This opinion is nonprecedential except as provided by Minn.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
A25-1459
A25-1487

Joshua LaFond,
Appellant (A25-1459),

vs.

Mater Dei Apostolate, et al.,
Respondents,

Joshua LaFond,
Respondent,

vs.

Mater Dei Apostolate, et al.,
Appellants (A25-1487).

Filed August 3, 2026
Affirmed in part and reversed in part
Johnson, Judge

St. Louis County District Court
File No. 69DU-CV-23-1974

Vincent J. Fahnlander, Maxwell D. Becker, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for Joshua LaFond)

David M. Wilk, Patrick H. O'Neill, III, Nicholas A. Rauch, Larson King, L.L.P., St. Paul, Minnesota (for Mater Dei Apostolate and Marie Mullen)

Considered and decided by Johnson, Presiding Judge; Harris, Judge; and Rasmusson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal is concerned with claims of breach of contract and defamation arising from a private high school's employment of a headmaster. After a five-day trial, a St. Louis County jury found that the school did not commit a breach of contract by suspending the headmaster without pay, which prompted his resignation. The jury also found that the school's executive director defamed the headmaster, for which the jury awarded the headmaster damages of $120,000.

We conclude that the district court did not err by denying the headmaster's post-trial motion for judgment as a matter of law on his breach-of-contract claim against the school. We also conclude that the district court did not err by denying the executive director's post-trial motion for judgment as a matter of law or a new trial on the headmaster's defamation claim. But we conclude that the district court erred by granting the school's post-trial motion for attorney fees and costs, which was based on a provision in the headmaster's employment agreement, and by ordering the headmaster to pay the school approximately $175,000 for its attorney fees and costs. Therefore, we affirm in part and reverse in part.

FACTS

Mater Dei Apostolate (hereinafter MDA) is a Catholic high school in the city of Cloquet. The school was founded in 2019 by Marie Mullen, who served as its executive director until the end of the 2022-2023 school year.

In the summer of 2022, MDA hired Joshua LaFond to be the school's headmaster. MDA and LaFond entered into a written employment agreement that specified a two-year term and an annual salary of $90,000. The agreement required, in relevant part, that LaFond follow MDA's code of conduct and fulfill the responsibilities stated in a written job description. In the employment agreement, MDA expressly reserved the right to terminate LaFond if he were to breach the agreement. As headmaster, LaFond reported to Mullen, who in turn reported to MDA's governing board.

Problems arose in LaFond's first semester after he made several reports to Mullen that her son had misbehaved. After receiving the reports, Mullen reviewed videorecordings of the incidents, which were captured by security cameras inside the school, and observed what she believed to be discrepancies between the videorecordings and LaFond's reports.

The first incident occurred in early October 2022, when LaFond saw Mullen's son and two other students using laptop computers outside the designated study-hall room, which was not allowed by a school policy. LaFond reported to Mullen that, when he told the students to move to the designated room, Mullen's son said "no," argued with LaFond, and untucked his shirt, which is contrary to the school's dress code. Mullen reviewed a videorecording of the incident and believed that her son did not say "no," argue, or untuck his shirt.

The second incident occurred the next day, when LaFond reported to Mullen that her son kept a school-owned laptop computer in his locker, which is contrary to a school policy. LaFond stated that Mullen's son resisted LaFond's instructions to return the computer to the school office. Mullen reviewed the videorecording and disagreed with

LaFond's report. During an October meeting of the school's board, Mullen expressed concerns about the discrepancies she had observed between LaFond's reports and the corresponding videorecordings. The board instructed Mullen to document any future discrepancies.

The third incident occurred in November 2022, when LaFond reported to Mullen that her son and two other students had posted a message in an online chat room that teased another student, which made that student upset. LaFond initially told Mullen that all of the students were in the same classroom when the post occurred, but he later corrected his report by saying that the upset student received the message "as if she was in the same room" with the other students. Mullen informed the board of this correction.

The fourth incident occurred in early January 2023, when LaFond reported to Mullen that he had overheard her son and another student making sexually oriented comments in the lunchroom. LaFond also stated that he had seen Mullen's son and the other male student holding beef-jerky sticks near their groins in a sexual manner. LaFond requested that Mullen review the videorecording, stated that he was "very concerned" about her son, and stated that he planned to meet with Mullen's son to discuss the incident. Mullen reviewed the videorecording and disagreed with LaFond's report. Mullen agreed that her son's conduct was inappropriate but asked LaFond not to speak with her son about the incident without her being present. The next day, however, LaFond met with Mullen's son one-on-one. Mullen's son admitted the conduct LaFond had observed and repeated the sexual comments he had made. LaFond told Mullen's son that he believed such comments could indicate that a student is struggling with sexual-abuse issues or pornography addiction.

