STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1844

John Moore,
Appellant,

vs.

Robinson Environmental, et al.,
Respondents,

Century Surety,
Defendant.

Filed June 1, 2020
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-18-6506

John Moore, Minneapolis, Minnesota (pro se appellant)

Robert E. Kuderer, Thomas C. Brock, Madeline E. Davis, Erickson, Zierke, Kuderer & Madsen, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

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

BJORKMAN, Judge

Appellant challenges the award of costs and disbursements to respondents following dismissal of this action, arguing that respondents are not prevailing parties under Minn. Stat. § 549.04, subd. 1 (2018). We affirm.

FACTS

In April 2018, appellant John Moore commenced this action against respondents Robinson Environmental and Tim Robinson (collectively Robinson), asserting claims related to asbestos removal. In February 2019, the district court dismissed the action for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). The court concluded that most of Moore's claims are barred by the applicable statute of limitations, and that Moore did not adequately plead his remaining claims.[1] Robinson sought to tax costs and disbursements against Moore. The district court administrator awarded $832.74 in costs and disbursements to Robinson.

Moore appealed the award to the district court pursuant to Minn. R. Civ. P. 54.04(e). He argued that Robinson is not entitled to costs and disbursements because it is not a prevailing party. Moore also contended that the district court administrator did not have the authority to determine which party prevailed, and that the district court lacked the authority to make a prevailing-party determination because the deadline for seeking amended legal determinations under Minn. R. Civ. P. 52.02 had passed.

[1] This court affirmed the rule 12 dismissal in a separate appeal. *Moore v. Robinson Envtl.*, No. A19-0668 (Minn. App. Jan. 27, 2020), *review granted* (Minn. Apr. 14, 2020).

The district court denied Moore's appeal, reasoning that Robinson is the prevailing party because it "fully prevailed on [its] motion and obtained a judgment of dismissal with prejudice in [its] favor." It noted that a district court may need to expressly identify the prevailing party in "situations in which it is not immediately obvious," but that requirement does not invalidate an award of costs and disbursements when "there is no genuine dispute as to which party prevailed in the underlying litigation." The district court also concluded that rule 52.02 does not apply to dismissals for failure to state a claim. Moore appeals.[2]

D E C I S I O N

"In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred . . . ." Minn. Stat. § 549.04, subd. 1. And the prevailing party is entitled to $5.50 "for the cost of filing a satisfaction of the judgment." Minn. Stat. § 549.02, subd. 1. The district court has discretion to determine both the amount of the award and who qualifies as the prevailing party. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). We will not reverse the district court's determination unless the decision is "against logic and facts on the record," arbitrary or capricious, or based on an erroneous view of the law. *Id.*

Moore argues that the district court erred by determining Robinson is a prevailing party entitled to recover costs and disbursements. And he asserts that this court should

[2] Moore does not challenge the taxation of $200 in costs under Minn. Stat. § 549.02, subd. 1 (2018), as he correctly conceded in the district court that Robinson was entitled to that amount upon dismissal of the case.

sanction Robinson for violating rules of civil appellate procedure. We address each argument in turn.

I. The district court did not abuse its discretion by determining that Robinson is the prevailing party.

When determining the prevailing party, "the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). "The prevailing party in any action is the one in whose favor the decision or verdict is rendered and judgment entered." *Id.*; *see also Luna v. Zeeb*, 633 N.W.2d 540, 543 (Minn. App. 2001) (holding that defendant in a personal-injury action arising from a motor-vehicle accident is the prevailing party when plaintiff made no recovery following a jury trial because she did not meet the tort threshold); *Kletschka v. Abbott-Nw. Hosp., Inc.*, 417 N.W.2d 752, 755-56 (Minn. App. 1988) (affirming award of costs and disbursements to defendant who obtained summary judgment in its favor because, among other grounds, one claim was time-barred), *review denied* (Minn. Mar. 30, 1988).

Moore recognizes this general rule, but maintains that an exception applies because his action was dismissed based on a procedural deficiency rather than the merits of the case. He cites *HNA Props. v. Moore*, 848 N.W.2d 238, 241 (Minn. App. 2014), for the proposition that a defendant is not a prevailing party when it obtains a dismissal based on procedural law instead of substantive law. And he contends that, for a defendant to be a prevailing party, the causes of action must be "unable to proceed even in the absence of statutes of limitations."

