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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-2035**

Crystal Grosch,  
Appellant,

vs.

Soo Line Railroad Company,  
d/b/a Canadian Pacific,  
Respondent.

**Filed September 18, 2017  
Affirmed  
Reilly, Judge**

Hennepin County District Court  
File No. 27-CV-14-17783

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Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Jesson,  
Judge.

**UNPUBLISHED OPINION**

**REILLY**, Judge

On appeal from judgment in favor of respondent on her disability-discrimination and reprisal claims, appellant asserts that the district court erred by: (1) dismissing her disability-discrimination and failure-to-accommodate claims on summary judgment based

on the determination that she could not perform an essential function of her job; (2) determining that her disability-discrimination claims were barred after November 20, 2012, when appellant was totally and permanently disabled for purposes of receiving disability benefits; (3) finding, following a court trial, that respondent did not commit reprisal; (4) failing to admit appellant's medical records at trial; and (5) awarding respondent costs and fees for an expert witness. We affirm.

### **FACTS**

Respondent Soo Line Railroad Company, d/b/a Canadian Pacific, is a railroad company that provides freight rail transportation in several states, including Minnesota. In 2002, respondent hired appellant Crystal Grosch, who worked as a crew dispatcher until May 2008, when she transferred positions and began work as an audit clerk in the pay services department. In 2009, appellant was involved in a car accident and sustained serious injuries, which affected her ability to complete daily work tasks. Respondent successfully accommodated appellant's work restrictions while appellant worked as an audit clerk, and continued to accommodate her restrictions after she transferred positions within the pay services department and began working as a garnishment and wage clerk.

In November 2012, respondent asked appellant to complete filing, estimated to include between 500 and 600 documents, which substantially exceeded her work restrictions. This task caused appellant's injuries to "flare up," and, as a result, appellant returned to see her physician who revised her work restrictions to prohibit "any filing." Because respondent determined that filing is an essential function of appellant's job, respondent informed appellant that it could no longer reasonably accommodate her

disability without violating her medical restrictions and causing undue hardship among her coworkers. Appellant disagreed with respondent's determination and notified respondent that filing was only a minor function of her position that could easily be reassigned to her coworkers. Respondent encouraged appellant to keep it informed of any change to her restrictions, noting that any updates would be "helpful in our ongoing dialogue."

In December 2012, appellant applied for disability benefits from the United States Railroad Retirement Board (RRB), alleging that her depression and work restriction barring "repetitive use of her upper extremities" rendered her unable to work. In her supplemental form to the RRB, appellant reported that "[n]obody is responsible for [her] depression, which is what [she is] getting short term disability for."

Shortly thereafter, in January 2013, appellant notified respondent of revised work restrictions, which lifted the absolute prohibition on filing, but barred her from "filing and folding documents in excess of 15 documents per hour" and prohibited "substantial, repetitive use of the upper extremities above heart level." After receiving appellant's updated work restrictions, respondent asked appellant to clarify what constitutes "substantial," "repetitive," and "use of the upper extremities above heart level," but appellant failed to answer respondent's request for clarification.

In April 2013, the RRB found that appellant was totally and permanently disabled due to her physical and mental impairments, including "schizoaffective disorder, anxiety,

personality disorder, and myofascitis.” The RRB determined that this finding satisfied the requirements for a disability annuity with an onset date of November 20, 2012.<sup>1</sup>

Appellant initiated this lawsuit alleging three violations of the Minnesota Human Rights Act (MHRA), including: (1) disability discrimination; (2) failure to accommodate; and (3) reprisal. Respondent moved for summary judgment on all three of appellant’s claims, and the district court summarily dismissed appellant’s disability-discrimination and failure-to-accommodate claims, but denied respondent’s motion for summary dismissal of appellant’s reprisal claim. After a court trial on appellant’s remaining claim, the district court found that appellant failed to prove by a preponderance of the evidence that she suffered reprisal. Appellant subsequently filed post-trial motions to open judgment, to amend the findings of fact and conclusions of law, for entry of a new judgment and for a new trial; the district court denied these motions in their entirety.