Mullen reported the incident to the board in a detailed e-mail message. She stated that LaFond's report of the incident did not match the videorecording, and she expressed dismay that LaFond had discussed sensitive subjects with her son without her being present. Mullen stated that she believed LaFond's response to the incident was "grounds for immediate termination" because he had engaged in "manipulation" and "intimidation" and had crossed "serious boundaries."

The board later met with LaFond, who admitted to speaking with Mullen's son about sexual-abuse issues and pornography addiction. The board decided to issue LaFond a formal reprimand. The board sent LaFond a letter stating that his conversation with Mullen's son, without the presence of a parent, was unprofessional and beyond the scope of his job duties. The letter warned LaFond that future misconduct could result in further discipline or termination.

In addition, the chair of the board sent a detailed e-mail message to Mullen informing her of the board's decision not to terminate LaFond's employment. The board chair stated that the tension between LaFond and Mullen was "largely the result of ineffectively onboarding the headmaster and fail[ing] to turn over the roles and responsibilities to him." The board chair recommended that Mullen complete leadership training and expressed concern that MDA would not be successful if Mullen did not delegate responsibilities to LaFond. The board chair also stated that increased board governance was necessary for the success of MDA. A few days later, Mullen sent an e-mail message to LaFond in which she transferred all responsibility for day-to-day operations to him and stated that she would work remotely in the future. Soon thereafter, the board created a new position, dean of students, to assist LaFond with student discipline so that he could focus on day-to-day operations.

The board's support for LaFond subsequently diminished in the spring of 2023 following a disciplinary incident with another student. In March 2023, LaFond texted a photograph to S.B., the mother of the student, that depicted several blueberries on the floor of the lunchroom. LaFond referred to the photograph in a text message, stating, "I guess blueberries grow on floors." S.B. asked LaFond whether the blueberries belonged to her son, to which LaFond responded in the affirmative. When S.B.'s son returned home that day, S.B. spoke to him about the incident. S.B.'s son told her that he had spilled blueberries on the floor but that he had cleaned them up. S.B. contacted the dean of students and requested a videorecording of the incident. S.B. viewed the videorecording and saw her son throw blueberries in the lunchroom and then pick up some of the blueberries. S.B. also saw LaFond enter the lunchroom, pick up the remaining blueberries, arrange them under the chair where S.B.'s son had been sitting, and photograph them.

S.B. sent an e-mail message to the dean of students expressing her concern that LaFond had staged the blueberry photograph. The dean of students forwarded S.B.'s e-mail message to Mullen, who forwarded it to the board. Board members reviewed the videorecording of the incident, determined that LaFond had acted inappropriately by staging the photograph, and concluded that disciplinary action was appropriate. The board discussed the possibility of terminating LaFond's employment but decided to suspend him without pay, with the option of continuing to teach two classes as a part-time instructor at a salary of approximately $6,000 per year. LaFond resigned his employment.

In September 2023, LaFond commenced this action against MDA and Mullen. His complaint asserted three causes of action: (1) breach of contract against MDA, (2) defamation against Mullen, and (3) tortious interference with business relations against Mullen.

The case was tried to a jury on five days in February and March of 2025. With respect to the first claim, the jury found that MDA did not commit a breach of contract. With respect to the second claim, the jury found that Mullen defamed LaFond and awarded him damages of $120,000. The special-verdict form did not require the jury to return a verdict with respect to the third claim because it had not found a breach of contract.

In April 2025, LaFond moved for judgment as a matter of law (JMOL) on his breach-of-contract claim. Mullen moved for JMOL on LaFond's defamation claim or, in the alternative, a new trial. MDA filed a motion seeking contractual attorney fees and costs from LaFond. In August 2025, the district court denied LaFond's motion for JMOL, denied Mullen's motion for JMOL or a new trial, and granted MDA's motion for attorney fees and costs in the amount of $175,024.

LaFond filed a notice of appeal, Mullen filed a notice of appeal, and the two appeals were consolidated.

