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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1292**

Justin K. Ayers, et al.,
Respondents,

vs.

John William Kalal, et al.,
Appellants.

**Filed April 6, 2020
Affirmed
Bryan, Judge**

Dakota County District Court
File No. 19HA-CV-14-2487

Christopher L. Goodman, Brian M. Hansen, Thompson, Coe, Cousins & Irons, L.L.P., St. Paul, Minnesota (for respondents)

Dyan J. Ebert, Cally Kjellberg-Nelson, Quinlivan & Hughes, P.A., St. Cloud, Minnesota;
and

Patrick L. Arneson, League of Minnesota Cities, St. Paul, Minnesota (for appellants)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellants challenge the district court's decision to award attorney fees as a sanction, arguing that the district court abused its discretion in its choice to exercise its

inherent authority and in deciding that the conduct in this case merited an award of attorney fees. Because the district court did not abuse its discretion when it awarded attorney fees under its inherent authority, we affirm.

FACTS

A. Background and First Appeal

Appellant City of Burnsville employed appellant John William Kalal to conduct snow removal. In January 2011, a snowplow driven by Kalal collided with a motor vehicle driven by respondent Justin K. Ayers. At the time of the accident, Kalal was driving the snowplow across an intersection, but Kalal was not plowing snow. It is undisputed that Ayers had the right-of-way. Ayers sued Kalal and the city (together, appellants), alleging that Kalal negligently operated the snowplow and that the city was vicariously liable for Kalal's negligence.

Appellants raised various immunity defenses in their motion for summary judgment. At the summary-judgment hearing, the district court expressed concern about appellants' theories of immunity, asking how a snowplow operator could be immune from a duty to observe traffic laws. The district court noted its disagreement with such a blanket statement of the law. At one point, the district court stated that it was problematic to argue that a snowplow operator could run a stop sign or fail to yield the right-of-way with complete immunity and regardless of the consequences. In response, appellants argued that because snowplowing was inherently discretionary, snowplow operators have official immunity to "roll through" stop signs and "blow" traffic lights in the same way that police officers and

ambulance drivers have immunity to run red lights. The district court disagreed with this view of the law and denied appellants' motion for summary judgment.

Appellants brought an interlocutory appeal, and we affirmed the district court's decision. *Ayers v. Kalal*, No. A15-0694, 2015 WL 9264116, at *1, 3 (Minn. App. Dec. 21, 2015) (*Ayers I*). We concluded that appellants' claims of immunity were contrary to established law, which require "[e]very driver crossing a highway on a city street" to exercise "some judgment as to when it is safe to cross a highway." *Id.* at *2 (citing *Schroeder v. St. Louis Cty.*, 708 N.W.2d 497, 506-08 (Minn. 2006) and *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281-82 (Minn. App. 2104)).

B. Jury Trials, Motion for Costs and Disbursements, and Second Appeal

The case proceeded to a jury trial, and the district court ultimately rejected appellants' request to include questions regarding snow and ice immunity on the special verdict form. At the trial, Ayers presented testimony from a medical expert who concluded that Ayers suffered permanent injuries. Appellants did not obtain a medical expert, procure any independent medical examination, produce expert testimony at trial, or challenge through their own evidence Ayers's medical expert's opinion that the injury was permanent. In addition, appellants presented no evidence that something other than Kalal's driving conduct caused the injuries to Ayers and did not raise any comparative fault claims. The jury found that Kalal's negligence was the direct and only cause of Ayers's injuries and determined that Ayers had not suffered a permanent injury as a direct result of the collision. The jury calculated Ayers's damages to be \$42,178.07.

Both sides filed post-trial motions. Ayers contested the jury verdict regarding permanency and moved for judgment as a matter of law for damages greater than those awarded by the jury or, in the alternative, for a new trial. The district court granted Ayers's motion for a new trial because the jury's verdict was not justified by any reasonable interpretation of the evidence. The motion for new trial was granted only with respect to the amount of damages to be awarded for Ayers's injuries. For their part, appellants also challenged the verdict. Appellants moved the district court to reduce the amount of the judgment corresponding to the amount of economic loss benefits paid to or on behalf of Ayers by his no-fault benefits insurer. The district court denied appellants' offset request.

