

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0070**

The Weitz Company, LLC,
Respondent,

vs.

Zitting Brothers Construction Inc.,
Appellant.

**Filed October 28, 2019
Reversed and remanded
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-15-9490

Bradley D. Fisher, Amy M. Sieben, Fisher Bren & Sheridan, LLP, Minneapolis, Minnesota
(for respondent)

Richard R. Caldecott, David R. Forro, Caldecott & Forro, P.L.C., White Bear Lake,
Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Zitting Brothers Construction Inc. (ZBC) challenges the district court's
award of costs and disbursements.¹ Because the district court's order lacks specific

¹ Respondent The Weitz Company, LLC (Weitz) withdrew its opposition to ZBC's appeal prior to oral argument and waived its right to appear for oral argument. Although Weitz does not oppose this appeal, "an appellate court's obligation [is] to decide cases in a manner

findings for adequate appellate review, we reverse and remand for additional factual findings.

FACTS

Weitz filed a complaint against ZBC, Samuel Zitting (Zitting), and ZB Holding Company, LC (ZBH) related to the construction of Trillium Woods, a senior living center. During the course of litigation, Weitz entered into two settlement agreements resolving claims against Zitting and ZBH. The first settlement agreement between Weitz and ZBH stipulated to dismiss with prejudice their claims against one another “and without further costs to any of the [p]arties.” The second settlement agreement settled some claims related to ZBC and all claims related to Zitting, which resulted in Zitting being dismissed from the lawsuit. This second agreement also included a provision that “[t]he claims and counterclaims listed . . . are dismissed with prejudice and on the merits, with no costs or fees assessed to any party.” As a result of these agreements, the only remaining parties are Weitz and ZBC.

On January 16, 2018, Weitz and ZBC proceeded to a jury trial on Weitz’s breach-of-contract claim. On January 25, 2018, the jury rendered its verdict which found ZBC breached its contract with Weitz and caused damages in the amount of \$2,216,702. The district court entered judgment in favor of Weitz based on the jury’s findings.

consistent with existing law when there is nothing ‘novel or questionable’ about the relevant law.” *Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (quoting *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990)), *review denied* (Minn. Feb. 4, 1991). Accordingly, we address the merits of ZBC’s appeal consistent with existing law.

Weitz, pursuant to Minn. R. Civ. P. 54.04, filed an application for taxation of costs and disbursements. Weitz submitted approximately 88 pages of invoices related to work completed by respondent's expert, which identified the employee performing the work, the employee's position, hours worked, the hourly rate, and discounted rate. The invoices also provided lists of activities performed on the case that month such as: discussing with counsel, preparing for testimony, and reviewing information. Additionally, Weitz provided the following breakdown:

Costs Category	Amount
Court Filing and Motions	\$1,615
Depositions	\$13,045.50
Service and Courier	\$1,509.79
Mediation	\$1,343.36
Copying	\$2,898.32
Document Management and Production	\$68,821.62
Expert	\$99,605
Lay Witness	\$3,519
Trial Presentation	\$2,884.28

ZBC timely objected to Weitz's application. ZBC asserted that Weitz was not entitled to costs for prosecuting claims involving ZBH and Zitting because, in its view, such an award would be *per se* unreasonable based on the parties' stipulations dismissing those claims without costs.

The Hennepin County District Court Administrator granted in part Weitz's application for costs and disbursements. The following reflects the reductions made by the court administrator:

Costs Category	Amount
Court Filing and Motions	\$1,615
Depositions	\$13,045.50
Service and Courier	\$1,509.79 283.90 + 184.84 + 506.83 = \$975.57
Mediation	\$1,343.36
Copying	\$2,8938.32 78.50 + 233.73 + 175.26 + 240 + 419.02 = \$1,146.51
Document Management and Production	\$68,821.62
Expert	\$99,605
Lay Witness	\$3,519
Trial Presentation	\$2,884.28 \$1,442.14

The court administrator approved an award of \$104,784.22.

On June 1, 2018, ZBC appealed the court administrator’s decision to the district court. The district court issued an order that reduced Weitz’s cost and disbursement award by \$102, which resulted in a total award of \$104,682.22. This appeal follows.

