STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1465

Olson Property Investments, LLC,
Appellant,

vs.

Michael Alexander, et al.,
Respondents.

Filed June 5, 2023
Reversed and remanded
Bryan, Judge

Dakota County District Court
File Nos. 19AV-CV-20-1479, 19AV-CV-21-1607

Christopher T. Kalla, Douglass E. Turner, Hanbery & Turner, P.A., Minneapolis, Minnesota (for appellant)

Lisa Hollingsworth, Laura Jelinek, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for respondents)

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this eviction appeal, appellant-landlord challenges the district court's decision that each party was responsible for their own costs, disbursements, and attorney fees. Because we are unable to review the district court's decisions regarding the denial of

additional statutory costs, disbursements, and attorney fees, and because the district court erred by not awarding mandatory statutory costs to appellant, we reverse and remand.

FACTS

Respondents Michael Alexander and Pherizia Davis (tenants) lived in an apartment in Farmington, Minnesota, owned by appellant Olson Property Investments, LLC (landlord). The written lease between the parties provided that "[t]he court may award reasonable attorney's fees and costs to the party who prevails in a lawsuit about the tenancy." The lease began on June 1, 2019, ended on July 31, 2020, and allowed for a month-to-month lease thereafter. Landlord gave tenants notice on May 30, 2020, that the lease would not be renewed, but tenants did not vacate the property.

In August 2020, landlord filed an eviction complaint against tenants. The district court declined to issue a summons because of ongoing restrictions on evictions during the COVID-19 pandemic. *See* Emerg. Exec. Ord. No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (July 14, 2020). Landlord sought a writ of mandamus from this court compelling the district court to proceed with the eviction action, which this court denied. *Olson Property Investments, LLC v. Alexander*, A20-1073 (Minn. App. Sept. 1, 2020) (order), *rev. denied* (Minn. Nov. 25, 2020). Landlord then filed an amended complaint in March 2021, which the district court dismissed without prejudice. Landlord appealed and this court dismissed the appeal as premature because judgment had not been entered. *Olson Property Investments, LLC v. Alexander*, A21-0782 (Minn. App. July 20, 2021) (order).

Landlord filed a second, separate eviction action in September 2021. Tenants removed the action to federal court, but it was remanded several months later. Landlord also filed a motion seeking to re-open the initial eviction action and amend the complaint therein, which the district court granted. Landlord filed a consolidated amended complaint in both eviction actions in January 2022. This complaint included a request for "all allowable costs and disbursement[s] and an award of attorney's fees."

The district court held an evidentiary hearing in both matters in May 2022 and subsequently issued an order awarding landlord possession of the apartment and authorizing entry of judgment and issuance of a writ of recovery. The district court ordered that "[a]ll parties shall be responsible for their own attorney's fees as well as their own costs and disbursements." Neither party filed any post-judgment motions or an application for costs and disbursements. This appeal follows.

DECISION

Landlord argues that the district court erred by not awarding it disbursements, costs, and attorney fees. We address each in turn.

I. Disbursements

Landlord first argues that the district court erred by not awarding it reasonable disbursements.[1] Because the district court did not explain its basis for denying disbursements, we cannot determine whether the district court abused its discretion.

[1] Although landlord requested both disbursements and costs in its January 2022 complaint, tenants argue that landlord forfeited any costs and disbursements by failing to request them during or after trial. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that reviewing courts "generally consider only those issues that . . . were presented and

"In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred . . . ." Minn. Stat. § 549.04, subd. 1 (2022); *see also Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006) ("The prevailing party in a district court action shall be allowed . . . reasonable disbursements." (quotation omitted)), *rev. denied* (Minn. Aug. 23, 2006). "The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998); *see also Posey v. Fossen*, 707 N.W.2d 712, 715 (Minn. App. 2006) (noting that where more than one party succeeds in part, determining which party prevailed involves "a careful weighing of the relative success of the parties to a lawsuit"); *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998) (affirming determination that, despite grant of summary judgment, there was no prevailing party in an action).

"We generally review a district court's award of costs and disbursements for an abuse of discretion." *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014). The use of "shall" in section 549.04 means that the duty to award reasonable disbursements to a prevailing party is mandatory. *Id.*; *see also Quade & Sons Refrigeration, Inc. v.*

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considered by the trial court" (quotation omitted)). Under Minnesota Rule of Civil Procedure 54.04, "[a] party seeking to recover costs and disbursements must serve and file a detailed application for taxation of costs and disbursements" within 45 days of the entry of judgment. Minn. R. Civ. P. 54.04(b). Landlord does not dispute that it did not file an application. Landlord contends, however, that the judgment entered by the district court in this case included a denial of costs and disbursements—before landlord was required to file the application under rule 54.04. We agree with landlord that, given the timing of the district court's denial of costs and disbursements, landlord is not precluded from taking an appeal from this portion of the judgment without having filed a rule 54 application.

Minnesota Min. & Mfg. Co., 510 N.W.2d 256, 260 (Minn. App. 1994) ("The [district] court does not have discretion to deny costs and disbursements to the prevailing party."), *rev. denied* (Minn. Mar. 15, 1994). The district court has discretion, however, in determining what amount of disbursements is reasonable, *Quade & Sons Refrigeration*, 510 N.W.2d at 260; *see also Jonsson v. Ames Constr., Inc.*, 409 N.W.2d 560, 563 (Minn. App. 1987), *rev. denied* (Minn. Sept. 30, 1987), and in determining which party, if any, is the prevailing party, *Benigni*, 585 N.W.2d at 54-55.

