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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1385

Samuel Zean,
Appellant,

Eunice Zean,
Appellant,

vs.

Mark Reveling, et al.,
Respondents.

Filed February 3, 2020
Affirmed
Hooten, Judge

Hennepin County District Court
File No. 27-CV-17-16520

Samuel Zean and Eunice Zean, Brooklyn Park, Minnesota (pro se appellants)

A. Chad McKenney, Donohue McKenney Ltd., Maple Grove, Minnesota (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Bryan, Judge.

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

HOOTEN, Judge

In this appeal from summary judgment dismissing appellants' defamation and related claims that arose out of allegations that appellants stole towels and bedding from

respondent hotel, appellants argue that the district court erred by: (1) determining that the statements of the manager and other employees of the hotel were privileged; (2) determining that appellants' claim for intentional infliction of emotional distress failed as a matter of law; (3) denying appellants' punitive damages motion; (4) denying appellants' motion to remove the district court judge; (5) denying appellants' motion for a finding of contempt of court by respondents; (6) reserving respondents' motion for costs and attorney fees; and (7) denying appellants' motion for sanctions. We affirm.

FACTS

In July 2017, appellants Samuel Zean and Eunice Zean checked into a room at respondent Quality Inn & Suites in Eagan. Shortly after checking in, appellants returned to the front desk unsatisfied with the condition of their room, and they were given a second room. But appellants again returned to the front desk, dissatisfied with their second room. They requested a refund, which was granted, and left the hotel. Later that night, hotel staff noticed that the pillows, pillow cases, towels, and a bath mat were missing from one of the rooms assigned to appellants. Respondent Mark Revering,[1] the hotel's manager, charged appellants' credit card for the missing items the next day.

When appellants saw the charges, appellants called the hotel to speak with Revering. Appellants put the conversation on speaker phone, and their two minor children overheard the conversation. Revering told appellants that they were charged for the items because

[1] The caption spells his last name "Reveling" but his name is spelled "Revering." The caption shall not be changed on appeal, Minn. R. Civ. App. P. 143.01, but we use the correct spelling throughout this opinion.

hotel staff believed that appellants had taken the items. Appellants denied taking anything from the hotel and demanded a full refund. Revering complied.

Appellants sued respondents for defamation, alleging that they were compelled to publish Revering's accusations to the police and others. They also claimed intentional infliction of emotional distress. Appellants moved to amend the complaint to add claims for punitive damages, alleging that Revering's statements were discriminatory, and "outrageous, spiteful and demeaning." The district court denied appellants' motion to add claims for punitive damages, reasoning that appellants failed to meet the threshold requirement that Revering deliberately disregarded the rights of others.

Appellants moved for a new trial, amended findings, judgment as a matter of law, and for supplemental pleadings and amendments. The district court denied each of their motions because no trial had taken place. The district court then construed appellants' motions as asking the court to reconsider its order that denied appellants' motion to add claims for punitive damages. The district court noted that appellants did not follow the Minnesota General Rules of Practice in requesting a motion to reconsider. Nevertheless, the district court explained that it was willing to consider any newly discovered evidence submitted by appellants. The district court reviewed appellants' claims of newly discovered evidence and concluded that the offered exhibits were not previously unavailable to appellants. Furthermore, the district court ruled that nothing in the newly offered exhibits supported appellants' motion to add claims for punitive damages.

When the original judge assigned to this case retired during the pendency of the case, it was assigned to a second judge. A week after the case was reassigned, appellants

moved for summary judgment. Before the motion hearing was held, appellants submitted a letter to the district court. While the letter mainly alleged that respondents forged documents produced in discovery, the letter also appeared to request reconsideration of the district court's order denying appellants' motions for a new trial, amended findings, judgment as a matter of law, and for supplemental pleadings and amendments. The day after submitting this letter, appellants moved to hold respondents in contempt of court for failure to respond to a subpoena.

Following a hearing, the district court issued an order addressing each of appellants' arguments. The district court denied appellants' motion for summary judgment, ruling that they failed to establish the elements of their claims. The district court also denied appellants' motion to hold respondents in contempt because appellants' subpoena was improperly issued. The district court found that there were no grounds on which to reconsider the order denying appellants' motion to add claims for punitive damages. Finally, the district court reserved respondents' request for costs and attorney fees, noting that respondents could renew the request after trial.

Respondents moved for summary judgment. The next month, appellants moved to remove the second judge from their case, alleging that the judge was biased against them. Upon review by another judge in Hennepin County, the district court denied appellants' demand for removal, finding that the second judge's "impartiality in this case cannot reasonably be questioned."