At the second jury trial, Ayers again presented expert medical testimony regarding his injuries. Appellants again did not obtain a medical expert, procure any independent medical examination, produce expert testimony at trial, or challenge Ayers's medical expert's opinion through their own evidence. The second jury awarded damages of \$152,810.07. After the second trial, appellants again moved the district court to deduct economic loss benefits from the judgment, specifically requesting a reduction in the amount of \$23,000. Ayers moved the district court for entry of final judgment and applied for costs and disbursements in the amount of \$34,704.03.¹ Appellants raised numerous objections to the disbursements, including objections to the following: a motion filing fee cost of \$107; a medical overcharge of \$27.82; delivery charges of \$16, \$11, and \$24; service costs throughout the case totaling \$416.32; a medical evaluation charge of \$2,500;

¹ Ayers initially requested \$37,437.03, but amended the request to \$34,704.03.

costs associated with printing and copying approximately 10,000 pages of deposition and trial exhibits for \$2,523.66; Ayers's mediation fee of \$675; witness fees of \$75 and \$180.44; and \$2,835 in costs to prepare transcripts for the summary judgment hearing, a pretrial hearing, and the first jury trial.

On October 31, 2017, the district court held a hearing regarding the posttrial issues and appellants' objections to Ayers's request for costs and disbursements. During the hearing, the judicial officer expressed frustration and disbelief. In his 20 years of dealing with car accident cases, the judge remarked that he had never seen a lawyer contest these types of disbursements. The district court criticized the manner in which appellants litigated, saying that it was unfair to Ayers, the district court, and the State of Minnesota. The district court characterized appellants' conduct as outrageous, told Ayers's counsel to add up the time spent addressing the objections, and told appellants that "costs are coming."² In the ensuing order, the district court also denied appellants' motion to offset damages by \$23,000, finding that because the insurer could still assert a subrogation claim to recover this amount, it was properly included in the judgment. The district court also awarded Ayers costs and disbursements of \$34,602.03.³

Appellants filed a second appeal, seeking review of several issues. *Ayers v. Kalal*, 925 N.W.2d 291 (Minn. App. 2019) (*Ayers II*). They contested the district court's decision

² Ayers argues that appellants were, therefore, given notice of potential sanctions as of October 2017.

³ This award was \$102 less than the amended amount requested. The district court did not explain why it denied the full amended amount requested, but presumably it related to appellants' objection that a jury fee of \$102 was included twice.

not to ask the first jury for special findings regarding snow and ice immunity. *Id.* at 295. In addition, appellants challenged the district court’s decisions to grant a new trial and to deny appellants’ motion to offset damages by \$23,000. *Id.* at 297, 300. Last, even though appellants initially objected to a wide variety of disbursements before the district court, on appeal, appellants only sought review of the pertinent date for calculating prejudgment interest and the district court’s decision to award one specific cost: a \$2,500 cost for medical evaluation. *Id.* at 303.

Appellants also moved the district court to stay the execution of proceedings to enforce judgment pending disposition of the second appeal. The district court held a hearing, and again criticized the way appellants continued to defend the case. The district court categorized appellants’ position on immunity as “outrageous” and also pointed out that appellants had inconsistently applied this defense. It also referenced appellants’ failure to pay reasonable disbursements and noted that appellants did not retain a medical expert for the second trial. The district court also focused on appellants’ tactics, their alleged failure to make a settlement offer at mediation, and their strategy to use this case to deter future plaintiffs on other cases. The district court stayed enforcement of the judgment pending this court’s consideration of *Ayers II*.

We affirmed in part, reversed in part, and remanded in part. *Ayers II*, 925 N.W.2d at 303. We affirmed the district court’s decision not to include questions concerning snow and ice immunity in the special verdict form because *Ayers* alleged a claim of negligent driving, not a claim that appellants negligently maintained the roadway:

Although Kalal was driving a snowplow and the city is responsible for maintaining the road, [Ayers's] claim is not based on the city's failure to maintain the roads resulting in snow or ice accumulation (conduct which the statute would protect). [Ayers's] claim is that Kalal negligently failed to yield the right-of-way to [Ayers] (conduct to which the statute does not speak).

