that her past medical expenses totaled \$105,210.46 and that her lost wages totaled \$52,010. But of the \$105,210.46 in past medical expenses that Hamilton submitted to the jury, only \$242 were found to be reasonable and unpaid. Additionally, the jury found that Hamilton did not incur any past wage loss related to the accident. It also found that Hamilton had no future pain or suffering expenses or future healthcare expenses. Moreover, Hamilton commenced this action primarily to recover UIM benefits, and recovered none. To recover noneconomic damages, Hamilton needed to convince the jury that she met the tort thresholds under the Minnesota no-fault act and show that the other driver was underinsured. Again, she failed to do so. *See* Minn. Stat. § 65B.51, subds. 1-3 (2018).

Weighing the evidence submitted by both parties, the jury found against Hamilton on her UIM claim—failing to meet the tort thresholds under the act. Because the jury members were unpersuaded by the bulk of Hamilton’s arguments and persuaded by Progressive’s arguments, particularly on the major issues in this case, Hamilton was left with just \$242. Based on the jury’s verdict, and considering both claims, it is clear

Progressive prevailed. As the prevailing party, Progressive is the party entitled to reasonable costs and disbursements under section 549.04.²

Progressive also argues that it should be entitled to statutory costs under section 549.02. Section 549.02 governs taxable costs in a civil action and provides that costs in the amount of \$200 shall be awarded to a defendant “[u]pon discontinuance or dismissal or when a judgment is rendered in the defendant’s favor on the merits.” Here, the jury returned a verdict in Progressive’s favor, finding that Hamilton failed to meet the tort thresholds. The district court then dismissed Hamilton’s UIM claim with prejudice. Because the statutory costs were mandatory, the district court did not have the discretion to not award them.

Hamilton, nonetheless, argues that Progressive did not properly apply for the statutory costs at district court and cannot now do so on appeal. It is true that Progressive did not file the district court’s standard form “Notice and Application for Taxation of Costs and Disbursements” as Hamilton did. However, Progressive did file a “notice of motion and motion for taxation of costs and disbursements” and an accompanying “affidavit in support of rule 68 cost motion” that broke down the requested costs and disbursements. The affidavit included the now requested \$200 statutory costs. *See Staffing Specifix, Inc.*,

² The dissent argues that there is no Minnesota case law supporting Progressive’s argument. But the most important case is *Posey*, which states the prevailing-party determination depends on a *pragmatic* analysis that takes into account a party’s success on the merits and recovery of damages. Hamilton’s claim for UIM benefits completely failed and she recovered only \$242 on her claim for no-fault benefits. Consequently, the district court failed to undertake a pragmatic analysis. That is why the district court abused its discretion and why we are reversing its decision.

896 N.W.2d at 135 (rejecting that an applicant who applies for fees must use the standard form application and stating that a party must only “serve and file a *detailed sworn application* for taxation of costs and disbursements with the court administrator, *substantially in the same form as published by the State Court Administrator*”).

Consequently, we reverse and remand with instructions for the district court to award Progressive its reasonable costs and disbursements pursuant to Minn. Stat. § 549.04 and Minn. Stat. § 549.02. We decline to address whether Hamilton should have been entitled to tax her expert witness reports as a reasonable cost or disbursement under Rule 68 because we conclude that she was not the prevailing party entitled to any disbursements. *See* Minn. R. Civ. P. 68.03(b)(1) (“[i]f the offeror is a defendant, and the defendant-offeror prevails or the relief awarded to the plaintiff-offeree is less favorable than the offer, the plaintiff-offeree must pay the defendant-offeror’s costs and disbursements incurred in the defense of the action after service of the offer.”).

Reversed and remanded.

SMITH, TRACY M., Judge (dissenting)

I respectfully dissent. In my view, the district court did not abuse its discretion in deciding that respondent Lauren Hamilton was the prevailing party for purposes of awarding disbursements when she obtained a judgment for no-fault benefits against her insurer, appellant Progressive Direct Insurance Company. Furthermore, even if that determination was an abuse of discretion, I disagree that the district court was compelled to conclude that appellant was the sole prevailing party and was entitled to its disbursements from respondent.

As the majority explains, a district court has discretion to determine which party qualifies as a prevailing party under Minn. Stat. § 549.04 (2018), *see Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998), and we will reverse a district court’s determination only if the district court “abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law,” *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted). A district court abuses its discretion “when its decision is against logic and facts on the record.” *Posey*, 707 N.W.2d at 714. A party challenging a district court’s prevailing-party determination as an abuse of discretion has the burden to show that “no reasonable person would agree” with the district court’s decision. *Id.* (quotation omitted).

Following a car crash, respondent settled with the tortfeasor for \$30,000 and then brought two claims against her insurer—one for underinsured-motorist (UIM) benefits and the other for no-fault economic-loss benefits. By special verdict, the jury found damages for pain and suffering in the amount of \$7,500 and past medical expenses in the amount of

\$1,783.70. Because the damages did not meet tort thresholds under the No-Fault Act, *see* Minn. Stat. § 65B.51, subds. 1-3 (2018), and because the damages were less than the amount respondent had received in settlement from the tortfeasor, the district court dismissed respondent's UIM claim. As for the economic-loss damages, after applying offsets, the district court reduced the verdict for no-fault benefits to \$242. The court then ordered judgment in favor of respondent in the amount of \$242.

The district court determined that respondent was the prevailing party and awarded her disbursements under Minn. Stat. § 549.04. The Minnesota Supreme Court has established the following standard for determining who is the prevailing party:

In determining who qualifies as the prevailing party in an action, the general result should be considered and inquiry made as to who has, in the view of the law, succeeded in the action. The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered.