Hearings were held on respondents' motion for summary judgment and appellants' motion for sanctions. The district court granted respondents' summary judgment motion and denied appellants' request for sanctions. This appeal follows.

D E C I S I O N

In this appeal from summary judgment, self-represented appellants challenge several decisions made by the district court throughout the proceedings leading to the dismissal of their claims. "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001); *see also Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010) (providing that a party that appears pro se "is held to the standard of an attorney in presenting his appeal"). We address each of appellants' arguments in turn.

I. The district court did not err in granting respondents' motion for summary judgment.

Appellants challenge the district court's grant of summary judgment in favor of respondents, arguing that respondents' statements were not protected by qualified privilege.

We ordinarily review a grant of summary judgment for disputed genuine issues of material fact and errors in applying the law. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). Whether qualified privilege applies to the allegedly defamatory statements made by hotel employees is a question of law we review de novo. *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). When reviewing the district court's

legal conclusions, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

"[A] plaintiff pursuing a defamation claim must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community." *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003). The plaintiff bears the burden of establishing each element of defamation. *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 537 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

"Two types of privilege exist as defenses against defamation claims: absolute privilege, and qualified privilege." *Minke*, 845 N.W.2d at 182. Both exist because "statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory." *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 889 (Minn. 1986). Appellants challenge the district court's determination that respondents' statements were protected by qualified privilege.

"A person who makes a defamatory statement is not liable if a qualified privilege applies . . . ." *Kuelbs v. Williams*, 609 N.W.2d 10, 16 (Minn. App. 2000), *review denied* (Minn. June 27, 2000). But "qualified privilege bars liability only if the defamatory statements are publicized in good faith and without malice." *Minke*, 845 N.W.2d at 182 (quotation omitted). The statements must also be made "on a proper occasion, from a proper motive, and based on reasonable or probable cause." *Kuelbs*, 609 N.W.2d at 16. If

a qualified privilege applies to the statement, then the plaintiff bears the burden of proving that the "privilege was abused because the defamatory statements were made with malice." *Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997). "Although malice is generally a question of fact, summary judgment is appropriate if the plaintiff fails to raise a genuine issue of material fact regarding malice." *Kuelbs*, 609 N.W.2d at 16.

In this case, the district court determined that respondents' statements that appellants took items from the hotel room were protected by a qualified privilege because employees of the hotel have a pecuniary interest in the items at the hotel and reasonably believed that appellants took the items without paying for them. The district court held that Revering made the statements: (1) on a proper occasion—appellants called him to inquire about the charges; (2) from a proper motive—appellants provided no evidence of animosity or ill will from Revering; and (3) based on probable cause—Revering had valid reasons to believe that appellants took the items and sufficiently investigated the situation to conclude that there was probable cause.

Because there is a lack of Minnesota caselaw about qualified privilege and the rights of proprietors to protect their pecuniary interests, the district court applied legal principles from the employment context in determining whether a qualified privilege protects respondents' statements. The district court also relied on the Second Restatement of Torts. The restatement provides that a qualified privilege extends to "[a]ny lawful pecuniary interest." Restatement (Second) of Torts § 594 cmt. f (1977). If a person reasonably believes that his or her "interest is in danger" and "publication is reasonably necessary for its protection," then a qualified privilege applies. Restatement (Second) of Torts § 594

cmt. h (1977). Appellants do not challenge the district court's application of qualified privilege from the employment context, but make several challenges to the district court's determinations.

A. Probable cause to make statements

First, appellants challenge the district court's determination that Revering had probable cause to believe that appellants took the items. Appellants' argument relies on two of Revering's later statements: (1) a statement on the phone call that he "hope[s]" appellants did not take the items, and (2) a quote from a memorandum submitted by respondents that stated, "After further discussion, [Revering] decided to refund the $107 fine for the stolen items, signifying that he does not believe that [appellants] stole the items." But Revering's later statements, which occurred after his allegedly defamatory statements, do not render his belief, when he made the alleged defamatory statements, unreasonable.