DECISION

I. LaFond's Motion for JMOL

We begin our analysis with LaFond's argument that the district court erred by denying his motion for JMOL.

A party is entitled to JMOL if "there is no legally sufficient evidentiary basis for a reasonable jury to find" for the other party on an issue. Minn. R. Civ. P. 50.01(a). On appeal, this court views the evidence in the light most favorable to the prevailing party and applies a *de novo* standard of review to the district court's ruling on the motion. *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 229 (Minn. 2010); *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009).

To prevail on a breach-of-contract claim, a plaintiff generally must prove three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). In this case, the district court instructed the jury as follows: "A contract is breached when there is a failure to perform a substantial or an important part of the contract." The jury answered special interrogatories by finding that there was a contract between LaFond and MDA but that MDA did not breach the contract.

In denying LaFond's motion for JMOL, the district court reasoned that MDA introduced evidence that was sufficient to allow the jury to find in MDA's favor for two reasons: first, that MDA did not breach the employment agreement because it did not terminate LaFond but merely suspended him, after which he resigned, and, second, that

MDA's actions were justified by LaFond's failure to comply with his contractual obligations, including his duty to abide by school policies and perform certain responsibilities in the job description. On appeal, LaFond challenges the district court's reasoning on both grounds.

Our review leads to the conclusion that the evidence supports the district court's second rationale. Under the employment agreement, LaFond was required to "maintain continuous adherence to the code of conduct and policies and procedures of Mater Dei Apostolate and comply with the job specifications." The written job specifications stated that the MDA headmaster is responsible for "maintaining a positive, orderly and supportive culture and learning environment," "work[ing] closely with, and under the supervision of, the executive director to execute the mission and achieve the vision of Mater Dei Apostolate," and "[c]ultivat[ing] positive relationships with MDA stakeholders including parents, donors, clergy, and community members." In the agreement, MDA expressly "reserve[d] the right to terminate [LaFond] for breach of any of the terms of this agreement."

Viewing the evidence in the light most favorable to MDA, a reasonable jury could find that LaFond did not comply with his contractual obligations. The evidence tends to show that the primary reason for MDA's suspension of LaFond without pay was his conduct with respect to the March 2023 blueberry incident, in which he staged a photograph that did not truly reflect the conduct of the student at issue and sent the photograph to the student's mother, who was offended and complained to MDA's board. In the aftermath of that incident, board members exchanged several e-mail messages in which they criticized LaFond's conduct and questioned his ability to lead the school as headmaster. LaFond's conduct with respect to the blueberry incident could be viewed as inconsistent with "maintaining a positive, orderly and supportive culture and learning environment" and "[c]ultivat[ing] positive relationships with MDA stakeholders including parents, donors, clergy, and community members." That evidence is sufficient to allow the jury to find that LaFond materially breached his contractual responsibilities, which excuses any subsequent breach by MDA. *See Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985) (stating that party's non-performance of contractual obligations may be excused by other party's prior material breach of contract); *Soderbeck v. Center for Diagnostic Imaging, Inc.*, 793 N.W.2d 437, 441 (Minn. App. 2010) (same). Because we conclude that the district court's second rationale is supported by the evidentiary record, we need not analyze the evidence relevant to the district court's first rationale.

Thus, the district court did not err by denying LaFond's post-trial motion for JMOL on his breach-of-contract claim.

II. Mullen's Post-Trial Motions

Mullen argues that the district court erred by denying her post-trial motion for JMOL on LaFond's defamation claim or, in the alternative, a new trial.

To prevail on a defamation claim, a plaintiff must prove that

> (1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

Larson v. Gannett Co., 940 N.W.2d 120, 130 (Minn. 2020) (quotation omitted). "[T]he truth or falsity of a statement is inherently within the province of the jury." *Lewis v. Equitable Life Assurance Soc'y*, 389 N.W.2d 876, 889 (Minn. 1986). Appellate courts "will not overturn a jury finding on the issue of falsity unless the finding is manifestly and palpably contrary to the evidence." *Id.*

If a plaintiff proves all elements of a defamation claim, a defendant nonetheless may avoid liability if the defamatory statement is protected by a qualified privilege. *Larson*, 940 N.W.2d at 131. A qualified privilege applies if a defamatory statement is "made in good faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause." *Id.* The qualified privilege extends only to "statements made in particular contexts or on certain occasions" that, as a matter of policy, "should be encouraged despite the risk that the statements might be defamatory." *Id.* (quotation omitted). Statements made in the course of an employer's investigation into employee misconduct may be protected by a qualified privilege. *Bahr*, 766 N.W.2d at 923.

