

A07-1387
NO. A07-1418

State of Minnesota
In Court of Appeals

International Brotherhood of Electrical Workers,
Local No. 292,

Appellant,

v.

City of St. Cloud,

Respondent,

Design Electric, Inc.,

Respondent.

RESPONDENT DESIGN ELECTRIC, INC.'S BRIEF

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STATEMENT OF LEGAL ISSUES

- I. Did the District Court err in determining that as an intervenor, Design is not liable for an attorney fee award or costs under the Minnesota Government Data Practice Act?

The District Court determined that under Minn. Stat. § 13.08, subd. 4, attorney fees and costs may only be awarded against the responsible authority or government entity withholding the requested documents and that an intervenor to an action brought under the Minnesota Government Data Practice Act may not be liable for attorney fees or costs.

Most Apposite Authorities:

Imperial Fin., Inc., v. GK Cab Co., 03 N.W.2d 853 (Minn. App. 2000)

Kuczynski v. City of Dassel, No. C0-98-1278, 1999 WL 43348 (Minn. App. Feb. 3, 1998)

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Minn. Stat. § 13.08, subd. 4

Minn. Stat. § 13.43, subd. 2,6

Minn. Stat. § 645.26, subd. 1

- II. Did the District Court err in limiting Appellant's attorney fee award and costs to \$500?

The District Court awarded Appellant attorney fees and costs in the amount of \$500.00 against the City and declined to award additional fees following a motion for attorney fees and costs.

Most Apposite Authorities:

Anderson v. Hunter, Keith, Marshall & Co., Inc., 417 N.W.2d 619

Wiegel v. City of St. Paul, 639 N.W.2d 378 (Minn. 2002)

Minn. Stat. § 13.08, subd. 4

STATEMENT OF THE CASE

Appellant International Brotherhood of Electrical Workers, Local No. 292 (Appellant) filed a lawsuit against the City of St. Cloud (City) on February 8, 2007. In its Complaint, Appellant asserted that the City violated the Minnesota Government Data Practice Act, Minn. Stat. § 13.01–.99 (2006)(MGDPA) when it refused to release certified payroll records which were requested by Appellant and which Appellant claims are “public data” under the MGDPA.

Appellant filed a motion for summary judgment on April 6, 2007. On the same day, Respondent Design Electric, Inc. (Design) filed a motion to intervene. The District Court granted Design’s motion to intervene on April 23, 2007 and granted Design Intervenor/Defendant status. On May 7, 2007, Appellant’s summary judgment motion came before the District Court, which heard arguments from all parties, including Design. On May 21, 2007, the District Court granted Appellant’s summary judgment motion and ordered the City to release the certified payroll data. Judgment was entered on May 24, 2007. In its order granting summary judgment, the District Court also awarded Appellant attorney fees and costs in the amount of \$500 against the City.

On May 29, 2007, Design filed a motion to stay the District Court’s order to release the records pending the disposition of an appeal. The District Court heard the parties’ arguments by telephone and granted the motion to stay on June 1, 2007. The records have not been released.

On June 20, 2007, Appellant filed a motion for attorney fees, requesting attorney fees in the amount of \$33,609.00 and costs in the amount of \$1,433.10, for a total award of \$35,042.10 against both the City and Design. The District Court heard that motion on July 9, 2007. On July 18, 2007, the District Court issued an order on the motion for attorney fees, reaffirming its original award of \$500 in attorney fees against the City. The District Court declined to award attorney fees or costs against Design based on the fact that Design is an intervenor in this matter, and the MGDPA does not authorize an award of attorney fees or costs against anyone other than the responsible authority or government entity who withholds the requested records.

Design filed a notice of appeal on July 16, 2007, appealing the District Court's order and judgment granting summary judgment in favor of Appellant (Appellate Court Case No. A07-1388). Appellant filed its own notice of appeal on the issue of attorney fees and costs on July 23, 2007 (Appellate Court Case No. A07-1418). By order of this court, dated August 2, 2007, the two appeals are consolidated for oral argument and decision but are to be briefed separately.

