STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1736

Thomas Knoll,
Appellant,

vs.

MTS Trucking, Inc., et al.,
Respondents.

Filed August 15, 2011
Affirmed in part, reversed in part, and remanded
Stauber, Judge

Anoka County District Court
File No. 02CV075591

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Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STAUBER, Judge

This is an appeal from judgment following a jury trial on appellant's claims arising out of respondents' deposit of contaminated fill on appellant's real property.

Appellant argues that the district court erred by (1) determining, on summary judgment, that his common-law claims are barred by the two-year statute of limitations for improvements to real property in Minn. Stat. § 541.051 (2010) and (2) awarding attorney fees to respondents under the Minnesota Environmental Response and Liability Act (MERLA) on the basis that respondents are the prevailing parties on appellant's MERLA claim. We affirm in part, reverse in part, and remand.

FACTS

Respondent Midwest Asphalt Corporation (Midwest) was awarded contracts for two street-reconstruction projects slated for 2003 and 2004 in the City of Columbia Heights. As part of the projects, Midwest milled the old street surface and left part of the millings in place to be used as a temporary driving surface. Later, when it was time to rebuild the street, Midwest removed the remaining asphalt millings and excavated the underlying fill to make room for the new roadbed. Midwest hired respondent MTS Trucking (MTS) to haul away the excavated fill from the project site.

The fill that was excavated from the project included a mixture of soil and asphalt millings. The Minnesota Pollution Control Agency (MPCA) considered the excavated fill to be a regulated waste due to the presence of asphalt in the soil. Consequently, Midwest was interested in locating a cost-effective dump-site for the excavated fill.

Gene Kohler, the owner of MTS, informed Midwest that appellant Thomas Knoll was looking for fill material. Knoll was the owner of real property located in Blaine. In 2002 and 2003, Knoll removed and sold black dirt from a 3.5 acre area in the northeast corner of his property. In order to prepare his property for potential development, Knoll

needed to import clean fill material to replace the black dirt that had been excavated. Knoll claims that based upon representations that the fill from the road project was "clean," he agreed to allow MTS to dump Midwest's excavated fill on his property. MTS deposited several thousand cubic yards of fill on Knoll's property in 2003 and 2004.

In February 2005, Ryan Companies (Ryan), a commercial development company, entered into a purchase agreement with Knoll to buy the property. Ryan contracted with an environmental consulting company to perform environmental testing as a preliminary step in the acquisition of the property. The testing revealed elevated diesel range organics (DROs) in the soil in areas of Knoll's property that contained fill from the road project. As a result of the DRO contamination, Ryan refused to purchase the property at the price listed in the purchase agreement unless Knoll removed the impacted soil.

Knoll hired ProSource Technologies, Inc. (ProSource) to assist him with the environmental issues. In July 2005, ProSource completed a report confirming that 90 percent of the fill contained low-level DRO contamination. ProSource also discovered that some of the fill soils were impacted with benzo(a)pyrene (BaP) equivalents. ProSource concluded that the contamination existed in the parts of Knoll's property where MTS had deposited the fill from the road project, and that the source of the DRO and BaP contamination was the asphalt millings that were present in the soils.

Based on the contamination findings, ProSource recommended that Knoll report the contamination to the MPCA. ProSource also recommended that Knoll prepare an application for entry into the MPCA Voluntary Investigation & Cleanup program and the Petroleum Brownfields Program to receive expedited technical reviews of the impacted

soils. Knoll followed ProSource's recommendation, and ProSource worked with the MPCA to develop a low-cost plan for removing and disposing of the contaminated soils. Ultimately, the MPCA approved a plan to remove all the contaminated soil to the East Bethel Landfill. Knoll removed the fill in July 2006, and, after subsequent testing revealed that the property was free from contamination, Ryan closed on the purchase of the property.

On August 29, 2007, Knoll brought suit against Midwest and MTS alleging negligence, misrepresentation, common-law trespass, and violation of MERLA. Knoll alleged that MTS and Midwest misrepresented to him that the fill deposited on his property was clean fill, and that the fill was the cause of the contamination on his property. Knoll sought damages of approximately $296,000 to recover the costs he incurred in connection with remediating the contamination of his property.

