This opinion is nonprecedential except as provided by Minn.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
A24-1041

Craig Stevenson, et al.,
Appellants,

vs.

Sean Stevenson, et al.,
Respondents.

Filed February 3, 2025
Affirmed
Reilly, Judge[*]

Otter Tail County District Court
File No. 56-CV-20-2928

Cassandra C. Wolfgram, Matthew J. Schaap, Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for appellants)

Ross N. Tentinger, Joseph C. Tourand, Tentinger Law Firm, P.A., Apple Valley, Minnesota (for all respondents); and

Kirsten J. Hansen, Stitch, Angell, Kreider & Unke, P.A., Minneapolis, Minnesota (for respondents Sean and Renee Stevenson)

Considered and decided by Harris, Presiding Judge; Cochran, Judge; and Reilly, Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellants challenge a costs-and-disbursements judgment, arguing that the district court abused its discretion by taxing against them (1) costs and disbursements incurred because of respondents' intentional spoliation of evidence and perjury, (2) certain motion fees, (3) costs related to evidence respondents failed to produce and witnesses respondents failed to identify, and (4) costs related to an expert report that appellants contend was unnecessary. Appellants also assert that the district court erred by entering judgment nunc pro tunc. We affirm.

FACTS

This case is before us for the fourth time. *See Stevenson v. Stevenson (In re Stevenson)*, No. A23-0077, 2023 WL 2662579 (Minn. App. Feb. 21, 2023) (granting in part and denying in part petition for extraordinary writ in relation to discovery orders); *Stevenson v. Stevenson*, No. A23-1209, 2024 WL 1506989 (Minn. App. Apr. 8, 2024) (affirming summary-judgment dismissal of claims), *rev. denied* (Minn. July 23, 2024); *Stevenson v. Stevenson (In re Stevenson)*, No. A24-0697, 2024 WL 2592854 (Minn. App. May 21, 2024) (denying writs of prohibition and mandamus related to district court's failure to enter judgment on costs and disbursements as moot after district court entered judgment).

In 2020, appellants Craig and Marie Stevenson brought claims of defamation per se, intentional infliction of emotional distress (IIED), and civil conspiracy against respondents Sean Stevenson, Renee Stevenson, Lisa Stevenson-Allen, and Ashley

Anderson.[1] The district court granted summary judgment to respondents and dismissed all of appellants' claims in June 2023. Appellants appealed that dismissal and we affirmed. *Stevenson*, 2024 WL 1506989, at *1.

In July 2023, respondents filed a Notice and Application for Taxation of Costs and Disbursements asking the district court to tax 121 costs and disbursements, totaling $80,747.28, against appellants pursuant to Minnesota Statutes section 549.04 (2024). Appellants objected to many of respondents' costs and respondents filed a short response to that objection. On October 13, 2023, the district court granted in part and denied in part respondents' application, taxing 85 costs totaling $60,757.12 against appellants in a thorough and detailed order. On May 17, 2024, following a delay in court administration entering the judgment, the district court issued an order entering judgment nunc pro tunc to October 13, 2023.

This appeal follows.

DECISION

Appellants argue that the district court abused its discretion by taxing certain costs against them for several reasons. They also argue that the district court abused its discretion

[1] We use first names of the parties throughout this opinion for ease of reference as most parties share the same last name. Appellants Craig and Marie Stevenson are married, and respondent Sean Stevenson is Craig's adult son. Renee Stevenson is Sean's mother, Lisa Stevenson-Allen is Sean's aunt, and Ashley Anderson is Sean's significant other. The facts underlying the claims involve many complex intrafamilial interactions and are generally irrelevant to the issues currently on appeal, except for those discussed below. For a recitation of the underlying facts, see *Stevenson*, 2024 WL 1506989, at *1-5.

in issuing an order nunc pro tunc backdating the judgment to the date it issued the costs order.

