STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0691

Eric John Blehr,
Respondent,

vs.

Jacki Sue Anderson,
Appellant.

Filed January 11, 2021
Affirmed
Hooten, Judge

Douglas County District Court
File No. 21-CV-18-1471

Courtney A. Lawrence, Matthew J. Barber, Schwebel Goetz & Sieben, P.A., Minneapolis, Minnesota (for respondent)

Thomas D. Jensen, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Frisch, Judge; and Kalitowski, Judge.*

SYLLABUS

I. A written notice of claim under Minn. Stat. § 549.09, subd. 1(b) (2018), does not require a demand for a specific amount of money, but instead must contain sufficient information, in conjunction with the information known to the noticed party, to allow the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

noticed party to determine its potential liability from a generally recognized objective standard of measurement.

II. Preverdict interest on additur damages is appropriate under Minn. Stat. § 549.09 (2018) because additur increases the verdict.

OPINION

HOOTEN, Judge

In this appeal from judgment entered following a jury trial on respondent's personal-injury claims, appellant challenges the district court's awards of (A) preverdict interest, and (B) costs and disbursements. We affirm.

FACTS

In July 2016, Patrick Anderson and respondent Eric Blehr were involved in a two-vehicle crash on Highway 55. The crash occurred when Anderson, who was driving a John Deere Gator all-terrain vehicle, attempted to turn left from Highway 55 directly into respondent's path of travel. Respondent, who was driving a Pontiac passenger vehicle, was seriously injured in the crash, and Anderson was killed.

Respondent sent Anderson's automobile insurer a letter dated January 26, 2017 (the January 26 letter). The January 26 letter was sent to an insurance claims office and was printed on the letterhead of the law firm retained by respondent. The January 26 letter stated that the law firm had been retained to represent respondent in connection with the July 2016 accident, and sought to "confirm the existence and amount of coverage." The January 26 letter also sought the claim number and any information that the insurance claims office had in its possession regarding the claim.

In August 2018, respondent commenced this action against appellant Jacki Sue Anderson, personal representative of the Estate of Anderson. Following a jury trial, both Anderson and respondent were found to be at fault. The jury apportioned 75% of the fault to Anderson, and 25% to respondent. The jury then awarded damages to respondent in the amount of $90,301.39.

Respondent petitioned for taxation of costs and disbursements and moved for preverdict interest, additur or a new trial regarding his past general damages, and costs under Minn. R. Civ. P. 68. The district court granted respondent's motion for conditional additur in the amount of $15,000 for past pain and suffering. Appellant accepted the additur under protest.

After appellant accepted the additur, the district court entered its amended findings of fact, conclusions of law, and order for judgment. The district court determined that the January 26 letter "was sufficient to constitute a 'notice of claim'" under Minn. Stat. § 549.09 subd. 1(b), because the letter "specifically identified the parties, the precipitating event, and the intent of [respondent], sufficient to put [appellant] on notice of a claim." The district court concluded that under section 549.09, respondent was entitled to $21,935.87 in preverdict interest, which was "computed by taking [10%] of the net verdict of $78,901.04 from January 26, 2017," the date of the purported notice of claim, "to November 6, 2019 (date of verdict)."

In addition to preverdict interest, the district court determined that respondent was entitled to $24,729.95 in costs and disbursements. The district court also found that the rule 68 amount of $95,000 offered to respondent "is less favorable than [respondent's]

award of $110,880.92, which sum was determined by adding the net award of $78,901.04 to [respondent's] taxable costs and disbursements of $10,377.82 through October 22, 2019, and his preverdict interest of $21,602.06." The district court concluded that because respondent's "award is greater than his Rule 68 offer, he is entitled to double the costs incurred." The district court, therefore, entered judgment in favor of respondent in the amount of $139,714.36. This appeal follows.

ISSUES

I. Did the district court err in determining the amount of preverdict interest?

II. Did the district court abuse its discretion in awarding costs and disbursements?

ANALYSIS

I. Did the district court err in determining the amount of preverdict interest?

Appellant challenges the district court's award of preverdict interest, arguing that the district court erred by (A) concluding that the January 26 letter constituted a "notice of claim" for purposes of triggering the date on which to begin calculating preverdict interest; (B) calculating preverdict interest at a rate of 10%; and (C) awarding preverdict interest on the additur damages.