MTS and Midwest (collectively "respondents") moved for summary judgment on all counts and requested an award of fees and costs under Minn. Stat. § 115B.14 (2010), the provision in MERLA permitting such an award to a prevailing party. The district court denied the motion, concluding that factual issues concerning the non-MERLA claims needed to be resolved by a jury. The court also found that Knoll had voluntarily withdrawn his MERLA claim.

In March 2009, on the eve of the scheduled jury trial, respondents moved to amend their answers to add the affirmative defense that Knoll's claims were barred by the statute of limitations under Minn. Stat. § 541.051. The district court continued the jury

trial and later issued an order granting respondents' motion to amend their answers. The court also indicated that it would allow Knoll to amend his complaint.

Knoll filed an amended complaint alleging negligence, negligent misrepresentation, trespass, fraud, violations of MERLA, consumer fraud, unlawful trade practices, and deceptive trade practices. Knoll also alleged that respondents were liable under equitable principles. Respondents moved for summary judgment on the basis that all of the claims asserted in Knoll's amended complaint were barred by the two-year statute of limitations for improvements to real property.

The district court found that Minn. Stat. § 541.051, subd. 1(a), was applicable to Knoll's claims because Knoll intended to improve his real property when he arranged for respondents to dump the fill from the road project on his property. The court also found that Knoll was aware of the contamination in July 2005 when ProSource informed him that the property was indeed contaminated. Thus, the court concluded that, because Knoll did not serve his initial complaint until August 2007, more than two years after he learned of the contamination on his property, his common-law claims were time-barred under Minn. Stat. § 541.051, subd. 1(a). However, the court concluded that the MERLA claim survived summary judgment because there was an issue of material fact "as to whether the fill [respondents] deposited on [Knoll's] property was a hazardous substance."

A jury trial was held on the sole issue of whether respondents were liable under MERLA. The jury found that the contaminants that respondents dumped on Knoll's farm derived from petroleum. Based on this finding, the district court concluded that the

contaminants dumped by respondents were not hazardous substances because the contaminants fell within the "petroleum exclusion" to the definition of "hazardous substances" contained in MERLA. Thus, the district court dismissed Knoll's MERLA claim with prejudice.

Knoll moved for judgment as a matter of law or a new trial, which was denied. Respondents subsequently moved for an award of costs, disbursements, and fees under section 115B.14. The district court found that because respondents were the "prevailing party" under MERLA, they were entitled to reasonable costs, disbursements, and attorney fees. The court then determined that the combined costs, disbursements, and reasonable attorney fees incurred by respondents totaled approximately $300,000, and ordered that Knoll reimburse respondents for this amount. Knoll appeals.

D E C I S I O N

I.

Knoll first challenges the district court's conclusion that his common-law claims are barred by the two-year statute of limitations contained in Minn. Stat. § 541.051. In an appeal from summary judgment, we must determine whether there are any genuine issues of material fact and whether the district court erred in its application of law. *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The evidence will be viewed in the light most favorable to the party against whom summary judgment was granted. *Id.* "The construction and applicability of statutes of limitations are questions of law that this court reviews de novo." *Benigni v. Cnty of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998).

Minnesota law provides:

> Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective unsafe condition of an improvement to real property, shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after discovery of the injury, nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction.

Minn. Stat. § 541.051, subd. 1(a).

Knoll argues that the district court erred by applying the two-year statute of limitations contained in Minn. Stat. § 541.051, subd. 1(a), to all of his common-law claims because the contamination of Knoll's property did not constitute an "improvement" to real property within the meaning of Minn. Stat. § 541.051, subd. 1(a), and because common-law pollution claims are governed by a six-year statute-of-limitations period. Knoll also challenges the district court's grant of summary judgment on his continuing trespass claim, fraud and misrepresentation claims, and certain statutory claims.

