STATE OF MINNESOTA

IN SUPREME COURT

A19-2083

Court of Appeals

Anderson, J.
Took no part, Chutich, J.

Joseph Roach, et al.,

Respondents,

vs.

Filed: July 21, 2021
Office of Appellate Courts

County of Becker,

Defendant,

Thomas Alinder, et al.,

Appellants,

and

Gary Heitkamp Construction, Inc., et al.,

Appellants.

Denis E. Grande, Zachary P. Armstrong, DeWitt LLP, Minneapolis, Minnesota, for respondents.

Steven F. Lamb, Vogel Law Firm, Fargo, North Dakota, for appellants Thomas Alinder, et al.

Michael J. Morley, Victoria A. Thoreson, Morley Law Firm, Grand Forks, North Dakota, for appellants Gary Heitkamp Construction, Inc., et al.

SYLLABUS

1. Acceptance of a remittitur in lieu of a new trial does not bar an appeal that raises issues separate and distinct from the remittitur order.

2. A violation of a watershed district rule asserted as part of a tort claim but that is neither pleaded as, nor held to be, a basis for the claim does not suffice for an award of attorney fees under Minn. Stat. § 103D.545, subd. 3 (2020).

Affirmed in part and reversed in part.

OPINION

ANDERSON, Justice.

This dispute involves the violation of a Pelican River Watershed District rule during the construction of a home on lakeside property owned by appellants Thomas and Sandra Alinder, which resulted in damage to property owned by their neighbors, respondents Joseph and Jennifer Roach. Appellants Gary Heitkamp and Gary Heitkamp Construction, Inc. (collectively Heitkamp) built the Alinder home.

The Roaches brought nuisance, negligence per se, and trespass claims against the Alinders and Heitkamp. After years of litigation, a jury trial was held to address certain unresolved issues, primarily damages. The jury awarded the Roaches damages, including $300,000 in future damages. The Roaches moved for attorney fees, which the district court denied based on the conclusion that the watershed statute under which fees were sought, Minn. Stat. § 103D.545, subd. 3 (2020), did not apply. In response to posttrial motions by the Alinders and Heitkamp, the district court also conditionally ordered a new trial unless the Roaches accepted a remittitur of the future damages award to zero.

The Roaches accepted the remittitur on future damages, then appealed several issues to the court of appeals, including the denial of attorney fees. The Alinders and Heitkamp argued that the Roaches' acceptance of the remittitur barred the appeal. The court of appeals determined that the Roaches' appeal was not barred by acceptance of the remittitur and held that the Roaches could seek attorney fees under Minn. Stat. § 103D.545, subd. 3. We agree with the conclusion that the Roaches are permitted to appeal issues separate and distinct from the subject of the remittitur order, but we conclude that attorney fees are not authorized under the statute. We therefore affirm in part and reverse in part the decision of the court of appeals.

FACTS

The Roaches own property on the shoreline of Lake Melissa in Becker County. The Alinders own adjacent property, also on the shoreline of Lake Melissa, directly south of the Roaches' property. In 2003, the Alinders applied to Becker County for a permit to construct a home on their property and hired Gary Heitkamp Construction, Inc. for the project. In 2004, the Roaches filed a zoning complaint with Becker County, asserting that fill was improperly added to the Alinders' property during construction, raising the elevation of the property and increasing water runoff to neighboring properties. No permit to add fill was obtained, in violation of Becker County zoning ordinances and Pelican River Watershed District rules.

In 2005, during ongoing zoning proceedings, the Roaches began litigation against Becker County, the Alinders, and Heitkamp. This litigation has a lengthy procedural history that includes multiple appeals to the court of appeals and a significant volume of

motion practice.[1] We include only those facts that are directly relevant to the issues before us. In the litigation, the Roaches sought declaratory relief, petitioning for a writ of mandamus directing Becker County to enforce the zoning ordinances by compelling the Alinders to remove the added fill; they also sought damages from Becker County for a claim of inverse condemnation. The Roaches brought nuisance, negligence per se, and trespass claims against the Alinders and Heitkamp.

In 2015, the district court bifurcated the matter and held a bench trial on the declaratory relief claim. The court found that the Alinders failed to obtain the required permits from Becker County and from the Pelican River Watershed District for the placement and movement of fill on their property during the construction of the home. The court ordered Becker County to enforce its zoning ordinance with the consultation and participation of the Pelican River Watershed District. The court required certain restoration work on the Alinders' property but concluded that the Alinders were not required to remove the completed home.

In 2017, the district court partially granted a motion for summary judgment brought by the Roaches. The court held that the Roaches had sufficiently proven the elements of nuisance and negligence per se against the Alinders.