STATEMENT OF FACTS

I. BACKGROUND

This litigation arises under the MGDPA, Minn. Stat. § 13.01-.99 (2006). Design is a commercial electrical contractor with its primary place of business located in Stearns County, Minnesota. (RA – 41.)¹ In 2006, Design was hired by the City to perform certain subcontracting work on the reconstruction of the East St. Germain Utility Project, Project No. 100570774. (RA – 42.)

The Minnesota Prevailing Wage Act requires that contractors on certain public jobs pay the “prevailing wage” for the area of the state in which the project is located. Minn. Stat. § 177.41. The Department of Labor and Industry (Department) sets the various prevailing wages for use in different sections of the state. Minn. Stat. § 177.43, subd. 4. The Act further provides for “certification” of payrolls by the Department; in other words, the Department (and other governmental bodies) have the right to require review of certified payrolls of contractors on public projects. Minn. Stat. § 177.44, subd. 4. This “certification” usually takes the form of the contracting governmental body requiring a review of the payroll records of the contractor.

In response to a request from the City, Design turned over its certified payroll records from the East St. Germain Project to the City. (RA – 42-43.) As per industry standard practice, these records included such information as social

¹ All references to Respondent Design’s Appendix are denoted as “(RA - __).” All references to Appellant’s Appendix are denoted as “(AA - __)”

security numbers, employee addresses, withholdings, child support orders, etc. (RA – 43.) These records were apparently satisfactory, and there has been no allegation in this matter, or any other, that Design did not correctly compensate its employees. In anticipation of a situation such as that in the current dispute, Design marked its payroll record “confidential” and as constituting “trade secrets.” (*Id.*)

Appellant is a labor organization within the meaning of the National Labor Relations Act, 29 U.S.C. § 141 *et seq.* Appellant does not represent any of Design’s employees, who are represented by the Christian Labor Association, a union “competitor” of Appellant. (RA – 42.) Appellant has, however, attempted to organize Design’s employees on several occasions. (*Id.*) In November 2006, a representative of Appellant made a data practice request to the City asking the City for copies of Design’s certified payroll records from the St. Germain Project. (AA – 77.) On December 14, 2006, the City responded that Design had marked its materials confidential, and that the City would not, therefore, produce those materials. (AA – 78.) Appellant’s representative made two additional requests for the information, once on December 28, 2006 and again on February 8, 2007. (AA – 77, 79 – 80).

II. THE CURRENT LAWSUIT

Appellant filed a lawsuit in this matter on February 8, 2007, claiming that it had a right to the materials in question because they were “public” within the meaning of the MGDPA, Minn. Stat. § 13.01–.99 (AA–33.) In response, the City

refused to produce the documents, serving and filing an Answer denying the Plaintiff's allegations. (AA – 35.)

Almost from the outset of this litigation, Design sought to intervene. On February 22, 2007, one of Design's attorneys, Douglas Seaton, spoke with Appellant's counsel, Marshall Tanick, regarding Design's interest in intervening in the current litigation. (RA – 22.) Tanick stated that he would speak to his client about agreeing to Design's intervention and "get back" to Mr. Seaton, which he never did. (*Id.*) Design's attorneys received no further response to their request, in spite of two follow-up phone calls. (*Id.*) Although Tanick did leave two messages on Design's attorneys' voicemail, one of the messages was left on a Saturday evening, and in both messages, Tanick merely left a phone number and did not respond to or address Design's question regarding intervention. (RA – 22-23.) On April 6, 2007, having received no response to their request to intervene, Design filed a motion to intervene. (AA – 48.) On April 23, 2007, the District Court granted Design's motion to intervene, holding that Design could intervene as a matter of right. (AA – 22.)

