

*This opinion is nonprecedential except as provided by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
A22-0028**

Kevin S. Carpenter, et al.,
Appellants,

vs.

City of St. Cloud,
Respondent.

**Filed June 20, 2022
Affirmed
Worke, Judge**

Stearns County District Court
File No. 73-CV-19-8441

Kevin S. Carpenter, Kevin S. Carpenter, P.A., St. Cloud, Minnesota (self-represented attorney for appellants)

Renee N. Courtney, St. Cloud City Attorney, Kevin M. Voss, Deputy City Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellants challenge the district court's determinations arising out of its dismissal of a special-assessment appeal. Appellants also challenge the award of costs and disbursements. We affirm.

FACTS

Respondent City of St. Cloud (the city) adopted a special assessment to cover part of the cost of water, sewage, storm-drain, and road replacement completed in 2018. The city assessed appellants Kevin S. Carpenter and Julianna S. Carpenter's residential property for the 2018 project in the amount of \$13,954.62.

Appellants appealed the special assessment, under Minn. Stat. § 429.081 (2018), arguing that the assessment exceeded the increase in market value of their property. The district court held a scheduling conference, and both parties agreed to the proposed scheduling order.

In January 2020, appellants moved for summary judgment, arguing that the special assessment was *prima facie* invalid because no evidence supported an increase in their residential property value from the 2018 project.

The district court denied appellants' motion, concluding that, although a method that fails to approximate a market-value analysis is void on its face, the assessment here was not *prima facie* invalid because the city used a "front-footage" method, which is an acceptable method under Minnesota law. The district court noted that "there may still be an unconstitutional taking if the assessment was greater than the increase in market value of the property."

This court denied appellants' petition for discretionary review, and the supreme court denied appellants' petition for further review. *Carpenter v. City of St. Cloud*, No. A20-1090 (Minn. App. Sep. 15, 2020) (order), *rev. denied* (Minn. Nov. 17, 2020).

In December 2021, appellants moved for summary judgment for the second time, arguing that the special assessment should be set aside because the record did not support a market-value analysis and thereby violated their constitutional rights under the Fourteenth Amendment. The district court denied appellants' motion as "untimely," under Minn. R. Civ. P. 56.02. The district court determined that appellants' motion violated the scheduling order to which both parties agreed.

In July 2021, the city reassessed appellants' property, reducing the total assessment to \$4,000. The city then moved to dismiss appellants' special-assessment appeal as moot; appellants agreed that the issue was moot.

In September 2021, appellants moved for an award of costs and disbursements, totaling \$1,831.90. The city "voluntarily agreed to pay the initial filing fee of \$299."

The district court dismissed the special-assessment appeal as moot and awarded appellants \$299 in costs and disbursements. This appeal followed.

DECISION

Justiciability

Appellants moved the district court "to set aside the special assessment because the record on which the assessment was made does not approximate a market value analysis." The city argues that the district court's denial of appellants' motions for summary judgment were not final orders, decisions, or judgments, and thus cannot be appealed.

We consider first the question of appellate jurisdiction raised by the city. Questions of appellate jurisdiction are reviewed de novo. *Howard v. Svoboda*, 890 N.W.2d 111, 114 (Minn. 2017).

We have appellate jurisdiction to take an appeal “from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02.” Minn. R. Civ. App. P. 103.03(a). A district court’s award of costs and disbursements is reviewable on an appeal from a final judgment. *See id.*; *see also T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 789-90 (Minn. 2009) (analyzing whether an award of attorney fees was an appealable order pursuant to rule 103.03). “An order for the recovery of money, including an order awarding attorney fees, is not appealable, and the proper appeal is from a resulting judgment.” *Sheeran v. Sheeran*, 481 N.W.2d 578, 579 (Minn. App. 1992).

The district court granted the city’s motion to dismiss appellants’ special-assessment appeal and granted, in part, appellants’ motion for costs and disbursements. The district court’s order was then certified by the court administrator as a final judgment. This appeal is taken from that final judgment and is therefore properly before this court.

On review from a judgment, this court may review “any order involving the merits or affecting the judgment.” Minn. R. Civ. App. P. 103.04. Because the district court’s denials of appellants’ summary-judgment motions involved the merits of the special-assessment appeal, they are within this court’s scope of review in this appeal from the district court’s final judgment. Next, we consider whether the special-assessment issue addressed in appellants’ summary-judgment motions is moot.