In 2019, the remaining issues, including damages, were addressed at a jury trial—the events that followed paved the way for this appeal. The jury awarded the Roaches

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[1] *See In re Decision of Becker Cnty. Zoning Adm'r*, No. A07-1580, 2008 WL 4224508 (Minn. App. Sept. 16, 2008); *Roach v. County of Becker*, No. A12-0132, 2012 WL 6097133 (Minn. App. Dec. 10, 2012), *rev. denied* (Minn. Feb. 19, 2013); *Roach v. County of Becker*, No. A16-0915, 2017 WL 1316117 (Minn. App. Apr. 10, 2017).

$564,800 in damages, including $300,000 for future damages. Following the trial, the Roaches moved for attorney fees under a statute that permits fees to be awarded in a dispute that arises from or is related to a rule made by a watershed district; the Roaches also moved for costs and disbursements and preverdict interest. In separate motions, the Alinders and Heitkamp challenged the jury's future damages award and requested a remittitur of those damages or, in the alternative, a new trial. The Roaches moved for judgment as a matter of law as to their right to preverdict and postverdict interest.

In an order addressing the various posttrial motions, the district court denied the Roaches' motion for attorney fees on the basis that the statute under which the Roaches sought fees, Minn. Stat. § 103D.545, subd. 3, "is not intended to apply to a situation like this case" because a watershed district was never a party and "it would be a stretch" to say that this dispute was related to a rule made by a watershed district. The court granted in part the Roaches' motion for costs and disbursements, reducing as unreasonable the charges from one expert. The court also granted in part the Roaches' motion for preverdict interest but determined that the period of accrual should end in 2015 when the court bifurcated the proceedings.

The district court also conditionally granted the motions for a new trial brought by Heitkamp and the Alinders on the ground that the Roaches failed to prove future damages to a reasonable certainty. The court ordered a "new trial on the issue of damages" unless the Roaches "accept[ed] a remittitur of the future damages award from $300,000 to $0.00 and of costs and disbursements from $93,213.08 to $74,574.20." The court calculated the

final award as $514,885.77, not including postjudgment interest.[2] If the Roaches did not accept the remittitur, the court would order a new trial "on all issues" because the court could not determine whether the future damages award was attributed to the completed house or to the lake lot.

The Roaches petitioned the court of appeals for discretionary review of the district court's order conditionally granting a new trial unless the remittitur was accepted, which the court of appeals denied. *Roach v. County of Becker*, No. A19-1445, Order at 4 (Minn. App. filed Oct. 8, 2019). The Roaches ultimately accepted the remittitur, and the district court filed an amended and final order for judgment. The order specified that the final award for the Roaches was $514,885.77, which included costs and disbursements as well as preverdict interest.[3] The order also repeated that no attorney fees were awarded to any party.

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[2] The court provided the following breakdown of damages, costs, disbursements, and preverdict interest:

- Damage to Lake Lot ($10,000 * 80%): $8,000.00
- Damage to Cabin ($200,000 * 80%): $160,000.00
- Nuisance Damages: ($50,000 * 80%): $40,000.00
- Trespass Damages (against Heitkamp): $4,800.00
- Costs and Disbursements: $74,574.20
- Preverdict Interest: $227,511.57

The jury had attributed 20 percent fault to Becker County, thus the Alinders and Heitkamp were jointly liable for 80 percent of the damages resulting from claims asserted against all three defendants.

[3] Although the record is not entirely clear about the nature of an apparent clerical error, after correcting the error, the final award to the Roaches was $504,449.11.

The Roaches appealed from the final judgment, challenging the district court's rulings on attorney fees, preverdict interest, and several other issues not relevant to the matters before us. The court of appeals affirmed in part and reversed in part. *Roach v. County of Becker*, No. A19-2083, 2020 WL 4281003, at *1 (Minn. App. July 27, 2020). The court of appeals first concluded that the appeal was proper despite acceptance of the remittitur because the record contained "no evidence that the Roaches intentionally relinquished any known right to appeal" and "the [district court's] order did not specify that *acceptance* of the remittitur" would operate as a waiver of their right to appeal other issues. *Id.* at *3. The court of appeals next held that the district court erred by limiting the time period for accrual of the Roaches' preverdict interest because there was no basis in Minnesota law to support a reduction in the accrual timeframe. *Id.* at *4. Finally, as is relevant here, the court of appeals held that section 103D.545, subdivision 3, authorized attorney fees in this case because "the statute broadly and unambiguously" allows fees in any civil case that "has a connection, association, or logical relationship" to a watershed rule and "[t]his civil action relates to a watershed-district rule." *Id.* at *6–7. The court of appeals remanded for a determination by the district court of whether attorney fees are appropriate under the circumstances here. *Id.* at *7.

Heitkamp and the Alinders subsequently sought review in separate petitions. We granted review of two issues.

ANALYSIS

The first issue presented by this appeal is whether the Roaches could appeal after accepting the district court's remittitur in lieu of a new trial. The second issue presented is

whether the court of appeals correctly concluded that Minn. Stat. § 103D.545, subd. 3, authorizes attorney fees here.

