This opinion is nonprecedential except as provided by Minn.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
A23-0245

Darwin Boutain, et al.,
Appellants,

vs.

Aaron Peterson,
Respondent.

Filed September 11, 2023
Affirmed in part, reversed in part, and remanded
Bryan, Judge

Beltrami County District Court
File No. 04-CV-21-900

Michael L. Jorgenson, Charlson & Jorgenson, P.A., Thief River Falls, Minnesota (for appellants)

Patrick S. Rosenquist, Rosenquist Law Office, Grand Forks, North Dakota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bryan, Judge; and Klaphake, Judge.[*]

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal after remand in a lease dispute, appellants make the following two arguments: (1) the district court erred when it awarded respondent contract-based attorney

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

fees after determining that the lease was void, and (2) the district court erred when it awarded respondent costs pursuant to statute. We affirm the award of contract-based attorney fees, but we reverse the award of statutory costs and remand to the district court to vacate this award.

FACTS

On June 18, 2015, appellants Darwin and Dena Boutain (the Boutains) entered into a ten-year lease agreement (the lease) to rent farmland owned by a trust in Beltrami County. The lease provided that half of the annual rent was due on March 1 and the other half was due on November 1 of each year until 2020. After 2020, the entire annual rent was due on March 1. The lease included the following provision: "Contract is void if rent is not paid on time. . . . All legal fees for noncompliance will be covered by renter."

In or around January 2021, respondent Aaron Peterson bought the farmland leased by the Boutains. As of March 1, 2021, the Boutains had not paid rent due to Peterson. Ten days later, the Boutains met with Peterson to discuss the lease. After the meeting, Peterson informed the Boutains that he did not want them farming the property anymore, and on March 18, 2021, an attorney for Peterson emailed a letter to the Boutains' attorney notifying the Boutains of Peterson's intent to file an eviction action. That same day, the Boutains, through their counsel, sent Peterson's counsel a check for $12,000 for the March rent. Peterson rejected the payment and confirmed his intent to proceed with eviction.

On April 1, 2021, the Boutains commenced this lawsuit against Peterson, seeking declaratory relief to confirm the existence and terms of the lease and requesting a temporary injunction. Peterson moved to dismiss the Boutains' complaint and to award Peterson contract-based attorney fees. Following a hearing, the district court granted Peterson's motion to dismiss. In doing so, the district court found that the lease agreement was rendered void by the Boutains' failure to pay rent on time. The district court, therefore, denied the Boutains' request for declaratory relief and a temporary injunction. The district court also awarded Peterson attorney fees based on Minnesota Rule of Civil Procedure 11.02 and Minnesota Statutes section 549.211 (2020).

The Boutains brought a motion for amended findings under Rule 52.02 and for relief from the judgment under rule 60.02(f). The district court issued an order granting in part the motion to amend findings. The district court modified its reasoning for granting summary judgment for Peterson, but the result was still the same—Peterson was entitled to summary judgment as a matter of law. The district court also maintained the award of attorney fees to Peterson under rule 11 and section 549.211.

The Boutains appealed to this court. They argued that the district court erred by dismissing their declaratory-judgment action for failure to state claim upon which relief can be granted and abused its discretion by awarding attorney fees to respondent. *Boutain v. Peterson*, A21-1301, 2022 WL 1763601, *2-3 (Minn. App. May 31, 2022). This court affirmed the summary-judgment dismissal of the Boutains' complaint, concluding that the complaint failed to state a viable claim. *Id.* at *3. However, this court reversed and remanded the sanctions-based attorney fees award, concluding that the district court erred because Peterson requested only contract-based attorney fees (not fees pursuant to rule 11 or section 549.211) and because the district court did not follow the procedural requirements for imposing a sanctions-based award. *Id.* at *4. This court remanded to the district court to determine whether contract-based attorney fees "are warranted under the lease agreement, and if so, to determine the amount of attorney fees to award." *Id.*

After remand, the district court awarded Peterson contract-based attorney fees in the amount of $13,044, concluding that the legal fees resulted from the Boutains' failure to pay rent and that the lease provision regarding attorney fees were not void. The district court also found that Peterson was entitled to an award of $500 in costs, *see* Minn. Stat. § 549.02 (2020), an amount that included $200 in costs following the district court judgment and $300 in costs related to the appeal. The Boutains appeal.