I. The district court did not abuse its discretion by taxing the challenged costs against appellants.

Following "a detailed application for taxation of costs and disbursements," a district court "shall be allowed" to award those costs and disbursements as provided by law. Minn. R. Civ. P. 54.04. "In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred." Minn. Stat. § 549.04. The prevailing party bears the burden to show it is entitled to costs and disbursements. *Capacity Wireless, LLC v. Board of Regents of Univ. of Minn.*, 978 N.W.2d 275, 283 (Minn. App. 2022), *rev. denied* (Minn. Oct. 18, 2022). The test for awarding costs and disbursements is reasonableness. *Id.* ("[T]he district court is bound to allow only reasonable disbursements."). We review a district court's award of costs and disbursements for an abuse of discretion. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014).

Appellants challenge the district court's costs-and-disbursements judgment on several bases, arguing that the district court (1) taxed costs against them that were incurred because of respondent Sean's spoliation of evidence and perjury, (2) improperly taxed several motion fees against them, (3) taxed costs associated with evidence respondents failed to produce and witnesses respondents failed to identify, and (4) taxed costs related to an expert report appellants contend was unnecessary. We address each argument in turn.

1. Costs Incurred based on Spoliation and Perjury

First, appellants challenge the cost of an expert forensic technology report conducted by Carney Forensics (the Carney report), arguing that it cannot reasonably be taxed to them because respondents only obtained the Carney report to mitigate respondent Sean's spoliation of evidence and perjury.

In 2022, the district court found that Sean had spoliated evidence and committed perjury. In his deposition, Sean denied that he had ever intentionally deleted text messages between him and his co-defendants that he knew were relevant to the litigation. Following his deposition, Sean's counsel became aware that he had deleted relevant text messages from his phone after litigation had begun and pursued a forensic examination of his, Renee's, and Lisa's phones conducted by Carney Forensics. Appellants also obtained their own forensic examinations of all three phones conducted by a different forensic examiner. Appellants filed separate motions for sanctions against respondents Sean, Renee, and Lisa, claiming they had each spoliated evidence by deleting text messages relevant to the litigation. Respondents filed three separate responses to each motion. The district court found that only Sean had intentionally spoliated evidence and granted appellants' motion only against him, ordering him to pay for the forensic examinations of Renee's and Lisa's phones that appellants had obtained from the other forensic examiner.

Respondents asked the district court to tax the costs associated with the Carney report against appellants. Appellants objected, arguing that the report was obtained due to Sean's spoliation. Respondents countered that the purpose of the report was partially to rectify Sean's spoliation but was also to comply with appellants' "overburdensome discovery requests" and examine the phones of Lisa and Renee—who did not engage in spoliation—to obtain potential evidence. The district court taxed half of the Carney report costs against appellants, concluding that the request was "partially justified and partially unjustified" and therefore finding it would achieve "rough justice" to award respondents half of their fees related to the Carney Forensics report and deny the other half.

We discern no abuse of discretion in the district court's award of half of the Carney report costs. The record supports that appellants made extensive discovery requests, and it was reasonable for respondents to obtain the Carney report not only because of Sean's spoliation, but to comply with those requests. And the Carney report costs also encompass the work done on the phones of Lisa and Renee, who the district court determined did not engage in spoliation. Because the record supports the dual purpose of the Carney report and the partial award accounts for that dual purpose, the district court did not abuse its discretion in partially taxing this cost against appellants.

2. Motion Fees

Second, appellants challenge several motion fees taxed to them, arguing that the district court improperly taxed fees for motions in which respondents were not the prevailing party and improperly taxed motion fees respondents did not actually incur.

Costs are only recoverable by the "prevailing party." Minn. Stat. § 549.04. 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). In determining which party is the prevailing party, the district court is to consider the general result of the action and "who has, in the view of the law, succeeded in the action." *Haugland v. Canton*, 84 N.W.2d 274, 280 (Minn. 1957) (quotation omitted). If the district court deems a party prevailing in the action, that party may recover motion fees associated with motions on which it was only partially successful because "[e]ven partly successful motions require a filing fee." *Capacity Wireless*, 978 N.W.2d at 285.

