

**A08-1203**  
**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

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LAWRENCE BAER

*Appellant,*

vs.

J.D.DONOVAN, INC.

*Respondent.*

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**BRIEF OF *AMICUS CURIAE***  
**NATIONAL EMPLOYMENT LAWYERS ASSOCIATION,**  
**MINNESOTA CHAPTER**

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**Statement of the *Amicus Curiae* Minnesota Chapter of the  
National Employment Lawyers Association <sup>1</sup>**

The National Employment Lawyers Association (“NELA”) is a non-profit organization founded in 1985, and it has a membership of approximately 3,000 employment-law practitioners nationwide. NELA’s Minnesota Chapter (“Minnesota NELA”) has appeared as *amicus curiae* in many significant employment cases before the Minnesota Supreme Court and the Minnesota Court of Appeals. See, e.g., *Frieler v. Carlson Marketing Group*, 751 N.W.2d 558 (Minn. 2008); *Ray v Miller Meester Advertising, Inc.*, 684 N.W.2d 404 (Minn.2004); *Abraham v. County of Hennepin*, 639 N.W.2d 342 (Minn.2002); *Anderson-Johanningmeier v. Mid-Minnesota Women’s Center*, 637 N.W.2d 270 (Minn.2002); *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn.1998); *Williams v. St. Paul Ramsey Medical Center*, 551 N.W.2d 483 (Minn.1996); *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555 (Minn.1996).

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<sup>1</sup>Rule 129.03 Certification: This brief was wholly authored by the undersigned counsel for the *amicus curiae* Minnesota Chapter of the National Employment Lawyers Association. No counsel for any party authored this brief in whole or in part. No person or entity other than the Minnesota Chapter of the National Employment Lawyers Association, its members and/or its counsel, has made any monetary contribution to the preparation or submission of this brief.

Minnesota NELA affirms that the views it expresses in this brief have not been previously reviewed or approved by the parties or their attorneys in this case, nor has any portion of this submission been written by any party. Any duplication of analysis with that of Appellant's is coincidental. The undersigned are current members of the Minnesota NELA Amicus Committee. Minnesota NELA thanks the Minnesota Court of Appeals for permitting it to appear in this case.

## INTRODUCTION

This case comes to the Court following the trial court's determination that, although Appellant established that Respondent required him and others to complete an illegal job application in violation of the Minnesota Human Rights Act ("MHRA"), he was not a prevailing party entitled to attorney fees. Minnesota NELA urges the Court to find that the trial court abused its discretion in determining that Appellant was not a prevailing party entitled to attorney fees.

### **I. The Court Should Apply Minnesota's Well Settled Principal that a Prevailing Plaintiff for a Claim Under the MHRA Should Be Awarded Attorney Fees**

The plain language of the Minnesota Human Rights Act and case law construing it are clear: a Plaintiff who establishes a violation of the Act should, unless special circumstances exist, be awarded attorney fees.

### **A. Minnesota Courts Apply a Different Standard for Awarding Prevailing Party Status to a Plaintiff Versus a Defendant**

The MHRA permits the court to “allow the prevailing party reasonable attorney’s fee as part of the costs.” Minn. Stat. § 363A.33, subd. 7. Generally, a prevailing party is one who receives a favorable decision or verdict upon which judgment is entered. *Bochert v. Maloney*, 581 N.W.2d 838 (Minn.1998); *Hensley v. Eckerhart*, 461 U.S. 424 (1983) (prevailing party is one who succeeds “on a significant issue in litigation which achieves some of the benefits the [party] sought in bringing the suit.”). For a claim under the MHRA, a prevailing plaintiff ordinarily is to be awarded attorney fees in all but special circumstances. *Kunza v. St. Mary’s Regional Health Center*, 747 N.W.2d 586, 594 (Minn.App. 2008) (citations omitted). Courts apply a different standard to defendants.

For a defendant to establish prevailing party status it must show “the employee’s action was frivolous, unreasonable, or without foundation, or was brought in bad faith.” *Sigurdson v. Isanti County*, 386 N.W.2d 715, 722-23 (Minn.1986); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421(1978) (court has discretion to award attorney's fees to a prevailing defendant in a Title VII case if plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith).

