

*This opinion is nonprecedential except as provided by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
A24-0864**

Dalvin Cook,
Respondent,

vs.

Gracelyn Trimble, et al.,
Defendants,

Coley Grostyan,
Appellant.

**Filed January 13, 2025
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-CV-21-14617

Janel M. Dressen, Kathryn E. Campbell, Anthony Ostlund Louwagie Dressen & Boylan
P.A., Minneapolis, Minnesota (for respondent)

Coley J. Grostyan, Law Office of Coley J. Grostyan, PLLC, Minneapolis, Minnesota (self-
represented attorney)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Coley Grostyan challenges the district court's discovery sanction order
awarding attorney fees for the work respondent Dalvin Cook's attorneys performed in

filing a motion to compel compliance with a subpoena after Grostyan's client failed to appear for a deposition. Because the district court did not abuse its discretion in ordering sanctions or in the amount of the award, we affirm.

FACTS¹

This dispute stems from litigation involving Cook and Gracelyn Trimble. Trimble sued Cook in Dakota County alleging battery, assault, and false imprisonment. Cook later sued Trimble's counsel for defamation in Hennepin County. The sanctions order and fees award at issue in this appeal arose from the Hennepin County action.

On November 20, 2023, Trimble—who lived outside of the United States—attended a court-ordered medical examination in Minnesota related to the Dakota County action. While Trimble was in Minnesota, Cook's counsel had her personally served with a subpoena to appear for a Zoom deposition on Monday, December 18, 2023, in the Hennepin County action.

On Friday, December 15, 2023, Trimble's counsel, Grostyan, indicated that Trimble would not appear for the deposition.

On Monday, December 18, 2023, neither Trimble nor Grostyan appeared for the remote deposition. Cook's counsel filed a motion under Minn. R. Civ. P. 37 to compel Trimble's compliance with the subpoena and for sanctions against Trimble and Grostyan.

On January 5, 2024, two different attorneys entered their appearance on behalf of Trimble in the Hennepin County action and filed a motion to quash the subpoena.

¹ Our recitation of the facts is limited given the confidential nature of some of the documents filed in the district court dockets.

Trimble's new attorneys also filed, on Trimble's behalf, an opposition to the motion to compel and for sanctions. Grostyan filed no response to the motion seeking sanctions against him.

Grostyan did not attend the hearing on the parties' motions. Following the hearing, the district court granted Cook's motion to compel Trimble's deposition and to sanction Trimble and Grostyan. The district court ordered that Trimble and Grostyan were jointly and severally liable for Cook's reasonable attorney fees, costs, and disbursements incurred in preparing and filing the motion to compel.

Cook's counsel submitted declarations seeking attorney fees and costs. Cook and Trimble entered into two agreements. First, Cook and Trimble jointly stipulated that Cook would not seek sanctions against Trimble in exchange for Trimble sitting for the deposition in the Hennepin County action. Second, Cook and Trimble entered into a settlement agreement for the Dakota County action, which included a term whereby Cook agreed to seek attorney fees only against Grostyan.

Grostyan objected on behalf of himself and Trimble to Cook's counsel's declarations for fees. The district court ordered Grostyan to pay \$21,028.34 in attorney fees and costs, reasoning that rule 37.01(d)(1) provides for the award of reasonable costs and attorney fees against the deponent whose conduct necessitated the motion to compel, the attorney advising such conduct, or both.

Grostyan appeals.

DECISION

Grostyan raises three arguments on appeal, claiming the district court: (1) abused its discretion in imposing sanctions because his objection to the subpoena was substantially justified; (2) clearly erred in finding that he advised Trimble to disobey the subpoena; and (3) abused its discretion in awarding an excessive and unreasonable amount of attorney fees solely against him. We address each argument in turn.

I. Grostyan’s objection was forfeited and was not substantially justified.

Grostyan challenges the imposition of sanctions on the basis that his objection to the subpoena was substantially justified. We conclude that Grostyan forfeited this issue because he failed to raise the objection before the district court.

