

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1575**

James Robinson,
Appellant,

vs.

Metropolitan Council,
Respondent.

**Filed March 8, 2021
Reversed and remanded
Bryan, Judge**

Hennepin County District Court
File No. 27-CV-18-7065

Jeremy L. Brantingham, Brantingham Law Office, Minneapolis, Minnesota (for appellant)

John P. Brendel, Brendel and Zinn, Ltd., St. Paul, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this action for uninsured-motorist benefits, appellant challenges the district court's posttrial determination that respondent was the prevailing party and entitled to costs and disbursements. We conclude that because the statutory offset provisions does not apply to the postverdict payment in this case, the district court abused its discretion when

it determined that respondent was the prevailing party. We reverse the district court's decision and remand for further proceedings.

FACTS

On February 21, 2014, appellant James Robinson was riding on a Metro Transit bus insured by respondent Metropolitan Council when an uninsured motor vehicle struck the bus and injured Robinson. On April 26, 2018, Robinson filed a complaint against Metropolitan Council for uninsured-motorist benefits, seeking to recover damages for past and future medical expenses and past and future pain and suffering. Prior to trial, both parties made "total-obligation offers" of settlement under Minnesota Rule of Civil Procedure 68. Robinson offered to settle for \$4,000 and Metropolitan Council offered to settle for \$500.

At trial, Robinson testified that Metropolitan Council had not paid for any of his medical bills and that he had been denied coverage since the accident. Metropolitan Council agreed that it was responsible for the payment of any medical bills for any injuries Robinson sustained as a result of the accident. Accordingly, the only questions submitted to the jury were whether Robinson's injuries were permanent and what amount of damages Robinson suffered as a result of the accident. On March, 29, 2019, the jury found that Robinson was not permanently injured, that \$1,537.17 would compensate Robinson for past medical expenses, and that Robinson was not entitled to damages for future medical expenses or pain and suffering.

On April 3, 2019, the district court issued its findings of fact and conclusions of law. The district court concluded that because Robinson had failed to satisfy the \$4,000

threshold required by Minnesota Statutes section 65B.51, subdivision 3 (2018), Metropolitan Council was entitled to judgment dismissing Robinson's claim and entitled to costs and disbursements. On April 4, 2019, Robinson moved for amended findings, arguing that section 65B.51, subdivision 3, is inapplicable because it only applies to noneconomic detriment and the jury awarded Robinson economic damages. On April 8, 2019, the district court denied the motion, reiterating that Robinson did not meet the thresholds in section 65B.51, subdivision 3, and further explaining that Minnesota Statutes section 65B.51, subdivision 1 (2018), requires the deduction of economic loss benefits "paid or payable." Applying the offset provisions of subdivision 1, the district court reduced the recovery amount to zero and again awarded Metropolitan Council their costs and disbursements.

On May 1, 2019, Robinson requested that the district court allow him to move for reconsideration, and the district court granted the request. In his motion for reconsideration, Robinson maintained his position that the district court should not have reduced the jury verdict to zero and argued that he was the prevailing party because the jury award exceeded Metropolitan Council's Rule 68 offer. In support, Robinson included a June 24, 2019 letter from Metropolitan Council enclosing a check in the amount of the jury award. Robinson argued that this letter was Metropolitan Council's acknowledgement that Robinson prevailed.

On August 1, 2019, the district court denied Robinson's motion for reconsideration and ordered judgment in Metropolitan Council's favor. The district court restated its position that Robinson's net recovery is zero based on section 65B.51, subdivision 1:

The problem with this argument is that the law requires the Court to deduct from a verdict any economic loss benefits “paid or payable” to the claimant. . . . In this case, the entire amount of medical expenses found by the jury must be deducted, leaving Mr. Robinson with a net recovery of zero.

Metropolitan Council did pay the \$1,537.17 (the amount of Mr. Robinson’s damages) after the jury verdict. Mr. Robinson argues that this is a concession by Metropolitan Council that he was the victor at trial. It is not. It is at most a concession that this amount was “paid or payable,” and, as explained above, must be deducted from Mr. Robinson’s net recovery.

As Mr. Robinson’s recovery at trial was zero, he was not the prevailing party. The Court affirms its earlier rulings, and Metropolitan Council may seek costs and disbursements. Mr. Robinson’s Motion for Reconsideration is denied, as is his request for costs and disbursements.

This appeal follows.

DECISION

Robinson argues that the district court erred by concluding that, based on a net recovery amount of zero, Metropolitan Council was the prevailing party. Because controlling legal authority precludes reducing the jury verdict to zero, we conclude that the district court abused its discretion in determining that Metropolitan Council was the prevailing party.

“The prevailing party in a civil matter is entitled to recover costs and reasonable disbursements.” *O’Brien v. Dombeck*, 823 N.W.2d 895, 901 (Minn. App. 2012); Minn. Stat. §§ 549.02, subd. 1, .04, subd. 1 (2018). “The prevailing party in any action is the one in whose favor the decision or verdict is rendered and judgment entered.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998). To determine 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.” *Id.* (quotation omitted). 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 v. Fossen*, 707 N.W.2d 712, 715 (Minn. App. 2006); *O’Brien*, 823 N.W.2d at 902 (the prevailing-party determination “depends on a pragmatic analysis that takes into account [a party’s] success on the merits and recovery of damages”). The district court has “discretion to determine which 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 not reverse the district court’s determination unless the decision is “against logic and facts on the record,” arbitrary or capricious, or based on an erroneous view of the law. *Posey*, 707 N.W.2d at 714.