Landlord argues that it was the prevailing party because the district court granted the requested relief: it awarded landlord possession of the premises and authorized the issuance of a writ of recovery. Tenants disagree, arguing that, because of this case's "tortuous procedural history," landlord is not clearly the prevailing party. The district court did not explicitly state which party, if either party, prevailed. Nor did the district court explain the basis for denying disbursements. The district court simply stated that "[a]ll parties shall be responsible for their own . . . disbursements." Without more, we are unable to review the decision. Therefore, we reverse and remand for further proceedings. On remand, the parties shall have the opportunity to apply for disbursements consistent with applicable law.

II. Costs

Landlord also argues that the district court erred by not awarding it mandatory costs. We agree that the district court erred because Minnesota law requires an award of costs if it finds in favor of a plaintiff in an eviction action.

If the district court "finds for the plaintiff" in an eviction action, the district court "shall tax the costs against the defendant." Minn. Stat. § 504B.345, subd. 1(a) (2022).[2] Here, the parties do not dispute that the district court found "for the plaintiff." Just as with disbursements, the district court was required to tax the costs against the defendant. *See Dukowitz*, 841 N.W.2d at 155 (stating that "[t]he use of the word 'shall' in a statute . . . indicates a duty that is mandatory, not one that is optional or discretionary" (quotation omitted)).

Because section 504B.345—the specific statute governing costs in an eviction action—does not specify a specific amount of costs, we look to the general costs statute to determine the appropriate amount. *See* Minn. Stat. § 549.02, subd. 1 (2022) (providing generally for costs "[i]n actions commenced in the district court"). That statute provides that the following costs "shall be allowed": (1) $200 "[t]o plaintiff" in actions that involve more than the recovery of money only, and (2) $5.50 "[t]o the prevailing party" for the cost of filing a satisfaction of the judgment.[3] *Id*. We conclude that the district court erred by not

[2] The parties refer to the general cost statute, Minn. Stat. § 549.02 (2022), without reference to the more specific provisions regarding costs in an eviction action, Minn. Stat. § 504B.345 (2022). We must rely, however, on the more specific statute. *See generally Connexus Energy v. Comm'r of Revenue,* 868 N.W.2d 234, 242 (Minn. 2015) (noting that, the more specific statutory provision controls); *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (concluding that this court has "the responsibility . . . to decide cases in accordance with law," despite "counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities." (quotation omitted)).

[3] As noted above regarding disbursements, the district court shall determine on remand whether landlord was the prevailing party. The general costs statute distinguishes between finding in favor of the plaintiff and designating the plaintiff as the prevailing party, and the applicable amounts to be ordered under this statute may also include an award of $5.50 to landlord if the district court designates landlord as the prevailing party.

awarding applicable costs to landlord, and we reverse and remand for further proceedings consistent with this opinion.

III. Attorney Fees

Finally, landlord argues that the district court erred by not awarding it attorney fees based on the fee provision in the parties' lease.[4] Because the district court did not explain its denial of attorney fees, we are unable to review the district court's exercise of discretion.

"The general rule in Minnesota is that attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute authorizing such recovery." *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 554 (Minn. 2008) (quotation omitted). "[L]eases are contracts to which we apply general principles of contract construction." *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012). Appellate courts "will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *rev. denied* (Minn. Aug.

[4] Tenants argue that landlord forfeited its attorney fees by failing to file a motion for attorney fees under Minnesota General Rule of Practice 119. That rule provides that "[i]n any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of $1,000.00 for the action, or more, application for award or approval of fees shall be made by motion." Minn. Gen. R. Prac. 119.01. However, rule 119 does not require strict compliance. *Rooney v. Rooney*, 782 N.W.2d 572, 577 (Minn. App. 2010) ("A district court has discretion to strictly enforce or to waive the requirements of rule 119 when considering a motion for attorney fees."); *see also Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999) (affirming award of attorney fees despite party's failure to file required affidavits). Landlord does not dispute that it failed to file a rule 119 motion. Landlord contends, however, that the judgment entered included a denial of attorney fees before landlord had the opportunity to file a posttrial motion requesting attorney fees. Similar to our discussion above regarding costs and disbursements, given the timing of the denial of attorney fees, landlord is not precluded from taking an appeal from this portion of the judgment.

21, 2007). A reviewing court will also reverse a district court's denial of attorney fees when it is unable to review the district court's exercise of discretion due to lack of an explanation. *See, e.g.*, *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987) (instructing district court to explain attorney fee decision on remand because supreme court was "unable to determine if there has been any abuse of discretion").

The lease in this case provided for a discretionary award of reasonable attorney fees to the prevailing party: "[t]he court may award reasonable attorney's fees and costs to the party who prevails in a lawsuit about the tenancy."[5] In such a situation, depending on the facts, it may have been within the district court's discretion to either award or deny landlord attorney fees. We are unable to review the district court's exercise of that discretion, however, because the district court did not explain its reasons for denying attorney fees. Nor can we be sure that the district court's decision was not based on a procedural error, erroneous factual findings, or a misinterpretation of the parties' contract. We therefore reverse and remand for the district court to provide rationale for its ruling on attorney fees.

Reversed and remanded.

[5] Tenants argue that because the parties' lease had expired at the time of trial, the lease provision allowing for attorney fees no longer applied. Tenants cite no relevant authority in support of this proposition, and we are aware of none.