. . . The relevant statute unambiguously restricts immunity to *claims based on snow or ice conditions*. Minn. Stat. § 466.03, subd. 4(a). Accordingly, and unlike some immunity statutes, there was no factual question for resolution by the jury in this case because, regardless of whether snow or ice conditions were present on the highway, section 466.03, subdivision 4, does not extend immunity to claims of negligent driving.

Id. at 296 (emphasis in original and footnote omitted) (applying *Hoff v. Surman*, 883 N.W.2d 631, 635 (Minn. App. 2016)).

We also affirmed the district court's decision to grant a new trial on damages. *Id.* at 297. The district court did not abuse its discretion when it concluded that the first jury's verdict could not stand in light of the unequivocal, unimpeached, and uncontradicted testimony that "[Ayers] suffered a permanent injury as a result of the collision." *Id.* at 300. We reversed the district court's decision refusing to reduce the jury's verdict by the \$23,000 in economic loss benefits that Ayers received, concluding that no subrogation claim existed. *Id.* at 302-03. Ayers conceded that the district court had included the \$2,500 cost in error. *Id.* In addition, rather than contest the date used to calculate prejudgment interest, Ayers stipulated to appellants' proposed date. *Id.* We remanded to the district court to reduce the costs and disbursements by \$2,500 and to recalculate prejudgment interest. *Id.*

C. Attorney Fees Award and Current Appeal

Ayers filed a notice of motion and motion requesting that the district court use its inherent authority to award attorney fees as a sanction for appellants' bad faith litigation conduct. The district court subsequently issued an order awarding \$5,000 to Ayers and \$3,000 to Ayers's attorney. The district court listed four findings in support of its order:

In this case, taking into consideration [appellants'] conduct throughout the nearly five years this case was litigated, including two trials and two appeals, the Court finds that [appellants] and their counsel have (1) engaged in bad faith, vexatious and oppressive litigation conduct, (2) taken positions that were non-meritorious and that lacked any reasonable factual and legal basis, (3) unnecessarily delayed the resolution of this case, and (4) acted with the intent to delay and disrupt the proceedings before this Court.

These findings rested primarily on two general categories of sanctionable conduct identified by the district court: persisting in meritless immunity defenses and causing unnecessary disruption and delay throughout the litigation.

The district court noted that appellants pursued, in bad faith, immunity claims that were contrary to well-established law. For instance, the district court observed that appellants' claim of official immunity not only conflicted with Kalal's own statements, it also was contrary to the holdings in *Hockenhull v. Strom Constr. Co.*, 2 N.W.2d 430, 432 (Minn. 1942) (holding that road contractors were liable for common law negligence actions for failing to exercise due care), and *Shariss*, 852 N.W.2d at 281 (concluding that immunity defense did not apply to snowplow operator's ministerial decision to back up a snowplow to give a school bus room to pass). The district court also rejected appellants' claim of statutory discretionary immunity as contrary to the holding in *In re Alexandria Accident of*

Feb. 8, 1994, 561 N.W.2d 543, 549 (Minn. App. 1997) (holding that statutory discretionary immunity applied only to planning-level policy decisions, not to the day-to-day operation of government), *review denied* (Minn. June 26, 1997). Likewise, the district court also rejected appellants' claim of statutory snow and ice immunity based on the holding in *Hoff*, 883 N.W.2d at 635.⁴ In rejecting appellants' argument, the district court noted that if immunity extended to the driving conduct in this case, then "snowplow operators would be insulated from liability for virtually any act they commit while behind the wheel." The district court repeatedly described such immunity theories as "outrageous" and "dubious."