Preverdict-interest awards are reviewed de novo. *Duxbury v. Spex Fees, Inc.*, 681 N.W.2d 380, 390 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004). We also apply a de novo standard of review to a district court's interpretation of the preverdict-interest statute. *Miller v. Soo Line R.R.*, 925 N.W.2d 642, 655 (Minn. App. 2019).

A. Notice of claim

Awards of preverdict interest "are designed to serve two functions: (1) to compensate prevailing parties for the true cost of money damages incurred, and (2) to promote settlements when liability and damage amounts are fairly certain and deter attempts to benefit unfairly from delays inherent in litigation." *Solid Gold Realty, Inc. v. Mondry*, 399 N.W.2d 681, 683 (Minn. App. 1987). The preverdict-interest statute provides: "Except as otherwise . . . allowed by law, preverdict . . . interest on pecuniary damages shall be computed . . . from the time of the commencement of the action or a demand for arbitration, or the *time of a written notice of claim*, whichever occurs first." Minn. Stat. § 549.09, subd. 1(b) (emphasis added).

Appellant argues that the district court erred by concluding that the January 26 letter constituted a "notice of claim" under section 549.09, subdivision 1(b). This argument requires us to interpret the meaning of "notice of claim," a phrase not defined in the statute. Because "notice of claim" is not defined by statute, it is given its plain and ordinary meaning. *Central Hous. Assocs., LP v. Olson*, 929 N.W.2d 398, 403 (Minn. 2019). "When a word or a phrase has a plain meaning, we presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction." *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

To ascertain the plain meaning of a word, appellate courts "often consult dictionary definitions." *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016). The word "notice" is defined in *Black's Law Dictionary* as:

> Legal notification required by law or agreement, or imparted by operation of law as a result of some fact . . . . A person has notice of a fact or condition if that person (1) has actual knowledge of it; (2) has received information about it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording.

Black's Law Dictionary 1227 (10th ed. 2014). And *Webster's* defines "notice" as "information, announcement or warning." *Webster's New Dictionary of the American Language* 973 (2nd ed. 1972).

The word "claim" is defined by *Black's Law Dictionary* as:

> A statement that something yet to be proved is true . . . . The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional . . . . A demand for money, property, or a legal remedy to which one asserts a right . . . .

Black's Law Dictionary 301 (10th ed. 2014).

Here, the January 26 letter is a written statement addressed to Anderson's insurance claims office, printed on the letterhead of a law firm identifying all of the attorneys of the law firm, the firm's address, and main telephone number, and signed by an attorney of the law firm right above his direct telephone number. The January 26 letter also contains the date of the accident and what appears to be Anderson's insurance policy number. The body of the letter in its entirety provides:

> We have been retained to represent [respondent] in connection with injuries sustained in the above accident.
>
> Please confirm the existence and amount of coverage and provide us with your claim number.

> Our office would also appreciate color copies of any property damage photographs, accident scene photographs, repair estimates and any statements concerning this loss.
>
> Your courtesies are appreciated.

Appellant argues that the district court erred by concluding that the January 26 letter constituted a "notice of claim" under section 549.09, subdivision 1(b) because "[a]ll it does is: (a) introduce counsel, and (b) seek information." Appellant argues that the "real notice of claim from respondent's counsel came on March 8, 2018, when [he] made a settlement demand, which included $95,761 in medical expenses, and $7,910 in wage loss."

Appellant's argument that the January 26 letter does not constitute a notice of claim under section 549.09, subdivision 1(b) focuses on the lack of a formal demand for a specific payment. We acknowledge that the January 26 letter does not seek payment of a specific amount of money. But appellant cites no published Minnesota caselaw supporting its position that such a formal demand is necessary, and our research has failed to uncover such a case. In fact, the Minnesota federal district courts have recognized that no Minnesota appellate court has defined "written notice of claim" for purposes of Minn. Stat. § 549.09, subd. 1(b). *See Creekview of Hugo Ass'n, Inc. v. Owners Ins. Co.*, 386 F. Supp. 3d 1059, 1067 (D. Minn. 2019) ("Minnesota courts have not defined precisely what constitutes a 'written notice of claim' in the context of an insurance dispute . . . ."). Accordingly, as the parties agreed at oral argument, the issue before us is one of first impression.

