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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1103**

Renee Hogendorf,
Respondent,

vs.

James J. Green, Jr., et al.,
Appellants.

**Filed March 9, 2026
Affirmed
Smith, Tracy M., Judge**

Anoka County District Court
File No. 02-CV-22-678

William A. Cumming, Laura H. Lindsay, William M. Florek, Hessian & McKasy, P.A.,
Minneapolis, Minnesota (for respondent)

Cara C. Passaro, Stephen P. Couillard, Stich Angell, P.A., Minneapolis, Minnesota (for
appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Florey, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from a judgment against them for attorney fees and costs under the
Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §§ 115B.01-

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

115B.20 (2024), appellants James Green Jr. and Well Groomed Lawns, Inc. (WGL) argue that the district court erred by (1) awarding respondent Renee Hogendorf attorney fees in an amount that is disproportionate to the award of compensatory damages, (2) awarding attorney fees and expert costs incurred after state agencies become involved in the matter, and (3) failing to reduce the attorney-fee award to account for work performed on Hogendorf’s non-MERLA claims. We affirm.

FACTS

This dispute began in 2021 when Hogendorf, who owns property that abuts property owned by WGL, discovered a drainage pipe on her property and noticed a foul smell and dead plants around the pipe’s discharge area. Hogendorf contacted an environmental consulting firm, which found evidence of contaminating substances in the soil and notified environmental authorities. An Anoka County environmental health inspector inspected both properties. Investigation determined that the drainage pipe on Hogendorf’s property was connected to a drain in the garage of WGL. WGL, which is owned by Green, provides lawn and garden services for residential and commercial properties. WGL maintained and washed its trucks, commercial lawn mowers, and pesticide and herbicide sprayers in the garage, generating “rinsate.” *See* Minn. Stat. § 18C.005, subd. 28 (2024) (defining “rinsate” as “a dilute mixture of a fertilizer or fertilizer with water, solvents, oils, commercial rinsing agents, or other substances”). WGL had placed the drainage pipe onto Hogendorf’s property after the pipe that WGL had been using to carry the rinsate to the drain field on its own property had become clogged. The Minnesota Department of

Agriculture (MDA) and the Minnesota Pollution Control Agency (MPCA) each issued a notice of violation to WGL, and WGL was eventually assessed two civil penalties.

In August 2021, Hogendorf retained the law firm of Hessian & McKasy, P.A., to represent her in claims against appellants and paid a \$1,000 retainer fee. Hogendorf and the firm's engagement agreement provided for four compensation scenarios, accurately summarized by the district court as follows:

Scenario A: In the event of a pre-litigation settlement, Plaintiff pays a hybridized "fixed" and "contingent" fee as follows: \$50,000.00 fixed, plus a contingency fee of thirty percent (30%) of any damages, exclusive of costs.

Scenario B: In the event of a favorable judgment inclusive of MERLA-based damages, attorneys' fees, and costs which are voluntarily paid by Defendants, attorneys collect the attorneys' fees awarded under the judgment.

Scenario C: In the event of a favorable judgment inclusive of MERLA-based damages, attorneys' fees, and costs which are not voluntarily paid by Defendants, money collected on the judgment shall be split on a pro-rata basis. Plaintiff is awarded costs and damages (but is also responsible for costs, so there's no windfall), and if the costs awarded were less than the costs incurred, Plaintiff would be responsible for the difference, and the attorneys awarded their fees.

Scenario D: Renegotiate if there is no settlement and also no judgment due to bankruptcy, insolvency, or lack of assets.

The engagement agreement estimated that the time required to litigate the case would be between 1,500 and 2,500 hours. Ultimately, 1,657.30 hours were billed for the case.

In February 2022, following unsuccessful efforts at settlement, Hogendorf brought claims against appellants, including a claim for violation of MERLA and common-law claims for negligence, negligence per se, nuisance, and trespass. Appellants asserted a

counterclaim for adverse possession. Appellants moved for summary judgment on the MERLA claim, and the motion was denied after a hearing. After a nine-day bench trial, the district court found in Hogendorf's favor on her MERLA claim, awarding Hogendorf \$331,295.84 in damages to compensate for the diminution in value of her property (\$235,750), expenses she paid to an environmental consultant (\$93,895.84), and expenses she paid for a land survey (\$1,650). The district court declined to reach Hogendorf's common-law claims, reasoning that doing so would amount to double recovery for the same damages, which was prohibited under MERLA. *See* Minn. Stat. § 115B.13. The district court rejected appellants' adverse-possession counterclaim and determined that Hogendorf was entitled to reasonable attorney fees under MERLA.