The qualified privilege does not protect a defendant from liability if the defendant abuses the privilege. *Lewis*, 389 N.W.2d at 890. A defendant abuses the privilege if the defendant makes the defamatory statement with actual malice. *See Bahr*, 766 N.W.2d at 920. The common-law definition of malice applies to statements made in the employer-employee context. *See Lewis*, 389 N.W.2d at 891. Common-law malice exists if a defendant "made the statement from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff." *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980) (quotation omitted). "Malice can be shown by extrinsic evidence of personal spite, as well as by intrinsic evidence such as the exaggerated language of the libel, the character of the language used, the mode and extent of publication, and other matters in excess of the privilege." *Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997) (quotation omitted). Whether a defendant made a defamatory statement with actual malice is a question of fact for the jury, on which the plaintiff bears the burden of proof. *See Larson*, 940 N.W.2d at 139.

At trial in this case, LaFond sought to prove—and persuaded the jury to find—that Mullen defamed him by telling the bishop of the diocese and a parish priest that LaFond was dishonest, without giving those persons all relevant information about the incidents at issue, which occurred in October and November of 2022. The jury answered special interrogatories by finding that Mullen made statements referring to LaFond, that the statements were false, and that the statements were made "for a proper purpose with a proper motive and with reasonable cause," but that the statements were "made with actual malice."

A. Motion for JMOL

Mullen first argues that, for two reasons, the district court erred by denying her motion for JMOL.

1. Falsity

Mullen contends that she is entitled to JMOL on the ground that LaFond's evidence is insufficient to prove that she made statements that were false.

The evidence shows that Mullen spoke to the bishop in late December 2022. Mullen contends that her statements—that LaFond was dishonest and had fabricated disciplinary incidents in the fall of 2022—were true. She asserts that LaFond's reports were not confirmed or corroborated by the videorecordings of the incidents. But the videorecordings of those incidents could reasonably be interpreted as being consistent with LaFond's reports. In the first October 2022 incident, the videorecording shows Mullen's son and two other students with their laptops in a room other than the designated study-hall room, which was against school policy. The videorecording also shows that Mullen's son's shirt was untucked, which was against the school's dress code. In the second October 2022 incident, the videorecording shows that Mullen's son kept a laptop computer in his locker, which also is against a school policy. Accordingly, the video evidence, when viewed in the light most favorable to LaFond, does not conclusively show that LaFond fabricated disciplinary reports, as Mullen claimed.

In early January 2023, Mullen sent a detailed e-mail message to the board in which she shared her concerns about the incidents that had occurred in the fall of 2022 as well as LaFond's one-on-one meeting with her son, which had occurred only a few days earlier. Mullen stated that LaFond's conversation with Mullen's son following the January lunchroom incident was "grounds for immediate termination." But the board was not convinced. After speaking with LaFond, the board decided to give him a written warning. The board chair sent Mullen a detailed e-mail message in mid-January 2023 concerning the board's meeting with LaFond. The board chair stated that LaFond "was very open and honest" in discussing his one-on-one meeting with Mullen's son. The e-mail message continues by, in essence, defending LaFond, stating that he did not receive proper onboarding, recommending training opportunities for Mullen, and requesting a joint meeting with her and LaFond. A few days later, Mullen sent LaFond a seemingly terse e-mail message "passing off all of the day-to-day operations of Mater Dei to you" and informing him that she will begin "working offsite," "effective immediately." This evidence tends to show that the board did not share Mullen's concern that LaFond was dishonest and, in fact, disagreed with her strong criticisms of LaFond. This and other evidence in the record, when viewed in the light most favorable to LaFond as the prevailing party, provides a reasonable basis on which the jury could find that Mullen's statements that LaFond was dishonest were false.

2. Actual Malice

Mullen also contends that she is entitled to JMOL on the ground that LaFond's evidence is insufficient to prove that her statements were made with actual malice.