A. Improvement to real property

An "improvement to real property . . . is defined as a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Siewert v. N. States Power Co.*, 793

N.W.2d 272, 286–87 (Minn. 2011) (quotations omitted). A "common sense" approach is taken when interpreting whether something constitutes an improvement to real property under Minn. Stat. § 541.051, subd. 1(a). *Williams v. Tweed*, 520 N.W.2d 515, 518 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). Moreover, the statute is to be construed "so that the plain meaning applies, without resort to technical legal constructions of its terms." *Id.*

Knoll argues that because section 541.051 is "designed to apply to legitimate contractors who construct improvements or supply materials for an improvement to real property," it is relevant to consider the "intent of the party claiming the protection of the statute." Knoll claims that respondents' intent was not to improve his property, but to simply get rid of the contaminated fill in a cost-effective manner. Thus, Knoll argues that the district court erred by concluding that the action here consisted of an "improvement to real property."

We disagree. Knoll cites no authority for his proposition that respondents' intent must be considered when determining whether the dumping of fill on Knoll's property constituted an "improvement" to the property. Moreover, the statute gives no indication that such intent need be considered. *See* Minn. Stat. § 541.051, subd. 1(a). Using a common-sense approach, Minnesota courts have determined that a variety of work done to real property constitutes an "improvement" for purposes of Minn. Stat. § 541.051. *See, e.g.*, *Capitol Supply Co. v. City of St. Paul*, 316 N.W.2d 554, 555 (Minn. 1982) (storm sewer); *Nelson v. Short Elliot-Hendrickson, Inc.*, 716 N.W.2d 394, 401 (Minn. App. 2006) (sedimentation pond), *review denied* (Minn. Sept. 19, 2006); *Matter v.*

Nelson, 478 N.W.2d 211, 213 (Minn. App. 1991) (drainage swale); *Johnson v. Steele-Waseca-Coop. Elec.*, 469 N.W.2d 517, 519 (Minn. App. 1991) (installation of electrical equipment and wiring in a barn), *review denied* (Minn. July 24, 1991); *O'Connor v. M.A. Mortenson Co.*, 424 N.W.2d 92, 94 (Minn. App. 1988) (unfinished stairway), *review denied* (Minn. July 28, 1988).

Here, the record reflects that Knoll wanted to bring in fill so that he could prepare his property to be sold for development. The fill respondents deposited was a permanent addition to the property and made the property more useful because it would be ready for construction. Moreover, by preparing the property for development, Knoll intended to improve the value of his property. Thus, a common-sense approach to this evidence dictates that respondents' depositing of the fill on Knoll's property constitutes an "improvement" to real property.

Knoll also contends that Minn. Stat. § 541.051, subd. 1(a), is not applicable because the presence of pollutants is not the same as "ordinary 'defects' in materials supplied for a construction project." To support his claim, Knoll contends that unlike an ordinary "defect" in material supplied for a construction project, the presence of contaminated substances in the soil exposes the property owner to a myriad of possible claims and regulations. But Knoll's argument presents a distinction without a difference. The statute provides that there must be a defective condition to an improvement to real property. Minn. Stat. § 541.051, subd. 1(a). The record reflects that Knoll was attempting to improve his property by arranging for respondents to deposit the fill on his property. The defective condition was the asphalt millings contained in the fill that

contaminated the property. Regardless of whether the fill contained pollutants or exhibited some other problem, the fill was defective. The district court did not err by concluding that the fill constituted an improvement to real property pursuant to Minn. Stat. § 541.051, subd. 1(a).

B. Applicability of section 541.051 to pollution claims

Knoll argues that because his claims are pollution-related claims, Minn. Stat. § 541.051 is not applicable. Rather, he argues that the much broader six-year statute of limitations in Minn. Stat. § 541.05 (2010) is applicable to his claims.