Hogendorf moved for costs and attorney fees, submitting an affidavit from her attorney along with documentation of the hours billed on the case and the costs incurred. Appellants opposed the motion. The district court then filed an order awarding Hogendorf \$574,803.00 in attorney fees and \$194,562.10 in costs.

Appellants brought separate appeals from the merits judgment and the costs-and-fees judgment. In the merits appeal, they challenged the district court's interpretation of various terms in MERLA, the admission of expert testimony, and the award of diminution-of-value damages under MERLA. We affirmed in a precedential opinion. *Hogendorf v. Green*, 26 N.W.3d 895 (Minn. App. 2025), *rev. denied* (Minn. Nov. 26, 2025).

In this appeal, we address appellants' challenges to the costs-and-fees judgment.

DECISION

Appellants challenge the district court's award of costs and attorney fees on three bases. First, they argue that the attorney-fee award is unreasonable because it is disproportionate to the damages award. Second, they argue that fees and expert costs should have been cut off after state agencies became involved in the matter. And third, they argue that the attorney-fee award is unreasonable because it includes compensation for time spent on non-MERLA claims.

“The proper method to calculate an award of attorney fees is a question of law” that appellate courts review de novo. *State by Comm’r. of Transp. v. Krause*, 925 N.W.2d 30, 32 (Minn. 2019). But the “reasonableness of a particular award” is reviewed for an abuse of discretion. *Id.* at 33.

The general rule is that attorney fees are not recoverable, but a statute can shift the burden of attorney fees to the losing party. *Dunn v. Nat’l Bev. Corp.*, 745 N.W.2d 549, 554 (Minn. 2008). MERLA contains such a fee-shifting provision. Minn. Stat. § 115B.14. It provides that a court “may award costs, disbursements and reasonable attorney fees and witness fees” to the prevailing party. *Id.*

We must apply the “lodestar method” for determining the reasonable amount of attorney fees under MERLA. *Musicland Grp., Inc. v. Ceridian Corp.*, 508 N.W.2d 524, 535 (Minn. App. 1993), *rev. denied* (Minn. Jan. 27, 1994). Under that method, once the party claiming attorney fees has been determined to be the prevailing party, “the starting point in determining a reasonable fee is ascertainment of the number of adequately documented hours expended on the litigation multiplied by a reasonable hourly rate.”

Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520, 542 (Minn. 1986) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). From that assessment, the “hours not reasonably expended should be deducted.” *Id.* In addition, courts evaluate the reasonableness of the award by considering “all relevant circumstances, including the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.” *State v. Paulson*, 188 N.W.2d 424, 426 (Minn. 1971); *see also State by Comm’r of Transp. v. Schaffer*, 8 N.W.3d 220, 223 (Minn. 2024) (applying *Paulson*).

With that background, we turn to appellants’ arguments.

I. The district court’s award of fees does not constitute an abuse of discretion based on disproportionality.

Appellants argue that the district court erred by awarding fees that are disproportionate to the damages awarded to Hogendorf. In making the argument that the fees are unreasonable because they are disproportionately high, appellants also contend that the fees should be capped based on Hogendorf’s fee arrangement with her counsel.

In its order evaluating the attorney-fees request, the district court considered the amount involved and the results obtained.¹ Appellants argue that the total award of attorney

¹ While also citing Minnesota caselaw, the district court evaluated relevant factors for determining the reasonableness of attorney fees according to the twelve-factor test laid out in the federal case of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *See Hensley*, 461 U.S. at 430 n.4 (adopting the *Johnson* factors). Like the supreme court’s decision in *Paulson*, 188 N.W.2d at 426, the twelve-factor test in *Johnson* includes the “amount involved and the results obtained,” *Johnson*, 488 F.2d at 718.

fees and costs (\$574,803 plus \$194,652) is more than three times the compensatory damages awarded and is thus disproportionate and unreasonable. In making that calculation, appellants consider the compensatory damages to be only the approximately \$235,000 in damages for diminution in value of the property and exclude the sums paid to an environmental consultant and for a land survey. But the district court rejected appellants' argument that the compensatory damages for this purpose should be limited to \$235,000. Rather, the district court determined that the full damages award of \$331,295.84 should be considered. Appellants do not specifically argue why that determination is erroneous, and we do not see error in it. From there, the district court determined that the attorney-fee award (\$574,803) is only 1.73 times the damages award, diminishing appellants' argument of disproportionality. Again, appellants do not explain why the district court's determination is erroneous.