I.

We first address whether the Roaches could pursue an appeal after accepting the remittitur that reduced the future damages award to zero. The appeal challenged numerous orders of the district court, including the reduction in the period of accrual for preverdict interest and the denial of attorney fees.

Remittitur is relief ordered by a district court after determining that a jury award was excessive. *See Daly v. McFarland*, 812 N.W.2d 113, 127 (Minn. 2012). The objective of remittitur " 'is to avoid the delay and expense of an appeal or a new trial.' " *Jangula v. Klocek*, 170 N.W.2d 587, 593 (Minn. 1969) (quoting *Plesko v. City of Milwaukee*, 120 N.W.2d 130, 135 (Wis. 1963)). The use of remittitur is well established in Minnesota. *See Podgorski v. Kerwin*, 179 N.W. 679, 680 (Minn. 1920). Under the common law, a plaintiff's acceptance of a remittitur generally bars the plaintiff from challenging the reduced award on appeal. *Jangula*, 170 N.W.2d at 592; *see also Donovan v. Penn Shipping Co.*, 429 U.S. 648, 649 (1977) ("A line of decisions stretching back to 1889 has firmly established that a plaintiff cannot appeal the propriety of a remittitur order to which he has agreed.").

We have acknowledged that, although a plaintiff cannot challenge a reduced award on appeal once it has been accepted in district court, an exception to the general rule exists. *See Jangula*, 170 N.W.2d at 588. A plaintiff may challenge the propriety of a remittitur on a proper cross-appeal when the defendant initiates the appeal. *Id.* at 593–94. Therefore,

accepting a remittitur binds the plaintiff to that relief unless the defendant first appeals and the plaintiff cross-appeals to challenge the reduced damages. Thus, because the Alinders and Heitkamp did not initiate an appeal here, the *Jangula* rule does not apply to the Roaches' appeal.

We have not previously considered whether acceptance of a remittitur prevents a plaintiff from making a direct appeal from a final judgment with respect to issues unrelated to the remittitur. "This court has the power to recognize and abolish common law doctrines." *Larson v. Wasemiller*, 738 N.W.2d 300, 303 (Minn. 2007).

A.

The Alinders and Heitkamp urge us to hold that the common law rule—acceptance of a remittitur precludes a plaintiff from challenging the reduced award on appeal—bars a plaintiff from appealing all issues following acceptance of the remittitur unless the defendant first appeals, which would trigger the *Jangula* exception. They also argue that this broad rule barring all appeals by a plaintiff after acceptance of a remittitur is necessary to foster judicial economy and finality in litigation.

The Roaches contend that they waived their right to appeal only the reduction of future damages but not their right to appeal other issues. They encourage us to adopt what is known as the separate and distinct rule, which allows appeals on issues that are separate and distinct from the subject of the remittitur. The Roaches claim that the issues of preverdict interest and attorney fees are separate and distinct from the subject of the remittitur and, therefore, are appealable despite acceptance of the remittitur. They argue

that the separate and distinct rule promotes judicial economy by resolving issues on appeal that would not be addressed by a second trial, even if a remittitur is rejected.

The Alinders and Heitkamp counter, arguing that, even if we adopt the separate and distinct rule, the appeal here was still not proper because the attorney fees and preverdict interest determinations were bound up in the damages award and thus not separate and distinct from the subject of the remittitur. In other words, they contend that accepting the remittitur bound the Roaches to the total amount awarded in the district court's order and that the attorney fees and preverdict interest determinations cannot be severed from that total because the district court specifically noted that those awards—or lack thereof, in the case of attorney fees—were addressed in the post-trial order. The Alinders and Heitkamp contend that allowing parts of a judgment to be separated from the remitted judgment would create uncertainty and inconsistency, thus threatening judicial economy.

"We often look to case law from other states for guidance when our own jurisprudence is lacking," and we also look to federal law when it is helpful. *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 402 n.9 (Minn. 2002). A number of courts, both state and federal, have applied the separate and distinct rule.[4] Further, we know of no court that

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[4] *See Templeton Feed & Grain v. Ralston Purina Co.*, 446 P.2d 152, 156–57 (Cal. 1968) (in bank); *Cohen v. Yale-New Haven Hosp.*, 800 A.2d 499, 502–06 (Conn. 2002); *Kornegay v. Aspen Asset Grp., LLC*, 693 S.E.2d 723, 741–42 (N.C. Ct. App. 2010); *Call Carl, Inc. v. BP Oil Corp.*, 554 F.2d 623, 626–27 (4th Cir. 1977); *Lanier v. Sallas*, 777 F.2d 321, 325 (5th Cir. 1985); *Denholm v. Houghton Mifflin Co.*, 912 F.2d 357, 359–60 (9th Cir. 1990); *Utah Foam Prods. Co. v. Upjohn Co.*, 154 F.3d 1212, 1216 (10th Cir. 1998); *Aaro, Inc. v. Daewoo Int'l (Am.) Corp.*, 755 F.2d 1398, 1401 (11th Cir. 1985).