The district court also based its award on the disruption and delay caused by appellants: "Yet at every turn, the defense has found ways to delay the proceedings by contesting issues that have greatly and unnecessarily added to the time and energy this case required." The district court provided several examples of this conduct throughout the case. For instance, the district court criticized appellants for their conduct during settlement. The district court explained that appellants "made no settlement offer at the only mediation in this case," and discredited appellants' explanation to the contrary: "The suggestion that the mediator . . . simply failed to communicate a settlement offer is dubious at best." In addition, the district court found that appellants pursued summary judgment despite questions of fact created by Kalal's own statements. The district court also criticized appellants for contesting liability at trial, even though they presented no evidence

⁴ As noted above, in *Ayers I* and *Ayers II*, we reviewed and affirmed the district court's rejection of appellants' various immunity defenses. The defenses were contrary to established case law.

that something other than Kalal's driving conduct caused the injuries to Ayers and even though they raised no contributory negligence claims. The district court then pointed to appellants' decision to contest damages, even though appellants did not offer contrary evidence to the testimony of Ayers's medical expert at either trial. Finally, the district court determined that appellants unnecessarily delayed the proceedings by raising many objections to Ayers's requested disbursements only to abandon all but one of these arguments on appeal in *Ayers II*.

Based on this conduct, the district court determined that appellants acted in bad faith, awarded \$5,000 to Ayers, and awarded \$3,000 to Ayers's attorney. This appeal follows.

D E C I S I O N

Appellants challenge the award of attorney fees on the following two grounds: (1) the district court abused its discretion when it chose to use its inherent authority instead of some other rule- or statute-based authority to award attorney fees, and (2) the district court abused its discretion in concluding that appellants' actions warranted the award. Because the district court did not abuse its broad discretion, we affirm the district court's decision to award attorney fees under its inherent authority.⁵

District courts possess inherent authority to impose sanctions as necessary to protect "their vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and

⁵ Appellants do not challenge the amount or extent of the award.

without delay, conformable to the laws.” *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995) (quotation omitted). We review a district court’s imposition of sanctions under its broad inherent authority for abuse of discretion, and will not reverse a district court’s award of attorney fees absent such an abuse. *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 461 (Minn. App. 2010). State appellate courts in Minnesota look to the analogous inherent authority held by federal district courts, adopting the same burden and the same standard of great deference: the party challenging an award of attorney fees under inherent authority “has the difficult burden of convincing an appellate court that the trial court abused its discretion—‘a burden which is met only when it is clear that no reasonable person would agree with the trial court’s assessment of what sanctions are appropriate.’” *Patton*, 538 N.W.2d at 119 (quoting *Marrocco v. Gen. Motors Corp.*, 966 F.2d 220, 223 (7th Cir. 1992)). This deferential abuse-of-discretion standard applies to both the district court’s choice of authority for sanctions, *Patton*, 538 N.W.2d at 119 (“The task of determining what, if any, sanction is to be imposed is implicated by the broad authority provided the trial court.”), and also to the decision to award sanctions. *See, e.g., Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

Appellants initially argue that the district court abused its discretion in deciding to use its inherent authority, as opposed to Rule 11 of the Minnesota Rules of Civil Procedure or Minnesota Statutes section 549.211 (2018). Appellants cite to no authority⁶ for the

⁶ Appellants offer expansive interpretations of two unpublished opinions, but neither supports appellants’ proposition. In each case, this court declined to adopt a new legal rule, deciding both cases based on whether the facts supported the sanctions awarded. *See Murrin v. Mosher*, No. A09-314, 2010 WL 1029306, at *9 (Minn. App. Mar. 23, 2010)

proposition that inherent authority must be reserved only for the most egregious of conduct, relied on as a last resort after exhausting other available rule or statutory bases to award attorney fees. While we recognize that statute- and rule-based authority to order sanctions usually includes procedural limitations, such as safe-harbor provisions, we decline to read into our inherent authority jurisprudence a new egregiousness threshold. Bad faith and vexatious, wanton, or oppressive conduct is sufficient:

[D]istrict courts possess inherent authority to impose sanctions as necessary to protect their “vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws.” *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995) (quotations omitted) (excluding expert witness testimony for spoliation of evidence). This includes awarding attorney fees. *Frazier v. Burlington Northern Santa Fe Corp.*, 788 N.W.2d 770, 783 (Minn. App. 2010), review granted (Minn. Nov. 23, 2010). Attorney fees may be an appropriate sanction when a party has “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46, 111 S. Ct. 2123, 2133, 115 L.Ed.2d 27 (1991) (citation omitted). A finding of bad faith is necessary before awarding attorney fees under the court’s inherent power. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S. Ct. 2455, 2465, 65 L.Ed.2d 488 (1980); *see also Harlan v. Lewis*, 982 F.2d 1255, 1260 (8th Cir.1993) (characterizing *Chambers* and *Roadway* as setting bad-faith standard for attorney fee awards, although not for all exercises of inherent power).

