

*This opinion is nonprecedential except as provided by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
A20-0920**

Brothers Fire Protection Co., d/b/a Brothers Fire and Security,
Respondent,

vs.

John B Przymus, et al.,
Appellants.

**Filed April 19, 2021
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Mille Lacs County District Court
File No. 48-CV-19-479

Michael P. Coaty, Elizabeth Ridley Scott, Heley, Duncan & Melander, PLLP, Minneapolis,
Minnesota (for respondent)

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Considered and decided by Reyes, Presiding Judge; Worke, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant John B. Przymus hired respondent Brothers Fire Protection Company, pursuant to an oral agreement without a specified price, to extend an existing fire sprinkler system on a commercial property that he was developing. Brothers Fire sent Przymus invoices charging Przymus for the labor and materials used for the project. Przymus made

partial payments on the invoices but ultimately disputed the amount of the charges and stopped paying.

Brothers Fire sued Przymus for foreclosure of its mechanic's lien against the property, among other claims. The case proceeded to trial, where the most significant issue was the reasonable value of the labor and materials that Brothers Fire contributed to the property. The district court entered judgment in Brothers Fire's favor, making findings regarding the reasonable value of the labor and materials based on the invoices and the testimony of Brothers Fire employees. The district court awarded interest on the award at 18% per year, purportedly pursuant to the agreement at issue. The court also granted Brothers Fire's posttrial motion for attorney fees.

Przymus challenges the district court's reasonable-value finding, its award of interest, and the award of attorney fees. We affirm the district court's reasonable-value finding because it is not clearly erroneous. And we affirm the interest award but modify it to six percent pursuant to Minnesota Statutes section 334.01 (2020). But we reverse the award of attorney fees and remand to allow Przymus an opportunity to respond to Brothers Fire's motion for attorney fees.

FACTS

Przymus is in the process of developing a commercial property called the Phoenix Complex.¹ Przymus intended the property to serve several purposes—including assisted living. In late 2018, Przymus hired Brothers Fire to extend an existing fire sprinkler system

¹ Przymus does business as "Phoenix Companies, LLC," but because Phoenix Companies, LLC, is not a separate legal entity, we simply refer to Przymus by name.

on the property to the area that would become the assisted living facility, which did not have a fire sprinkler system. Their agreement was an oral agreement.

The project had no specifications or known labor and material needs. Based on the undefined scope of the project, the parties did not agree to a specific price for the project and instead agreed that Brothers Fire would bill Przymus based on the time and materials furnished. Billing on a time-and-materials basis meant that Brothers Fire would charge “a per hour rate for the actual hours used on the job and then the price of the materials.” In other words, Brothers Fire would charge Przymus based on the actual labor and materials furnished for the project.

As it worked on the project, Brothers Fire sent Przymus invoices that charged Przymus separately for labor and materials. The labor charges detailed who contributed labor, how many hours the person worked on the project, and the hourly labor rate. The total labor charges at issue in this case were \$25,632.50. The materials charges, however, were not detailed. The invoices each contained only a lump sum for one unit of “materials.” The total material charges at issue in this case were \$17,742.76. The bills also included “trip charges” that the district court did not award and are not at issue in this appeal. Including the trip charges, the invoices totaled about \$45,000. Although Przymus made partial payments on the invoices, he ultimately disagreed with the charges and stopped paying Brothers Fire.

Brothers Fire eventually sued Przymus for foreclosure of a mechanic’s lien that it held on the property, among other claims. The case proceeded to a court trial, where the most significant issue was the reasonable value of the labor and materials furnished.

To establish the reasonable value of the labor and materials furnished, Brothers Fire introduced its invoices. Brothers Fire employees also testified to both the invoices and the reasonable value of the labor and materials furnished. The president of Brothers Fire testified that the company frequently bills on a time-and-materials basis on projects without a defined scope. He compiled the time and materials billing for Brothers Fire. He testified that he believed the amounts listed on the invoices reflected a reasonable and fair cost of labor and materials used on the project. The president further explained that it was possible to itemize the specific materials used on the project, but that he did not itemize the materials because Przymus never asked him to do so.²

The project manager who worked on this project testified that the only agreement that he reached with Przymus regarding price was that Brothers Fire would bill monthly on a time-and-materials basis. He described the materials used on the project, which included “CPVC pipe fittings, sprinkler heads, uprights for the heads above the ceiling, pendant style sprinklers from underneath,” and other materials. He believed that the materials charges were reasonable. He also testified that it was possible to itemize the materials used on the project.