Despite the dearth of published Minnesota caselaw interpreting the phrase "notice of claim" contained in section 549.09, subdivision 1(b), this court, in an nonprecedential

decision, recognized that a written notice of claim need not identify a specific amount of damages sought to trigger preverdict interest; rather, the issue is whether the defendant could have determined "'its potential liability from a generally recognized objective standard of measurement.'" *Indep. Sch. Dist. 441 v. Bunn-O Matic Corp.*, No. C0-96-594, 1996 WL 689768, at *10 (Minn. App. Dec. 3, 1996) (quoting *Mondry*, 399 N.W.2d at 684) (alteration omitted). In *Bunn-O Matic*, this court considered the sufficiency of notice provided in a pre-suit letter from the plaintiff school district's insurer to Bunn-O-Matic, the manufacturer of a defective electric coffeemaker. *See id.* In the pre-suit letter, the insurer informed Bunn-O-Matic that a defective coffeemaker had caused the plaintiff's high school building to be destroyed by fire, and that the damages were undetermined, but that a formal demand would be forthcoming when a final calculation of damages was available. *Id.* This court determined that the notice was sufficient to trigger preverdict interest because it advised Bunn-O-Matic "of the claim against it and the extent of the damages"—the destruction of the school—from which Bunn-O-Matic "could have determined its potential liability." *Id.*

The *Bunn-O Matic* decision was recently relied upon by a federal district court in Minnesota determining what constituted a "written notice of claim" for purposes of the preverdict-interest statute. *See Creekview of Hugo*, 386 F. Supp. 3d at 1068-69. In that case, the insurance manager for a townhome complex emailed its insurer of its "need to open a claim for this community." *Id.* at 1068. The email contained the date of loss, stated that the cause of damage was "hail," and requested that the "assigned adjuster contact me and let me know the claim number once you have record of it." *Id.* The *Creekview of*

Hugo court concluded that the email "constituted a demand for payment that is sufficiently specific under *Bunn-O Matic*" because the insurer "could have determined its potential liability" from the information provided. *Id.* at 1069. In reaching its decision, the *Creekview of Hugo* court reasoned that the "only reason an insured would open a claim with its insurance carrier is that it believed its loss was covered under the applicable policy and that it claimed some amount of payment from the insurer for the damage." *Id.* at 1068.

The reasoning in *Bunn-O Matic* and *Creekview of Hugo* is consistent with published Minnesota caselaw addressing the date on which preverdict interest commences under section 549.09, subdivision 1(b). For example, in interpreting the predecessor of section 549.09, the Minnesota Supreme Court stated:

> In determining whether interest should be allowed the question was not whether the parties agreed on the amount of damages but whether [the defendant] could have determined the amount of its potential liability from a generally recognized objective standard of measurement. Mere difference of opinion as to the exact amount of damages was not sufficient to excuse [the defendant] from compensating [the plaintiff] for loss of the use of its money . . . ."

ICC Leasing Corp. v. Midwestern Mach. Co., 257 N.W.2d 551, 556 (Minn. 1977) (citation omitted). And in *Mondry*, this court cited *ICC Leasing* in concluding that the plaintiff was entitled to preverdict interest from the date when it first demanded payment even though the damages were not readily ascertainable since the value of the property at issue could have been based on alternative methods of calculation. *Mondry*, 399 N.W.2d at 684. As such, we conclude that the reasoning set forth in *Bunn-O Matic* and *Creekview of Hugo* is persuasive. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993)

(stating that nonprecedential decision may have persuasive value); *see also TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017) (acknowledging that a federal court's interpretation of Minnesota law may have persuasive value).