considered the separate and distinct rule and rejected that rule entirely.[5] Of the jurisdictions that have considered the separate and distinct rule, all have determined that there are some matters that a plaintiff can appeal directly despite acceptance of a remittitur. The difference among courts is how the category of appealable issues is defined.[6]

For the reasons that follow, we adopt the separate and distinct rule. We find two decisions particularly instructive in our decision to do so. In *Templeton Feed & Grain v. Ralston Purina Co.*, the California Supreme Court held that the plaintiff's consent to a remittitur did not preclude an appeal from the judgment on a severable issue. 446 P.2d 152, 156–57 (Cal. 1968) (in bank). The plaintiff challenged the trial court's refusal to instruct the jury on exemplary damages. *Id.* at 153. The court determined that it could not assume that the plaintiff, "in agreeing to the remittitur, also acquiesced in the trial court's separate and distinct denial of [the] plaintiff's right to recover punitive damages." *Id.* at 158. The court concluded that correction of the error urged by the plaintiff—the failure to instruct on exemplary damages—"would not itself necessitate the reopening of the entire judgment" and could, therefore, be appealed by the plaintiff despite acceptance of the remittur. *Id.* at 157.

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[5] A few jurisdictions that have addressed the rule have not expressly adopted or rejected it; rather, these jurisdictions determined that it did not apply to the dispute before the court. *See Deans v. E. Me. Med. Ctr.*, 454 A.2d 835, 837 (Me. 1983); *Kneas v. Hecht Co.*, 262 A.2d 518, 520–21 (Md. 1970).

[6] *See, e.g.*, *Templeton*, 446 P.2d at 157 (concluding that the issue could be appealed because it would not "necessitate the reopening of the entire judgment"); *Cohen*, 800 A.2d at 504–05 (concluding that issues were not separate and distinct because there was evidence in common between them and they could result in overlapping verdicts).

The adoption of the separate and distinct rule by the Connecticut Supreme Court in *Cohen v. Yale-New Haven Hospital* also provides useful guidance. 800 A.2d 499, 502–06 (Conn. 2002). In *Cohen*, the plaintiff challenged on appeal the trial court's decision not to charge the jury on a particular causation question as well as the court's decision to set aside the verdict on one specific issue. *Id.* at 502. After the trial, the court ordered a remittitur of the jury's damages award, which the plaintiff accepted. *Id*. On appeal, the supreme court considered whether acceptance of the remittitur barred the plaintiff from appealing the court's decision on these two particular issues. *Id.* at 503. The court noted that appeals on issues "separate or distinct from the issue on which a plaintiff has accepted a remittitur" were not precluded. *Id.* at 504. But the court determined that the issues on appeal were not separable because the appeal sought to obtain additional compensatory damages for the same cause of action and of the same type as the damages that were the subject of the remittitur; thus, allowing an appeal could result in overlapping verdicts because there was evidence in common to the issue on which remittitur was accepted and the issues plaintiff sought to appeal. *Id.* at 504–05.

In addition to these decisions, we also consider the overall objective of remittitur, which is to "avoid the delay and expense of an appeal or a new trial" when the district court determines that a jury's award is excessive. *Jangula*, 170 N.W.2d at 593 (quoting *Plesko*, 120 N.W.2d at 135). In other words, remittitur allows the district court to correct jury error. *See Podgorski*, 179 N.W. at 680 (explaining that remittitur is not an encroachment on the province of the jury but merely corrects an error).

Considering the purpose of remittitur and the notion that it serves merely as error correction, it makes sense that accepting a remittitur should necessarily bar appeals only on damages awarded by the jury. Allowing remittitur to bind plaintiffs to decisions completely separate from a jury's award expands remittitur beyond its intended objective—a necessary correction to a mistaken jury decision—and insulates erroneous district court decisions from any review on appeal. Additionally, we find persuasive the Roaches' argument that the separate and distinct rule fosters judicial economy because, without it, the Roaches would have to reject the remittitur and undergo a new trial on damages before they could appeal the district court's posttrial rulings that would be unaffected by that second trial.[7]

Because the separate and distinct rule allows an appeal on issues that are unrelated to a remittitur, it is consistent with sound appellate practice and promotes judicial economy. We therefore adopt that rule.

A.

The Alinders and Heitkamp contend that, even under the separate and distinct rule, the issues of attorney fees and preverdict interest are not separate and distinct appealable issues in this case. We disagree.

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[7] The Eleventh Circuit, addressing facts similar to those before us in this case, explained that rejecting the separate and distinct rule would cause a district court's order on legal determinations to be "appealable by the plaintiffs only after a new trial on the damages issue, despite the fact that neither party contests the court's resolution of the damages issue. Such a result would be illogical and a waste of judicial resources." *Aaro, Inc.*, 755 F.2d at 1401 n.6.