On April 6, 2007, simultaneous with Design's intervention, Appellant filed a motion for summary judgment. (AA – 56.) Appellant requested attorney fees and costs as part of the relief requested within the summary judgment motion. (RA – 39.) The District Court heard arguments from all parties, including Design, on the summary judgment motion on May 7, 2007. (AA – 10.) On May 21, 2007, the court granted summary judgment in favor of Appellant and ordered

the City to release the data. (AA – 20.) Judgment was entered on May 24, 2007. (*Id.*) In its order granting summary judgment, the District Court also awarded Appellant attorney fees and costs in the amount of \$500 against the City. (*Id.*)

On May 29, 2007, Design filed a motion to stay the District Court's order to release the records pending the disposition of an appeal. (AA – 171.) Understanding that the City intended to release the payroll records per the District Court's order, Design was forced to file a motion to stay in order to avoid this appeal becoming moot because the records at issue had already been released. (AA – 73.) The court heard the parties' arguments by telephone and granted the motion to stay on June 1, 2007. (AA – 177.) Accordingly, the records have not been released.

Appellant filed a motion for attorney fees and costs on June 20, 2007. (AA – 107.) The court heard arguments on the motion on July 9, 2007. (AA – 1.) On July 18, 2007, the court granted, in part, Appellant's motion for attorney fees and costs when it held that it would award Appellant the \$500 it had originally awarded in its order granting summary judgment. (*Id.*) The District Court declined to award any additional attorney fees. (*Id.*) The District Court further declined to award any attorney fees against Design, determining that the MGDPA did not authorize an award of attorney fees against any party other than the responsible authority or government entity withholding the records and, therefore, that attorney fees could not be awarded against Design, as an Intervenor. (AA – 9.)

III. THE PREVIOUS LAWSUIT

In 2001, the same parties – Appellant, the City, and Design – litigated a similar case involving a data practice request by Appellant, to the City, for Design’s certified payroll records. (AA – 63.) In that case, the City had already released the documents to Appellant prior to the litigation. (AA – 65.) Consequently, the Honorable Richard J. Ahles, Judge of the District Court for Stearns County, held that the case was moot, as the City had already released the records. (AA – 71.)

Design appealed the District Court’s decision to the Court of Appeals, which agreed with the District Court’s ruling. The Court of Appeals held that the case was moot because the records had already been released and accordingly, declined to address the substance of the MGDPA argument. (*Design Elec. v. City of St. Cloud*, No. C1-01-734, 2001 WL 1402763 (Minn. App. Nov. 13, 2001); (AA – 73.)

ARGUMENT

I. STANDARD OF REVIEW

The interpretation of a statute presents a question of law, which the appellate court reviews *de novo*. *Hibbing Educ. Ass’n v. Public Employment Relations Bd.*, 369, N.W.2d 527, 529 (Minn. 1985). The construction of a statute is a question of law and courts must adhere to the statute’s clear language, unless doing so would be inconsistent with the legislature’s manifest intent. *Kugling v. Williamson*, 231 Minn. 135, 42 N.W.2d 534 (1950). An award or denial of

attorney fees by the District Court will not be reversed absent an abuse of discretion. *Star Tribune v. City of St. Paul*, 660 N.W.2d 821, 827-28 (Minn. App. 2003).

II. THE DISTRICT COURT DID NOT ERR IN DETERMINING THAT AS AN INTERVENOR, DESIGN IS NOT LIABLE FOR AN ATTORNEY FEE AWARD OR COSTS UNDER THE MINNESOTA GOVERNMENT DATA PRACTICE ACT

Under the MGDPA, an “aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney's fees, *as determined by the court.*” Minn. Stat. § 13.08, subd. 4(a) (emphasize added).