Based on *Bunn-O Matic* and *Creekview of Hugo*, a written notice of claim need not identify a specific amount of damages to trigger preverdict interest under Minn. Stat. § 549.09, subd. 1(b). Instead, to constitute a "notice of claim" under the statute, the written notice must be sufficient to allow the noticed party to determine "'its potential liability from a generally recognized objective standard of measurement.'" *Bunn-O Matic*, 1996 WL 689768, at *10 (quoting *Mondry*, 399 N.W.2d at 684). This standard is also consistent with the definition of "claim." The definition of "claim" provided by *Black's Law Dictionary* includes no reference to a specific amount of damages. *See Black's Law Dictionary* 301 (10th ed. 2014). And "claim" is defined as an "assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional." *Id.* As such, we conclude that a "notice of claim," for purposes of section 549.09, subdivision 1(b), does not require a demand for a specific amount of money.

Nonetheless, persuasive authority states that to constitute a "notice of claim," the purported written notice must be sufficient to allow the defendant to determine "'its potential liability from a generally recognized objective standard of measurement.'" *See Bunn-O Matic*, 1996 WL 689768, at *10 (quoting *Mondry*, 399 N.W.2d at 684). Here, similar to the notice given in *Bunn-O Matic* and *Creekview of Hugo*, the January 26 letter reasonably notified Anderson's insurer that respondent, who was represented by a law firm,

was making a claim for damages against Anderson's estate for injuries sustained in the accident.

As evidence of respondent's intent to make a claim against Anderson's estate, and ultimately against Anderson's automobile liability insurer, the January 26 letter identified respondent's attorney, advised the insurer that he was representing respondent, and provided his contact information. The letter then asked for confirmation of the existence of the policy, the policy limits, and the claim number for the accident, as well as copies of any photographs, repair estimates, and statements regarding the insurer's investigation of the accident. In asking for the policy limits of the insurer, respondent's attorney was implicitly communicating a concern that his client had a claim for damages that might equal or exceed the insurer's policy limits. In requesting copies of documents from the insurer's investigation of the accident, respondent's attorney reasonably anticipated that the insurer was well aware of the seriousness of an automobile accident causing the death of its insured and injuring respondent. We conclude that, under these circumstances, the letter sufficiently notified the insurer that respondent was making a claim for damages as a result of the accident and that the insurer, based upon the information in the letter and in its claim file, was sufficiently notified of its potential liability to respondent. *See Creekview of Hugo*, 386 F. Supp. 3d at 1068-69; *see also Bobo v. Varughese*, 507 S.W.3d 817, 819-20, 825 (Tex. App. 2016) (concluding that a letter constituted a written notice of claim for purposes of Texas' prejudgment-interest statute where the letter (1) was sent by the plaintiff's attorney to the insurance company's claims department, (2) referenced the insured and the claim number, (3) stated that the plaintiff suffered personal injuries and

other damages, and (4) indicated that the plaintiff was in the process of receiving medical treatment).

Appellant argues that an amendment to Minn. Stat. § 549.09, subd. 1(b), made in 1991, supports its position that a "notice of claim" requires a demand for a specific amount of money. To support its position, appellant refers to the legislative history of the 1991 amendment. But section 549.09, subdivision 1(b), is unambiguous and, therefore, we cannot resort to legislative history. *See Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 180 (Minn. 2020) (stating that a "plain-language statutory reading makes the legislative history irrelevant"). As such, appellant's discussion of the 1991 amendment to Minn. Stat. § 549.09, subd. 1(b), is unavailing.

In sum, a "notice of claim" under Minn. Stat. § 549.09, subd 1(b), does not require a demand for a specific amount of money; but the written notice must be sufficient, in light of the circumstances known to the noticed party, to allow the noticed party to determine "'its potential liability from a generally recognized objective standard of measurement.'" *See Bunn-O Matic*, 1996 WL 689768, at *10 (quoting *Mondry*, 399 N.W.2d at 684). And in light of the information known to appellant, the information contained in the January 26 letter was sufficient for Anderson's insurer to have determined its potential liability to respondent under its insurance policy. Therefore, we conclude that the district court did not err by determining that the January 26 letter constituted a "notice of claim" for purposes of triggering preverdict interest under Minn. Stat. § 549.09, subd. 1(b).