In this case, the district court determined that Metropolitan Council was the prevailing party because it concluded that section 65B.51, subdivision 1, required reducing Robinson’s net recovery at trial to zero.¹ Section 65B.51, subdivision 1, states:

With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which

¹ In its April 3, 2019 order, the district court relied on section 65B.51, subdivision 3, to reduce Robinson’s damages to zero. We agree with the parties that this subdivision is inapplicable. Section 65B.51, subdivision 3, establishes a threshold for noneconomic damages, but the jury only awarded Robinson damages for medical expenses. Compare Minn. Stat. § 65B.43, subd. 8 (2018) (defining “noneconomic detriment”) with Minn. Stat. § 65B.44, subd. 2 (2018) (defining medical expenses as economic losses); see also *Johnson v. State Farm Mut. Auto. Ins. Co.*, 574 N.W.2d 468, 472 (Minn. App. 1998) (“The statutory No-Fault thresholds apply to Johnson’s [uninsured motorist] action for noneconomic loss; however, because the jury awarded damages for only economic loss, Johnson is entitled to those damages, reduced by any no-fault benefits that she has already received from State Farm.”).

security has been provided as required by sections 65B.41 to 65B.71, the court shall deduct from any recovery the value of basic or optional economic loss benefits paid or payable, or which would be payable but for any applicable deductible.

Minn. Stat. § 65B.51, subd. 1. The district court determined that because Metropolitan Council “did pay the \$1,537.17 (the amount of Mr. Robinson’s past medical expenses) after the jury verdict,” this amount “must be deducted, leaving Mr. Robinson with a net recovery of zero.” Because “Mr. Robinson’s net recovery at trial was zero,” the district court determined that “he was not the prevailing party.”

The offset in section 65B.51, subdivision 1, however, does not apply to the damages in this case. *See State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 531-32 (Minn. 2015) (holding that the offset applies to an award of tort damages, offsetting benefits that a claimant has received prior to recovering any damages in the negligence action). The holding distinguishes tort damages from other types of damages based on causes of action related to an insurance contract, and establishes a firm deadline requiring benefits to be paid prior to trial in order for the offset provision to apply. *Id.* Thus, *Lennartson* prevents insurance carriers from denying payment, going to trial, receiving an adverse verdict, paying the amount awarded, and then recovering litigation costs and disbursements as the “prevailing party.”

At oral argument, Metropolitan Council conceded that *Lennartson* applies and that it precludes the district court’s decision to reduce Robinson’s net recovery to zero. Rather than distinguish *Lennartson* or urge its reconsideration, Metropolitan Council argued that Robinson could not rely on *Lennartson* to reverse the district court’s decision because

Robinson did not file an affidavit with the district court to establish a necessary fact: nonpayment prior to trial. We disagree. The fact of nonpayment prior to trial was established before the district court. At trial, Robinson testified that Metropolitan Council had not paid for any of his medical bills and that he had been denied coverage since the accident.² In addition, in his motion for reconsideration, Robinson attached a June 24, 2019 letter from Metropolitan Council enclosing a check in the amount of the jury award. Finally, in its August 1, 2019 order, the district court acknowledged that Metropolitan Council paid the \$1,537.17 after the jury verdict. Given the interpretation of section 65B.51 in *Lennartson*, and because the record shows that Metropolitan Council did not pay Robinson until after the jury verdict, we conclude that the district court erred in reducing Robinson's net recovery to zero.

The parties also made arguments regarding their Rule 68 offers. Because we remand the determination of prevailing party, we need not address the parties' arguments regarding the proper application of Rule 68. *Borchert*, 581 N.W.2d at 840. *Borchert* resolves the conflict between Rule 68 and Minnesota Statutes section 549.04 and explains why a district court should first determine who the prevailing party is based on the verdict rendered before analyzing the implications of any Rule 68 offers:

² Metropolitan Council objected to this testimony, arguing that it was inherently unfair and prejudicial. The district court overruled the objection. During this exchange, Metropolitan Council acknowledged to the district court that it had refused to pay Robinson and had denied him coverage. Additionally, during closing arguments, Metropolitan Council again acknowledged that it had not paid Robinson. While these statements are not evidence, they demonstrate that the fact of nonpayment was presented to the district court and that Metropolitan Council acknowledged this fact.

In resolving this conflict, the first question we must address is whether Borchert is a prevailing party under Minn. Stat. ch. 549 because if she is not, she is not entitled to recover her costs and disbursements under any circumstances. . . .

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.

. . . .

Having concluded that Borchert is the prevailing party does not, however, end our inquiry; we must still determine whether Rule 68 nonetheless precludes her from recovering her costs and disbursements.

Borchert, 581 N.W.2d at 839-40 (footnotes omitted). In addition, we observe that the rule 68 analysis only determines which party is entitled to costs and disbursements “*after the service of the offer*.” Minn. R. Civ. P. 68.03(b) (emphasis added). The prevailing party is still entitled to pre-offer costs and disbursements under Minn. Stat. §§ 549.02, .04. See *Althaus v. Krueger*, 929 N.W.2d 907, 910 (Minn. App. 2019) (“[A]lthough Althaus is entitled, as the prevailing party under Minn. Stat. §§ 549.02, .04, to pre-offer costs and disbursements, by operation of rule 68.03(b)(1), Althaus cannot recover costs and disbursements incurred after service of the offer.”). Because the district court is in the best position to make this determination, we remand to the district court to first determine the prevailing party and then determine costs and disbursements in light of *Lennartson* and *Borchert*.

Reversed and remanded.