Minnesota law provides that the following actions, among others, shall be commenced within six years: (1) "a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;" (2) "for a trespass upon real estate;" (3) "for criminal conversion, or any other injury to the person or rights of another, not arising on contract;" and (4) "for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting fraud." Minn. Stat. § 541.05, subd. 1. By its plain language, the six-year statute of limitations contained in section 541.05, subdivision 1, applied to Knoll's equitable claims and his claims for negligence, negligent misrepresentation, trespass, fraud, consumer fraud, unlawful trade practices, and deceptive trade practices. Moreover, despite Knoll's characterization of his claims as "pollution claims," Minn. Stat. § 541.051 is also triggered because his claims arise out of an improvement to real property. Consequently, because both sections 541.05 and

541.051 could apply to Knoll's claims, there is an irreconcilable conflict between the two sections, and we must determine which provision controls.

When there is an irreconcilable conflict between two statutory provisions, the more particular provision prevails over the general provision. Minn. Stat. § 645.26, subd. 1 (2010). In *Ford v. Emerson Elec. Co.*, 430 N.W.2d 198 (Minn. App. 1988), *review denied* (Minn. Dec. 16, 1988), this court was faced with a similar conflict between section 541.051 and Minn. Stat. § 573.02 (1986).[1] In that case, the plaintiff brought a wrongful death action for the death of her husband, caused by a defective water heater. *Id.* at 199. This court found an irreconcilable conflict between the statutes and held that section 541.051 controlled because it was more particular and specific than section 573.02. *Id.* at 200–01 (holding that section 541.051 applies to wrongful death actions arising out of defects in improvements to real property); *see also Fagerlie v. City of Willmar*, 435 N.W.2d 641, 644 (Minn. App. 1989) (holding that section 541.051, subd. 1, applied to nuisance claim arising out of improvements to real property because it was more specific than the "catch-all" provision found in Minn. Stat. § 541.05, subd. 1(2)).

Here, a review of the conflicting statutes indicates that section 541.051 is the more particular provision because it is limited to actions involving improvements to real property. In contrast, the provisions in section 541.05, subdivision 1 are "catch-all" provisions that apply generally to all actions for liability created by statute where the statute creating liability specifies no limitations period. *See Fagerlie*, 435 N.W.2d at 644.

[1] Minn. Stat. § 573.02, subd. 1, provides that a wrongful death action (other than one resulting from murder or medical malpractice) must be brought within three years after the date of death, and within six years after the act or omission causing death.

Therefore, the statute of limitations contained in Minn. Stat. § 541.051 is applicable to Knoll's claims.

C. Continuing trespass, fraud and misrepresentation, and statutory claims

Knoll argues that the district court erred by granting summary judgment on (1) his continuing trespass claim and (2) his fraud, misrepresentation, and statutory claims.

1. Continuing trespass claim

Knoll initially challenges the applicability of section 541.051 to his continuing trespass claim on the basis that the statute is "limited solely to cases where the claim is based on physical injury to persons or property." Knoll contends that because his claimed injury was to his possessory interest in the land rather than a physical injury to his property, the statute of limitations contained in section 541.051 does not apply to his continuing trespass claim. Thus, Knoll argues that summary judgment on his continuing trespass claim was erroneous.

Knoll correctly points out that Minn. Stat. § 541.051 is limited to "injury to property, real or personal . . . arising out of the defective and unsafe condition of an improvement to real property." But despite the contamination of the soil, Knoll still enjoyed the exclusive right to possession of his property and there is no evidence to indicate otherwise. Although Ryan declined to purchase the property at the price agreed upon in the purchase agreement, the record indicates that Ryan would have purchased the property with the contaminated soil for a lesser price. The fact that Knoll could have sold the property at a lesser price despite the alleged contaminated soil demonstrates that the alleged injury was the physical injury to his property. Indeed, this court held that the

two-year statute of limitations contained in section 541.051 applied to the landowner's trespass claim when the alleged injuries were physical injuries to the property stemming from flooding that regularly took place on the landowner's property from a defective storm sewer system installed by the city on an adjacent property. *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 497 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). Because the actual injury was to Knoll's property rather than his possessory interest in the property, section 541.051 is applicable.

Knoll also contends that even if section 541.051 is applicable to his continuing trespass claim, his claim is not barred by the two-year statute of limitations because the alleged conduct was a continuing trespass, and therefore, the trespass did not end until he removed the contaminated fill in July 2006. Knoll argues that because he filed his cause of action in August 2007, less than two years after the trespass ended in July 2006, his trespass claim in not barred by Minn. Stat. § 541.051.