Although jurisdictions that have adopted this rule do not have a uniform definition of what issues are "separate and distinct,"[8] we conclude that the issues of attorney fees and preverdict interest are separate and distinct from the remittitur on future damages under any definition and that we need not expressly define the contours of the separate and distinct rule in this appeal. It is enough to say that a legal determination made by the district court and never presented to, or considered by, the jury is an issue that is separate and distinct from a remittitur.

Here, the issues of attorney fees and preverdict interest were addressed by the district court in its order on posttrial motions and were never considered by the jury. The district court made legal determinations based solely on its understanding of the law. Put another way, the jury never considered whether Minn. Stat. § 103D.545, subd. 3, authorized attorney fees here or whether the Roaches were entitled to preverdict interest and for what time period. Further, the jury's findings of fact were unrelated to, and irrelevant for, the court's determination of these issues.[9]

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[8] Other state courts that have adopted the rule consider issues to be separate and distinct when those issues do not have evidence in common, when review of one issue does not require reopening the entire judgment, or when review of one issue would not result in overlapping verdicts. *See Cohen*, 800 A.2d at 504–05; *Templeton Feed & Grain*, 446 P.2d at 157.

[9] The Alinders' and Heitkamp's reliance on the Tenth Circuit's decision in *Alley v. Gubser Development Co.*, 785 F.2d 849 (10th Cir. 1986), is unpersuasive because that decision is inapposite to the issues presented here. The question in that case was whether accepting a remittitur "under protest" preserved the right to appeal any issues whatsoever. *Id.* at 857. Thus, while the Tenth Circuit concluded that the plaintiff could not appeal the district court's denial of attorney fees (or the remittitur of punitive damages), the court did not contemplate whether attorney fees would be a separate and distinct issue because the court did not consider the separate and distinct rule. The court was simply presented with

Therefore, we conclude that, at the very least, the legal issues determined by the district court are separate and distinct issues from the remittitur of the jury's future damages award. Thus, the Roaches' appeal of the district court's rulings on attorney fees and preverdict interest is proper despite their acceptance of the remittitur, and we affirm the court of appeals' decision on this issue.

II.

We turn next to whether the court of appeals erred by holding that attorney fees were authorized in this case under Minn. Stat. § 103D.545, subd. 3, a provision governing watershed districts. We conclude that it did so.

Statutory interpretation is a question of law, which we review de novo. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).[10] Section 103D.545, subdivision 3, provides: "In any civil action arising from or related to a rule, order, or stipulation agreement made or a permit issued or denied by the managers under this chapter, the court may award the prevailing party reasonable attorney fees and costs."[11] Section 103D.545 as a whole addresses enforcement, and subdivisions 1 and 2 provide for particular kinds of criminal and civil enforcement methods. Minn. Stat. § 103D.545.

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the question of whether accepting a remittitur "under protest" could preserve the right to appeal—a question that is irrelevant to our resolution of the issues before us.

[10] The Alinders and Heitkamp contend that the standard of review is an abuse of discretion. However, the issue presented here is whether the statutory language allows attorney fees in the first instance. This is purely a legal determination that calls for de novo review.

[11] "Managers" is defined as "the board of managers of a watershed district." Minn. Stat. § 103D.011, subd. 15 (2020).

Under Minnesota's common law, attorney fees are not allowed in ordinary civil actions. *In re Silicone Implant Ins. Coverage Litig.*, 667 N.W.2d 405, 422 (Minn. 2003). Rather, attorney fees are allowed only when permitted by a specific contract or when authorized by statute. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983); *State v. Dist. Ct. of St. Louis Cnty.*, 152 N.W. 838, 840 (Minn. 1915). "[S]tatutes are presumed not to alter or modify the common law" unless the intention to abrogate the common law is provided by express wording or necessary implication. *Agassiz & Odessa Mut. Fire Ins. Co. v. Magnusson*, 136 N.W.2d 861, 868 (Minn. 1965); *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). Statutes, therefore, must be construed in harmony with existing principles of common law. *In re Estate of Washburn*, 20 N.W. 324, 326 (Minn. 1884). Thus, "[w]e decline to construe legislative intent to abrogate the common law with regard to [an] attorney fees provision in the absence of a clear purpose to do so." *Ly*, 615 N.W.2d at 314.

The Alinders and Heitkamp argue that the Roaches may not seek attorney fees under Minn. Stat. § 103D.545, subd. 3, because the Roaches' civil action was based in tort and did not arise from or relate to a watershed district rule for the purposes of subdivision 3. Further, they contend that the statute applies only when a watershed district is a party to the litigation. They argue that applying the statute to disputes involving solely private parties "would open the floodgates" to allow attorney fees in all manner of disputes between neighbors.

