

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0343**

State of Minnesota,
by its Commissioner of Transportation,
Respondent,

vs.

Cole A. Schneider, et al.,
Respondents Below,
Richard A. Kelly, Jr., et al.,
Appellants.

**Filed September 9, 2019
Affirmed
Reyes, Judge**

St. Louis County District Court
File No. 69DU-CV-15-760

Keith Ellison, Attorney General, Jeffery S. Thompson, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Kenneth D. Butler, Kenneth D. Butler, Ltd., Duluth, Minnesota (for appellants)

Considered and decided by Reyes, Presiding Judge; Tracy M. Smith, Judge; and
Florey, Judge.

S Y L L A B U S

In eminent-domain proceedings, interest accrued under Minn. Stat. § 117.195, subd.
1 (2018), is not included in the final judgment or award of damages to determine eligibility
for reimbursement of attorney fees under the plain meaning of Minn. Stat. § 117.031(a)
(2018).

O P I N I O N

REYES, Judge

In this condemnation action, appellant landowners challenge the district court's denial of their motion for attorney fees, which was based on the court's determination that appellants' final judgment or award of damages did not exceed the \$25,000 threshold for reimbursement of attorney fees under Minn. Stat. § 117.031(a). Appellants argue that the district court erred in concluding that interest accrued under Minn. Stat. § 117.195, subd. 1, is not included in the final judgment or award of damages under Minn. Stat. § 117.031(a). We affirm.

F A C T S

Appellant landowners Richard A. Kelly, Jr., and Sandra L. Kelly (the Kellys) owned real property described as Parcel 35. In 2015, the state petitioned to acquire several parcels of land, including Parcel 35, to make highway improvements. The taking occurred in August 2015. In October 2018, court-appointed commissioners held a hearing regarding the taking of Parcel 35. The commissioners issued a report, awarding the Kellys \$24,552.00 as compensation for damages they sustained from the 2015 taking. Pursuant to Minn. Stat. § 117.195, subd. 1, the Kellys were entitled to interest on their damages in the amount of \$2,104.87. The Kellys filed a motion for attorney fees pursuant to Minn. Stat. § 117.031(a). The district court denied the Kellys' motion, determining that their final damages award of \$24,552.00 did not exceed the \$25,000 threshold requirement under section 117.031(a) to qualify for reimbursement of attorney fees. The district court reasoned that the Kellys failed to exceed the \$25,000 threshold because "the accrued

interest [under section 117.195, subdivision 1] is not included in the final award of damages under [section] 117.031.” This appeal follows.

ISSUE

Did the district court err in holding that interest accrued under Minn. Stat. § 117.195, subd. 1, is not included in the final judgment or award of damages under Minn. Stat. § 117.031(a), to determine eligibility for reimbursement of attorney fees?

ANALYSIS

The Kellys argue that the district court erred by determining that interest accrued pursuant to section 117.195, subdivision 1, is not included in the final judgment or award of damages under section 117.031(a), because Minn. Stat. § 549.09, subd. 1(a) (2018) states that interest shall be “added to the judgment or award.” We disagree.

Generally, we review a district court’s award of attorney fees for an abuse of discretion. *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). But when, as here, that decision turns on the interpretation of a statute, we review de novo. *Ly v. Nystrom*, 615 N.W.2d 302, 307 (Minn. 2000). “When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is ambiguous if it is subject to more than one reasonable interpretation. *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013). If it is unambiguous, we interpret the statute’s text according to its plain language. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

When a statute does not define a word, we assume the legislature is aware of its common-law meaning and intended to use the word according to that meaning. *U.S. Bank*

N.A. v. Cold Spring Granite Co., 802 N.W.2d 363, 372 (Minn. 2011). To identify the plain meaning of a word, we refer to its common usage. *TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 430 (Minn. App. 2017).

The narrow issue before us is whether the plain language of section 117.031(a) unambiguously provides that interest is included in the final judgment or award of damages to determine eligibility for attorney fees. Chapter 117 governs eminent-domain proceedings. Section 117.031(a) provides that “[n]o attorney fees shall be awarded under this paragraph if the final judgment or award of damages does not exceed \$25,000.” We conclude that this language is clear and unambiguous, and we therefore look to the plain meaning of the statute.

