**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-1253**

Father John Dee Czaplewski,
Appellant,

vs.

City of Minneapolis,
Respondent.

**Filed May 15, 2017**
**Affirmed**
**Kalitowski, Judge***

Hennepin County District Court
File No. 27-CV-15-21172

Father John Dee Czaplewski, Minneapolis, Minnesota (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, Gregory P. Sautter, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Kalitowski, Judge.

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

## U N P U B L I S H E D  O P I N I O N

**KALITOWSKI**, Judge

In this appeal challenging the district court's affirmance of a special assessment for the costs of repairing sidewalks, appellant-homeowner argues that the assessment was improper because the repairs were unnecessary. Appellant also asserts that evidentiary and procedural errors require reversal of the district court's decision. We affirm.

## D E C I S I O N

### I.

Initially, we reject the city's contention that because appellant was granted an evidentiary hearing before the hearing officer, the district court should have deferred to the hearing officer's findings. *See St. Paul Area Chamber of Commerce v. Minn. Publ. Serv. Comm'n*, 312 Minn. 250, 258, 251 N.W.2d 350, 356 (1977) (concluding that substantial-evidence standard applied when commission acted in quasi-judicial capacity). *St. Paul Area Chamber of Commerce* was decided under the Administrative Procedure Act, and does not control here. Moreover, the city concedes that because the district court found that the assessment was properly adopted, any error in conducting a trial de novo and not deferring to the hearing officer's findings was harmless. We, therefore, review the district court's factual findings for clear error and its conclusions of law de novo. *See Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011) (applying that standard).

Generally, when a special assessment is appealed, a special-benefit test applies. *Carson-Lang Realty Co. v. City of Windom*, 307 Minn. 368, 369, 240 N.W.2d 517, 519

(1976). But "the Minnesota Supreme Court [has] recognized a distinction between revenue collected under the taxing power and regulatory service fees collected under the police power." *Am. Bank*, 802 N.W.2d at 786. When property violates a city regulation or creates a public nuisance, the city may act under its police power to correct the violation and assess the costs to the property at issue. *See id.* at 786-87 (providing examples to explain the difference between taxing and police power). Such an "assessment . . . is subject to a reasonableness standard rather than the special benefit standard." *Id.* at 787. Under the reasonableness standard, a court considers whether "the assessment amount was proportionate to the cost of the service rendered, and [whether] the cost was unreasonable or not reasonably related to the regulatory expense." *Id.* at 786.

Appellant owns a corner lot with two sidewalks located in respondent City of Minneapolis. Following two inspections, city sidewalk inspectors determined that almost all of the sidewalk panels on appellant's property needed to be replaced. The record evidence shows that one of the sidewalk panels that was replaced on appellant's property had an unsafe slope and that all of the others had multiple cracks.

The district court found:

> 10. The evidence shows that [appellant's] sidewalk panels were in violation of Minneapolis City Charter, Chapter 8, Section 12, which requires property owners to "maintain [sidewalks] in good repair." As seen in Exhibit 3, there were several deep cracks in the panels, and Mr. Glenn credibly testified that one of the panels was at an incline of approximately 4%. This was double the maximum allowable cross-slope, and increased the risk of a pedestrian tripping or falling.

> 11. While [appellant] had filled several of the cracks with vinyl cement, such patches last only one to three years, and the City only inspects a given sidewalk once every ten to fifteen years. Indeed photographs 5-8 of Exhibit 3 show that in less than one year, several of [appellant's] vinyl patches had started to wear down and expose the underlying cracks. Accordingly vinyl cement patches were not a sufficient means of repair.

The district court's findings are supported by the record evidence, including the photographs of appellant's sidewalks, and testimony by a city sidewalk inspector about the city's 10- to 15-year rotation period for sidewalk inspections and repairs and the temporary nature of vinyl patches. The findings, therefore, are not clearly erroneous, and the findings support the district court's determination that the city's decision to replace appellant's sidewalk panels was reasonable.

The assessed costs included the costs incurred by the city plus a $50 administration-and-inspection fee. Appellant argues that the district court erred in finding that the city replaced 94.5 feet of sidewalk covering 12 panels. But even if this finding is erroneous, appellant has not shown that the costs incurred by the city were unreasonable. To prevail on appeal, a party must show that the district court erred and that the error was prejudicial. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975).

**II.**

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "Entitlement to a new trial on the grounds of

improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at 46 (quotation omitted).

Appellant argues that the district court erred in excluding as hearsay his proffered statement by a licensed contractor. An out-of-court statement made by a nonparty and offered to prove the truth of the matter asserted is generally inadmissible hearsay. Minn. R. Evid. 801(c), (d). And appellant has not provided a citation to an exception to the hearsay rule that applies to the contractor's statement.

Appellant argues that the district court erred in considering a statement made by a council member at the public committee hearing. But the statement is in the hearing transcript, and appellant did not object to the admission of the transcript. The failure to object to evidence during a legal proceeding generally waives the right to raise a later challenge. *Town of Forest Lake v. Minn. Mun. Bd.*, 497 N.W.2d 289, 290 (Minn. App. 1993), *review denied* (Minn. Apr. 29, 1993). Also, nothing in the district court's order indicates that the court relied on the council member's statement to support its decision.

Appellant argues that the district court did not give sufficient weight to the testimony of his witnesses. This court defers to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). In addition, no evidence in the record supports appellant's conspiracy and perjury claims.

Finally, appellant argues that costs and disbursements should not have been imposed on him due to his in forma pauperis status. But in every district court action, the prevailing party "shall be allowed reasonable disbursements paid or incurred." Minn. Stat. § 549.04, subd. 1 (2016). The supreme court has interpreted this statute as to mandate that a district

court must not relieve the nonprevailing party of the obligation to pay reasonable disbursements based on the nonprevailing party's indigent status. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155-56 (Minn. 2014). The in forma pauperis statute states that judgment may be rendered for costs as in other actions. Minn. Stat. § 563.01, subd. 10 (2016). Based on the applicable law, the district court did not err in awarding the city costs and disbursements despite appellant's in forma pauperis status.

**Affirmed.**