The tort of trespass "encompasses any unlawful interference with one's person, property, or rights, and requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant." *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). A trespass may be permanent or continuing. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 233–34 (Minn. 2008). The "test to determine whether the claimed trespass . . . is permanent or continuing is whether the whole injury results from the original wrongful act . . . or from the wrongful *continuance* of the state of facts produced by such act." *Id.* at 234 (quotation omitted).

> A permanent injury to real property . . . is one of such a character and existing under such circumstances that it will be presumed to continue indefinitely. A temporary, or continuing injury is one that may be abated or discontinued at any time, either by the act of the wrongdoer, or by the injured party.

Id. (quoting *Worden v. Bielenberg*, 119 Minn. 330, 332, 138 N.W. 314, 315 (1912)).

Respondents argue that the claimed trespass is not a continuing trespass because "all" of the caselaw supporting a continuing trespass theory involve property owned or possessed by the party that was interfering with the plaintiff's rightful possession. Respondents argue that because they no longer owned or possessed the fill after Knoll accepted it and it was deposited on his property, the alleged trespass cannot be a continuing trespass.

Our review of the caselaw does not support respondents' characterization of the caselaw involving the tort of continuing trespass. Moreover, we cannot accept respondents' claim that there was no continuing trespass because Knoll accepted and possessed the fill. To do so would effectively conclude that there was no trespass as a matter of law. Instead, Minnesota law states that resolution of the issue "centers on the nature of the wrong complained of." *Id.* (quotation omitted). If the wrong complained of is the act of depositing contaminated soil on Knoll's property, the trespass is permanent. *See, e.g.*, *Worden* at 332, 138 N.W.2d at 315 (concluding that the act of making excavations in a street constituted a permanent trespass because "the wrong result[ed] from the completed act"); *Ziebarth v. Nye* 42 Minn. 541, 542–44, 44 N.W. 1027, 1027–28 (1890) (concluding that there was a single trespass where "[t]he alleged trespass

consisted of a single tortious act upon the land of the plaintiff"–unlawfully excavating two parallel ditches on the plaintiff's farm and constructing an embankment). In contrast, if the wrong complained of is some continuing or reoccurring intrusion onto the landowner's property, the trespass is continuing. *See, e.g., Bowers v. Mississippi & Rum River Boom Co.*, 78 Minn. 398, 403, 81 N.W. 208, 209–10 (1899) (concluding that the acts of the defendant in placing and maintaining piling in a river, which caused water, logs, and ice to drive upon the shore of the landowner's property, were in the nature of a continuing trespass); *Mathews v. St. Paul & Sioux City R.R. Co.*, 18 Minn. 434, 440–41, 18 Gil. 392, 395–96 (1872) (concluding that construction and operation of a railroad through the plaintiff's pasture constituted a continuing trespass in a suit involving an injury to a cow); *Harrington v. St. Paul & Sioux City R.R. Co.*, 17 Minn. 215, 224–25, 17 Gil. 188, 203–05 (1871) (concluding that a continuing trespass resulted from the construction of a railroad and the continuous operation of trains over the property of the plaintiffs, which interfered with their use and enjoyment of their premises and rendered access to the street inconvenient and unsafe).

We acknowledge that the applicable test and relevant caselaw applying that test are nebulous. But we conclude that the facts presented here parallel the caselaw finding a permanent rather than a continuous trespass. The wrong complained of was the depositing of contaminated fill rather than clean fill. Once the fill was deposited, the alleged trespass ended and there was no reoccurring intrusion. Therefore, we conclude that the alleged trespass is permanent rather than continuous, and the district court

properly concluded that Knoll's trespass claim is barred by the two-year statute of limitations.

2. Other claims

Knoll further argues that his claims for fraud and misrepresentation, along with his statutory claims, do not involve physical injury to property. Rather, Knoll contends that these claims involve only financial harm. Knoll argues that these claims are covered by the six-year statute of limitations and, therefore, section 541.051 is not applicable to these claims.