This appeal follows.

## **D E C I S I O N**

### **I. Disability-Discrimination and Failure-to-Accommodate Claims**

#### **A. Standard of Review**

On appeal from summary judgment, this court must determine whether there are genuine issues of material fact for trial and whether the district court erred in its application of the law. *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn.

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<sup>1</sup> Appellant’s receipt of the RRB annuity is predicated on her continued disability and is subject to change if appellant’s condition improves. The record suggests that appellant continues to receive the annuity.

2001). When considering a grant of summary judgment, this court “need not adopt the reasoning of the district court” and may instead “affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

### **B. Judicial Estoppel**

The district court determined that no genuine issue of material fact exists with regard to appellant’s claims of disability discrimination and failure to accommodate, and granted summary judgment for two separate and independent reasons: (1) appellant failed to present evidence that she was qualified for the garnishment and wage clerk position given her work restriction prohibiting her from “any filing,” and (2) appellant’s contrary representations to the RRB judicially estopped her from claiming that she was physically or mentally qualified for the position. Appellant challenges both determinations on appeal. Because we conclude that appellant’s contrary representations to the RRB judicially estopped her from claiming that she was physically or mentally qualified for the position, we decline to address whether undisputed evidence establishes that filing constitutes an essential function of the garnishment and wage clerk position.

In essence, appellant argues that the district court erred by concluding, as a matter of law, that she was judicially estopped from proving that she has been a qualified disabled person after November 20, 2012, because: (1) established law prohibits a per se rule barring disability benefit applicants from asserting disability-discrimination claims, and (2) the district court misrepresented appellant’s statement in her RRB application for disability benefits. Appellant further asserts that the district court erred by relying on the findings of

fact set forth in its summary judgment order, instead of making new factual findings based on the evidence presented at trial. We disagree.

Judicial estoppel is an equitable doctrine that is generally intended to “prevent[] a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding.” *Van Horn v. Martin*, 812 F.3d 1180, 1182 (8th Cir. 2016) (citation omitted). In deciding whether to apply the doctrine, courts often consider whether: (1) a party’s current position is clearly inconsistent with the party’s earlier position, (2) the party succeeded in persuading the court to accept its earlier position, and (3) the party seeking to assert an inconsistent position would derive an unfair advantage if judicial estoppel did not apply. *Id.*

Both parties cite *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 805-06, 119 S. Ct. at 1597 (1999), as support for their arguments regarding judicial estoppel. In *Cleveland*, the plaintiff sought and obtained Social Security Disability Insurance (SSDI) benefits and later filed a disability-discrimination claim against her employer under the Americans with Disabilities Act (ADA). *Id.* at 798, 119 S. Ct. at 1600. In her application for SSDI benefits, the plaintiff stated that she “could no longer do the job” given her condition. *Id.* at 799, 119 S. Ct. at 1600. The plaintiff commenced a disability-discrimination action under the ADA, alleging that she was a qualified disabled person who could perform the essential functions of her job with reasonable accommodations. *Id.*

The Supreme Court granted review and cautioned that receipt of SSDI benefits and disability-discrimination claims under the ADA do not “inherently conflict,” as the Social Security Administration does not consider whether the qualified disabled person may

continue to work with reasonable accommodations, while claims brought under the ADA take “reasonable accommodation” into account. *Id.* at 802-03, 119 S. Ct. at 1602. For that reason, the Court indicated that prior receipt of disability-related benefits does not necessarily preclude a later disability-discrimination claim brought under the ADA. *Id.* at 804-05, 119 S. Ct. at 1602-03. But a “previous sworn statement asserting ‘total disability’ or the like, . . . require[s] an explanation of any apparent inconsistency with the necessary elements” of a disability-discrimination claim. *Id.* at 807, 119 S. Ct. at 1604. To defeat summary dismissal of a plaintiff’s disability-discrimination or failure-to-accommodate claim, the explanation “must be sufficient to warrant a reasonable juror’s concluding that, assuming the truth of, or the plaintiff’s good-faith belief in, the earlier statement, the plaintiff could nonetheless ‘perform the essential functions’ of her job, with or without ‘reasonable accommodation.’” *Id.* at 807, 119 S. Ct. at 1604.