In *HNA Props.*, the district court declined to award prevailing-party costs in an eviction action after the case was dismissed without prejudice based on the plaintiff's failure to file a required power-of-authority form. 848 N.W.2d at 240. This court affirmed, reasoning that a prevailing party "must be more than 'successful to some degree,' and instead must 'prevail[] on the merits in the underlying action.'" *Id.* at 242 (alteration in original) (quoting *Borchert*, 581 N.W.2d at 840). We held that the defendant was not a prevailing party because she "did not prevail on the merits of the underlying action by obtaining the dismissal because the district court did not evaluate the evidence and the parties' substantive arguments." *Id.* at 243.

We are not persuaded to read *HNA Props.* as broadly as Moore urges. This case differs from *HNA Props.* in two significant ways. First, this case involves a dismissal with prejudice. Minnesota courts have long held that a dismissal with prejudice "operates as an adjudication on the merits." *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967); *see also Johnson v. Hunter*, 447 N.W.2d 871, 873 (Minn. 1989) (holding that a dismissal with prejudice, even on a nonsubstantive ground, is an adjudication on the merits). Second, the dismissal is grounded in Moore's failure to assert a meritorious claim. A dismissal generally operates as an adjudication on the merits, except for a dismissal for lack of jurisdiction, forum non conveniens, and failure to join an indispensable party. Minn. R. Civ. P. 41.02(c). None of these exceptions apply here. And this court has held in the res judicata context that a dismissal based on a statute of limitations is a dismissal on the merits. *Nitz v. Nitz*, 456 N.W.2d 450, 452 (Minn. App. 1990). Indeed, application of a statute of limitations "determines outcomes," and "will always bar claims if the statute

is tolled." *State v. Lemmer*, 736 N.W.2d 650, 658 (Minn. 2007). In contrast, the procedural defect in *HNA Props.* implicated the manner in which the landlord could assert a substantive right; it did not prevent the landlord from asserting a claim.

Nor are we persuaded by Moore's citation to *Fleeger v. Wyeth*, 771 N.W.2d 524 (Minn. 2009). That case presented a choice-of-laws question. The supreme court concluded—in that context—that Minnesota's statute of limitations was procedural. 771 N.W.2d at 528. This case does not present a choice-of-laws issue. In sum, neither *HNA Props.* nor *Fleeger* compels us to depart from the general rule that the prevailing party "is the one in whose favor the decision . . . is rendered and judgment entered." *Borchert*, 581 N.W.2d at 840.

Moore's remaining challenges to the district court's prevailing-party determination are also unavailing. He provides no authority to support his contention that a district court must explicitly identify the prevailing party in its order dismissing an action, and we see none. His assertion that the district court cannot now amend its findings to declare Robinson the prevailing party because the deadline for filing a motion for amended findings under Minn. R. Civ. P. 52.02 has passed likewise fails. The district court rejected the argument, concluding that the rule applies only to cases tried to the district court, not to cases dismissed on a motion for failure to state a claim.

The district court is correct. Rule 52 governs "all actions tried upon the facts without a jury or with an advisory jury." Minn. R. Civ. P. 52.01. As such, it applies to cases that are tried to the district court. This case was not tried to the district court; it was dismissed for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e).

"Findings of fact and conclusions of law are unnecessary on decisions on motions pursuant to Rule[] 12 . . . ." Minn. R. Civ. P. 52.01. Accordingly, the order dismissing Moore's complaint is not governed by rule 52. The time limit for filing a motion under rule 52.02 does not apply.[3]

In sum, the district court did not abuse its discretion in determining that Robinson is the prevailing party.

II. The record does not support sanctioning Robinson.

In his reply brief, Moore contends that Robinson violated various rules of civil appellate procedure. He alleges that Robinson failed to provide him with unpublished opinions cited in its brief in violation of Minn. Stat. § 480A.08, subd. 3 (2018), and failed to timely serve its brief on him in violation of Minn. R. Civ. App. P. 125.02. And he asks this court to "remedy these infractions as it deems just, such as striking arguments related to these unpublished opinions and disallowing enhanced costs and disbursements related to this appeal." We decline to address these arguments in the absence of a motion under Minn. R. Civ. App. P. 127 and because we do not have an adequate record to assess them.

[3] Moore also asserts that he is entitled to relief because the district court administrator did not have the authority to determine the prevailing party because that is a legal question. The rules of civil procedure defeat this argument. Minn. R. Civ. P. 54.04(d) explicitly provides that costs and disbursements may be taxed by either the district court administrator or a district court judge. And the rule provides a method of judicial review: "If costs and disbursements are taxed by the court administrator, any party aggrieved by the action of the court administrator may serve and file a notice of appeal[.] . . . The appeal shall thereupon be decided by a district court judge . . . ." Minn. R. Civ. P. 54.04(e). That procedure was followed in this case.

Moore may renew these arguments if Robinson seeks to recover costs and disbursements related to this appeal.

Affirmed.