We disagree. Knoll's claims all arise out of the improvement to his property and the physical injury his property sustained as a result of respondents' actions. Although Knoll suffered financial harm from respondents' actions, the underlying harm stemmed from the damage to the property. Moreover, while Knoll is correct that the six-year statute of limitations may apply to these claims, as discussed above, section 541.051 also applies to the claims because the alleged injuries arose out of the defective improvements to Knoll's real property. Because section 541.051 is the more specific provision, it governs these claims. Accordingly, the district court did not err by granting summary judgment on Knoll's remaining claims.

II.

Knoll argues that the district court erred by granting respondents' request for attorney fees under MERLA. This court will not reverse a district court's award or denial of attorney fees absent an abuse of discretion. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). When the determination of the appropriateness of

attorney fees involves the construction of a statute, a question of law, this court reviews such construction de novo. *See Deli v. Hasselmo*, 542 N.W.2d 649, 655 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

The object of statutory construction is "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). If that intent is clear from the plain and unambiguous language of the statute, this court will apply the plain meaning of the statute. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "Under the basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage." *ILHC of Eagan, LLC v. Cnty of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

MERLA provides that "[u]pon motion of a party prevailing in an action under [MERLA] the court *may* award costs, disbursements and reasonable attorney fees and witness fees to that party." Minn. Stat. § 115B.14 (emphasis added). The district court concluded that respondents were the prevailing party and awarded attorney fees to respondents based on section 115B.14.

Knoll argues that a prevailing defendant in a MERLA action may only recover fees if the plaintiff's claim was frivolous or brought in bad faith. Knoll contends that because his claims were not frivolous or brought in bad faith, the district court erred by granting fees in favor of respondents.

To support his claim, Knoll cites *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S. Ct. 694 (1978). In that case, a successful defendant in an employment-discrimination action under Title VII of the Civil Rights Act was awarded attorney fees under a provision of the Act that provides a district court with discretion to award the prevailing party reasonable attorney fees. *Id.* at 412, 98 S. Ct. at 696–97. In reversing the attorney fee award, the Supreme Court held that while prevailing plaintiffs are entitled to attorney fees under the Civil Rights Act in all but special circumstances, prevailing defendants are entitled to attorneys fees much less frequently. *See id.* at 417–18, 98 S. Ct. at 698–701. Relying on the legislative history to Title VII, the Court found that Congress intended to provide incentives for private enforcement of the civil-rights laws while at the same time affording some protection to defendants from litigation "having no legal or factual basis." *Id.* at 420, 98 S. Ct. at 700. Noting that defendants would be entitled to attorney fees even in the absence of a statute for suits brought in subjective bad faith, *id.* at 419, 98 S. Ct. at 699, the Court held that bad faith is not required for recovery. "In sum," the Court held, "a district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Id.* at 421, 98 S. Ct. at 700.

The Minnesota Supreme Court has adopted the *Christiansburg* standard for attorney fee requests under the Minnesota Human Rights Act (MHRA). *Sigurdson v. Isanti Cnty*, 386 N.W.2d 715, 723 (Minn. 1986). In *Sigurdson*, the supreme court explained the limited circumstances under which attorney fees are available to defendants

under Minn. Stat. § 363.14, subd. 3, (1984), the then-existing attorney-fee provision in the MHRA:

> Policy reasons support adoption of the federal standard for awarding attorney fees in cases brought under the [MHRA]. An obvious reason for enactment of subdivision 3 of section 363.14 was to encourage victims of discrimination to bring suit, particularly where the relief sought is not a large money judgment, and to make legal counsel available in these cases. Making awards of attorney fees equally available to prevailing defendants would likely produce the reverse of the intended effect. Victims with legitimate cases would be discouraged from filing suit, fearing that if they did not prevail, they might be liable for substantial attorney fees incurred by a defendant. Moreover, the typically substantial difference in resources between plaintiffs and defendants in employment discrimination cases supports the conclusion that awards of attorney fees should not be available to prevailing defendants on the same basis as to prevailing plaintiffs. We hold, therefore, that a trial court may, in its discretion, award attorney fees to a prevailing defendant, pursuant to section 363.14, subd. 3, only upon a finding that the employee's action was frivolous, unreasonable, or without foundation, or was brought in bad faith.