The Roaches contend that the court of appeals properly concluded that Minn. Stat. § 103D.545, subd. 3, applies here because the plain language of the statute requires only

that a civil action be "related to" a watershed district rule. They specifically point to our broad interpretation of "relat[ed] to" in *Phone Recovery Services, LLC v. Qwest Corp.*, 919 N.W.2d 315 (Minn. 2018), and *500, LLC v. City of Minneapolis*, 837 N.W.2d 287 (Minn. 2013). They argue that they asserted, from the very beginning of the litigation, that the Alinders and Heitkamp were negligent per se[12] by failing to obtain the necessary permits before adding fill to the Alinders' property, in violation of Pelican River Watershed District rules; thus, they contend, the dispute is related to a watershed district rule. The Roaches also note that nothing in the text of the statute requires that a watershed district be a party to the litigation for the statute to apply.

A.

The question before us is, in the context of both the enforcement statute and the common law principles surrounding attorney fees, what it means for an action to arise from or relate to a violation of a watershed district rule under section 103D.545, subdivision 3. We have not previously interpreted Minn. Stat. § 103D.545, subd. 3.

The purpose of statutory interpretation is to ascertain the intention of the Legislature. Minn. Stat. § 645.16 (2020). When interpreting a statute, we give words and phrases their ordinary meaning. Minn. Stat. § 645.08(1) (2020). We also read a statute as a whole and, where possible, construe it "to give effect to all its provisions." Minn. Stat. § 645.16. When a statute is susceptible to more than one reasonable interpretation, it is

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[12] "A per se negligence rule substitutes a statutory standard of care for the ordinary prudent person standard of care, such that a violation of a statute (or an ordinance or regulation adopted under statutory authority) is conclusive evidence of duty and breach." *Gradjelick v. Hance*, 646 N.W.2d 225, 231 n.3 (Minn. 2002).

ambiguous. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). When a statute is ambiguous, we may look to the canons of construction to determine its meaning. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013). To ascertain the meaning of an ambiguous statute, we may consider various factors relevant to legislative intent, including the object to be obtained, the consequences of a particular interpretation, and the contemporaneous legislative history. Minn. Stat. § 645.16.

We have previously interpreted the phrase "relating to" in *500 LLC v. City of Minneapolis*, 837 N.W.2d 287, 291 (Minn. 2013). We concluded that, as used in the statute at issue in that case, the phrase was unambiguous and meant to have a "connection, association, or logical relationship." *Id.* (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)). The Roaches rely on this previous interpretation to argue that section 103D.545, subdivision 3, unambiguously authorizes attorney fees here. Though we agree that this is the only reasonable interpretation of the same phrase as used in the statute at issue in *500 LLC*, we note that the phrase as used in section 103D.545, subdivision 3, must be read in context, not in isolation.

To determine whether subdivision 3 unambiguously expresses a clear intent to abrogate the common law rule on attorney fees or necessarily implies such abrogation, we look to section 103D.545 as a whole. *See* Minn. Stat. § 645.16. Section 103D.545 is an enforcement provision. Subdivision 2 of the section specifically provides the methods of enforcement for all of chapter 103D. The subdivision reads: "A provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter may be enforced by criminal prosecution, injunction, action to compel

performance, restoration, abatement, and other appropriate action." Minn. Stat. § 103D.545, subd. 2. Thus, reading subdivision 3 within section 103D.545 as a whole, the authorization of attorney fees in subdivision 3 could be reasonably interpreted to be limited to the enforcement methods provided in subdivision 2—an injunction, action to compel performance, restoration, abatement, and other appropriate action.

We conclude that, because subdivision 3 is susceptible to more than one reasonable interpretation, it is ambiguous. The first reasonable interpretation is the one urged by the Roaches: that attorney fees are authorized in *any* civil action with *any* connection, association, or logical relationship to a watershed district rule. A second reasonable interpretation is that the attorney fees authorized by subdivision 3 apply only to those types of civil enforcement actions outlined in the rest of section 103D.545.

Having determined that the statute is ambiguous, we turn to the canons of construction to understand the intent of the Legislature behind the attorney fees provision. Minn. Stat. § 645.16; *see also State v. Riggs*, 865 N.W.2d 679, 682 n.3 (Minn. 2015) (noting that the canons of construction are considered after a statute is determined to be ambiguous). A number of canons of construction are particularly useful in determining the legislative intent here.

We start by considering "the consequences of a particular interpretation." *See* Minn. Stat. § 645.16(6). The broad interpretation urged by the Roaches results in a significant departure from the common law rule that ordinarily prohibits attorney fees. The consequences of that interpretation—that attorney fees are authorized in *any* civil action with *any* connection to a watershed district rule—are significant. This interpretation would

authorize attorney fees in a wide variety of private party disputes that are only tangentially connected to a watershed district rule. This result is contrary to our common law approach that attorney fees are generally not awarded to successful litigants and parties must pay their own attorney fees. *See Ly*, 615 N.W. 2d at 314 (construing a statutory attorney fees provision narrowly because there was no clear intent to substantially alter the fundamental common law principle that each party bears its own fees).