Applying the appropriate standards, Appellant is indisputably a prevailing party. Appellant alleged Respondent used an illegal job application in violation of the MHRA, Minn.Stat. § 363A.08 Subd.4 (b). The trial court determined that Appellant proved Respondent committed a “serious” violation of the MHRA by using this application, and imposed a civil penalty against Respondent. *District Court Order, p. 26*. Accordingly, plaintiff should have been awarded attorney fees. Minn.Stat. § 363A.33, Subd. 7; *Kunza*, 747 N.W.2d at 594.

The trial court erroneously ruled; however, that Appellant failed to demonstrate that Respondent discriminated against him by failing to hire or even interview him when he failed to respond to three questions on the illegal application. *District Court Order, Pp. 4, 12, 21, 30*. Appellant did not allege such a claim and, even if he had, it has no bearing on the determination of Appellant’s prevailing party status. Moreover, simply failing to prevail on a claim does not satisfy the requirements Respondent must show to be considered a prevailing party.

Nevertheless, both parties petitioned for fees claiming “prevailing party” status. The district court held that since Appellant prevailed on the employment application issue and Respondent prevailed on the discriminatory hiring claim, neither side was a “prevailing party” entitled to

attorney fees. *Id. at p. 30.* The trial court apparently reasoned that because both parties obtained partial success, neither side was the “prevailing party.” As the law makes clear, however, the lower court misapplied the burden of proof the Appellant must meet for “prevailing party” status versus that of the Respondent. As a result, it abused its discretion in failing to award Appellant prevailing party status along with reasonable attorney’s fees. The trial court’s decision not only fails to recognize and apply the appropriate burdens for establishing prevailing party status, it also undermines the purpose and public policy underlying those distinct burdens and the statutory fee provision of the MHRA.

**B. Minnesota Courts Apply Different Standards for Awarding Prevailing Party Status to Ensure the Continued Enforcement of the MHRA**

The trial court’s decision reflects an all or nothing approach to the issue of who constitutes a prevailing party: a party must prevail on *all* claims or it is not the prevailing party. Moreover, by conflating the standards for awarding prevailing party status to a plaintiff versus a defendant the court ignores the law and public policy behind the distinct standards.

The trial court’s all or nothing approach effectively eviscerates the MHRA’s statutory fee provision because rarely does a party prevail on all claims brought in a suit. *Cf. Hensley v. Eckerhart*, 461 U.S. 424, 435

(1983)(“Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.”) Moreover, such a rigid definition of a prevailing party is inconsistent with the MHRA’s explicit grant of authority to the trial court to use its discretion in awarding statutory fees. There is no discretion to exercise under an “all or nothing” approach.

The court’s apparent definition of a prevailing party is also irreconcilable with the MHRA’s statutory fee provisions and its purpose. Indeed, the distinction in burdens for establishing prevailing party status for plaintiffs and defendants is necessary to the continued enforcement of the MHRA. Otherwise, “[v]ictims with legitimate cases would be discouraged from filing suit, fearing that if they did not prevail, they might be liable for substantial attorney fees incurred by a defendant.” *Sigurdson*, 386 N.W.2d at 722.<sup>2</sup> The trial court, nevertheless, essentially applied the prevailing plaintiff standard to both Appellant and Respondent, and determined that each party’s respective success cancelled out the success of the other. In

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<sup>2</sup> Applying the same standard for prevailing party status to both defendants and plaintiffs fails to recognize the very real and distinct financial vulnerabilities plaintiff’s face, particularly when the defendant is an employer that provides the plaintiff’s livelihood. *Sigurdson*, 386 N.W.2d at 722-723.

doing so, the court abused its discretion and contravened long standing public policy of the MHRA.

**II. The Award of Attorney Fees to a Prevailing Plaintiff are Essential to Enforce the Intent and Public Policy of the MHRA to Eliminate Discriminatory Employment Practices**

The Supreme Court has explained that the MHRA's statutory fee provision was put in place to encourage victims of discrimination to bring suit and to make legal counsel available. *Sigurdson v. v. Isanti County*, 386 N.W.2d 715, 722 (Minn.1986). The court's decision to deny an award of attorney fees in this case works against the very purpose of the attorney fee provision. Appellant challenged Respondent's use of an illegal application as part of his discrimination claim. The trial court concluded that Respondent's job application was a "serious" violation of the MHRA that warranted a civil penalty.

It cannot be gainsaid that proving a "serious" violation of the MHRA was a significant achievement in the case at bar. This is not an exceptional circumstance justifying a denial of attorney fees, and the lower court cited no evidence to the contrary. Likewise, the court fails to cite any evidence demonstrating that Appellant's case was frivolous or brought in bad faith, justifying prevailing party status for Respondent.

