

NO. A11-1481

**State of Minnesota
In Court of Appeals**

Jane Kay Dukowitz,

Appellant,

vs.

Hannon Security Services,

Respondent.

APPELLANT'S REPLY BRIEF

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REPLY

Appellant (Dukowitz) devotes this reply brief to the appropriate standard of review. In its responsive brief, Respondent (Hannon) argues that the appropriate standard of review is whether the trial court “abused its discretion.” (Resp.’s Br., p. 2). That standard of review would apply only after a legal determination has been made regarding the interpretation of Minn. R. Civ. P. 54.04 and Minn. Stat. § 549.04.

Here, Dukowitz is not challenging the Court’s discretion in awarding costs. Rather, she is challenging the trial court’s conclusion and interpretation of Minn. Stat. § 549.01 and Minn. R. Civ. P. 54.04(d). The trial court, in interpreting that rule and statute, concluded that costs and disbursements are mandatory and Dukowitz cannot avoid them because of her financial condition. Despite its wide discretion, the trial court determined that § 549.01 and Rule 54.04(d) do not allow it to consider the hardship an award of costs may otherwise cause a party. The Court further determined that Minn. Stat. § 563.01, subd. 10 (*in forma pauperis* statute) compels costs and disbursements on the non-prevailing, indigent party. Accordingly, this is a legal issue in the first instance.

On appeal, the Court is “not bound by and may not give deference to the District Court’s decision on a purely legal issue.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 474 (Minn. Ct. App. 2002); *see also Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003) (no deference is given to a lower court on questions of

law) Therefore, the appropriate standard of review is *de novo*. See *In Re: Grand Rapids Public Utilities Comm.*, 731 N.W.2d 866, 871 (Minn. Ct. App. 2007) (stating that appellate courts retain the right to review *de novo* an agency's determination and interpretation of words in a statute); *Jasper v. Commissioner of Public Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (stating that the interpretation of a rule presents a question of the law which the Court of Appeals reviews *de novo*).

Respectfully submitted.

Dated: March 23, 2012.

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