"Reasonable grounds can exist if a person has valid reasons for believing a statement, even though the statement later proves to be false." *Elstrom v. Indep. Sch. Dist. No. 270*, 533 N.W.2d 51, 55 (Minn. App. 1995), *review denied* (Minn. July 27, 1995). Although Revering appears to later concede that appellants did not steal the items from the hotel room, at the time he made the alleged defamatory statements, he had reason to believe appellants took the items from the hotel room based on the following: (1) Revering spoke with housekeeping staff who noticed that, after appellants accessed a room, items were missing from the room; and (2) Revering checked the hotel's room access log and found that appellants' key card was the only card used to access the room before housekeeping

discovered the items were missing later that night. As a result, when the alleged defamatory statements were made, Revering and hotel staff had reasonable grounds to believe that appellants took the missing items from the room.[2]

B. Revering's investigation

Second, appellants argue that Revering did not investigate the situation before hotel staff made the allegedly defamatory statements. In essence, appellants argue that Revering should have conducted an investigation before housekeeping staff reported the missing items to Revering.

Housekeeping staff's statements to Revering are protected by qualified privilege because they were required to report to Revering what they discovered as part of their job duties. In the employment context, communications between employees of a company in the course of an investigation are protected by qualified privilege when made in good faith. *Kuechle v. Life's Companion P.C.A., Inc.*, 653 N.W.2d 214, 220 (Minn. App. 2002), *review dismissed* (Minn. Jan. 21, 2003). Housekeeping staff reported the missing items to Revering, the general manager. Revering then conducted an investigation. Any statements made among employees about the report of the missing items, the ensuing investigation,

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[2] Appellants also challenge one of Revering's statements as implying that he accused appellants of stealing from other hotels. Revering stated, "People do [steal from hotels]. I know you've stayed at other hotels and they clearly say 'please don't take the stuff out of there. If you do, you're going to get charged for it.'" Revering's statement appears to be based on an inference that appellants have stayed at other hotels in which the same rule applies—if a guest takes items from the room, the hotel will charge the guest's account for the items taken. A reasonable reading of this statement provides that Revering did not accuse appellants of stealing from other hotels, and because we address this statement later, we do not address it further here.

or Revering's reasonable belief that appellants took the items are protected by qualified privilege.

Appellants also allege that the hotel charged their credit card before Revering conducted an investigation. Respondents admit that they charged appellants $143.15 on July 31, 2017, the day appellants checked in and out of the hotel. But the record shows that the charge on July 31 was for the upgrade of appellants' room to a room with a Jacuzzi, an upcharge to which appellants had agreed. The bill from the hotel also shows that the full amount of the room was refunded to appellants' account on the same day. The hotel then charged appellants for the missing items on August 1, 2017, and refunded that charge the next day. This timeline follows Revering's investigation that occurred on the day that housekeeping staff reported the missing items. Therefore, appellants' allegations about Revering's inadequate investigation are unsupported by the record.

C. Malice

Third, appellants argue that Revering and other hotel staff made the allegedly defamatory statements with malice because they knew that appellants did not steal from the hotel and thus qualified privilege does not apply.

"Malice is defined as actual ill-will or a design causelessly and wantonly to injure a plaintiff." *Kuelbs*, 609 N.W.2d at 16 (quotation omitted). "Malice cannot be implied from the statement itself or from the fact that the statement was false." *Bol*, 561 N.W.2d at 150. If appellants fail to raise a genuine issue of material fact regarding malice, then summary judgment is appropriate. *See Kuelbs*, 609 N.W.2d at 16 (noting that although malice is

generally a fact question, "summary judgment is appropriate if the plaintiff fails to raise a genuine issue of material fact regarding malice").

Appellants assert that respondents made the allegedly defamatory statements even though they knew no theft occurred. But the record shows that hotel staff reasonably believed that appellants took the missing items as appellants admitted that nothing was missing from the room when they entered it and they were the only ones who entered the room before housekeeping staff noticed the items were missing. Appellants fail to point to any evidence in the record to support their contention that hotel staff lied about the missing items or that hotel staff knew appellants did not take the items. Because appellants cannot show ill will or a wanton design intended to injure them, the district court's summary judgment determination was appropriate under the law.

We affirm the district court's grant of summary judgment in favor of respondents because their allegedly defamatory statements are protected by qualified privilege and there is no evidence in the record to create a genuine issue of fact regarding malice.

II. The district court did not err by determining that appellants' claim for intentional infliction of emotional distress failed as a matter of law.

Appellants argue that the district court erred in determining that their claim for intentional infliction of emotional distress failed as a matter of law because respondents' conduct was extreme and outrageous.

To sustain a claim for intentional infliction of emotional distress, appellants must show that: (1) the conduct was extreme and outrageous; (2) the conduct was intentional or reckless; (3) the conduct caused emotional distress; and (4) the distress was severe.