Following the reasoning set forth in *Cleveland*, courts have since granted summary judgment when plaintiffs sought and obtained permanent disability payments from the RRB and later claimed to be qualified to work. *See, e.g., Newberry v. Burlington N. Santa Fe R.R.*, No. 00-260, 2002 WL 535029, at \*2-3 (D. Minn. Mar. 29, 2002) (granting summary judgment because plaintiff’s RRB application reported he was “unable to work”). Here, the district court did not rely on a per se rule barring all disability benefit recipients from filing disability-discrimination claims, but instead considered whether appellant adequately explained the discrepancy between her RRB permanent disability application and the statements in her MHRA claim. In doing so, the district court relied on appellant’s representations in her RRB application that “[she] could no longer work because of” her

“work restriction [that] says no repetitive use of upper extremities,” depression, and seizures. The RRB determined that appellant was “totally and permanently disabled for all work” due to her “impairments of schizoaffective disorder, anxiety, personality disorder, and myofascitis,” and appellant failed to make any representations to the district court or on appeal that “she does not remain totally and permanently disabled.” Appellant also failed to explain how reasonable accommodations would permit her to work in spite of her work restrictions. We therefore conclude that the district court did not err by determining that appellant is judicially estopped from asserting that she was a qualified disabled person after November 20, 2012.

## **II. Reprisal Claim**

Appellant also asserts that the district court improperly denied her reprisal claim, arguing that the district court’s findings are inconsistent, and that the district court relied on defenses not argued by the parties at trial. Respondent argues that the district court properly determined that appellant failed to meet her burden to demonstrate that respondent was motivated by retaliatory animus in the two adverse actions against appellant: (1) deciding to place appellant on leave, and (2) the decision not to return appellant to her job.

### **A. Standard of Review**

On appeal from a bench trial, we review findings of fact for clear error. Minn. R. Civ. P. 52.01. Findings of fact are considered clearly erroneous only if they are not reasonably supported by the evidence. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999). A finding is clearly erroneous only if the reviewing court is “left with



the definite and firm conviction that a mistake has been made.” *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987). On appeal, this court reviews the evidence in the light most favorable to the district court’s factual findings and defers to the district court’s credibility determinations. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

## **B. Motivating Factors**

To establish a prima facie case for reprisal under the MHRA, appellant must establish the following three elements: “(1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 81 (Minn. 2010) (quoting *Hoover*, 632 N.W.2d at 548). Appellant challenges only the third element, arguing that the district court erred by determining that appellant failed to establish a causal connection between the statutorily protected conduct and her employer’s actions preventing her return to work. Appellant argues that the district court “[a]scrib[ed] motivation and intent unsupported by the evidence,” and, as a result, erred by concluding that respondent’s actions were not retaliation for protected conduct.

Appellant’s argument disregards the majority of the evidence supporting the district court’s determination that numerous reasons other than retaliation supported respondent’s decision to remove appellant from the department, including that appellant: (1) ignored and flouted her supervisor’s management directives, (2) disparaged the department, (3) had strained relationships with her coworkers, (4) passive aggressively ignored her supervisor’s requests, and (4) is “disingenuous,” “highly questionable,” and “exhibits a selective memory.” Appellant also ignores the district court’s findings that (1) “[the supervisor]

understood her obligations and made constructive efforts to clarify [a]ppellant’s restrictions so a potential accommodation may be made,” and (2) respondent’s communications to appellant did not discuss appellant’s work restrictions “in any way that even implies an animus toward her for submitting them.” There is substantial evidence in the record to support these findings.