Brothers Fire had done work in other areas on the Phoenix Complex in the past, so the parties were familiar with each other. Przymus testified that he believed, based on previous work done by Brothers Fire and based on an estimate for the project made by

² Przymus failed to timely request discovery from Brothers Fire and the district court ordered that Brothers Fire was not required to respond to his untimely request for the production of documents. Przymus does not contest any discovery order on appeal.

another project manager years before, that the total cost of the project would be about \$50,000. He also believed that the project was only about 40% done. Consequently, he believed that the invoices, which totaled almost \$45,000, were unreasonable for the amount of work that had been done by that point.

The district court found Brothers Fire witnesses credible with respect to the value of the labor and materials furnished, and specifically found that the reasonable value of the labor and materials furnished but not yet paid for was \$30,935.66.³ As a result, the court ordered judgment in Brothers Fire's favor for \$30,935.66, with interest at a rate of 1.5% per month (or 18% per year) "in accordance with the subject contract." The district court further indicated that Brothers Fire was entitled to an attorney-fees award. Brothers Fire filed a motion requesting attorney fees but did not identify a hearing date for the motion. Before Przymus filed a response to the motion, and without setting a hearing, the district court entered an order awarding Brothers Fire the amount of attorney fees it requested.

This appeal follows.

DECISION

Przymus raises three issues on appeal. The first, and primary, issue is whether the district court clearly erred by finding that Brothers Fire proved the reasonable value of the materials furnished for the project. Przymus also challenges the district court's decisions

³ The finding is consistent with the amounts billed in the invoices, less "trip costs" identified in the invoices, as the district court found that the parties never agreed that Przymus would pay for trip costs.

to award attorney fees and interest on the judgment at a rate of 18% per year. We address each issue in turn.

I. The district court did not clearly err in finding that the invoices reflected the reasonable value of materials furnished.

Based on the invoices and the credible testimony of Brothers Fire employees, the district court found that “the reasonable value of labor and materials furnished, which remains unpaid, is Thirty Thousand Nine Hundred Thirty-Five and 66/100 Dollars (\$30,935.66) in principal.” On appeal, Przymus only challenges the district court’s findings with respect to the materials.⁴ Przymus argues that the district court clearly erred by finding that the unitemized amounts on Brothers Fire’s invoices reflected the reasonable value of materials furnished for the project. We review a district court’s findings of fact for clear error, setting aside findings only when “we are left with the definite and firm conviction that a mistake has been made.” *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotation omitted).

We begin our review with the law regarding the value of a mechanic’s lien. A person who contributes to improvements of real estate under contract with the owner “shall have a lien upon the improvement, and upon the land on which it is situated.” Minn. Stat. § 514.01 (2020). In cases like this, with no agreed upon price, the amount of the lien

⁴ At oral argument, Przymus referenced an argument purportedly in his brief concerning the district court’s reasonable-value finding regarding the cost of labor. We find no such argument and limit our review to whether the evidence regarding the reasonable value of materials supports the district court’s finding.

is for the “reasonable value of the work done, and of the skill, material, and machinery furnished.” Minn. Stat. § 514.03, subd. 1(b) (2020).

At issue in this case is whether Brothers Fire introduced sufficient evidence to support the district court’s reasonable-value finding. Summary bills, even without underlying support, are admissible to prove the reasonable value of labor and materials furnished in a mechanic’s lien case. *Theissen-Nonnemacher, Inc. v. Dutt*, 393 N.W.2d 397, 400 (Minn. App. 1986). In *Theissen-Nonnemacher*, we concluded that the district court “did not err in using summary bills supported in part by backup data and in part by testimony to support a contractor’s claim for the reasonable value of his services.” *Id.* at 401.