Appellants challenge two motion fees—(1) respondents' opposition to appellants' motion for sanctions and (2) respondents' motion to strike statements from declarations appellants filed in opposition to respondent's summary-judgment motion—arguing that respondents were not the prevailing party. As respondents point out, the application for costs shows that the fee taxed against appellants for respondents' opposition to appellants' motion for sanctions relates to sanctions against Renee, not Sean. Because the district court denied appellants' motion for sanctions against Renee, there is no question that respondents prevailed on the opposition motion taxed to appellants.

Appellants correctly assert that the district court never ruled on respondents' motion to strike statements from appellants' declarations. The district court nonetheless taxed the fee for this motion against appellants because it "was a reasonable part of [respondents'] pursuit of summary judgment," even though the court "did not reach [the] motion because it was able to resolve the underlying summary[-]judgment motion on other grounds." This was not an abuse of discretion. The motion to strike was tangential to respondents' overarching motion for summary judgment, and there is no dispute that respondents prevailed on that overarching motion. That the district court never formally ruled on the motion to strike is immaterial because, as the district court correctly explained, the motion was reasonably construed as part of the larger summary-judgment motion. Because respondents prevailed on the overarching summary-judgment motion, the district court did not abuse its discretion in finding them the prevailing party in this related supporting motion.

Appellants also challenge two motion fees that they claim respondents did not actually incur. In their opposition to respondents' application for costs, appellants pointed out these two motion fees that should have been incurred but were not, along with four motion fees that they claimed were incurred when they should not have been.[2] The district court taxed two of these motion fees against appellants, refunded two from the court to respondents, and disallowed the other two.

Though respondents did not technically incur fees specifically for these motions, they did, as appellants concede, incur fees for four motions they should not have. The district court did not err in effectively shifting the erroneous costs from the filings to which they were attached to these two motions because all motion fees were the same, $80.00, and respondents did incur the $160.00 taxed against appellants through the other erroneously charged fees. Nor do appellants dispute—and the record supports—that respondents were the prevailing party on the motions for which the fees were ultimately taxed. The district court did not abuse its discretion in awarding motion fees to respondents.

[2] These fees were incurred by erroneous double-charging or improperly charging motion fees for correspondence.

3. Costs Related to Alleged Discovery Violations

Third, appellants challenge various costs because they are related to evidence respondents failed to produce, and witnesses they failed to identify. Appellants challenge the Carney report on this basis too, along with three printing and copying costs, the cost for service on a person appellants claim was not identified to them as a witness, and the cost for respondents' use of Great Plains, Inc., a private investigator.

Appellants point to various entries in the Carney and Great Plains billing narratives to contend that respondents committed discovery violations and should not be awarded costs incurred because of those violations. In awarding the cost for Great Plains, the district court addressed appellants' contentions as follows:

> [Appellants] allege that the billing invoices reveal that [respondents] engaged in discovery violations, withholding of relevant discovery, and post-deadline discovery. As such, they argue that it would be inequitable for the Court to award fees for the private investigator. The Court has repeatedly rejected many of the premises underlying these arguments. . . . The Court has reviewed [appellants'] arguments again and finds that they fall short.

We agree with the district court that appellants' claim that the application for costs revealed discovery violations is not supported by the record. The entries appellants highlight consist of various technical terms used in Carney's reporting work and names of people Great Plains may have contacted; they do not make clear that any of the work performed or people contacted uncovered discoverable evidence or witnesses. The district court pointed out that appellants made similar tenuous accusations when they moved to compel discovery of all information respondents obtained from Great Plains once they learned respondents had employed them, and it rejected those arguments then too. The district court "granted multiple motions seeking to limit [appellants] from engaging in overburdensome discovery" throughout this case, finding that appellants' "discovery strategy has borne less relation to an attempt to litigate their claims on the merits than . . . an attempt to use the court system to impose burdens upon, and exert control over, [respondents]." The district court reviewed appellants' arguments on potential discovery violations associated with this cost and its decision is supported by the record.