B. Applicable interest rate

Appellant argues that the district court erred by awarding preverdict interest at a rate of ten percent per annum on respondent's medical-expense damages under Minn. Stat. § 549.01, subd. 1(b). Appellant argues that because respondent's medical-expense damages were readily ascertainable, interest should have been awarded at a rate of six percent per annum under Minn. Stat. § 334.01 (2018).

The preverdict-interest statute provides: "Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first." Minn. Stat. § 549.09, subd. 1(b). "For a judgment or award over $50,000 . . . the interest rate shall be ten percent per year until paid." *Id.*, subd. 1(c)(2).

In *Hogenson v. Hogenson*, this court stated that section 549.09 was meant to supplement, not supplant, existing law. 852 N.W.2d 266, 273 (Minn. App. 2014). In that case, this court concluded that the phrase "[e]xcept as otherwise . . . allowed by law" in section 549.09 "requires that preverdict interest be calculated under existing common-law principles whenever possible." *Id.* at 273-74. This court determined that "[b]ecause preverdict interest was allowed for conversion claims under common law, preverdict interest should be calculated from the date of conversion at 6% under section 334.01 to the date of the verdict *if* the damages are ascertainable or liquidated." *Id.* at 274. Where damages were not readily ascertainable or where a claim did not allow for preverdict

interest prior to the 1984 amendment,[1] "preverdict interest should be calculated exclusively under" section 549.09. *Id.* All other preverdict interest "should be calculated under the appropriate subdivision of section 549.09 in every case." *Id.*

Appellant argues that because the amount of respondent's past medical expenses was known at the time of respondent's March 8, 2018 settlement demand letter, the damages were liquidated and, therefore, readily ascertainable. We disagree. Damages are not ascertainable if they depend on "contingencies or jury discretion." *Id.* Examples of unascertainable damages include the valuation of a partnership interest, *Trapp v. Hancuh*, 587 N.W.2d 61, 64 (Minn. App. 1998), the amount of damages for a trespass, *Hogenson*, 852 N.W.2d at 274, and personal injury or injury to reputation, *Potter v. Hartzell Propeller, Inc.*, 189 N.W.2d 499, 504 (Minn. 1971). Whether damages are ascertainable is a question of fact to be resolved by the fact-finder. *Trapp*, 587 N.W.2d at 63. A district court's findings of fact will not be reversed unless clearly erroneous. *Id.*

Here, the district court did not make specific findings related to whether respondent's medical-expense damages were readily ascertainable. But by awarding interest at a rate of ten percent per annum, the district court implicitly found that respondent's medical-expense damages were not readily ascertainable. *See Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (holding that findings may be inferred from the district court's final resolution of a matter), *review denied* (Minn.

[1] In 1984, the Minnesota Legislature added language to section 549.09, subdivision 1, allowing for preverdict interest on pecuniary damages from the time of commencement of an action; the statute had previously provided for interest from the time of the verdict. 1984 Minn. Laws ch. 339, § 1, at 35-36.

Aug. 30, 1995). Our review of the record supports this finding. The record indicates that in addition to disputing the percentage of fault to be allocated between respondent and Anderson, appellant disputed the amount of damages that respondent should be awarded for his medical expenses. Specifically, appellant's answer "denies that [respondent's] alleged injuries satisfy suit thresholds, [and] require future medical or hospital expenses." And the jury instructions indicate that the jury was to decide the amount of damages, if any, respondent should be awarded for his medical expenses. Because the amount of respondent's medical-expense damages were dependent on jury discretion, they were not readily ascertainable. *See Hogenson*, 852 N.W.2d at 274 (stating that damages are not ascertainable if they depend on "contingencies or jury discretion"); *see also Trapp*, 587 N.W.2d at 64 (concluding that the value of collateral was not "readily ascertainable" because the method of valuing was "sharply disputed throughout the litigation"). Therefore, the district court did not err by awarding preverdict interest at a rate of ten percent per annum under section 549.09.

C. Preverdict interest on additur damages

Appellant argues that the district court erred by awarding preverdict interest on additur damages. Additur is "the practice of the [district] court to condition a denial of a new trial on the defendant's consent to an increase in the verdict." *Seydel v. Reuber*, 94 N.W.2d 265, 268 (Minn. 1959). The district court may grant additur only if grounds for a new trial on damages exist. *Pulkrabek v. Johnson*, 418 N.W.2d 514, 516 (Minn. App. 1988), *review denied* (Minn. May 4, 1988).