Grostyan did not file an opposition to the motion seeking sanctions or appear for the hearing on the motion. Because Grostyan failed to raise his objection to the subpoena to the district court, we deem it forfeited. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Even if we were to consider the merits of Grostyan’s argument, it would fail on the merits. Grostyan claims that his objection was substantially justified because, among other reasons, he indicated to Cook’s counsel on December 15 that Trimble would not attend the December 18 deposition. But an objection alone does not remove the subpoena’s power that compels an action. Instead, the rules require a motion challenging the validity of the subpoena to be filed with the district court. Grostyan never filed any such motion.²

² Even if Grostyan had properly filed a motion—like Trimble’s new attorneys did on her behalf—our review of the record (including the confidential record) reveals that the district court acted well within its discretion in denying the motion to quash.

Besides failing to file a motion, the record demonstrates that Grostyan failed to lodge a timely objection. The notice of deposition was served on Trimble on November 20 for a December 18 deposition. Grostyan waited until the Friday before the Monday deposition to object to the subpoena. Grostyan's correspondence offered no reason for the delay in making an objection. Waiting until Friday to object to a Monday deposition—after having 25 days since personal service of the notice—is far from a *timely* objection.

II. Grostyan forfeited the challenge to the district court's finding that he advised Trimble to disobey the subpoena.

Grostyan next argues the district court's finding that he advised Trimble to disobey the subpoena is without support in the record. Grostyan neither filed a response to Cook's motion to compel and for sanctions, nor attended the hearing. The objection to the amount of attorney fees that Grostyan filed did not raise this argument. Because Grostyan failed to raise this argument to the district court, we deem it forfeited. *Thiele*, 425 N.W.2d at 582.

Even if we were to consider this argument, we conclude that it is unavailing. We will not set aside a district court's findings of fact unless they are clearly erroneous. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). When "reasonable evidence . . . support[s] the [district] court's findings of fact," we will not disturb them. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

The district court's finding that Grostyan advised Trimble to disobey the subpoena has ample support in the record. The record establishes that: Trimble was served with a subpoena compelling her presence at a deposition held via Zoom; Grostyan represented Trimble; Grostyan indicated that Trimble would not appear at the deposition; and Trimble

ultimately did not appear for the deposition. The district court's finding that Grostyan advised Trimble to disobey the subpoena was a reasonable inference to make from this evidence and was not clearly erroneous.

III. The district court did not abuse its discretion in awarding \$21,028.34 in fees.

Grostyan argues that the district court abused its discretion in the amount of attorney fees awarded and by imposing that award only against him. “[T]he district court is the most familiar with all aspects of the action [and] . . . is in the best position to evaluate the reasonableness of requested attorney fees.” *650 N. Main Ass’n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 494 (Minn. App. 2016) (quotation omitted), *rev. denied* (Minn. Nov. 23, 2016). We will not reverse an award of attorney fees absent an abuse of discretion. *Id.* “The reasonableness of the hours expended and the fees imposed raise questions of fact,” which will be reversed only if they are clearly erroneous. *Id.* at 497 (quotations omitted).

The district court here made detailed findings as to the expenses incurred by Cook. The order reflects the court's careful consideration of the declarations submitted by Cook's counsel and the accompanying documents showing itemized time entries and hourly rates for tasks associated with the motion to compel. The time entries that the court based the award on represent counsel's work on the motion and related litigation, all of which was prompted by Grostyan's conduct.

The district court also appropriately excluded “excessive, redundant, or otherwise unnecessary” hours. *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985) (quotation omitted). The court reduced the award from the amount requested by Cook's counsel, reasoning that time spent preparing for a deposition that occurred on a later date

should not be included. The district court's findings regarding the hours and fees expended on the motion to compel are not clearly erroneous.

Grostyan also argues that he cannot be solely responsible for the whole attorney fees award because the district court found he was only partially responsible for Trimble's failure to attend the deposition, yet required him to pay the entire award due to a stipulation between Trimble and Cook. We are not persuaded. The district court found Grostyan and Trimble jointly and severally liable for the entire award. Parties that are held jointly and severally liable are each individually responsible for the entire award. *See Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 74 (Minn. 2012). Once two parties are held jointly and severally liable for an award, the award may be collected against either one for the entire amount. Because the district court found Grostyan to be partially responsible for Trimble's failure to attend the deposition—and, accordingly, jointly and severally liable for any attorney fees awarded—the court did not abuse its discretion in awarding attorney fees solely against him.

Affirmed.