As stated above, actual malice exists if a defamatory statement is made "from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff." *Stuempges*, 297 N.W.2d at 257 (quotation omitted). The evidence introduced at trial, when viewed in the light most favorable to LaFond as the prevailing party, is sufficient to allow the jury to find actual malice. Mullen spoke to the bishop before sharing information with the MDA board. Mullen's son was at risk of expulsion due to violations of the school's code of conduct. In her detailed e-mail message to the board, Mullen used strong language, such as by describing LaFond as "aggressive, imprudent, and offensive," and stating that his conduct was "grounds for immediate termination" because it demonstrated "manipulation, intimidation, and serious boundaries crossed." Thereafter, in its response to Mullen, board members observed that there was an interpersonal conflict between Mullen and LaFond. The board disagreed with Mullen's assessment and responded by defending LaFond. After Mullen abruptly transferred all of her day-to-day responsibilities to LaFond by e-mail, several board members expressed surprise and concern that Mullen was "trying to set [LaFond] up to fail." This and other evidence gives rise to an inference of improper motive or purpose.

Thus, the district court did not err by denying Mullen's motion for JMOL on LaFond's defamation claim.

B. Motion for New Trial

Mullen also argues that the district court erred by denying her alternative motion for a new trial on the ground that the jury returned an inconsistent verdict.

Mullen invokes a rule that authorizes a district court to grant a new trial based on an "[i]rregularity in the proceedings of the court, . . . whereby the moving party was deprived of a fair trial." Minn. R. Civ. P. 59.01(a). In this context, an irregularity means a "failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law." *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. June 14, 1995). A party seeking a new trial on this ground must establish that the alleged irregularity occurred and that she was prejudiced by it in that it "might reasonably have changed the result." *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (quotation omitted). This court applies an abuse-of-discretion standard of review to a district court's ruling on a motion for new trial. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

Mullen contends that an irregularity occurred because the district court erred in the manner in which it submitted the qualified-privilege issue to the jury. Specifically, Mullen contends that the district court "erred in submitting question 14 to the jury and by making the jury's finding on question 15 contingent on the answer to question 14, leading to the jury's finding that Mullen acted with a proper motive in question 14 and that she acted maliciously in making those same statements in question 15." But Mullen did not assert that objection at trial. At the instructions conference, Mullen's attorney simply objected to the submission of any part of the qualified-privilege issue to the jury on the ground that "qualified privilege is an issue for the court to decide." The district court overruled Mullen's objection and instructed the jury in a manner consistent with an oft-cited source of pattern instructions. *See* 4 Minnesota Dist. Judges' Ass'n, *Minnesota Practice—Jury Instruction Guides*, § 50.35, at 495 (6th ed. 2014).

In the absence of a specific objection to questions 14 and 15, we may review Mullen's challenge to the jury instructions and special-verdict form only for plain error. *See* Minn. R. Civ. P. 51.04(b); *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 626 (Minn. 2012). But the jury instructions and special-verdict form are not erroneous, let alone plainly erroneous, because the qualified-privilege doctrine consists of both questions of law and questions of fact. The supreme court has explained that the existence of a qualified privilege depends on whether a communication was "made upon a proper occasion, from a proper motive, and . . . based upon reasonable or probable cause." *Lewis*, 389 N.W.2d at 889 (quotation omitted). "Whether an occasion is a proper one upon which to recognize a privilege is a question of law for the court to determine." *Id.* But "the question of whether the privilege was abused is a jury question." *Id.* at 890. Consistent with *Lewis*, the district court asked the jury in question 14 whether Mullen made the allegedly defamatory statements "for a proper purpose with a proper motive and with reasonable cause" but refrained from asking the jury whether Mullen made the statements upon a proper occasion, which is a question of law. *See id.* at 889. And, consistent with *Lewis*, the district court asked the jury in question 15 whether Mullen made the allegedly defamatory statements "with actual malice." *See id.* at 890; *see also Bahr*, 766 N.W.2d at 920; *Larson*, 940 N.W.2d at 139. Accordingly, there is no inconsistency between the jury's answers to questions 14 and 15. Consequently, there is no irregularity in the district court's submission of the defamation claim to the jury.

Thus, the district court did not err by denying Mullen's alternative motion for a new trial.

III. MDA's Motion for Attorney Fees and Costs

In LaFond's appeal, he also argues that the district court erred by granting MDA's motion for attorney fees and costs.