Langeslag v. KYMN Inc., 664 N.W.2d 860, 864 (Minn. 2003). "[E]xtreme and outrageous [conduct] must be so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 439 (Minn. 1983) (quotations omitted). The emotional distress must be "so severe that no reasonable [person] could be expected to endure it." *Id.* "Summary judgment is proper where a person does not meet the high standard of proof needed for an intentional infliction of emotional distress claim." *Strauss v. Thorne*, 490 N.W.2d 908, 913 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992).

Appellants argue that they proved that respondents' conduct was extreme and outrageous because Revering accused them of theft "just for the fun of it." Appellants also claim that because they had their speaker phone on when they spoke with Revering about the charges on their credit card, their children heard Revering state the reasons for the charges. Appellants assert that it is any parent's nightmare "to be so falsely and maliciously accused of theft in the presence of one's children." However, appellants do not point to any caselaw to support their assertion that respondents' conduct was so extreme and outrageous that no reasonable person could be expected to endure it.

Quoting *Langeslag*, 664 N.W.2d at 865, the district court ruled that respondents' conduct was "entirely commonplace and while it may be distressing to [appellants] it certainly does not rise to the level of 'utterly intolerable to the civilized community.'"

In *Hempel v. Fairview Hospitals and Healthcare Services*, we concluded that the threshold is so high for finding severe emotional distress that even parents who watched their son die while being held down by eight employees of the hospital where the son was

admitted for a psychiatric disorder could not prove an intentional infliction of emotional distress claim. 504 N.W.2d 487, 493 (Minn. App. 1993). Because being accused of theft, even in front of one's children, is not so extreme and outrageous that a reasonable person cannot withstand the accusation, we affirm the district court's determination that appellants failed to establish their claim for intentional infliction of emotional distress.

III. The district court did not abuse its discretion by denying appellants' motion to add claims for punitive damages.

Appellants challenge both the district court's initial order denying appellants' motion to add claims for punitive damages and the district court's denial of their request to reconsider. Although the underlying causes of action have been dismissed, rendering a claim for punitive damages moot, we address both of appellants' claims.

A. Denial of motion to add punitive damages

We review a district court's denial of a motion to add a claim for punitive damages for an abuse of discretion. *McKenzie v. N. States Power Co.*, 440 N.W.2d 183, 184 (Minn. App. 1989).

Minn. Stat. § 549.191 (2018) prohibits a plaintiff from seeking punitive damages in the complaint. Once the suit is filed, a plaintiff may move to amend the pleadings to claim punitive damages. Minn. Stat. § 549.191. To succeed on a motion for punitive damages, the plaintiff must show that there is "clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a) (2018). A defendant acts with "deliberate disregard" if the defendant "has knowledge of facts or intentionally disregards facts that create a high probability of

injury to the rights or safety of others" and "deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others." *Id.*, subd. 1(b). If the district court finds prima facie evidence to support a claim for punitive damages, then the district court must grant the motion. Minn. Stat. § 549.191.

"Prima facie evidence is that evidence which, if unrebutted, would support a judgment in that party's favor." *McKenzie*, 440 N.W.2d at 184. District courts must consider the burden of proof required to recover punitive damages when assessing whether a plaintiff has made out a prima facie case. *Id.* Thus, when "a plaintiff's motion to amend and supporting affidavits do not reasonably allow a conclusion that clear and convincing evidence will establish the defendant acted with willful indifference, no basis for amendment is made out." *Id.*

Appellants argue that the district court should have permitted claims for punitive damages based on Revering's following statement: "I know you've stayed at other hotels and they clearly say 'please don't take the stuff out of there. If you do, you're going to get charged for it.'" Appellants allege that this statement shows Revering accused them of stealing from other hotels and that he was motivated by racism.

The following exchange occurred between appellants and Revering:

> REVERING: Well the proof is there was nobody else in the room.
> APPELLANT: So you should watch what you do so you don't go around accusing people of stole [sic] something as cheap as [a] three-dollar pillow. You don't do that.
> REVERING: People do. I know you've stayed at other hotels and they clearly say "please don't take the stuff out of there. If you do, you're going to get charged for it."

APPELLANT: Yeah but you don't go and just accuse people

. . . .

Appellants argued to the district court and to this court that these statements by Revering were racist and discriminatory and thus appellants should be able to claim punitive damages. Appellants allege that Revering accused them of stealing from other hotels and other hotels would immediately "put notices in their hotel rooms during [appellant]'s stay at hotels" based on their race.