Appellant's success in this case is precisely why statutory fees are warranted. Statutory fees "encourage victims of discrimination to bring suit, particularly where the relief sought is *not a large money judgment*. . ." *Sigurdson*, 386 N.W.2d at 722 (emphasis added). Statutory fees also break down the unfortunate but well known financial barriers faced by victims of civil rights violations. See *Liess v. Lindemyer*, 354 N.W.2d 556, 558 (Minn.App. 1984) (vacating lower court's reduction of plaintiff's attorney fee award in Section 1988 housing discrimination case because to do so would "discourage lawyers from accepting housing discrimination cases and vindicating the rights Congress had in mind.") Indeed, to deny statutory fees in these cases would relegate civil rights solely to the four corners of the paper they are written on. *122 Cong. Rec. 33313 (1976) (remarks of Sen. Tunney)*.

The potential for such fee awards also encourage legal counsel to pursue these claims on behalf of victims. Private enforcement of civil rights laws, along with statutory fees is an integral part of the enforcement scheme for these laws. See *Marquart v. Lodge 837, International Association of Machinists and Aerospace Workers*, 26 F.3d 842, 848 (8<sup>th</sup> Cir. 1994) (addressing award of fees under Title VII). The effective enforcement of civil rights laws depends largely on private citizens because of the limited

resources and myriad public interests of institutions charged with enforcing these laws. *H.R.Rep. No. 94-1558, p. 1 (1976)* (“Although some agencies of the United States have civil rights responsibilities, their authority and resources are limited.”); *See also Humphrey v. Schumaker*, 524 N.W.2d 303, 306 (Minn.App.1994); *Ly v. Nystrom*, 615 N.W.2d 302, 311 (Minn.2000) (citing testimony before the Labor and Commerce Committee) (“It’s impossible for the Attorney General’s Office to investigate and prosecute every act of consumer fraud in this state. \* \* \*[And] if a[n] individual could bring an action, he can do some of the prosecuting, he can do some of the enforcing, he can provide some of the protection for himself and others that the Attorney General’s Office \* \* \* can not do today \* \* \*.”) But when private individuals enforce the MHRA, their interests still coincide with the public’s interest in addressing discrimination. Therefore, to fully realize the purposes, principles and policies of the MHRA, private enforcement is necessary, and therefore reasonable attorney fees are necessary as well.

While this arrangement affords plaintiffs an opportunity to vindicate their civil rights, statutory fees also facilitate MHRA’s broader purpose of eliminating discrimination in certain of our social interactions. *Sigurdson*, 386 N.W.2d at 722; *Giuliani v. Stuart Corporation*, 512 N.W.2d 589, 596,-97 (Minn.App.1994); *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143

(Minn.App.1985) (“Attorneys for successful civil rights plaintiff should recover a fully compensable fee.”). The trial court’s decision, if allowed to stand, would present a serious setback to plaintiffs with legitimate claims under the MHRA. Not only would it discourage private enforcement of these important civil rights, but it would frustrate the objective of eliminating illegal discrimination in this state. Minn.Stat. § 363A.02, subd. (a) and (b). Because the trial court applied the wrong standard in denying Appellant’s attorney fees and ignored public policy critical to enforcing the MHRA, its decision should be reversed.

### **III. Conclusion**

Appellant challenged Respondent’s use of an illegal employment application. The trial court agreed that Respondent’s use of this application constituted a serious violation of the MHRA. Despite this determination, the trial court abused its discretion when it failed to determine that Appellant was a prevailing party.

The court based this determination on its misunderstanding of the distinct standards defendants and plaintiffs must meet to establish prevailing party status. The court conflated these exclusive standards and determined that, since both parties had some success, neither was a prevailing party. This misreading of the law lowered Respondent’s burden of proof and, if

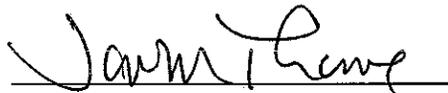
permitted to stand, would effectively eviscerate MHRA's statutory fee provision and undermine the public policy underlying it.

For these reasons, Minnesota NELA respectfully requests that the Minnesota Court of Appeals remand this case to the lower court with instructions to re-evaluate Appellant's prevailing party status and to determine a reasonable attorney's fee in light of his success.

Respectfully submitted,

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