And importantly, as the district court observed, the supreme court has explicitly rejected the idea that the factor of "the amount involved and the results obtained" translates to a "dollar value proportionality rule." *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 538 (Minn. 2013). Rather, this factor "is merely one factor, among a host of others, that the district court is to consider." *Id.* The district court here considered this factor, observing that Hogendorf obtained compensatory damages of \$331,295.84, which was "nearly all [the] relief [that Hogendorf] sought." It also explained that "[t]he amount involved and the results obtained in this case was substantially colored by the novelty of the questions involved in this case" under MERLA. And the district court observed that the fees covered three years of litigation, including multiple motions and hearings, and culminated in a nine-

day trial. The district court also noted that the actual hours billed (1,657.30) were at the low end of the 1,500 to 2,500 estimated by Hogendorf’s counsel at the start of the case. In sum, the district court properly considered the amount involved and the results obtained and did not err by awarding fees that exceed the damages awarded.

We are not persuaded otherwise by the mechanic’s lien cases cited by appellants in which courts have compared the amount of the lien recovered to the attorney fees sought. *See, e.g., Asp v. O’Brien*, 277 N.W.2d 382, 385 (Minn. 1979); *Nw. Wholesale Lumber, Inc. v. Citadel Co.*, 457 N.W.2d 244, 251 (Minn. App. 1990). Appellants urge that we should apply the reasonableness test identified in the mechanic’s lien case of *Jadwin v. Kasal*, 318 N.W.2d 844, 848 (Minn. 1982), which, they assert, reflects “the concept of proportionality.” But this is a MERLA case, not a mechanic’s lien case, and we have applied the lodestar method and its associated factors for evaluating the reasonableness of attorney fees in the MERLA context. *Musicland*, 508 N.W.2d at 535. Accordingly, the *Paulson* factors are the appropriate factors to be applied here, and the district court properly considered the “amount involved and the results obtained” factor.

Appellants further argue that the attorney-fee award “should be capped at what [Hogendorf] agreed to in her agreement with Counsel because she has not actually incurred any fees beyond the \$1,000 she paid counsel to prepare a demand letter.” Specifically, appellants argue that the amount should be based on the provision of the engagement letter that assumed a judgment in Hogendorf’s favor without any attorney fees awarded under MERLA—in other words, according to “Scenario A” of the engagement agreement, which addressed prelitigation settlement in Hogendorf’s favor. Under this provision, appellants

calculate a fee award of \$76,020.12, consisting of a \$50,000 fixed fee plus a \$26,020.12 contingent fee representing thirty percent of the damages award less Hogendorf's costs. In the alternative, appellants suggest that the award should be the amount of attorney fees that would be paid under a "traditional plaintiff's contingency agreement"—typically, 40% of the recovery—which here would be either \$94,300 (using appellants' alleged compensatory damages) or \$132,518.34 (using Hogendorf's and the district court's calculation of compensatory damages). Appellants reason that these numbers represent an amount that Hogendorf "could have *actually* owed to her attorneys had a typical plaintiff's retainer agreement been used, rather than one specifically designed to take advantage of a fee shifting statute."

We are not persuaded by the argument. The district court took into account Hogendorf's fee arrangement with counsel. Applying the lodestar method, the district court used the hours expended, supported by time entries and affidavits, multiplied by a reasonable hourly rate to calculate the attorney fees award. Appellants have not challenged the number of hours billed or any entries for work performed (aside from those for the non-MERLA claims discussed below in Section III). They do assert that they should not be responsible for paying a higher hourly rate than Hogendorf was asked to pay for partner-level work. But, as the district court noted, the engagement agreement provided that, if litigation commenced, the higher hourly rate would apply. The district court found that the hourly billing rates for an attorney with Hogendorf's lead attorney's experience were "reasonable and appropriate for the Minneapolis/St. Paul metropolitan-area legal market

for civil litigation of this type, based upon an appropriate comparison to the exact same type of litigation which occurred twenty years ago, as adjusted for inflation.”

The district court was not required to cap the award at the amount of a contingency fee. The supreme court recently addressed the issue of reasonable attorney fees when a contingent-fee agreement is in place in the context of Minnesota’s eminent-domain statutes. *See Schaffer*, 8 N.W.2d at 224. There, the supreme court rejected an argument similar to appellants’ reasoning:

The lodestar method does not prioritize one factor over any of the others, particularly not contingent fee agreements. The lodestar method already requires the district court to weigh fee agreements among other factors. To use a fee agreement as a cap on fees awarded would contravene the lodestar method by giving double weight to the fee agreement factor.