A. An award of attorney fees or costs may not be awarded against an intervenor in a case arising under the MGDPA.

The District Court concluded that as a matter of law, under the MGDPA, Design is not liable for attorney fees or costs. Specifically, the District Court determined that under Minn. Stat. § 13.08, subd. 4(a) which authorizes the discretionary award of fees in claims brought under the MGDPA, reasonable costs and attorney fees may only be awarded against the responsible authority or government entity. (AA – 9.) The District Court determined that as an intervenor in this action, Design could not be liable for attorney fees or costs.

Although Appellant cites to a number of cases which Appellant contends support its position that fees run against Design, as well as the City, these cases are all clearly distinguishable from the facts of this case and Appellant's reliance

on them is misplaced. In *Diamond v. Charles*, the Supreme Court determined that an intervenor physician did not have separate standing to appeal an order holding an Illinois abortion law unconstitutional after the state declined to appeal case. 476 U.S. 54, 106 S.Ct. 1697 (1986). The issue of attorney fees was only tangentially raised because one of the arguments Diamond asserted in support of his standing to appeal was the fact that the District Court had awarded attorney fees against him below. *Id.* at 69, 106 S.Ct. at 1707. The only finding the *Diamond* court made in relation to attorney fees was that an award of attorney fees against Diamond at the district court level did not confer standing. *Id.* at 70, 106 S.Ct. 1708.

Appellant has suggested that the fact that the fee award was not “disturbed on appeal” before either the Seventh Circuit or the Supreme Court somehow supports its argument that attorney fees may be assessed against Design. (App. Brief – 30.) It does not. The issue of attorney fees was not on appeal, so the Court had no reason to consider, rule on, or reverse the award of attorney fees against an intervenor. Further, the award of attorney fees to the prevailing party in that case was specifically authorized by federal statute, and therefore has no bearing on an attorney fee award under the MGDPA. *Id.*

In *Ramsey County v. Alvarado*, a case which involved an appeal from a marriage dissolution and paternity action, a grandmother had intervened at the district court level and sought custody and/or reasonable visitation with her grandchildren. No. C3-97-65, 1997 WL 309362 (Minn. App. June 10, 1997). The

court of appeals upheld an award of attorney fees and costs against the intervenor grandmother because the court determined that her claims were without merit and “unreasonably contribut[ed] to the length [and] expense of the proceedings. *Id.* at *2. The award of attorney fees in *Ramsey* was authorized by Minn. Stat. § 518.14 (2006), which permits both need-based and a conduct-based attorney fee awards to “a party” to the proceedings. As an intervenor, Cohen, the grandmother, was a party to the litigation. As such, under Minn. Stat. § 518.14, she was subject to an assessment of attorney fees against her based on her conduct, which unreasonably contributed to the length and cost of the litigation. Because *Alvarado* involved a dissolution/paternity action and conduct-based attorney fees which were specifically authorized by statute, *Alvarado* has no bearing on this case, which was brought under the MGDPA. Further, even if the court concluded that *Alvarado* did have some bearing this case, Design’s intervention *was* meritorious and did not contribute at all to the length and expense of the proceedings.

In *Johnson v. Schrunk*, No. C7-94-2614, 1995 WL 497428 (Minn. App. Aug. 22, 1995) *rev. den’d on other grounds*, 1995 WL 681106 (Minn. Oct. 19, 1995), attorney fees were granted against the intervenor insurer because its intervention forced the insured to incur costs for coverage for which it had already paid. The reasoning behind awarding attorney fees in that claim has no bearing on the facts at issue in this matter. Finally, in *Schweich v. Zeigler, Inc.*, 463 N.W.2d 722 (Minn. 1990), the issue of attorney fees and their taxation to a given party

were mandated by statute and involved the application of a specifically mandated statutory formula, which again, is both unrelated and inapplicable to this case.

All of the cases relied upon by Appellant to support its argument in favor of awarding attorney fees against Design are wholly inapposite to this case. While Appellant argues at some length that Design *should* be liable for fees, this is simply not the law in Minnesota. Under the MGDPA, an intervenor is not liable for attorney fees.