The district court considered appellants' arguments and noted that "[t]hese are serious allegations that the Court takes seriously." While we also carefully consider claims of discrimination, we see no reasonable way to read Revering's statements as discriminatory or racist. As the district court explained, appellants provided no facts to support their allegations in order to meet their burden of proof that clear and convincing evidence exists to support a claim of punitive damages. On appeal, appellants do not point to any evidence in the record to support their assertion that Revering was willfully indifferent to appellants' rights based on their race or any other grounds. Therefore, the district court did not abuse its discretion by denying appellants' motion to add a claim for punitive damages.

B. Reconsideration of denial of claim for punitive damages

We again note that, although we make some accommodations for pro se litigants, we generally hold pro se litigants to the same standard as attorneys. *Fitzgerald*, 629 N.W.2d at 119. While it is unclear exactly to what appellants object regarding the

reconsideration of the denial of their motion to add punitive damages, we attempt to address their concerns.

It is important to note the procedural history of appellants' punitive damages claim and reconsideration of the order denying appellants' motion. After appellants moved to add claims for punitive damages, the original judge denied appellants' motion. Months later, appellants filed a letter with the district court entitled "Plaintiffs' Letter Pursuant to Minn. Gen. R. Prac. Rule 115.11, Motions to Reconsider." Although the letter did not address reconsideration outside of the title, the original judge construed it as a request to reconsider the district court's order and denied their request. In appellants' later motion for summary judgment before the second judge, it appeared that they requested reconsideration of the original judge's denial to reconsider. For that reason, the second judge addressed whether there were any grounds to reconsider the original judge's order denying appellants' motion to claim punitive damages. The second judge found that there were no grounds on which to reconsider the original judge's decision.

Minn. R. Gen. Prac. 115.11 provides the procedure for bringing a motion to reconsider. The party seeking reconsideration must request the district court's permission to file a motion to reconsider by letter to the district court. Minn. R. Gen. Prac. 115.11. If the party shows that there are compelling circumstances to reconsider, the district court must grant the party permission to move for reconsideration. *Id.* Only then may a party move to reconsider. *Id.*

In this case, appellants submitted a letter that appeared to request reconsideration on the same day that they filed a motion to reconsider. Although appellants failed to follow

the procedure outlined in Minn. R. Gen. Prac. 115.11, the original judge considered their request on the merits. It appears that appellants: (1) argue that they did not file a motion to reconsider, and (2) challenge the district court's decision to consider the request on the merits.

Appellants' arguments lack merit. First, the record reveals that appellants did file a motion to reconsider. Second, the district court afforded appellants great leeway in addressing their request for reconsideration even though appellants failed to follow the rules for filing a motion to reconsider. And even though the district court addressed their request, it found that there were no merits to appellants' motion. Therefore, appellants were not prejudiced by the district court's treatment of their letter as a request for reconsideration or its consideration of their motion. There is also nothing to show that the district court was biased because the district court was not required to address their motion but nonetheless did. The district court did not abuse its discretion in its treatment of appellants' letter to reconsider and motion to reconsider.

IV. The district court did not abuse its discretion in denying appellants' motion to remove the second judge.

Appellants argue that the district court abused its discretion by failing to remove the second judge for bias. We review a denial of a motion to remove a district court judge for an abuse of discretion. *Matson v. Matson*, 638 N.W.2d 462, 469 (Minn. App. 2002).

The Minnesota Code of Judicial Conduct provides that a judge must disqualify himself or herself when "the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A). This includes circumstances in which "[t]he judge has a

personal bias or prejudice concerning a party." Minn. Code Jud. Conduct Rule 2.11(A)(1). "Impartiality means the absence of bias or prejudice" against a party. *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (quotation omitted).

Appellants argue that the second judge was personally biased against them and "made multiple arbitrary defenses and decision [sic] in favor of the defense unprompted." Appellants broadly argue in their brief to this court that every decision made by the district court was biased. Among their complaints, they allege that the district court argued on the respondents' behalf, lied about reading all of appellants' submissions to the court, and favored respondents over appellants when scheduling.

Prior adverse rulings "clearly cannot constitute bias." *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). District courts have wide discretion in scheduling deadlines, *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006), and granting continuances, *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). Appellants fail to explain how the district court's decisions show bias or prejudice against them. And the burden of showing error rests on the appealing party asserting error. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 465 (Minn. 1944). Because appellants have failed to meet their burden of showing the second judge should have been removed for bias, the district court did not abuse its discretion by failing to remove the judge.

