This opinion is nonprecedential except as provided by Minn.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
A25-1824

Rose Kissner,
Appellant,

vs.

Farm Bureau Financial Services,
Respondent.

Filed July 13, 2026
Affirmed
Worke, Judge

Stearns County District Court
File No. 73-CV-23-9704

Christy L. Thorson, Michael A. Bryant, Tucker L. Isaacson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Troy A. Poetz, Melaina N. Mrozek, RGP Law, Ltd., St. Cloud, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this underinsured-motorist (UIM) matter, appellant argues that the district court erred by granting respondent's motion for judgment as a matter of law (JMOL), which reduced the jury's past wage-loss award to zero. By notice of related appeal, respondent argues that the district court abused its discretion by concluding that appellant was the prevailing party and awarding costs and disbursements. We affirm.

FACTS

In December 2017, appellant Rose Kissner was involved in a car accident. Kissner received a $55,000 settlement from the at-fault driver's $100,000 policy limits. Kissner had an automobile insurance policy with respondent Farm Bureau Financial Services (Farm Bureau). Kissner submitted a claim to Farm Bureau, requesting $245,000 in UIM benefits. In December 2023, Kissner sued Farm Bureau after it denied her claim. Farm Bureau asserted that Kissner failed to meet the statutory requirements that entitled her to UIM benefits.

A jury trial began in January 2025. Kissner testified that she operates a business that cleans homes and businesses. Kissner incorporated her business in 2000. Before the accident, Kissner worked "probably 60 hours a week." She worked eight to nine hours a day, seven days a week. Kissner "th[ought]" that she had charged homeowners $38 per hour, and she "probably" charged businesses $42 per hour.

After the accident, Kissner had shoulder pain. She stated: "I had to cut back on my hours because I was told that he[1] would like to see me keep at five hours." Kissner had to turn down work and did not seek new clients. Kissner increased her fees so that she could work less. After the accident, Kissner charged homeowners $45 per hour and businesses $60 per hour.

[1] "He" is likely Kissner's chiropractor.

Kissner's other witnesses did not testify about Kissner's wages. After Kissner's final witness, Farm Bureau moved for JMOL, arguing that Kissner failed to offer tax records, so she had no exhibits in the record to show wage loss. Farm Bureau argued that the jury would have "to speculate as to what [Kissner's] salary is."

Kissner's attorney asserted that Kissner testified about "her wages, both before and after the crash," and offered Kissner's tax records. The district court stated that it would not receive the tax records because they "were not offered as an exhibit with any witness laying foundation." But the district court ruled that Kissner's testimony, "albeit thin," was sufficient to "at least get past a motion for directed verdict."

The jury returned a verdict awarding Kissner $75,000 in past pain and suffering, $250,000 in past wage loss, $25,000 in future pain and suffering, and $0 in future lost earning capacity. Kissner filed an application for taxation of costs and disbursements, claiming $4,955.45. Kissner also claimed that she was entitled to pre-verdict and post-verdict interest in the amount of $62,602.27.

Farm Bureau again moved for JMOL, arguing that the evidence of wage loss was insufficient to support the verdict. The district court held a hearing. Kissner's attorney argued that the evidence was sufficient because Kissner testified

> that she was working 60 hours per week prior to the crash . . . . So that is 8.57 hours per day. And . . . she had to cut back to five hours per day. . . . [T]hat's sufficient to calculate wage loss using the lowest rate, her homeowner rate, $38 per hour, and decrease from eight and a half hours per . . . day, average, to five hours per day, average.

On June 16, 2025, the district court granted Farm Bureau's motion for JMOL and vacated the jury's wage-loss verdict. The district court determined that there was no testimony regarding how many houses or businesses Kissner cleaned, her business expenses, or how much she paid herself. The district court concluded that, because past wage-loss evidence was not properly offered at trial, and any past wage-loss determination is "speculative without this information," JMOL was appropriate regarding past wage loss. The district court reduced the wage-loss award to $0.

Farm Bureau filed a memorandum, claiming that the district court's JMOL ruling rendered it the prevailing party. Farm Bureau argued that Kissner could no longer establish that she is entitled to UIM benefits because, after the JMOL ruling, the jury verdict was $100,000, which was equal to the at-fault driver's policy limit.

On September 2, 2025, the district court filed an order to address which party was the prevailing party. The district court found that, to be entitled to UIM benefits, Kissner had to show that her "damages were greater than the at-fault driver's $100,000 policy limits." The district court stated that, if Kissner established damages in excess of $100,000, she would be the prevailing party. The district court concluded that Kissner was "entitled to pre-verdict interest" in calculating damages, which put her damages in excess of $100,000. As the prevailing party, the district court determined that Kissner was entitled to $4,955.45 in costs and disbursements and $45,347.67 in total damages ($100,000 damages, less $55,000 paid, plus $347.67 in pre-verdict interest).

This appeal followed.

DECISION

JMOL

Kissner argues that the district court erred by granting JMOL because the evidence of wage loss was sufficient to support the jury's verdict.

A district court may grant JMOL against a party when the "party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). This court reviews a district court's JMOL decision de novo, viewing the evidence in the light most favorable to the nonmoving party. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). This means that this court "focus[es] solely on the evidence supporting the nonmoving party's position." *Peterson v. W. Nat'l Mut. Ins. Co.*, 946 N.W.2d 903, 911 (Minn. 2020).

The burden is on the plaintiff to "establish a reasonable basis for approximating a loss." *DeRosier v. Util. Sys. of Am., Inc.*, 780 N.W.2d 1, 5 (Minn. App. 2010). "Damages cannot be speculative, remote, or conjectural." *Id.* (quotation omitted).