B. Design's claim is meritorious.

Appellant argues that attorney fees should be awarded against Design because Design intervened and then proceeded to assert a position which Appellant repeatedly characterizes as “unreasonable,” “absurd,” and “obstinate.”² (App. Brief – 32.) Design's position, however, is none of these things.

1. Design's position regarding restriction on a labor organization's access to personnel data.

Minn. Stat. § 13.03, subd. 1 provides that “all government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section, or federal law, as nonpublic or protected nonpublic, or with respect to data on

² Appellant also claims that the District Court's found Design's *position* to be “absurd” and “unreasonable.” This mischaracterizes the court's opinion, however, in that the court characterizes the interpretation of Minn. Stat. § 13.43, subd. 6 as limiting a labor organization's access to data as producing an “absurd result.” (AA – 16.) Design, however, has simply asserted that the statute be interpreted under its plain meaning, which is neither an absurd nor unreasonable position.

individuals, as private or confidential.” Minn. Stat. § 13.43, subd. 1 defines “‘personnel data’ as data on individuals collected because the individual... acts as an independent contractor with a government entity.” Minn. Stat. § 13.43, subd. 2, provides that:

Except for employees described in subdivision 5 and subject to the limitations described in subdivision 5a . . . the following personnel data on current and former employees, volunteers, and independent contractors of a government entity is public:

- (1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
- (2) job title and bargaining unit; job description; education and training background; and previous work experience;
- (3) date of first and last employment;
- (4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
- (5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;
- (6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;
- (7) work location; a work telephone number; badge number; and honors and awards received; and
- (8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

While Minn. Stat. § 13.43, subd. 2 provides that the specifically identified personnel data is public, Minn. Stat. § 13.43, subd. 6 places *specific, concrete limitations* on the circumstances under which that public personnel data may be accessed by a labor organization. Specifically, subdivision 6 provides that:

Personnel data may be disseminated to labor organizations to the extent that the responsible authority determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the commissioner of the Bureau of Mediation Services.

Here, Design supplied the certified payroll records to the City in its capacity as an independent contractor. Consequently, the records Design supplied qualify as personnel data as defined by Minn. Stat. § 13.43 and the dissemination of these records to a labor organization is, therefore, subject to the restrictions imposed by Minn. Stat. § 13.43, subd. 6.

While the District Court did not find in favor of Design below, Design argued, and continues to argue on appeal, that Minn. Stat. § 13.43, subd. 6, must be construed as limiting a labor organization's access to personnel data. And while the District Court may have concluded that interpreting Minn. Stat. § 13.43 as limiting a labor organization's access to personnel data would produce an "absurd result," general rules of statutory construction support Design's position.

The object of statutory interpretation is to determine and give effect to the legislature's intent. *Schumacher v. Ihrke*, 469 N.W.2d 329, 332 (Minn. App.

1991). Courts “must adhere to the statute’s clear language unless doing so would be inconsistent with the legislature’s manifest intent.” *Pathmanathan v. St. Cloud State Univ*, 461 N.W.2d 726, 728 (Minn. App. 1990). Further, when two statutes irreconcilably conflict, as is the case here, the more specific provision should prevail over the more general provision unless the legislature intended the general provision to control. Minn. Stat. § 645.26, subd. 1; *State v. Kalvig*, 296 Minn. 395, 398, 209 N.W.2d 678, 680 (1973); *see also State v. Williams*, 396 N.W.2d 840, 845-46 (Minn. App. 1986).