Id. The *Schaffer* court also noted that other provisions in the eminent-domain statute “are explicitly limited to ‘reimbursement,’” while the attorney-fee provision is not. *Id.* The supreme court ultimately concluded that the fee agreement between a litigant and their attorney does not cap an attorney-fee award because “‘reasonable attorney fees’ . . . means attorney fees calculated using the lodestar method.” *Id.* Similarly, here, MERLA does not limit recovery of attorney fees to “reimbursement” or otherwise contain qualifications other than “reasonable.”

In sum, even if there is arguably some “disproportion” between the damages award and the attorney-fee award, the district court did not abuse its discretion by awarding attorney fees that exceeded the amount of compensatory damages.

II. The district court did not err by awarding attorney fees and expert costs incurred after the state became involved in the litigation.

Appellants next argue that the district court erred by awarding attorney fees and expert costs after November 23, 2021—the date that the MPCA issued a notice of violation. Appellants reason that, at that point, the purposes of MERLA were “being accomplished” and Hogendorf’s MERLA claim was “superfluous.”² Thus, they assert, she should not be able to recover her fees and costs. Relatedly, appellants compare MERLA to Minnesota’s “private attorney general” statute, Minn. Stat. § 8.31, subd. 3a (2024), and argue for an interpretation of MERLA that would impose a “public benefit” requirement before an award of attorney fees may be made. Appellants’ arguments implicate statutory interpretation, and appellate courts review questions of statutory interpretation *de novo*. *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 925 (Minn. 2012).

Purposes of MERLA

MERLA provides a cause of action for private individuals for the release of hazardous materials. Minn. Stat. §§ 115B.04, subd. 1, .05, subd. 1. Appellants do not dispute that Hogendorf had a right to bring a claim against them under MERLA to recover damages; rather, they argue that she cannot recover attorney fees and costs incurred after state environmental authorities became involved because the purposes of MERLA were already being served. We are not persuaded. MERLA’s primary purposes are “(1) to

² We note that we rejected a similar argument in our decision in appellants’ merits appeal, holding that “the state’s involvement in the investigation or cleanup of a hazardous substance after a release under MERLA does not preclude a private cause of action under MERLA or make one superfluous.” *Hogendorf*, 26 N.W.3d at 905.

impose strict liability on those responsible for harm caused by the release of hazardous substances; (2) to allow the state to clean up contamination and collect costs later; and (3) to fund state cleanup activity.” *Musicland*, 508 N.W.2d at 529. Hogendorf’s MERLA claim fits within the first purpose of MERLA.

Moreover, MERLA contains no language that limits the award of attorney fees based on agency involvement. MERLA’s fee-shifting provision provides: “Upon motion of a party prevailing in an action under sections 115B.01 to 115B.15 the court may award costs, disbursements, and reasonable attorney fees and witness fees to that party.” Minn. Stat. § 115B.14. Appellants provide no authority to support their offered interpretation and, notably, our only precedential case interpreting the attorney-fee provision of MERLA, *Musicland*, awarded attorney fees incurred after agency involvement. 508 N.W.2d at 535. Therefore, we conclude that the involvement of the MDA and MPCA does not limit Hogendorf’s recovery of attorney fees under MERLA.³

Public Benefit

Appellant’s argument that proof of a public benefit is required for an attorney-fee award under MERLA relies on caselaw requiring a plaintiff seeking attorney fees under Minnesota’s private attorney general statute to establish that their private civil action benefited the public. *See Ly v. Nystrom*, 615 N.W.2d 302 (Minn. 2000) (holding that the prevailing party in consumer-fraud action could not be awarded attorney fees under section

³ Hogendorf argues that an interpretation limiting the recovery of attorney fees after agency involvement “would effectively eviscerate MERLA’s fee provision, as state agencies frequently become involved in contamination cases.” The concern is well-founded.

8.31, subdivision 3a, without establishing public benefit of their action); *see also Liess v. Lindemyer*, 354 N.W.2d 556, 558 (Minn. App. 1984) (holding that an award under the private attorney general statute “must take into account the degree to which the public interest is advanced by the suit,” in addition to the *Paulson* factors). Appellants recognize that the private attorney general statute, section 8.31 subdivision 3a, does not apply to MERLA. But they urge us to interpret the MERLA attorney-fee provision to include the same public-benefit limitation, arguing that the word “reasonable” provides a vehicle for that limitation.

We are not convinced. MERLA provides for a private right of action of property owners to recover damages from those responsible for releasing hazardous substances and itself affords property owners the right to recover attorney fees and costs when they prevail. As the district court reasoned, MERLA thus provides benefits to an injured party that are personal. In that context, appellants’ argument that a public-interest benefit must also be established is unpersuasive. Moreover, neither *Musicland* nor the federal cases interpreting MERLA have applied a public-benefit analysis to the award of attorney fees. *See Gopher Oil Co. v. Union Oil Co. of Cal.*, 955 F.2d 519 (8th Cir. 1992); *Kennedy Bldg. Assocs.*, 375 F.3d at 750. We therefore reject appellants’ argument that the district court abused its discretion by awarding Hogendorf fees incurred after the state became involved because her MERLA claim did not provide a public benefit.