The printing and copying fees were from the Todd and Dakota County courthouses and an unidentified law library. Appellants argue respondents did not show these costs were reasonable because they never produced any of these copies or printed documents. But as the district court explained, it was reasonable for respondents to obtain documents from Todd County because Renee and Craig's divorce occurred there, and factual assertions underlying the claims involved Renee and Craig's relationship. And though respondents did not provide a similar explanation for the Dakota County or law library fees, the district court also found it reasonable that respondents would have had to print documents from a law library or from another courthouse. We discern no abuse of discretion in this decision. We also note that the Dakota County courthouse printing fee is \$8.00 and the law library printing fee is \$3.75, totaling \$11.75 out of the \$60,757.12 awarded. Even if taxing these costs were error, such error would be de minimis. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error).

The district court also taxed the service costs for a person who has the same last name as Marie's father, presumably a family member. Appellants argue this cost is not taxable because this person was not disclosed to them as a witness. The IIED claim here was asserted solely by appellant Marie against respondent Sean and rested mainly on allegations that Sean had contacted Marie's estranged father and expressed concern for Marie in her marriage to Craig. The district court pointed out that Marie's IIED claim "turned, in large part, on the idea that [she] was particularly vulnerable due to her childhood experiences with her father," so it was reasonable for respondents to attempt to contact other members of Marie's family because they "might obviously have information about [those childhood experiences]." Here too, we discern no abuse of discretion. As the district court explained, "[respondents] were entitled to conduct their own investigation." Because it was reasonable to conduct preliminary investigation into a person who may have had insight into a central component of Marie's claim, the district court did not err in awarding this cost.

4. Expert Report

Finally, appellants argue that the district court abused its discretion by awarding the cost of an independent medical examination (IME) of appellant Marie because the IME was not favorable to respondents and they did not use it for their summary-judgment motion. They also argue that the cost is not taxable because "Minn. R. Gen. Prac. 127 precludes recovery for examinations or preparation outside of trial" conducted by experts.

In support of her IIED claim, Marie claimed Sean's conduct caused her to suffer from several medical issues, including chest pain, heart palpitations, night terrors, and "severe intestinal distress." Respondents requested that Marie submit to an IME pursuant to Minn. R. Civ. P. 35.01,[3] and the district court granted respondents' motion to compel her to do so. The district court taxed this cost against appellants, finding that it was reasonable for respondents to conduct an IME when Marie had put her own health at issue by bringing an IIED claim and asserting the existence of medical symptoms to support it. We agree with the district court's reasoning here. And even though respondents did not use the IME to obtain summary judgment, it was still a reasonable step to take in preparation for their summary-judgment motion on which they ultimately prevailed.

We have rejected appellants' argument that Minn. R. Gen. Prac. 127 precludes awarding this type of cost. *Blehr v. Anderson*, 955 N.W.2d 613, 625 (Minn. App. 2021) (rejecting this rule 127 preclusion argument because the rule "specifies only the daily expert fees that the court administrator may tax" (quotation omitted)). Minn. R. Gen. Prac. 127 provides, "No allowance shall be made for preparation or in conducting of experiments outside the courtroom by an expert." Appellants argue that because the IME was preparation conducted outside of trial, rule 127 precludes the recovery of its cost. But "[i]t is well established in Minnesota that it is within the district court's discretion to award expert-witness fees to the prevailing party for pretrial preparation time." *Blehr*, 955 N.W.2d at 625. The district court did not abuse its discretion by taxing the cost of the IME to appellants.

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[3] Minn. R. Civ. P. 35.01 provides that the court "may order" a party to submit to "a physical, mental, or blood examination" "[i]n an action in which the physical or mental condition" of that party "is in controversy."