Here, both parties have acknowledged that this is an issue of first impression and that there is neither caselaw nor legislative history which sheds light on the interpretation of this provision. (AA – 14.) Design has asserted a position, then, which is reasonably supported by statutory construction and which is in no way contravened by either legislative history or caselaw. Appellant’s continued insistence on arguing that Design’s position is unreasonable or absurd is, therefore, utterly incorrect. Design has asserted legitimate arguments in this litigation. For Appellant to argue that Design does not have the right to protect information which it believes that Appellant cannot access, as a labor organization, is ridiculous, as well as hypocritical, given Appellant’s argument that allowing parties in Design’s position to intervene will deter others from pursuing data practice litigation. (App. Brief – 31.) What Appellant is really arguing, is that some parties, such as Appellant, apparently have a right to litigate an issue under the MGDPA, while others, such as Design, do not. Appellant has

essentially taken the position that a labor organization may use the MGDPA to seek information while other parties have no right to use the statute to bar access to private information. In other words, the MGDPA should protect some, but not all. This argument raises serious due process and equal protection issues, which, ironically, are arguments which Appellant uses to shield its own position.

2. Design's position regarding home addresses as private data.

Design has also contended that home addresses are not considered public data under the MGDPA. The District Court concluded that home addresses should be considered public data under the MGDPA because Minn. Stat. § 13.43, subd. 5a only “prohibits release of home addresses with respect to employees working in jails, prisons, or other correction facilities to inmates and certain others associated with the corrections facility” and concluded that “[t]his exclusion clearly establishes that home addresses of other employees not excluded are public information.” (AA – 17 .)

The District Court's conclusion is flawed in a number of respects. First, subdivision 5a does not prohibit the release of a correctional facility employee's home address *per se* but instead prohibits the release of payroll data - which is public personnel data - when that payroll data might reveal an employee's home address or phone number. Further, Minn. Stat. § 13.43, subd. 2 *does* specifically enumerate which types of data will be considered public personnel data. All data not on that list is *not* public data. Home addresses are *not* on that list. Under the

canon of statutory construction *expressio unius exclusio alterius*, the expression of one thing is the exclusion of another. See *In re Common Sch. Dist. No. 1317*, 263 Minn. 573, 575, 117 N.W.2d 390, 391 (1962) (invoking “[e]xpressio unius est exclusio alterius”). In other words, the legislature has specifically expressed which types of data will be considered public personnel data. Since home addresses are not on that list, the legislature did not intend that home addresses should be considered public data.

C. A prevailing party is not automatically entitled to an award of attorney fees or costs in litigation arising under the MGDPA.

This court has consistently held that when a MGDPA claim is not frivolous and the losing party had a reasonable defense on the merits and made a colorable argument supporting its actions, a denial of attorney fees is appropriate. See *WDSI, Inc. v. County of Steele*, 672 N.W.2d 617 (Minn. App. 2003)(citing *Imperial Fin., Inc., v. GK Cab Co.*, 603 N.W.2d 853, 859-60 (Minn. App. 2000)). Minn. Stat. § 13.08, subd. 4(a) does not require the court to award a party attorney fees simply because it prevailed in its case, as Appellant has suggested. See *Pathmanathan*, 461 N.W.2d at 728 (holding that because the university’s argument in litigation brought under the MGDPA was a plausible, though ultimately incorrect, interpretation of the statute, the court would not award attorney fees against the university). A court may decline to award attorney fees to the prevailing party even if the opposing party’s argument was incorrect under the law, so long as their position was “plausible.” *Kuczynski v. City of Dassel*, No.

C0-98-1278, 1999 WL 43348, at * 3 (Minn. App. Feb. 3, 1998)(RA - 99.) (determining that because Kuczynski presented arguments that, “although incorrect, were not wholly frivolous or without arguable basis in fact or law” the court would not award attorney fees to the opposing party).

Here, Design has asserted a claim which is plausible and has an arguable basis in both fact and law. On that basis, the court should not award attorney fees against Design, regardless of the fact that Design did not prevail at the district court level, or, if Design does not ultimately prevail in this appeal.