We also consider "the contemporaneous legislative history" of the amendment that added subdivision 3 to section 103D.545. *See* Minn. Stat. § 645.16(7). When the Legislature added subdivision 3 in 1992, it also added a provision to section 103D.537. Act of Apr. 17, 1992, ch. 466, § 7, 1992 Minn. Laws 306, 308. The subject of section 103D.537 is appeals of rules, permit decisions, and orders of watershed districts. Minn. Stat. § 103D.537 (2020). At the same time that the Legislature added the attorney fees provision to section 103D.545, it also added, to section 103D.537, the following text: "Except as provided in section 103D.535, an interested party may appeal a rule, permit decision, or order made by the managers *by a declaratory judgment action* brought under chapter 555 *or by appeal*" to the Board of Water and Soil Resources. Act of Apr. 17, 1992, ch. 466, § 7, 1992 Minn. Laws 306, 308 (emphasis added) (codified as amended at Minn. Stat. § 103D.537(a) (2020). This amendment to section 103D.537 was focused on particular methods by which private parties could challenge actions of watershed districts.

As far as our interpretation of section 103D.545, subdivision 3, is concerned, this other simultaneous amendment provides insight into the Legislature's focus at the time it enacted the legislation containing both amendments. The attorney fees amendment was,

itself, concerned with rules, orders, stipulation agreements, and decisions to issue or deny permits made by watershed districts. *See* Act of Apr. 17, 1992, ch. 466, § 7, 1992 Minn. Laws 306, 308. Collectively, these amendments indicate that the Legislature was concerned with ensuring a mechanism through which private parties could challenge watershed district actions. This supports the second reasonable interpretation of subdivision 3: that the attorney fees authorized by subdivision 3 were intended to apply only to cases seeking to enforce or challenge watershed district actions, such as the actions outlined by subdivision 2 of section 103D.545.

Finally, when interpreting an ambiguous statute, we also construe that statute as a whole. Minn. Stat. § 645.16. Section 103D.545 has always addressed enforcement through criminal prosecution and civil actions, and the Legislature chose to place the attorney fees provision within this section when it enacted subdivision 3 in 1992. Act of Apr. 17, 1992, ch. 466, § 7, 1992 Minn. Laws 306, 308.

Given these considerations, we conclude that the second interpretation of subdivision 3—that subdivision 3 applies only to those types of civil actions seeking to enforce or challenge watershed district actions—is the more reasonable interpretation. To conclude otherwise would be contrary to our longstanding common law rule and our requirement that the intent of the Legislature to abrogate a common law rule must be clear and express or necessarily implied.

The Legislature is customarily clear about authorizing awards of attorney fees to successful litigants,[13] and section 103D.545, subdivision 3, is not a clear authorization of awards of attorney fees to private parties; nor does it necessarily imply such a result. Without clearer indication from the Legislature, we cannot conclude that subdivision 3 was intended to authorize attorney fees in *any* civil action with *any* connection to a watershed rule. Such a finding would substantially alter our common law rule without any clear indication that the Legislature intended such a broad and significant modification. *See Magnusson*, 136 N.W.2d at 868.

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[13] *See, e.g.*, Minn. Stat. §§ 8.31, subd. 3(a) ("In addition to the remedies otherwise provided by law, *any person* injured by a violation of *any of the laws* referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and *reasonable attorney's fees* . . . ." (emphasis added)), 117.045 ("Upon successfully bringing an action compelling an acquiring authority to initiate eminent domain proceedings relating to a person's real property which was omitted from any current or completed eminent domain proceeding, *such person* shall be entitled to petition the court for reimbursement for reasonable costs and expenses, *including reasonable attorney* . . . fees . . . ." (emphasis added)), 524.3–720 ("Any personal representative or person nominated as personal representative who defends or prosecutes *any proceeding* in good faith, *whether successful or not*, or *any interested person* who successfully opposes the allowance of a will, is entitled to receive from the estate necessary expenses and disbursements including *reasonable attorneys' fees incurred*." (emphasis added)), (2020); *see also* 27 Michael K. Steenson, J. David Prince & Shane A. Anderson *Minnesota Practice—Products Liability Law* § 13.23 (2020–2021 ed.) ("The general American common law rule is that the costs of litigation are borne by the parties that incur them and a prevailing party to litigation is not ordinarily entitled to recover her costs as part of, or in addition to, her other damages."); 23 Ronald I. Meshbesher & James B. Sheehy, *Minnesota Practice—Trial Handbook for Minnesota Lawyers* § 43:7 (2020–2021 ed.) ("Attorney's fees as costs are not recoverable unless there is a specific contract permitting their payment or a statute authorizing such recovery.").