V. The district court did not abuse its discretion by denying appellants' motion to hold respondents in contempt of court.

Appellants argue that the district court abused its discretion by denying their motion to hold respondents in contempt of court because respondents failed to respond to

appellants' subpoena. It appears that appellants' main argument is that respondents should have produced footage from the hotel's video cameras and that the district court should have held respondents in contempt for failing to produce that footage. We review a district court's order regarding a motion to hold a party in contempt for an abuse of discretion. *Minn. State Bar Ass'n v. Divorce Assistance Ass'n Inc.*, 248 N.W.2d 733, 740 (Minn. 1976).

Civil contempt is appropriate to "vindicat[e] the rights of a party by imposing a sanction that will be removed upon compliance with a court order that has been defied." *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). "Civil contempt sanctions are intended to operate in a prospective manner and are designed to compel future compliance with a court order . . . ." *Mower Cty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996) (quotation omitted). "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court on behalf of which the subpoena was issued." Minn. R. Civ. P. 45.05.

Appellants served a subpoena on respondents to obtain footage from the hotel cameras. When respondents did not comply, appellants filed a motion to hold respondents in contempt of court. At the motion hearing, appellants argued that respondents must release the footage. The district court explained to appellants that respondents had stated under oath that the hotel did not have a video camera and proceeded to ask appellants if they had any evidence that the hotel did have a camera. Appellants did not respond.

The district court issued its order following the hearing. It ruled that appellants' subpoena was untimely and respondents had an adequate excuse for not responding to it.

Because the discovery period had expired when appellants served their subpoena, the district court properly denied appellants' motion for contempt.

On appeal, appellants argue that they filed other discovery requests for the video footage before the discovery period had expired. Appellants requested production of the video surveillance from the hotel in a request for production. In response to their requests for documents and video footage, respondents produced the records from appellants' stay at the hotel. Because appellants did not move to compel respondents to comply with this production request, and instead moved to hold respondents in contempt for failure to respond to their untimely subpoena, the district court properly denied their contempt motion.

VI. The district court did not abuse its discretion by reserving respondents' right to request costs and attorney fees.

Appellants argue that the district court was biased against them and abused its discretion by reserving respondents' request for costs and attorney fees. Appellants appear to argue that by reserving respondents' right to request costs and fees, the district court issued a sanction against appellants meant "to intimidate and punish Appellants for bringing a motion against the defense."

It is important to note that, in the district court's order denying appellants' motions for summary judgment, contempt, and request for reconsideration, the district court did not rule on respondents' request for costs and fees, but reserved judgment on the request. The district court stated that respondents "may renew their request for costs and attorneys' fees after trial." After the district court granted respondents' motion for summary judgment,

respondents requested costs and disbursements. Respondents were awarded $2,363.35 in costs and disbursements by the court administrator. However, appellants did not appeal the court administrator's award. Even if appellants had appealed the court administrator's award, appellants do not have a valid argument against the award.

In every action in a district court, the prevailing party is entitled to reasonable disbursements paid or incurred. Minn. Stat. § 549.04 (2018). The district court's award of costs and disbursements will not be reversed on appeal absent an abuse of discretion. *Stinson v. Clark Equip. Co.*, 473 N.W.2d 333, 336 (Minn. App. 1991), *review denied* (Minn. Sept. 13, 1991).

Appellants argue that the award of costs and disbursements to respondent was improper because appellants did not violate a rule or procedure. Appellants fail to realize that respondents, as the prevailing party, are entitled to reasonable disbursements under Minn. Stat. § 549.04. Respondents did not pursue attorney fees, but only the reasonable costs incurred in the action. For that reason, appellants have not shown that the district court abused its discretion by reserving respondents' request for costs and fees.

VII. The district court did not abuse its discretion by denying appellants' motion for sanctions.

Appellants argue that the district court should have sanctioned respondents. But, in their one-paragraph argument to this court, appellants failed to adequately brief the issue. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue that was inadequately briefed). Even if we were to address appellants' arguments on the merits, appellants challenge what occurred at the

May 23, 2019 hearing on their motion. Appellants failed to order the transcript from that hearing, and thus it is not in the record for our review. We therefore cannot address this issue because appellants have not adequately briefed the issue or provided the transcript for our review. Minn. R. Civ. App. P. 110.02, subd. 1(a) (providing that it is the appellant's duty to order a transcript "of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record").

Affirmed.