III. The district court acted within its discretion by declining to apportion attorney fees to exclude fees for non-MERLA claims.

Appellants argue that the district court erred because it did not apportion the attorney fees between Hogendorf’s successful and unsuccessful claims. “Appellate courts review the reasonableness of a particular attorney-fee award for an abuse of discretion.” *State by Comm’r of Transp. v. Williams*, 26 N.W.3d 159, 169 (Minn. App. 2025) (quotation omitted). “A district court abuses its discretion when it errs as a matter of law in applying improper standards in an award of fees or makes clearly erroneous findings of fact in determining the reasonable value of counsel’s work.” *Id.* (quotation omitted).

Generally, attorney fees are not awarded for time spent on unrelated, unsuccessful claims. *Id.* (citing *Hensley*, 461 U.S. at 434-35). But when claims are related, attorney fees may be awarded. *Musicland*, 508 N.W.2d at 535. In *Musicland*, we addressed the apportionment of attorney fees in the context of a MERLA claim:

Where a plaintiff succeeds on only some claims and fails on others, two questions must be addressed: whether the unsuccessful claims were related to the successful claims, and whether the plaintiff’s level of success makes the hours expended a satisfactory basis for making the fee award. . . . Where the claims are unrelated, fees should not be awarded for time expended on the unsuccessful claims. In other cases, however, the claims will involve a common core of facts or will be based on related legal theories. Much of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims.

Id. Additionally, we stated in *Musicland* that “the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. The most critical factor is the degree of success obtained.” *Id.*

Appellants make two distinct arguments. First, they argue that any work on the tort claims for which Hogendorf did not recover should reduce the attorney-fee award. Second, appellants contend that there should be at least some reduction in the fees to account for work on the claims that did not relate to rinsate discharge.

As to the first argument, Hogendorf’s tort claims for negligence, negligence per se, nuisance, and trespass primarily involved the same core facts as her MERLA claim—namely, WGL’s discharge of rinsate onto her property. Because the tort claims share a common core of facts with the MERLA claim, they are “related” to the MERLA claim. *Id.* Additionally, the tort claims were not “unsuccessful.” Appellants assert that Hogendorf’s non-MERLA claims “failed,” but actually the district court declined to address Hogendorf’s other claims simply because it determined that success on those claims would amount to double recovery prohibited by MERLA. *See* Minn. Stat. § 115B.13. The district court expressly concluded that the “facts underlying the disparate claims were the same, so [Hogendorf’s] counsels’ efforts were not substantially distinct because it merely required arguing different (but related) legal theories for the tort-based claims.”

As to the second argument, although Hogendorf’s common-law claims mostly focused on the rinsate released onto Hogendorf’s property, she also alleged that WGL stored lumber and parked vehicles on her property, constituting nuisance and trespass. Additionally, the facts related to the lumber and parked vehicles on Hogendorf’s property

were also relevant to defend against the counterclaim for adverse possession brought by appellants. Appellants argue that the district court abused its discretion by not reducing its award by some amount to account for the legal work related to this subset of facts regarding those common-law claims. Hogendorf counters that the lumber and parking issues were “ancillary” to the central focus of her common-law claims, which were grounded primarily on environmental contamination and could not be disentangled from the MERLA claim.

We do not find an abuse of discretion in the district court’s decision. The primary focus of Hogendorf’s common-law claims—like her MERLA claim—was the rinsate discharge. Hogendorf’s concerns about lumber and parking were reflected in some of those claims but were at most *part* of the common-law claims that primarily focused on the rinsate. And a plaintiff need not “prevail on every contention.” *Musicland*, 508 N.W.2d at 535. In addition, in objecting to the fees, appellants do not identify specific billing entries that they take issue with. Rather, they assert that they found \$13,527.50 for “entries dedicated at least partially” to the common-law claims and counterclaim. Because those claims were based primarily on the rinsate discharge, only a small subpart of that amount could arguably relate to the storage of lumber and trucks on Hogendorf’s property. On this record, and considering the district court’s greater familiarity with the case, we cannot conclude that the district court abused its discretion by not deducting some amount for attorney fees that might have related to facts that played at most a minor role in a case in which the plaintiff prevailed on her MERLA claim.

Affirmed.