II. The district court did not abuse its discretion by issuing an order nunc pro tunc backdating the judgment to the date it issued the costs order.

The term "nunc pro tunc" refers to a "retroactive legal effect through a court's inherent power." *County of Washington v. TMT Land V, LLC*, 791 N.W.2d 132, 135 (Minn. App. 2010) (quotation omitted). "A *nunc pro tunc* entry of judgment is allowed only" to correct the record or account for clerical deficiencies, such as "correcting an omission of the court, fixing a clerical error, or properly recording a step in the trial procedure which occurred but was omitted from the record." *Id.* (quotations omitted). A court may enter a nunc pro tunc judgment "as of the time when the party would otherwise have been entitled to it, if justice requires, [when] the delay in entering it is caused by action of the court." *Hampshire Arms Hotel Co. v. Wells*, 298 N.W. 452, 453 (Minn. 1941). We review a district court's decision to enter a judgment nunc pro tunc for an abuse of discretion. *TMT Land V*, 791 N.W.2d at 135.

The district court issued its order on costs and disbursements on October 13, 2023. The order stated that the "award of costs and disbursements shall promptly be INSERTED in the JUDGMENT," presumably referring to the June 16, 2023, summary-judgment order. On January 10, 2024, the district court administrator inserted the costs award into the June 16, 2023, judgment and filed a "Notice of Entry of Judgment" stating that judgment had been entered on October 13, 2023. But there was still no judgment on the costs award in the register of actions. In April 2024, appellants requested a writ of mandamus asking that we direct the district court to enter judgment. *In re Stevenson*, 2024 WL 2592854, at *1. We denied the writ as moot because on May 17, 2024, while the petition for a writ was pending, the district court issued an order directing that the district court administrator "complete entry of judgment for the costs and disbursements award in the amount of $60,757.12 by creating a judgment document with a judgment certification stamp *nunc pro tunc* to October 13, 2023." *Id.* And the district court administrator did so.

Appellants argue that the district court's entry of judgment nunc pro tunc was an abuse of discretion because "[i]t appears . . . the date was designed to deprive Appellants of their right to appeal, while subjecting Appellants to eight (8) months' worth of interest," thereby prejudicing appellants. Appellants rely primarily on two cases to support their argument that the nunc pro tunc judgment prejudiced them: *TMT Land V* and *Hampshire Arms Hotel*. In *TMT Land V*, we reversed a nunc pro tunc judgment because "it [was] obvious that the district court issued the *nunc pro tunc* order . . . to avoid application of [an updated interest rate.]" 791 N.W.2d at 138. In *Hampshire Arms Hotel*, our supreme court reversed a nunc pro tunc judgment because "it [was] obvious that the court amended the date of the judgment to save the appeal." 298 N.W. at 453. These cases are inapposite because there is no indication that the district court here acted for any purpose other than to correct a clerical error. In this case, the district court issued its nunc pro tunc judgment only to correct the court administrator's error and reflect the actual date it intended to enter judgment.

Appellants provide no factual support for their contention that the district court "designed" the nunc pro tunc date to deprive them of their right to appeal. And we have held that "entry of judgment nunc pro tunc cannot operate to cut off a party's appeal rights." *Duluth Ready-Mix Concrete, Inc. v. City of Duluth*, 520 N.W.2d 775, 777 (Minn. App.

1995), *rev. denied* (Minn. Mar. 14, 1994). It is clear from the district court's October 13 costs order and the record that the only reason judgment was not entered until May 17, 2024, is because the district court administrator failed to do so. As a result, it was not an abuse of discretion for the district court to enter judgment nunc pro tunc to October 13, 2023, because the parties were entitled to judgment at that time following the court's order and "the delay in entering [judgment was] caused by action of the court." *Hampshire Arms Hotel*, 298 N.W. at 453.

Affirmed.