Here, the evidence of wage loss was presented through Kissner's testimony. Kissner testified that she cleaned homes and businesses. Before the accident, Kissner worked "probably 60 hours a week." She worked eight to nine hours a day, seven days a week. Kissner "th[ought]" that she charged homeowners $38 per hour and businesses $42 per hour. After the accident, Kissner "was told that he would like to see [her] keep at five hours." Kissner increased her fees so that she could work less. After the accident, Kissner charged homeowners $45 per hour and businesses $60 per hour. We conclude that, based solely on this evidence, the jury would have to speculate to reach a wage-loss award.

To persuade us otherwise, Kissner first argues that the evidence was sufficient because she cannot be separated from her business given that she is the only owner. But the evidence does not establish how much her business made, much less what the business paid to Kissner. No exhibits were admitted into evidence. The only evidence is Kissner's testimony. She did not state how many homes or businesses she cleaned. She stated what she charged per hour, but she did not state that she was actually paid for everything she charged. Nor did she testify to her business expenses. And while she stated that she had to reduce her hours after the accident, she did not explain how and when her hours were reduced between the year of the accident and the time of trial. Kissner incorporated her business, and she was the only employee, but she did not state how much her business paid her each year. As Farm Bureau asserts, there was no evidence for the jury to consider in determining the amount that Kissner received as wages. Because the jury had to speculate in reaching the wage-loss award, we conclude that the district court did not err in determining that JMOL was appropriate.

Prevailing Party

Farm Bureau argues that the district court erred by using prejudgment interest in calculating damages to determine that Kissner was entitled to UIM benefits. Farm Bureau argues that the incorrect conclusion that Kissner was entitled to UIM benefits led the district court to conclude that Kissner was the prevailing party. Farm Bureau asserts that it was the prevailing party because the jury's verdict for actual damages ($100,000) equaled the at-fault driver's policy ($100,000) and so Kissner failed to show that UIM coverage was involved.

We must determine whether the district court properly used prejudgment interest ($347.67) in deciding that Kissner was entitled to UIM benefits. Interest on verdicts and judgments is governed by Minn. Stat. § 549.09 (2024). This court reviews legal questions, such as the application of a statute, de novo. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

Under section 549.09, subdivision 1, "[w]hen a judgment or award is for the recovery of money . . . interest from the time of the verdict . . . until judgment is finally entered shall be . . . added to the judgment or award." Farm Bureau relies on *Lessard v. Milwaukee Ins. Co.*, in which the supreme court held that an insurer is not liable for pre-award interest under section 549.09 when the amount added to the total damage award would exceed policy limits. 514 N.W.2d 556, 556 (Minn. 1994).

In *Lessard*, a driver hit Lessard's vehicle, and he and his wife were injured. *Id.* at 557. Lessard settled with the driver's insurer for $30,000. *Id.* Lessard then sought UIM benefits from his own insurer. *Id.* The UIM coverage limit was $250,000. *Id.* After arbitration, Lessard was awarded $221,000 and pre-award interest under section 549.09. *Id.* The parties agreed that the maximum liability under Lessard's policy was $220,000 ($250,000 less $30,000); thus, any interest awarded would exceed the liability limit. *Id.* at 557-58. The supreme court determined that "because prejudgment interest is an element of compensatory damages, . . . an insurer providing [UIM] coverage is not liable for that portion of pre-award interest under [section] 549.09 . . . which, when added to total damages, would exceed policy liability limits." *Id.* at 559.

Farm Bureau claims that, because prejudgment (pre-award) interest cannot create coverage, then it cannot create UIM status when non-interest damages do not exceed the policy limits. However, caselaw has established that there is no difference between actual damages and compensatory damages. *See Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988) (stating that pre-award interest is "an element of damages awarded to provide full compensation by converting time-of-demand (either by written settlement offer or commencement of action) damages into time-of-verdict damages"). Kissner showed that there was UIM coverage because the total damages award, based on the added prejudgment interest, was greater than the tortfeasor's coverage limit. The district court correctly determined that Kissner was entitled to UIM benefits.

Farm Bureau argues that, even if Kissner was entitled to UIM benefits, she was still not the prevailing party entitled to costs and disbursements.[2] A district court has discretion to determine who the prevailing party is and the amount the party is entitled to in costs and disbursements. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). When a district

---

[2] Farm Bureau also argues that the district court failed to reduce Kissner's award based on collateral source offsets. Kissner argues that Farm Bureau failed to raise this claim in district court. Farm Bureau does not claim to have raised the issue in district court; rather, Farm Bureau argues that it did not need to raise the issue in district court because Kissner identified collateral sources, and, under Minn. Stat. § 65B.51, subd. 1 (2024), the district court "shall deduct" any recovery. We decline to consider the collateral-sources issue because Farm Bureau did not raise it to the district court, such that the district court did not have an opportunity to rule on it in the first instance. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating reviewing courts generally consider only issues presented and considered by district court).

court has such discretion, this court will not reverse its decision unless it "abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law." *Id.* (quotation omitted). In deciding who is the prevailing party, a district court considers "the relative success of the parties to a lawsuit." *Id.* at 715.

Farm Bureau asserts that it is the prevailing party because it defeated most of the damages Kissner sought to collect and was successfully granted JMOL on the $250,000 wage-loss award, which reduced that award to zero. While this is true, Kissner received a damages award of $100,000 and UIM coverage. The district court did not abuse its discretion in determining that Kissner was the prevailing party.

Affirmed.