(declining to define the extent or the limits of inherent authority and concluding that “[u]nder the egregious circumstances of this case . . . the district court did not abuse its discretion by invoking its inherent authority to impose sanctions”), *review denied* (Minn. Aug. 10, 2010); *Mahoney & Emerson v. Private Bank of Minnesota*, No. A08-1571, 2009 WL 1852789, at *6-7 (Minn. App. June 30, 2009) (analyzing the conduct in the record and concluding that the district court abused its discretion in awarding fees under section 549.211, Rule 11, and inherent authority).

Peterson, 792 N.W.2d at 462. Because the choice of authority for sanctions does not depend on the egregiousness of the conduct, we conclude that the district court did not abuse its discretion in choosing to use its inherent authority to award sanctions.

Appellants also argue that the conduct in this case was not sanctionable. The record, however, supports the district court's decision. The district court identified two general categories of sanctionable conduct: appellants' persistent pursuit of immunity claims and the delay resulting from appellants' litigation conduct. We conclude that either or both categories of appellants' conduct would support the \$8,000 award in this case.

First, the district court did not abuse its discretion in determining that appellants acted in bad faith, vexatiously, wantonly, or for oppressive reasons in their pursuit of meritless immunity claims. At the summary judgment hearing, the district court criticized appellants' characterization of the law as providing a sweeping protection that relieved snowplow operators from any responsibility to follow traffic laws. Throughout appellants' pursuit of its immunity defenses, the district court repeatedly expressed concerns, characterizing appellants' view of the law as "dubious" and "outrageous."

On appeal, this court confirmed that appellants' various immunity claims were contrary to the law, just as the district court had stated. In doing so, we relied on a long line of cases regarding such immunity claims. *See Ayers I*, 2015 WL 9264116, at *2-3 (common law official immunity); *Ayers II*, 925 N.W.2d at 296-97 (statutory snow and ice immunity); *see also, e.g., Schroeder*, 708 N.W.2d at 505-08 (common law official immunity); *Shariss*, 852 N.W.2d at 281-84 (common law official immunity); *Hockenhull*, 2 N.W.2d at 432 (statutory exception to official immunity); *Alexandria*, 561 N.W.2d at 548

(common law official immunity), 549 (statutory discretionary immunity and statutory snow and ice immunity); *Hoff*, 883 N.W.2d at 633-37 (statutory snow and ice immunity).

Appellants have the difficult burden of convincing this court that it is “clear that no reasonable person would agree with the trial court’s assessment of what sanctions are appropriate.” *See Patton*, 538 N.W.2d at 119 (quotation omitted). In this case, we conclude that appellants have not satisfied this burden.

Second, the district court did not abuse its discretion by basing its award on the disruption and delay caused by appellants “at every turn” and listing examples, including the following: questionable tactics during mediation, pursuing summary judgment despite questions of fact created by Kalal’s own statements, and failing to present any evidence regarding the permanency of Kalal’s injuries,⁷ among others. The district court was perhaps most critical of appellants’ objections to Ayers’s requested costs and disbursements, which included objections to a motion filing fee, the costs to prepare necessary transcripts, costs to print and make copies of deposition and trial exhibits, and several nominal charges for delivery, service, and witness fees. During the hearing regarding appellants’ objections, the district court expressed frustration and disbelief. In his 20 years of dealing with car accident cases, the court remarked that it had never seen a lawyer contest these ordinary costs and disbursements, characterized appellants’ conduct

⁷ Refusing to admit liability by itself is not sanctionable. We conclude that the district court’s decision found fault with appellants’ actions in light of the uncontested facts of the case. Similarly, we conclude that the district court determined that appellants were contesting liability in bad faith, when they chose not to present evidence that would contradict Ayers’s claims of negligence or that would show comparative fault.

as “unfair” and “outrageous,” and put appellants on notice that sanctions were coming. After review of the costs requested and the objections, we conclude that appellants cannot establish the difficult burden to reverse the award. On this record, we cannot agree that all reasonable persons would disagree with the district court’s assessment.

Affirmed.