“An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Whether an issue is moot is a question of justiciability—an issue of law we review de novo. *Id.* at 4. An example of when “an exception to the

mootness rule” applies, is “when the issue presented is capable of repetition yet evading review.” *Minn. Voters All. v. Cnty. of Ramsey*, 962 N.W.2d 667, 671 (Minn. App. 2021) (quotation omitted), *aff’d*, 971 N.W.2d 269 (Minn. 2022).

Here, the district court did not address the merits “related to the value of the special assessment,” and both parties “agreed the issue was moot,” because the city was allowed to reassess appellants’ property either by the district court’s order, the advice of counsel, or at its discretion. *See* Minn. Stat. § 429.071, subd. 2 (2020). Even so, on appeal, both parties extensively briefed the merits of the special assessment. Because an award of relief is no longer necessary, we will not address the merits of the special assessment on appeal. *See Minn. Voters All.*, 962 N.W.2d at 671.

Costs and disbursements

Appellants argue that the district court abused its discretion by denying, in part, their motion seeking an award of costs and disbursements totaling \$1,831.90. The district court “did not reach the factual issue related to the value of the special assessment,” because the “[p]arties agreed the issue was moot.” As such, the district court did not consider the merits of the special assessment and determined that an award of costs and disbursements for “the initial filing fee [was] appropriate.”

We review the district court’s determination of costs and disbursements for an abuse of discretion, but we review *de novo* any legal issues raised in this context. *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 134 (Minn. App. 2017), *aff’d*, 913 N.W.2d 687 (Minn. 2018). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or rendering a

decision that is against logic and the facts on record.” *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (quotation omitted). When challenging the district court’s exercise of its discretion, the challenging party bears the burden of proving “that no reasonable person would agree” with the district court’s award of costs and disbursements. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted).

Appellants submitted an affidavit detailing the specific costs and disbursements requested as follows: (1) statutory costs of \$200, (2) initial filing fee of \$299, (3) fee for their first summary-judgment motion of \$75, (4) court of appeals filing fee of \$553.95, (5) supreme court filing fee of \$553.95, (6) fee for their second summary-judgment motion of \$75, and (7) fee for their costs-and-disbursements motion of \$75.

The district court awarded appellants \$299 in costs and disbursements. The district court did not consider whether the city’s assessment of appellants’ property was invalid because the city reassessed the property before the district court could set the assessment aside. *See* Minn. Stat. § 429.071, subd. 2. A city or municipality may reassess a private property:

When an assessment is, for any reason whatever, set aside by a court of competent jurisdiction as to any parcel or parcels of land, or in event the council finds that the assessment or any part thereof is excessive or determines on advice of the municipal attorney that the assessment . . . is or may be invalid for any reason, the council may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to such parcel or parcels.

Id.

“For the purpose of establishing a prima facie case that an assessment is valid, a calculation based on the cost of the improvement is deemed reasonably related to the value of special benefits.” *See Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011) (quotation omitted). However, even “[i]f the reasonableness of the action of the city council is at least doubtful, or fairly debatable, a court will not interject its own conclusions as to more preferable actions.” *Arcadia Dev. Corp. v. City of Bloomington*, 125 N.W.2d 846, 850 (Minn. 1964).

Here, the city’s original assessment of appellants’ property was not set aside by the district court. Instead, the city elected to reassess the property following an appraisal that indicated that the property’s market value increased by \$4,000 because of the construction project.

The district court determined that an award of the initial filing fee of \$299 was appropriate. *See Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co.*, 510 N.W.2d 256, 260 (Minn. App. 1994) (stating that it is within the district court’s discretion to determine what costs are reasonable, and our court would reverse that determination only if it abused its discretion), *rev. denied* (Minn. Mar. 15, 1994). The district court can “either affirm the assessment or set it aside and order a reassessment as provided in section 429.071, subdivision 2.” Minn. Stat. § 429.081 (providing the “exclusive method of appeal from a special assessment”).

The district court’s award of costs and disbursements was not contrary to “logic” or the “facts on record.” *See Knapp*, 883 N.W.2d at 835. Appellants failed to meet their burden of proof that “no reasonable person would agree” with the district court’s award of

costs and disbursements. *Posey*, 707 N.W.2d at 714 (quotation omitted). Therefore, the district court's award of costs and disbursements was not an abuse of its discretion.

Affirmed.