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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1396**

David H. Erickson,  
Appellant,

vs.

Venancio Trejo Otero,  
Respondent.

**Filed June 15, 2010  
Reverse and remanded  
Minge, Judge**

Ramsey County District Court  
File No. 62-C6-07-002052

Rodd Tschida, Minneapolis, Minnesota (for appellant)

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respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and  
Harten, Judge.\*

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

## UNPUBLISHED OPINION

MINGE, Judge

Following a jury verdict in his favor, appellant challenges the district court's order vacating the award of costs and disbursements as rendered by the court administrator.

We reverse.

### FACTS

In this personal-injury lawsuit, a jury found respondent Venancio Otero negligent and awarded appellant David Erickson \$104,151.62 in damages. During a hearing on a motion regarding collateral offsets, the trial judge asked whether "prevailing party" status was a present issue. Erickson's counsel said it was not, because the rules called on parties to first bring the issue to the court administrator. Otero's counsel said the issue would come up "at some point" in the future. The district court then issued an order reducing the award to account for collateral offsets. The order did not mention costs or who was the prevailing party. Pursuant to the order, judgment was entered on December 10, 2008.

One month later, Erickson filed a "notice of taxation of costs" with the court administrator. Otero objected by contacting the administrator's office, challenging the taxing on grounds that the district court's order did not provide for it. The administrator replied that (1) Erickson was the "prevailing party"; (2) she would consider formally submitted objections before taxing costs; and (3) the parties could then appeal the administrator's taxing decision to the district court.

The administrator determined that \$6,214.07 in costs and disbursements would be taxed for the benefit of Erickson, notifying the parties that, if there was no appeal to the district court within five days, taxed costs in that amount would be inserted into the judgment. Thirty-four days later, Erickson appealed the court administrator's taxation of costs, requesting review by a district court judge and an additional \$2,944.28. Forty-eight days after the administrator's action, Otero filed a motion with the district court objecting to costs, arguing that Erickson was not the prevailing party under Minn. R. Civ. P. 68.03 and was not entitled to costs.

Another district court judge who did not preside at the trial heard the challenges to the taxation of costs. This second judge determined that (1) the failure of the first judge to include costs and disbursements in her December 2008 order was intentional; (2) the administrator did not have authority to determine the prevailing party and tax costs; and (3) neither party timely challenged the administrator's unlawful taxation of costs. Based on these determinations, the second judge vacated the administrator's taxation but dismissed and denied both parties' challenges to the taxation. Erickson appeals.

## **DECISION**

Factual determinations of costs are not reversed by appellate courts absent an abuse of discretion. *Jonsson v. Ames Constr., Inc.*, 409 N.W.2d 560, 563 (Minn. App. 1987), *review denied* (Minn. Sept. 30, 1987). But legal issues regarding these rulings are reviewed de novo. *Vandenheuvel v. Wagner*, 690 N.W.2d 753, 754 (Minn. 2005).

## I.

The threshold issue is whether the second district court judge erred in vacating the administrator's award based on his conclusion that the trial judge deliberately failed to include costs and that, in this circumstance, allocating costs and disbursements was a legal determination which could not be made by the court administrator. Traditionally, the clerk of court (now the court administrator) cannot make a legal determination. See *State v. Paulick*, 277 Minn. 140, 150, 151 N.W.2d 591, 598 (1967) (holding that the clerk of court could not execute and issue a complaint because the clerk could not make the necessary legal determinations). At the same time, the statutes provide that the "administrator shall perform duties assigned by law and by the rules of the court." Minn. Stat. § 485.01 (2008).

Minnesota Rule of Civil Procedure 54.04<sup>1</sup> outlines the procedure for taxing costs and disbursements.<sup>2</sup> That rule authorizes the court administrator to tax costs and disbursements after a verdict or a judgment is entered. The procedure is initiated when the prevailing party submits a bill of costs to the administrator. 23 Ronald I. Meshbesher, *Minnesota Practice* § 43:5 (2009 ed.). The opposing party can then object in writing.

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<sup>1</sup> We note that the supreme court recently promulgated amendments to rule 54.04 that relate to the issues we address in this case. *Promulgation of Amendments to the Rules of Civil Procedure, the General Rules of Practice for the District Courts, and the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act*, No. C4-94-1646 (Minn. May 3, 2010). Because these revisions are not effective until July 1, 2010, we apply the preamendment version.

<sup>2</sup> The *amount* taxed is provided by statute and rule 68. Minn. R. Civ. P. 54.04; *Barrera v. Muir*, 553 N.W.2d 104, 108 (Minn. App. 1996). Generally, a "prevailing party" is entitled to fixed statutory costs and reasonable disbursements incurred in connection with the litigation. Minn. Stat. §§ 549.02, .04 (2008).

Minn. R. Civ. P. 54.04. Following the administrator's determination, an aggrieved party can file a notice of appeal to certify the issue to the district court. *Id.* The rule vests authority in the administrator to determine the prevailing party. This court has thus stated that "taxing of statutory costs and disbursements is an administrative function carried out by the court administrator." *Kellar v. Von Holtum*, 583 N.W.2d 761, 765 (Minn. App. 1998), *rev'd on other grounds*, 605 N.W.2d 696 (Minn. 2000).

Here, the jury awarded damages to Erickson. Although the trial judge recognized there might be an issue regarding who was the prevailing party, the trial judge did not determine prevailing-party status for purposes of taxing costs. Based on the record, we conclude that the trial judge left these questions for initial determination pursuant to the rules. A month after the entry of judgment and in accordance with the rules, Erickson requested that the court administrator tax costs. The court administrator taxed these in the amount of \$6,214.07 for Erickson with notice to all parties.

Base on the caselaw and the plain language of rule 54.04, we conclude that the district court administrator was authorized to tax costs and disbursements. We reverse the second judge's decision holding to the contrary.

## **II.**

The other issue in this appeal is whether the second judge abused his discretion in determining that the parties' challenges to the award were precluded as untimely. At the time of this litigation, Minnesota did not impose a time limit on appeals of an

administrator's taxation of costs and disbursements to the district court.<sup>3</sup> We agree with the second judge that both effective court administration and fairness require a litigant to challenge an award of costs without undue delay. Consideration of what is an undue delay rests within the discretion of the district court. *C.f. State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996) (granting discretion to district court in managing trial proceedings); *Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995) (“[T]he district court has considerable discretion in scheduling matters and in furthering what it has identified as the interests of judicial administration and economy.”).

Here, the second judge observed that Erickson did not file a notice of appeal until 34 days after the administrator's taxation and after Erickson requested that the judgment be docketed. Otero's appeal came 14 days later. Based on those circumstances, the district court found both appeals “unreasonably late.” These findings were not an abuse of discretion.

We reverse the vacation of the taxation of costs and disbursements and affirm the finding that the appeals were untimely. The administrator's taxation of \$6,214.07 is reinstated.

**Reversed.**

Dated:

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<sup>3</sup> The recent amendment to rule 54.04 imposes a filing deadline of seven days for any notice of appeal challenging an administrator's taxation of costs and disbursements. Because this rule is not yet effective, we do not consider that deadline for purposes of deciding this case.