The preverdict interest statute provides that preverdict interest shall not be awarded to "that portion of any verdict, award, or report which is found upon interest, or costs, disbursements, attorney fees, *or other similar items* added by the court or arbitrator." Minn. Stat. § 549.09, subd. 1(b)(5) (emphasis added).

The district court determined that "additur, as an amount representing past damages, is not similar to the statutorily designated items. Whether an award for damages is determined by a jury, or later added by the Court, it is not an item which is barred from receiving statutory preverdict interest."

Appellant argues that additur is a "similar item" to those referenced in section 549.09, subdivision 1(b)(5), because it is "added by the [district] court post-verdict." Thus, appellant argues that additur should not qualify for preverdict interest. We disagree.

Additur is directly related to the verdict, in that additur is "the practice of the [district] court to condition a denial of a new trial on the defendant's consent to an *increase in the verdict*." *Seydel*, 94 N.W.2d at 268 (emphasis added). Because additur increases the *verdict*, preverdict interest on additur damages was appropriate. Moreover, appellant cites no caselaw to support its position that preverdict interest on additur damages was improper under the statute, and the statute does not specifically exclude preverdict interest on additur damages. Accordingly, we conclude that the district court did not err by awarding preverdict interest on the additur damages.

II. Did the district court abuse its discretion in awarding costs and disbursements?

Appellant challenges the district court's award of costs and disbursements with respect to (A) expert-witness fees, (B) expert-witness preparation, (C) non-testifying police

officers' fees, (D) non-testifying police officers' depositions, (E) photocopy expenses, and (F) double costs. Appellant argues that because the district court made one conclusory finding that "every cent sought" was reasonable, the award of costs and disbursements was an abuse of discretion.

Appellate courts "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). A district court abuses its discretion when its decision is "against logic and facts on the record." *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). The party challenging the district court's exercise of discretion bears the burden of proving that the district court abused its discretion. *Id.*

A. Expert-witness fees

Allowance of expert-witness fees to the prevailing party in an award of costs and disbursements has long been a recognized practice in Minnesota. *See Kundiger v. Metro Life Ins. Co.*, 15 N.W.2d 487, 495 (Minn. 1944) (noting that allowance of expert-witness fees to prevailing party "was made by order of the [district] court . . . according to recognized practice"). But expert-witness fees must be reasonable. Minn. Stat. § 357.25 (2018).

Appellant argues that it was "unfair" for the district court to award the fees of the rebuttal accident-reconstruction expert to respondent because the expert's testimony was cumulative and his fee was "three times higher than the case-in-chief expert." But the district court allowed the rebuttal accident-reconstruction expert to testify, and appellant does not challenge the admission of his testimony. Moreover, as respondent points out,

the rebuttal accident-reconstruction expert was more experienced than the case-in-chief expert, and appellant did not argue in the district court that the accident-reconstruction expert's fees were unreasonable. Therefore, appellant is unable to show that the district court abused its discretion in awarding the expert-witness fees.

B. Expert-witness preparation

Next, appellant argues that the district court abused its discretion by awarding reimbursement of costs associated with the rebuttal accident-reconstruction expert's preparation time to respondent. To support its position, appellant cites Minn. R. Gen. Prac. 127, which provides in part, "No allowance shall be made for preparation or in conducting of experiments outside the courtroom by an expert." Appellant argues that because rule 127 specifically excludes an expert's preparation costs, the rebuttal accident-reconstruction expert's costs "must be reduced by at least two-thirds." We are not persuaded.

