This opinion is nonprecedential except as provided by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
A25-0187

Ruping Yang, et al.,
Appellants,

vs.

Azotic, LLC,
Respondent.

Filed December 8, 2025
Affirmed
Slieter, Judge

Olmsted County District Court
File No. 55-CV-24-3459

David L. Liebow, James A. Godwin, Godwin Dold, Rochester, Minnesota (for appellants)

Christopher W. Coon, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondent)

Considered and decided by Slieter , Presiding Judge; Worke, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal concerns Minnesota Statutes section 322C.0408 (2024), a section of the Minnesota Revised Uniform Limited Liability Company Act addressing advancement and indemnification. Appellants challenge the district court's order denying indemnification for expenses incurred to establish their right to advancement under the statute.[1] Alternatively, appellants contend that the matter should be remanded for additional findings by the district court. Because appellants sought indemnification for a proceeding that is not yet resolved, we hold that this issue is premature, and we therefore affirm, although on different reasoning than the district court.

FACTS

Appellants Ruping Yang and Eng Kiong Ng, a married couple, both worked for respondent Azotic LLC, a Minnesota limited liability company, until fall of 2023, when respondent terminated their employment. Respondent sued appellants in December 2023, asserting causes of action for misappropriation of trade secrets, tortious interference with prospective economic advantage, injunctive relief, conversion, civil conspiracy, and civil theft against Ng due to actions allegedly taken by appellants during the course of their former employment with respondent. In February 2024, the State of Minnesota charged Ng with theft for allegedly stealing from respondent. Shortly thereafter, appellants served a demand upon respondent, seeking advancement and indemnification under Minnesota Statutes section 322C.0408, subdivision 3, for expenses incurred in the civil case, and in March 2024 Ng served a similar demand upon respondent seeking advancement and indemnification for expenses incurred in the criminal case.

[1] In its order, the district court referred to the request as a request for advancement, likely because appellants requested both advancement and indemnification. The request is actually one for indemnification, which is why we characterize it as such here.

In May 2024, after receiving no response from respondent, appellants initiated a civil action seeking indemnification and advancement in the district court. Following a hearing to consider appellants' petition, the district court ordered respondent to provide advancement to appellants, finding that even though their affidavits merely copied the statutory language and provided no additional details, they "met the bare-bones requirements of Minn. Stat. § 322C.0408, subd. 3." Thereafter, respondent dismissed the civil claim against appellants.

In December 2024, appellants filed an amended petition for indemnification and advancement, now requesting that the district court order respondent to pay their expenses, including attorney fees and costs for pursuing and obtaining the order for advancement. In their amended petition, appellants argued that because they were successful in obtaining advancement for the underlying civil and criminal cases, they were entitled to indemnification of expenses incurred to obtain the advancement order under Minnesota Statutes section 322C.0408, subdivisions 2 and 3. Following a hearing on the amended petition, the district court filed a written order stating, "[Appellants'] motion for advancement for expenses incurred in this case file is DENIED." The district court provided no further analysis or reasoning for its denial.

This appeal follows.

DECISION

Minnesota Statutes section 322C.0408 requires, subject to the satisfaction of specific requirements, that LLCs indemnify and provide advancement to qualified persons who are "made or threatened to be made a party" to legal proceedings by reason of their official capacity within the LLC.

As an initial matter, we note that indemnification and advancement are distinct concepts. Indemnification is the right of a party to be reimbursed for all losses they incur in legal or administrative proceedings related to their job responsibilities. *See Asian Women United of Minn. v. Leiendecker*, 789 N.W.2d 688, 691 (Minn. App. 2010). Advancement refers to the right of a party to "immediate interim relief" from the financial burden of ongoing legal expenses arising from legal proceedings and can be thought of as "simply a decision to advance credit." *Id.* At oral argument, appellants conceded that, although their petition requested indemnification and advancement and the district court denied "advancement for expenses incurred in this case," their petition actually sought indemnification of legal fees and expenses incurred to successfully obtain advancement for expenses in the underlying civil and criminal cases.

The text of the statute regarding indemnification states, in relevant part, that:

> [A] limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, . . . including attorney fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:
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> (1) has not been indemnified by another organization . . .;
> (2) acted in good faith;
> (3) received no improper personal benefit and complied with the duties stated in sections 322C.0405 and 322C.0409, if applicable;

> (4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
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> (5) . . . reasonably believed that the conduct was in the best interests of the limited liability company, or . . . reasonably believed that the conduct was not opposed to the best interests of the limited liability company.

Minn. Stat. § 322C.0408, subd. 2(a).

The statute defines a "proceeding" as "a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company." *Id.*, subd. 1(d).

The question we are asked to decide is whether a person who succeeds in obtaining a court order for advancement under section 322C.0408, subdivision 3, is entitled to indemnification of their attorney fees and costs to obtain that order. More specifically, we are asked to determine whether the request for indemnification is sufficiently connected with the proceeding referenced in the statute to fall within the scope of the statute. But, because the criminal proceeding against Ng remains ongoing, we affirm the district court's decision to deny indemnification without reaching this issue.

"The right to indemnification cannot be determined until the legal proceedings have concluded." *Leiendecker*, 789 N.W.2d at 691. This reflects the nature of the statute, which requires that the appellants demonstrate they are entitled to indemnification because, among other requirements, they "acted in good faith" and "received no improper personal benefit." Minn. Stat. § 322C.0408, subd. 2(a)(2), (3). In the case of an underlying criminal proceeding, as here, Ng must also demonstrate that he "had no reasonable cause to believe the conduct was unlawful." *Id.*, subd. 2(a)(4).

The outcome of the criminal proceeding may impact appellants' ability to demonstrate the statutory factors to qualify for indemnification. For example, in *Augustine v. Arizant, Inc.*, the supreme court determined that the appellant's admissions made in connection with his plea agreement and the circumstances surrounding his plea did not demonstrate a lack of good faith as defined in the statute. 751 N.W.2d 95, 101 (Minn. 2008). *But see Reichel Foods, Inc. v. Taylor*, No. A24-0396, 2024 WL 3935001, at *5 (Minn. App. Aug. 26, 2024) (determining that signing a plea agreement to theft by swindle, which requires proof that the defendant had a specific intent to defraud, negated appellant's statements that she had no "reasonable cause to believe the conduct was unlawful" and that she had "received no improper personal benefit.").[2]

Ultimately, the question of whether appellants are entitled to indemnification is a question for the district court to answer after the underlying proceeding is concluded and, at that time, appellants present evidence to support their claim that they meet the statutory factors of Minnesota Statutes section 322C.0408, subdivision 2(a).

We affirm the district court on the basis that the request for indemnification is premature. We provide no opinion on a future request for indemnification once the underlying criminal proceeding is completed. Nor do we provide an opinion on whether,

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[2] In both of these cases, the courts were evaluating Minnesota Statutes section 302A.521 (2024), which requires indemnification by corporations and mirrors the relevant provisions of the LLC statute at issue before this court. This nonprecedential case law is cited as persuasive authority of a potential reverse outcome. *See* Minn. Stat. § 480A.08 (2024); Minn. R. Civ. App. P. 136.01.

as a general principle, the statute authorizes indemnification for attorney fees and costs incurred in successfully obtaining an advancement pursuant to the statute.

Affirmed.