DECISION

The Boutains first argue that the district court erred in awarding contract-based attorney fees because the declaratory judgment action was not related to noncompliance and because the district court determined that the lease was void. Second, the Boutains argue that the district court erred in awarding statutory costs to Peterson because Peterson did not request costs and because the Boutains were the prevailing party on appeal. We conclude that the district court did not err in awarding contract-based attorney fees incurred as a result of the declaratory judgment action, and we affirm this portion of the decision. However, because we conclude that Peterson did not apply for statutory costs within 45 days of the entry of final judgment and because the Boutains were the prevailing party on appeal, we reverse and remand the award of statutory costs.

I. Contract-Based Attorney Fees

The Boutains first argue that the district court erred by awarding contract-based attorney fees because the lease provision only applied to fees incurred as a result of a lawsuit relating to noncompliance with the lease. They characterize the instant declaratory judgment action as unrelated to noncompliance. In addition, the Boutains argue that because the district court determined that the lease was void, the lease provision concerning attorney fees was unenforceable. We are not convinced by either argument.

"Generally, attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute authorizing such recovery." *Northfield Care Ctr., Inc. v. Anderson*, 707 N.W.2d 731, 735 (Minn. App. 2006) (quoting *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983)). "We review an award of attorney fees for an abuse of discretion." *Green v. BMW of North America, LLC*, 826 N.W.2d 530, 534 (Minn. 2013) (quotation omitted). But whether the declaratory judgment action filed by the Boutains required a determination of noncompliance to permit the award of attorney fees by the district court presents a question of law that we review de novo. *Spicer, Watson & Carp v. Minnesota Lawyers Mut. Ins. Co.*, 502 N.W.2d 400, 402 (Minn. App. 1993).

In this case, the contract provision in the lease regarding attorney fees states: "Contract is void if rent is not paid on time. . . . All legal fees for noncompliance will be covered by renter."[1] The Boutains argue that the declaratory judgment action does not relate to noncompliance because it is an action to determine the validity of the lease, and not an action to force compliance with the lease. We are not convinced, however, because the only basis Peterson identified to invalidate the lease is the Boutains' failure to pay rent

[1] Neither party argues that the term "noncompliance" or any other lease term is ambiguous. Instead, the parties disagree about the correct characterization of the lawsuit seeking declaratory judgment and whether that lawsuit related to "noncompliance."

on time. In this way, the district court was required to determine whether the Boutains failed to comply with the terms of the lease. Therefore, this declaratory judgment action falls within the attorney fees provision of the lease.

The Boutains next argue that, based on a nonprecedential case, *Robert Davis Const., Inc. v. Althoen*, A14-0321, 2014 WL 4672378 (Minn. App. Sept. 22, 2014), the attorney fees provision was unenforceable after the lease was declared void. We are not persuaded to reverse for three reasons. First, this case is nonprecedential. *See* Minn. R. Civ. App. P. 136.01, subd. 1 ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel."). Second, the case does not stand for the proposition that a party cannot obtain contract-based attorney fees after the contract has been declared void. *See Althoen*, 2014 WL 4672378, at *4. Instead, in *Althoen*, this court determined that the district court erred by awarding respondents contract-based attorney fees because the respondents prevailed on an equitable claim, not a contract-based claim. *Id.* Third, and more substantively, Peterson incurred attorney fees as part of the litigation to determine whether the lease was void, not separate from such litigation. For these reasons, we affirm the district court's decision to award contract-based attorney fees.

II. Statutory Costs

The Boutains argue, and Peterson concedes, that the district court erred in awarding $500 in costs under section 549.02. We agree.

Subdivision 1 of section 549.02 provides that $200 in costs shall be allowed "[u]pon a judgment in the plaintiff's favor of $100 or more in an action for the recovery of money only." Subdivision 2 of the statute provides that "[u]pon a judgment on the merits on appeal to the court of appeals or supreme court, additional costs in the amount of $300 shall be allowed to the prevailing party." Minn. Stat. § 549.02, subd. 2. Before a party can recover such costs, however, the party "must serve and file a detailed application for taxation of costs and disbursements with the court administrator" within 45 days of the entry of judgment. Minn. R. Civ. P. 54.04 (a)-(b).

In this case, Peterson did not apply for statutory costs within 45 days and the Boutains were the "prevailing party" on appeal. Therefore, we reverse and remand to vacate the award of costs.

Affirmed in part, reversed in part, and remanded.