Borchert v. Maloney, 581 N.W.2d 838, 840 (Minn. 1998) (footnotes omitted) (quotation marks omitted). Citing *Borchert*, the district court concluded that, because respondent obtained a verdict and judgment in her favor, she was the prevailing party.

The district court's determination was not an abuse of discretion. The determination was not inconsistent with *Borchert*. And, as appellant acknowledges, it has found no Minnesota appellate case reversing a district court's determination that a plaintiff is the prevailing party when she succeeds on the merits and recovers damages for some, but not all, of her claims against a single defendant. Moreover, appellant cites no Minnesota appellate case holding that a plaintiff cannot be the sole prevailing party even though she obtained a judgment substantially lower than what she requested.

The precedential cases cited by appellant do not stand for the proposition that a district court abuses its discretion in determining a plaintiff to be the prevailing party when the plaintiff succeeds on only the smallest of multiple claims against a defendant. The supreme court's decision in *Benigni* did not involve an award to a plaintiff who had succeeded on the merits of his claim and won damages. 585 N.W.2d 51. Rather, there, the supreme court affirmed the tax court's determination that neither party prevailed when the defendant county was granted summary judgment on the multiple claims brought against it by the taxpayer because, "[i]n light of the particular facts" of that case, the taxpayer had achieved some relief because the tax court's decision had the effect of reducing his property tax assessments. *Id.* at 54-55.

Our decision in *Posey* likewise did not involve a plaintiff who won a money judgment. 707 N.W.2d 712. In *Posey*, we affirmed the award of disbursements to a third-party defendant, against a third-party plaintiff, when the third-party defendant was found zero percent liable and the third-party plaintiff was found ten percent liable in the underlying negligence action. Again, *Posey* does not address the question of whether a district court abuses its discretion by awarding costs and disbursements to a plaintiff who obtains a judgment based on only the smallest of her two claims.

Nor does *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.* compel the conclusion that respondent is not the prevailing party. 896 N.W.2d 115 (Minn. App. 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018). In *Staffing Specifix*, we affirmed the district court's exercise of discretion in determining that certain defendants, which a jury found to be not liable to the plaintiff on any of the plaintiff's claims, were prevailing parties and entitled

to costs and disbursements from the plaintiff. The plaintiff, Staffing Specifix, had asserted a number of claims against several defendants. It won a verdict against one of the defendants, TMS, for some, but not all, of its claims, and the district court awarded the plaintiff its costs and disbursements against TMS. *Id.* at 124. The jury found the other defendants not liable, and the district court awarded those defendants their costs and disbursements against the plaintiff. The issue on appeal was whether the not-liable defendants were prevailing parties even though the liable defendant—TMS—was indemnifying them and had in fact “paid or incurred” their costs and disbursements. *Id.* at 128 (quoting Minn. Stat. § 549.04, subd. 1). We rejected the argument that the not-liable defendants had not “incurred” costs and disbursements and upheld the district court’s award of costs and disbursements.³ *Staffing Specifix* does not support the proposition that a plaintiff who succeeds on only the smallest of its claims against a single defendant cannot be the sole prevailing party.

Our decision in *O’Brien v. Dombek* is likewise no support to respondent. 823 N.W.2d 895 (Minn. App. 2012). There, we affirmed a district court’s refusal to apportion costs and disbursements among liable defendants in a negligence action in accordance with the jury’s allocation of fault. The issue on appeal was not the prevailing plaintiff’s

³ Our opinion in *Staffing Specifix* characterizes TMS as having “prevailed” on one of the plaintiff’s claims against it. *Id.* But that characterization did not affect the award of costs and disbursements as between the plaintiff and TMS. The district court awarded the plaintiff its costs and disbursements against TMS, *id.* at 124, and TMS did not seek costs and disbursements against plaintiff based on TMS’s partial success, *id.* at 127 (identifying five defendants—not including TMS—that applied for costs and disbursements). In other words, the plaintiff was the prevailing party against TMS for purposes of costs and disbursements although it did not succeed on all of its claims against TMS.

entitlement to costs and disbursements but rather whether the defendants could be jointly and severally liable for the whole amount. Indeed, we noted that, “even when a prevailing party is also at fault, the award of costs and disbursements [to the plaintiff] is not reduced by the plaintiff’s percentage of fault.” *Id.* at 902 (citing Minn. Stat. § 549.04, subd. 1).

Appellant also argues that the district court abused its discretion because it decided respondent was the prevailing party even though it had written in its initial order, “Intuitively, to call . . . [respondent] the prevailing party seems absurd” because respondent “recover[ed] less than 1% of what she sought.” In its later order reaffirming its determination that respondent was the prevailing party, however, the district court explained, “Defendant offers no authority for a proposition that the costs and disbursements should be awarded on a claim-by-claim basis rather than on the basis of the judgment which was entered.” From my review, no authority compelled the district court to decide differently.

Case law makes clear that the district court has discretion to determine who is the prevailing party for purposes of Minn. Stat. § 549.04. Here, the district court made no error of law in concluding that a plaintiff who obtained a judgment against her insurer was the prevailing party, and no appellate case has drawn the bounds of discretion to preclude a district court from determining a plaintiff to be the prevailing party when she succeeds on the smallest of her claims against the defendant. The district court therefore did not act unreasonably in determining that respondent was the sole prevailing party.

I, therefore, also disagree with the majority that the district court was compelled to conclude that appellant was the sole prevailing party. In my view, if respondent was not

the sole prevailing party, then either the parties were both prevailing parties or there was no prevailing party. Although respondent did not meet thresholds permitting recovery on her UIM claim, she obtained a judgment against appellant for no-fault benefits that appellant was responsible for paying. Respondent thus succeeded on the merits of her no-fault claim and obtained a judgment. I see no authority supporting the conclusion that the district court must find her insurer to be the sole prevailing party in these circumstances.