Under the American rule, each party to a lawsuit generally bears responsibility for that party's own attorney fees. *See Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 363 (Minn. 1998). But a party may recover attorney fees if a statute or a contract allows attorney fees to be shifted from one party to another. *Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 87 (Minn. 2004); *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 96 (Minn. 1979). If a party seeks to recover attorney fees based on a contract, this court must look to the terms of the contract to determine whether the agreement authorizes the recovery of attorney fees. *See Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005), *rev. dismissed* (Minn. Nov. 15, 2005). The proper interpretation of an unambiguous contract is a question of law, to which we apply a *de novo* standard of review. *See Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

In this case, MDA's request for attorney fees and costs was not pleaded as a counterclaim in its answer. Rather, MDA requested attorney fees and costs in a post-trial motion. MDA's motion was based on paragraph 11 of the employment agreement, which provides, in relevant part:

> *In the event of a breach of this Agreement,* the non-breaching party shall be entitled to all remedies provided at law or in equity, including specific performance and reimbursement of all reasonable attorneys' fees and court costs incurred by the non-breaching party in pursuing its remedies hereunder. (Emphasis added.)

The district court granted MDA's motion, reasoning, in part, as follows:

> The jury heard all the evidence in favor and against Mr. LaFond's claims that Defendant MDA breached the Agreement. The jury found that there was a contract between Mr. LaFond and Defendant MDA, and Defendant MDA did not breach the agreement. The agreement provided that in the event of a breach, the non-breaching party is entitled to all remedies including reasonable attorney fees. Therefore, Defendant MDA, as the non-breaching party is entitled to reasonable attorney fees and costs.

After considering MDA's submissions and analyzing the reasonableness of its attorneys' rates and hours billed, the district court ordered LaFond to pay MDA $175,024. The district court administrator entered judgment for MDA and against LaFond in that amount.

On appeal, LaFond argues that the district court misinterpreted the employment agreement. LaFond contends that paragraph 11 allows a party to recover attorney fees and costs only if the party has proved a breach-of-contract claim, not if the party seeking fees and costs merely has successfully defended against a breach-of-contract claim. In other words, LaFond contends that recovery of attorney fees and costs under paragraph 11 depends on the fulfillment of a condition precedent: "In the event of a breach of this Agreement, ..."

MDA makes two arguments in response. First, MDA argues that LaFond waived any challenge to the award of attorney fees and costs by consenting at the pre-trial conference to the resolution of MDA's fee request in a post-trial motion. *See* Minn. R. Gen. Prac. 119. MDA refers to a discussion concerning its fifteenth motion *in limine*, in which it sought a ruling that LaFond could not offer any evidence or make any argument concerning the amount of money he spent pursuing his claims. LaFond's attorney responded by noting that LaFond was seeking attorney fees and costs under the employment agreement and, thus, should not be foreclosed from introducing evidence to support that claim. MDA's attorney replied by suggesting that LaFond be allowed to seek attorney fees and costs in a post-trial motion, at which time the prevailing party could be determined based on the jury's verdict. LaFond's attorney agreed that it would be appropriate to defer LaFond's claim for attorney fees and costs in the manner described by MDA's attorney. Contrary to MDA's argument, the discussion and agreement at the pre-trial conference does not preclude LaFond from challenging the district court's ruling on MDA's motion for attorney fees and costs. If MDA's attorney's statements have any relevance, they would be inconsistent with the district court's analysis of MDA's motion for attorney fees and costs because MDA's attorney stated that any entitlement to attorney fees and costs would depend on the jury's verdict.

Second, MDA argues that it is entitled to attorney fees and costs under paragraph 11 of the employment agreement because the jury determined that MDA did not breach the employment agreement and, thus, it is "the non-breaching party." MDA's argument ignores important language in the introductory clause: "In the event of a breach of this Agreement, ..." Under a proper interpretation of paragraph 11, attorney fees and costs may be recovered only if one party has proved a breach of contract. In that event, the non-breaching party (*i.e.*, the party that proved that the other party was the breaching party), shall be entitled to, among other things, attorney fees and costs. Because the jury did not find a breach of contract, no party is entitled to attorney fees and costs under paragraph 11 of the employment agreement.

Thus, the district court erred by granting MDA's motion for attorney fees and costs under paragraph 11 of the employment agreement and by ordering LaFond to pay MDA $175,024. Therefore, we reverse the award of attorney fees and costs.

Affirmed in part and reversed in part.