Id. at 722–23.

Knoll argues that the *Christiansburg* standard applied in *Sigurdson* should also be applied to the attorney fees issue here. We disagree. The attorney fee issue before us involves MERLA, whereas the *Christiansburg* standard was applied to the MHRA in *Sigurdson*. In *Sigurdson*, the supreme court recognized that the attorney fees statute in the MHRA was enacted to encourage victims of discrimination to bring suit. *Sigurdson*, 386 N.W.2d at 722. The court adopted the *Christiansburg* standard recognizing that victims with legitimate discrimination cases could be discourage from filing suit if they feared that if they did not prevail, they might be liable for substantial attorney fees

incurred by a defendant. *Id.* In contrast, this case lacks the public-interest circumstances that warrant the adoption of the *Christiansburg* standard. As the district court found, there was no public interest in Knoll pursuing his claim. Rather, Knoll acted purely for his own private interests–he wanted the contaminated soil removed so that he could sell his property for a higher price. In fact, as respondents point out, it was unnecessary to remove the soil. The record reflects that the MPCA would have allowed the impacted soil to be left in place, and the property still could have been used for development as a parking lot. Therefore, on this record, we decline to extend the *Christiansburg* standard to apply to attorney fees claims involving MERLA.

Knoll further argues that the district court abused its discretion by awarding attorney fees to respondent because the court failed to offer an explanation for the award. We agree. The general rule is that parties are responsible for their own attorney fees in the absence of a statutory or contractual provision to the contrary. *Sazama Excavating, Inc. v. Wausau Ins. Cos.*, 521 N.W.2d 379, 383 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). Under MERLA, the prevailing party "may" be awarded attorney fees. Minn. Stat. § 115B.14. Although the district court found that respondents were the prevailing parties, an award of attorney fees was not mandatory under the statute. *See* Minn. Stat. § 645.44, subd. 15 (2010) ("'May' is permissive."). Because an award of attorney fees was not mandatory under the statute, the district court was obligated to provide a basis for awarding fees in favor of respondents. *See Becker*, 401 N.W.2d at 661 (stating that on remand, the district court must state why it denied a request for attorney fees).

Here, the record reflects that Knoll's claims were not frivolous or brought in bad faith. In fact, the jury found that respondents caused contaminants to be released on Knoll's property, causing Knoll's damages. Knoll lost his MERLA action based on a very narrow statutory exclusion.[2] Moreover, Knoll's other legitimate claims never reached the jury because they are time-barred by the two-year statute of limitations– another close and contentious issue. And, were it not for respondents' eleventh-hour motion to amend their answers to include the statute-of-limitations defense, the MERLA action would not have been before the jury because, at the time, Knoll had withdrawn his MERLA claim. If respondents had gone to trial and prevailed at that time, attorney fees would mostly likely not have been awarded to respondents because the statute under which respondents were awarded fees was not pleaded at that time. Respondents bear responsibility for their failure to timely plead their defenses, resulting in the need for Knoll to reinstate his MERLA claim and expend time and effort and incur trial preparation costs on a new theory. Thus, the record before us certainly supports a decision to deny respondents' request for attorney fees under MERLA. Nevertheless, the district court must decide whether an award of attorney fees is equitable and provide a

[2] In its special verdict, the jury answered affirmatively that both respondents were responsible for releasing the contaminant PAH onto Knoll's property and significantly contributed to Knoll's damages. The jury also concluded that "the PAH compounds" were "petroleum/crude oil based." Thereupon, the district court determined that because the PAH compounds "were petroleum/crude oil based," they fell under the "petroleum exclusion" from an otherwise hazardous substance under Minn. Stat. § 115B.02, subd. 8 (2010).

reasoned basis for its decision. Accordingly, we reverse and remand the award of attorney fees for findings on the attorney fees issue.

Affirmed in part, reversed in part, and remanded.