We therefore conclude that the district court’s findings with respect to appellant’s reprisal claim are not clearly erroneous.

### **III. Good Faith Participation in the Interactive Process**

Appellant next argues that the district court erred by granting summary dismissal of her failure to accommodate claim. It is unclear what relief appellant is seeking, and she fails to cite to relevant facts or legal authority supporting this claim. We therefore consider this argument forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (deeming forfeited arguments on appeal that are unsupported by facts in the record and contain no citation to relevant legal authority).

### **IV. Appellant’s Medical Records**

Next, appellant argues that the district court erred by not admitting her medical records at trial because the district court “provisionally accepted those records,” but made determinations with regard to appellant’s medical condition without considering the admitted records. What relief appellant is seeking from this alleged error is again unclear; appellant states only that “[a] district court should not and cannot draw conclusions about a person’s medical condition while failing to consider medical records”—appellant

provides no relevant authority in support of this assertion. Nonetheless, we will address the merits of this argument.

“The question whether to admit evidence rests within the broad discretion of the district court, and the district court’s decision will not be disturbed unless it constitutes an abuse of discretion or is based on an erroneous view of the law.” *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 536 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). If a party is seeking a new trial on the ground of an improper evidentiary ruling, the party bears the burden of demonstrating prejudicial error. *Id.*

Here, appellant mischaracterizes the record. At trial, appellant stipulated that she would not call her treating health care providers, did not call a medical expert, and did not offer the contested medical records through respondent’s expert. But the record clearly shows that the district court admitted and considered appellant’s medical records, but ultimately found these records unconvincing given appellant’s contradictory testimony. This argument is unpersuasive.

#### **V. Expert Witness Costs and Fees**

Lastly, appellant argues that the district court’s award of expert costs to respondent is clearly erroneous. In essence, appellant contends that the district court may not award fees in this matter because the district court expressly found her claims were not frivolous or pursued in bad faith.

The MHRA permits district courts to award a prevailing party reasonable attorney fees as part of the party’s costs, Minn. Stat. § 363A.33, subd. 7 (2016), unless the prevailing party is a defendant in which case the district court may only award attorney fees if the

plaintiff's claim is "frivolous, unreasonable, or without foundation, or [is] brought in bad faith," *Sigurdson v. Isanti Cnty.*, 386 N.W.2d 715, 722 (Minn. 1986). Attorney fees under this provision include expert witness fees. Minn. Stat. § 363A.33, subd. 7. Because the district court determined that all of appellant's claims were not frivolous, unreasonable, or brought in bad faith, the district court denied respondent's motion for attorney fees, including expert witness fees, under Minn. Stat. § 363A.33, subd. 7.

A prevailing party in any civil action, however, is entitled to "reasonable disbursements paid or incurred" under Minn. Stat. § 549.04, subd. 1 (2016). And an award under this statute may include expert costs and fees. *See* Minn. Stat. § 357.25 (2016) ("[A] judge of any court of record, before whom any witness is summoned or sworn and examined as an expert in any profession or calling, may allow such fees or compensation as may be just and reasonable.").

Because respondent's expert witness, Dr. Ronald Groat, testified at trial and provided services, the district court awarded respondent \$30,715.24 in costs. Appellant does not contest the reasonableness of the expert's fees; instead, appellant argues that fees are inappropriate because the court did not rely on these services or consider this testimony. Appellant fails to cite to any relevant authority in support of these assertions, and we therefore decline to consider these arguments. *See* Minn. R. Civ. App. P. 128.02, subd. 1(d) (establishing that arguments raised on appeal must be supported by citations to relevant legal authority); *see also* *Stephens v. Bd. of Regents*, 614 N.W.2d 764, 770-71 n.4 (Minn. App. 2000) (declining to address issue unsupported by legal analysis), *review*

*denied* (Minn. Sept. 26, 2000). The district court's award of expert costs and fees under Minn. Stat. § 549.04 was proper.

**Affirmed.**