Based on the evidence in the record, we cannot conclude that the district court clearly erred in finding that the unitemized amounts listed on the invoices reflect the reasonable value of the materials that Brothers Fire furnished for this project. Brothers Fire introduced bills to support the district court’s ultimate reasonable-value finding. Brothers Fire employees also testified to the reasonableness of the charges. Their testimony established the type of materials used, that the quantity of materials used was based on measurements of the area of the project, why more materials were necessary in this project than in other projects done on the site, and why the cost of materials increased or decreased throughout the project. Thus, the district court’s finding is supported in part by the invoices and in part by testimony.

Still, Przymus argues that *Theissen-Nonnemacher* is distinguishable from this case because, in *Theissen-Nonnemacher*, at least some “backup data” was introduced to support

the amounts reflected in the bills. We agree that this case is distinguishable from *Theissen-Nonnemacher* in that no “backup data” was introduced at trial to support the invoices. But Brothers Fire introduced testimony to support the amounts reflected on the invoices. We conclude that in this case the combination of the bills and the testimony of Brothers Fire employees is sufficient to support the district court’s reasonable-value finding.

Because the district court’s findings are not clearly erroneous, we affirm the judgment for \$30,935.66 in Brothers Fire’s favor.⁵

II. The district court erred by awarding attorney fees without providing Przymus an opportunity to respond to Brothers Fire’s motion.

Next, Przymus asserts that the district court erred by awarding attorney fees without setting a hearing on Brothers Fire’s motion, which would have established the time by which Przymus was required to respond. We review a district court’s award of attorney fees for an abuse of discretion. *Minn. Humane Soc’y v. Minn. Federated Humane Soc’y*, 611 N.W.2d 587, 590-91 (Minn. 2000).⁶

⁵ Because we conclude that the district court did not clearly err in finding that the invoices reflected the reasonable value of materials furnished based on the invoices and the testimony that it found credible, we need not reach any argument concerning the theory of account stated, which was raised to the district court. *See Hall-Vesole Co. v. Durkee-Atwood Co.*, 35 N.W.2d 601, 604 (Minn. 1949) (discussing the showing required to establish an account stated).

⁶ Brothers Fire also argues that Przymus failed to challenge the attorney fees award to the district court and therefore forfeited review of the award on appeal. We observe that, in his posttrial memorandum, Przymus argued that the district court should not allow attorney fees because, in his view, Brothers Fire failed to prove its claims. Alternatively, Przymus asserted that the district court should not award attorney fees until Brothers Fire filed an application for costs pursuant to Minnesota Rule of Civil Procedure 54.04(b). As we ultimately conclude, Przymus was not afforded a sufficient opportunity to contest the

In a mechanic's lien foreclosure case, a prevailing plaintiff is entitled to costs and disbursements. *Stiglich Constr., Inc. v. Larson*, 621 N.W.2d 801, 803 (Minn. App. 2001) (quoting Minn. Stat. § 514.14 (1998)), *review denied* (Minn. Mar. 27, 2001). That award may include reasonable attorney fees. *Id.*

To review the district court's decision to award attorney fees under these circumstances, we look to the applicable rules. A party seeking more than \$1,000 in attorney fees must make the application by motion. Minn. R. Gen. Prac. 119.01. The motion must be accompanied by a supporting affidavit and documentation. Minn. R. Gen. Prac. 119.02. Generally, motions require both written notice and a hearing. Minn. R. Civ. P. 7.02(a); *see also* Minn. R. Gen. Prac. 115.02 (providing that a party "shall" obtain a hearing date from the court administrator when filing a motion). And although the time limits established in the Minnesota General Rules of Practice do not apply to posttrial motions,⁷ the hearing date is generally what establishes the responding party's deadline to respond to the motion. *See* Minn. R. Gen. Prac. 115.03, .04.

Here, Brothers Fire filed a motion seeking more than \$1,000 in attorney fees, indicating that it would move for the award "on a date to be determined by the court." But the district court never set a hearing date. Instead, approximately three weeks later, the district court entered an order granting Brothers Fire's motion. There is no indication in

attorney fees motion that Brothers Fire eventually filed. Because Przymus did dispute an award for attorney fees, and because the district court considered the issue, we conclude that the district court's attorney fees award is within the scope of our review. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1980).