A “[f]inal judgment” is “[a] court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes attorney’s fees) and enforcement of the judgment.” *Black’s Law Dictionary* 919 (10th ed. 2009). An “award” is “[a] final judgment or decision, [especially] one by an arbitrator or by a jury assessing damages.” *Id.* at 157. “Damages” refers to “[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury.” *Id.* at 445. Section 117.031(a) does not reference the word “interest,” nor does it authorize including other amounts in the final judgment or award of damages used to determine eligibility. And it does not cite to section 117.195 or section 549.09 regarding interest. See Minn. Stat. § 117.031(a). We must not read into a statute language that the legislature omitted. *In re Estate of Eckley*, 780 N.W.2d 407, 413 (Minn. App. 2010). Therefore, we hold that the

final judgment or award of damages in section 117.031(a) does not include interest accrued pursuant to section 117.195, subdivision 1.

The Kellys focus on sections 117.195, subdivision 1, and 549.09, subdivision 1(a). “We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Schroedl*, 616 N.W.2d at 277. Section 117.195, subdivision 1, provides that “[a]ll damages allowed under this chapter . . . shall bear interest . . . [and] [t]he *rate* of interest shall be determined according to section 549.09.” Minn. Stat. § 117.195, subd. 1 (emphasis added). Section 549.09 governs interest on verdicts, awards, and judgments in civil actions, and subdivision 1(a) provides:

When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) *and added to the judgment or award*.

(Emphasis added.) The Kellys argue that, because section 549.09, subdivision 1(a), requires that interest shall be added to the *award*, their final damages award amounts to \$26,656.87, and this exceeds section 117.031(a)’s \$25,000 eligibility threshold, thus entitling them to reimbursement of attorney fees. We are not persuaded. Section 117.195, subdivision 1, refers to section 549.09 to determine how to calculate the *rate* of interest. The interest-rate calculation is found in section 549.09, subdivision 1(c), not subdivision 1(a). Minn. Stat. § 549.09, subd. 1(c) (2018). Also, subdivision 1(a) refers to subdivision 1(c) for interest-rate calculation. Section 549.09, subdivision 1(c)(1)(i) provides for rate

calculation on a per-annum basis. Neither section 117.195, subdivision 1, nor section 549.09, subdivision 1(c)(1)(i), provides that interest shall be included in section 117.031(a)'s final judgment or award.

The Kellys further argue that the district court erred in relying on *State ex rel. Mondale v. Gannons Inc.*, which noted that “the law presumes that [interest] will not be included in the award.” 145 N.W.2d 321, 330 (Minn. 1966). They argue that, pursuant to Minn. Stat. § 645.39 (2018), subsequent amendments to section 117.195, subdivision 1, “effectively abolished” the presumption in *Gannons*. Section 645.39 provides:

When a law purports to be a revision of all laws upon a particular subject, or sets up a general or exclusive system covering the entire subject matter of a former law and is intended as a substitute for such former law, such law shall be construed to repeal all former laws upon the same subject.

They further argue that, “[h]ad the legislature intended to keep interest separate from an award of damages pursuant to [section] 117.195, [subdivision] (1). . . it could have done so” in its 1984 amendment, “but it did not.”

Gannons, decided in 1966, analyzed section 117.16, the precursor to section 117.195. 145 N.W.2d at 330. Section 117.16, as it appeared in 1966, provided that “[a]ll damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioner’s report.” Minn. Stat. § 117.16 (1965) (emphasis added). In 1971, the legislature replaced section 117.16 with section 117.195, but preserved the substantive statutory requirement that “[a]ll damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioner’s report or from the date of the

petitioner's possession whichever occurs first." Minn. Stat. § 117.195 (1971) (emphasis added).

In 1984, the legislature amended section 117.195 as follows:

All damages allowed under this chapter, whether by the commissioners or on appeal, shall bear interest from the time of the filing of the commissioner's report or from the date of the petitioner's possession whichever occurs first. The rate of interest shall be determined according to section 549.09.

(Emphasis added.) Once again, the legislature preserved the substantive statutory requirement that all damages bear interest. It added a reference to section 549.09 solely for the purpose of calculating the rate of interest owed on a final award. This addition did not repeal the substantive provision of the statute requiring payment of interest on a final award of damages, nor did it change the *Gannons* court's interpretation of the statutory language that interest "will not be included in the award" for damages. Therefore, the substantive requirement analyzed in *Gannons* remains in effect, and the district court did not abuse its discretion in relying on *Gannons* to support its denial of the Kellys' motion for attorney fees.

D E C I S I O N

The plain language of Minn. Stat. § 117.031(a) does not mention interest, nor does it authorize adding other amounts to the final judgment or award of damages used to determine eligibility for reimbursement of attorney fees. Therefore, we hold that, interest accrued pursuant to Minn. Stat. § 117.195, subd. 1, is not included in the "final judgment

or award of damages” under Minn. Stat. § 117.031(a) to determine eligibility for reimbursement of attorney fees. The district court properly denied the Kellys’ motion for attorney fees.

Affirmed.