D E C I S I O N

Appellate courts examine “a district court’s award of costs and disbursements” and “[a] discretionary award of expert fees” for an abuse of discretion. *See Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014) (costs and disbursements); *Stinson v. Clark Equip. Co.*, 473 N.W.2d 333, 337 (Minn. App. 1991) (expert-witness fees), *review denied* (Minn. Sept. 13, 1991). “[A] district court abuses its discretion when its decision is against logic and facts on the record.” *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). Whether a district court improperly interpreted a statute constitutes a legal question that we review *de novo*. *See Dukowitz*, 841 N.W.2d at 155.

Pursuant to Minn. Stat. §§ 549.02, .04 (2018), a district court shall award costs and disbursements to the prevailing party. *See, e.g.*, Minn. R. Civ. P. 54.04(a) (“Costs and

disbursements shall be allowed as provided by law.”); *Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co.*, 510 N.W.2d 256, 260 (Minn. App. 1994) (“The [district] court does not have discretion to deny costs and disbursements to the prevailing party.”), *review denied* (Minn. Mar. 15, 1994). It is undisputed that Weitz was the prevailing party in this litigation and ““absent a specific finding that the costs were unreasonable, the court *shall* approve recovery of disbursements.”” *Quade*, 510 N.W.2d at 260 (quoting *Jonsson v. Ames Constr., Inc.*, 409 N.W.2d 560, 563 (Minn. App. 1987), *review denied* (Minn. Sept. 30, 1987)).

A. Costs and Disbursements Related to Dismissed Parties

In a multiparty action, the supreme court recognizes the authority that district courts possess “to determine the fair proportion of the costs and disbursements to be taxed against [a party] under the circumstances.” *Klinzing v. Gutterman*, 85 N.W.2d 665, 668 (Minn. 1957). When a district court engages in this “fair proportion of costs and disbursements to be taxed against each defendant” that “determination will not be reversed in the absence of a clear abuse of discretion.” *Craft Tool & Die Co. v. Payne*, 385 N.W.2d 24, 28 (Minn. App. 1986).

The district court, in its order following ZBC’s appeal from the court administrator’s decision, reduced the award by \$102 though it did not make specific findings related to the costs and disbursements award.

ZBC argues that the district court abused its discretion by failing to consider whether the costs and disbursements awarded related to ZBH and Zitting, both of whom were previously dismissed from the case under agreements that no costs to either party would

be awarded. The appellate record includes multiple filings that show motions in opposition to requests and summary judgment between Weitz and the dismissed parties, which ZBC contends cannot be included in the costs and disbursement award based on the stipulations. Although the district court has the discretion to proportion costs and disbursements in multiparty actions, we cannot determine from the district court's order how it addressed the agreements and whether it eliminated costs as the result of those agreements.

A district court must make findings to address whether the costs requested are reasonable and necessary because “the exacting task of reviewing and recording with particularity the items claimed is the role of the district court.” *Stinson*, 473 N.W.2d at 338. Because the district court did not provide its explanation, we lack the detail necessary to review the award and must remand for additional findings.

B. Expert-witness Fees

A district court may award expert-witness fees when the request is “just and reasonable.” Minn. Stat. § 357.25 (2018). Amounts for expert-witness fees are reasonable based on “such services in the community where the trial occurred in the field of endeavor in which the witness has qualified as an expert.” Minn. Gen. R. Prac. 127.

The record before us shows that Weitz submitted documents related to the costs it incurred for its expert witness. But the district court's order does not address whether the costs incurred by Weitz were just and reasonable in presenting the breach-of-contract claim against ZBC. *See Spinett, Inc. v. Peoples Nat. Gas Co.*, 385 N.W.2d 834, 840 (Minn. App. 1986); *see also Quade*, 510 N.W.2d at 261. Without a finding that addresses the expert-witness fees as just and reasonable, we cannot adequately review the district court's

exercise of discretion. We therefore remand for additional factual findings to determine if the expert-witness fees incurred by Weitz were just and reasonable.

Reversed and remanded.