⁷ *See* Minn. R. Gen. Prac. 115.01(c) ("The timing provisions of sections 115.03 and 115.04 of this rule do not apply to post-trial motions.").

the record that Przymus was notified that the district court would enter the order without setting a hearing date or providing an opportunity to respond.

We are mindful that Brothers Fire filed its motion for attorney fees in the spring of 2020, in the midst of the global COVID-19 pandemic. At that time, the Chief Justice of the Minnesota Supreme Court ordered that district courts conduct most hearings (with some exceptions not applicable here) by remote technology or by review of the parties' submissions without oral argument. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch Under Emergency Executive Order No. 20-48*, No. ADM20-8001 (Minn. May 1, 2020). Thus, it is understandable that the district court sought to determine the attorney fees issue without setting a hearing on the matter. But by doing so without notifying Przymus that he could file a response by a given date, the district court made it unclear when Przymus was required to submit his response to the motion.

We conclude that the district court abused its discretion by awarding attorney fees under these circumstances. We reverse the award and remand to the district court to allow Przymus an opportunity to object to the request. We leave the decision as to whether a hearing is necessary to resolve the issue to the district court's discretion.

III. The district court erred by awarding interest at 18% per year.

Finally, Przymus argues that the district court erred by awarding interest at 18% per year, contrary to Minnesota Statutes section 334.01, which sets the interest rate of all legal indebtedness at six percent "unless a different rate is contracted for in writing."⁸ Brothers

⁸ We note that Przymus challenges the interest rate awarded, but not the award of interest generally.

Fire argues that Przymus has forfeited review of the interest-rate issue because he failed to challenge the interest rate before the district court.

Generally, we only consider issues that were presented to and considered by the district court. *Thiele*, 425 N.W.2d at 582. We also typically do not review an issue that was raised generally before the district court but argued under a different theory. *Id.* Nevertheless, we retain the discretion to review any issue “as the interests of justice may require.” Minn. R. Civ. App. P. 103.04; *see also Harms v. Indep. Sch. Dist. No. 300*, 450 N.W.2d 571, 577 (Minn. 1990) (indicating that an appellate court may decide an issue not determined by the district court when the question is “decisive of the entire controversy,” and when the facts are undisputed).

Turning to the scope of our review in this case, we consider that the district court addressed the interest-rate issue by awarding interest pursuant to Brothers Fire’s request. While Przymus did not challenge the interest award with the district court, as noted above, there was a truncated period of time to address posttrial motions in this case. As a result, because there are no genuinely disputed material facts⁹ and the issue is purely legal, we exercise our discretion to review the district court’s interest award.

⁹ In its brief, Brothers Fire argued that the parties agreed to an 18%-per-year interest rate but conceded that there is no evidence in the record to support that the parties made such an agreement. But even if that were true, it would not be material to this issue because Minnesota Statutes section 334.01 sets the interest rate for oral contracts at six percent. At oral argument, Brothers Fire asserted that the agreement between the parties was actually a partially written agreement, not a wholly oral agreement. But neither the district court’s findings nor the record support that assertion. The district court found that the agreement was oral. And the testimony and evidence introduced at trial unequivocally demonstrated that the agreement was oral.

Here, while the district court found that the parties entered into an oral agreement, there is no evidence in the record that a specific interest rate was contracted for.¹⁰ By operation of section 334.01, therefore, the district court should have determined that the interest rate for the oral agreement was six percent per year. Accordingly, we modify the interest award to six percent pursuant to section 334.01. *See Pearson-Berke, Inc., v. McIntosh*, 350 N.W.2d 378, 379 (Minn. 1984) (reversing district court's eight percent interest award based on Minnesota Statutes section 334.01).

Affirmed in part, reversed in part, and remanded.

¹⁰ Brothers Fire complains that it was not put on notice that the interest rate would be at issue at trial. But as the plaintiff, Brothers Fire bore the burden of proving its damages and chose not to submit any evidence regarding the purported interest-rate agreement. *See Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).