It is well established in Minnesota that it is within the district court's discretion to award expert-witness fees to the prevailing party for pretrial preparation time. *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 209 (Minn. App. 2009) ("The district court is permitted to tax costs for pretrial preparation time."), *review denied* (Minn. Oct. 28, 2009). And in *Lake Superior Ctr. Auth. v. Hammel, Green, & Abrahamson, Inc.*, this court rejected an argument identical to that made by appellant in this case. 715 N.W.2d 458, 483 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). The *Lake Superior* court stated that rule 127[2] "specifies only the daily expert fees that the court administrator may tax," and

[2] The relevant language of Minn. R. Gen. Prac. 127 has not changed since *Hammel* was decided.

that a "court may, in its discretion, allow 'pretrial preparation time in awarding just and reasonable compensation' under Minn. Stat. § 357.25." *Id.* (quoting *Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co.*, 510 N.W.2d 256, 260-61 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994)). The *Lake Superior* court then noted that the district court had found that the use of expert witnesses was necessary, and that for each expert, the district court had analyzed the value the expert added to the proceedings and had scrutinized the rate and the amount of work the expert had devoted to the case. *Id.* The *Lake Superior* court concluded that the district court did not abuse its discretion by awarding fees for expert-witness preparation. *Id.*

Here, as in *Hammel*, expert witnesses were necessary because of the complexity of the accident reconstruction, and the district court was provided with adequate information to determine the value of the expert fees. We discern no abuse of discretion in the district court's award of costs associated with the rebuttal accident-reconstruction expert's preparation time.

C. Non-testifying police officers' fees

Appellant challenges the award to respondent of "expert" fees of approximately $300 per witness for two police officers, arguing that because the police officers were fact witnesses who did not testify at trial, they were subject to the statutory $20 cap set forth in Minn. Stat. § 357.22(1) (2018). But section 357.22 indicates that the fee set forth in the statute is the minimum amount of fees to be paid to any witness. *See* Minn. Stat. § 357.22; *see also Quade*, 510 N.W.2d at 261. In *Quade*, this court concluded that, although "somewhat high," an award of $900 for non-expert-witness fees was not an abuse

of discretion where the deposition was three hours and the witness flew to Minnesota on short notice.[3] 510 N.W.2d at 261. Thus, the district court has discretion to award fees in excess of the statutory minimum as the circumstances require. *See id.*

The district court here considered the fees associated with the two police officers' deposition appearances and found that the fee amount of approximately $300 per witness was appropriate. In light of the financial burden placed on local law-enforcement agencies associated with police officers appearing for depositions, we discern no abuse of discretion in awarding respondent the non-testifying police officers' fees of approximately $300 per officer.

D. Non-testifying police officers' depositions

Appellant further argues that the district court abused its discretion by including in the taxable costs the cost of the depositions of four police officers who did not testify at trial. But the award of deposition costs to the prevailing party is within the discretion of the district court. *Larson v. Hill's Heating & Refrigeration of Bemidji, Inc.*, 400 N.W.2d 777, 783 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). And "[t]he fact that a deposition was not used at trial does not bar deposition costs." *Johnson v. S. Minn. Mach. Sales, Inc.*, 460 N.W.2d 68, 73 (Minn. App. 1990). The district court here did not find that the deposition costs were unreasonable. Therefore, the district court did not abuse its discretion in awarding costs for the non-testifying police officers' depositions.

[3] At the time *Quade* was decided, section 357.22 required witnesses to be paid a minimum of $10 per day. *See* Minn. Stat. § 357.22(1) (1992).

E. Photocopy expenses

Appellant challenges the district court's award of photocopy expenses, arguing that a "[r]emand should occur for an actual cost analysis to occur before the [district] court to see if every cost is reasonable, non-cumulative, not duplicative, and fair." But appellant concedes that a district court "may award reasonable and non-cumulative photocopy and exhibit costs." And appellant offered no support for its position that the photocopy expenses were cumulative. Instead, appellant simply argued that the award was unfair. Thus, appellant has not met its burden to show that the district court abused its discretion by awarding the photocopy expenses.

F. Double costs

Finally, appellant contends that if it receives any relief from its claims, "the issue of double costs can be evaluated by counsel and presumably resolved, or relief could be sought before the district court on remand." Because appellant has not shown that the district court abused its discretion in awarding costs and disbursements, a remand is not necessary.

D E C I S I O N

The district court did not err in determining the amount of preverdict interest and did not abuse its discretion in awarding costs and disbursements. We, therefore, affirm the judgment of the district court.

Affirmed.