III. THE DISTRICT COURT DID NOT ERR IN LIMITING APPELLANT’S ATTORNEY FEE AWARD AND COSTS TO \$500

A. The District Court provided a clear explanation of its reasons for the fee award.

Attorney fee awards under the MGDPA are not required but are within the discretion of the trial court. *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 385 (Minn. 2002). In making its decision, the District Court must “provide a ‘concise but clear explanation of its reasons for the fee award.’” *Anderson v. Hunter, Keith, Marshall & Co., Inc.*, 417 N.W.2d 619, 629 (Minn. 1988)(quoting *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933 (1983)).

Appellant has argued that the District Court’s award of \$500 in attorney fees and costs against the City should be reversed because the District Court failed to make findings justifying the reasons for the exercise of its discretion. The cases cited in support of this argument, however, are clearly distinguishable from this

matter and Appellant's reliance on those cases in its request for fees as applied to Design is misplaced.

In *Jadwin v. Kasal*, the Minnesota Supreme Court noted that factors to be considered in determining an award for attorney fees included: "time and effort required, novelty or difficulty of the issues, skill and standing of the attorney, value of the interest involved, [and] results secured at trial[.]" 318 N.W.2d 844, 848 (Minn. 1982).

In *Scott v. Minneapolis Pub. Sch., Special Dist. No. 1*, the Court of Appeals remanded the case to the District Court because the District Court did not provide an explanation for why it limited its award of attorney fees to hours that lead counsel dedicated to the case and discounted the fees for hours worked by an associate on the case. No. A05-649, 2006 WL 997721, *9 (Minn. App. April 18, 2006)(AA 146.)

Finally, in *Richard Knutson, Inc. v. Westchester, Inc.*, the Minnesota Court of Appeals remanded a case for further consideration after the District Court initially awarded attorney fees before any evidence was before it on the issue of fees. 374 N.W.2d 485, 490 (Minn. App. 1985). After receiving the evidence, the District Court then declined to alter the award, with no explanation. The case was remanded to the District Court for consideration of the *Jadwin* factors. *Id.*

Here, the District Court provided a clear and concise reason for its decision to not award attorney fees or costs against Design. The District Court declined to award fees or costs against Design because under Minn. Stat. § 13.08, subd. 4(a),

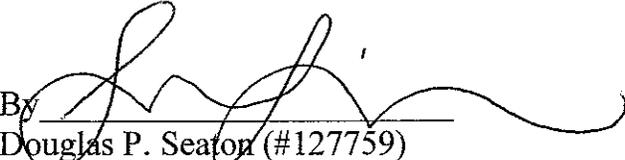
attorney fees and costs may only be assessed against the responsible authority or government entity – in this case, the City – and not against an intervenor. Because the District Court was not authorized to award attorney fees against Design, there was no reason for the Court to consider the *Jadwin* factors as they apply to Design.³

CONCLUSION

For the reasons stated above, the judgment of the District Court denying Appellant attorney fees and costs as applied to Design should be affirmed.

Dated: September 21, 2007

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³ Whether or not the District Court provided an adequate basis for its award of \$500 against the City is not relevant to Design's position and will not be addressed by Design. Design presumes that the City will address this argument within its own brief.

STATE OF MINNESOTA
IN COURT OF APPEALS

International Brotherhood of Electrical
Workers, Local No. 292,

Appellate Court Case No. A07-1418

Appellant,

v.

City of St. Cloud

**CERTIFICATION OF
BRIEF LENGTH**

Respondent,

Design Electric, Inc.,

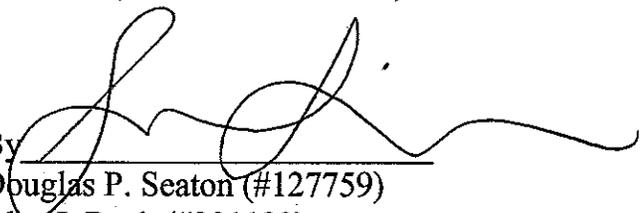
Respondent.

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
St. Paul, Minnesota 55155

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5,064 words. This brief was prepared using Microsoft Word 2000 (9.06926 SP-3).

Dated: September 21, 2007

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