B.

Having determined that subdivision 3 does not authorize attorney fees in *any* civil action with *any* connection to a watershed district rule, but, rather, that attorney fees incurred only in civil actions seeking to enforce or challenge watershed district actions are authorized, we consider whether the action brought by the Roaches comes within the scope of the attorney fees provision.

The Roaches did not challenge a watershed district action. Therefore, the attorney fees provision applies only if they sought to enforce a watershed district rule, order, stipulation agreement, or permit in their litigation against the Alinders and Heitkamp. Subdivision 2 of section 103D.545 specifically mentions the following civil methods of enforcing the provisions of chapter 103D: injunction, action to compel performance, restoration, abatement, and other appropriate action.

In their complaint, the Roaches pleaded a violation of Pelican River Watershed District Rule 4.10, which requires permits for any "alterations to land, impervious surface, or vegetation in Shore or Bluff Impact Zones, or on steep slopes in a Shoreland Zone." Pelican River Watershed District, Rule 4.10 (2003).[14] The Roaches did not assert that the failure to obtain the necessary permits before adding fill to the Alinders' property was a basis for their negligence per se cause of action or any of the other causes of action asserted against the Alinders and Heitkamp.

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[14] "Alterations to land" is defined as "grading, excavation, fill or movement of soil or vegetative material." Pelican River Watershed District, Section 3.0. The district court found that fill was placed on the Alinders' property within a Shore Impact Zone.

In their motion for partial summary judgment, the Roaches again noted the violation of Pelican River Watershed District Rule 4.10. The argument that they were entitled to summary judgment, however, focused entirely on the violation of the Becker County zoning ordinances. In particular, the section of the memorandum supporting their motion as to the nuisance and negligence per se counts was titled "The Zoning Violation of the Alinder Defendants Supports a Finding of Nuisance and Negligence per Se."

When the district court decided the Roaches' motion,[15] it concluded that the Roaches had sufficiently proven their negligence per se claim against the Alinders and cited violations of Becker County zoning ordinances as the basis for this determination.[16] The watershed district rule was not mentioned anywhere in the summary judgment order. After the Roaches filed their posttrial motion for attorney fees under Minn. Stat. § 103D.545, subd. 3, the district court described the only function of the watershed district rule as having "clarified" that the Alinders were negligent per se.

It is clear from their own pleadings and motions, as well as from the rulings of the district court, that the Roaches' objective was to force Becker County to enforce its zoning ordinance and to obtain compensation from the Alinders and Heitkamp for the alleged tort violations. None of those tort actions were based on violation of a watershed district rule. All of the Roaches' claims centered on violations of Becker County zoning ordinances.

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[15] The court stayed the motion, as well as Becker County's motion for summary judgment, pending the conclusion of the 2015 bench trial.

[16] Based on the increased runoff to the Roaches' property, which resulted from the increased elevation of the Alinder property, the court also found that the Roaches had sufficiently proven the nuisance claim against the Alinders.

Therefore, this dispute did not "aris[e] from or relate[] to" a watershed district rule under subdivision 3.

It is also relevant that the Roaches could have brought the same causes of action against the Alinders and Heitkamp absent the watershed district rules entirely. Although representatives from the Pelican River Watershed District inspected the property as part of the court-ordered restoration process, none of the Roaches' claims relied on the existence of the watershed rule. Further, the outcome on the merits of the Roaches' claims would not change if Rule 4.10 did not exist.

Although the district court commented that violation of the watershed rule "clarified" that the Alinders and Heitkamp were negligent per se, "clarify" is not the standard provided by the Legislature in subdivision 3. In light of our discussion above, we conclude that "arising from or related to" requires a watershed district rule to do more than clarify what is otherwise established by regulations entirely separate from the watershed district rule. We decline to decide whether it is *ever* appropriate to award attorney fees to a private party litigant under Minn. Stat. § 103D.545, subd. 3, and hold only that it is not appropriate here. A stray assertion of a violation of a watershed district rule simply is not sufficient to meet the "arising from or related to" requirement of the statute.

We conclude that this action does not arise from or relate to a watershed district rule as required by Minn. Stat. § 103D.545, subd. 3 and, therefore, reverse the decision of the court of appeals as to this issue.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals' holding that the Roaches' appeal on attorney fees and preverdict interest was not barred by their acceptance of the remittitur and reverse the decision of the court of appeals holding that Minn. Stat. § 103D.545, subd. 3, authorized attorney fees in this case.[17]

Affirmed in part and reversed in part.

CHUTICH, J., took no part in the consideration or decision of this case.

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[17] Neither party challenged the holdings of the court of appeals as to the other issues raised in the appeal and addressed by that court, including the preverdict interest issue. Thus, those issues are not before us, and the remand directed by the court of appeals to recalculate preverdict interest is unaffected by our decision.