**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-0906**

Travis Widner,
Appellant,

vs.

Ace Auto Parts & Salvage Co. d/b/a Ace Auto Parts,
Respondent.

**Filed April 21, 2025**
**Affirmed in part and reversed in part**
**Bratvold, Judge**

Ramsey County District Court
File No. 62-CV-20-5296

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota; and

Patrick W. Michenfelder, Throndset Michenfelder, LLC, Minneapolis, Minnesota (for appellant)

Lindsey J. Woodrow, Duncan A. Brumwell, Waldeck & Woodrow, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Reilly, Judge.*

**SYLLABUS**

1. A district court may award attorney fees and litigation expenses under the Americans with Disabilities Act (ADA) only when the plaintiff's claim was frivolous, unreasonable, or groundless, or if the plaintiff continued to litigate after it clearly become

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

so, as this standard is set out in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 422 (1978).

2. A district court abuses its discretion by awarding attorney fees and litigation expenses under the *Christiansburg* standard when an ADA plaintiff's claim survives motions for summary judgment and for judgment as a matter of law but ultimately does not prevail at trial.

## OPINION

**BRATVOLD**, Judge

Appellant Travis Widner sued respondent Ace Auto Parts & Salvage Co. under Title III of the ADA, alleging that there were four accessibility violations on Ace's retail premises. During the litigation, Ace successfully remediated those four violations; Widner added two new ADA-violation claims during summary-judgment proceedings, both of which went to a bench trial. After Widner rested his case, the district court denied Ace's motion for a directed verdict. The district court's written decision, which included findings of fact and conclusions of law, rejected Widner's two remaining claims for ADA violations. In response to posttrial motions, the district court denied Widner's motion for a new trial and granted Ace's motion for attorney fees and litigation expenses under the ADA along with Ace's request for statutory costs as the prevailing party. After determining that Widner's claims were frivolous, unreasonable, and groundless, the district court awarded Ace over $80,000 in attorney fees, litigation expenses, and costs.

Widner's appeal challenges the district court's denial of his new-trial motion and its award of attorney fees, litigation expenses, and costs to Ace. We affirm the district court's

denial of Widner's motion for a new trial. On Ace's monetary award, there is no dispute that Ace is a prevailing party. We conclude, however, that Ace was entitled to attorney fees and litigation expenses under the ADA only if it met the *Christiansburg* standard, which states that a district court may award attorney fees, litigation expenses, and costs if a plaintiff's claim was frivolous, unreasonable, or groundless, or if the plaintiff continued to litigate after it clearly become so. 434 U.S. at 422. We also conclude that the district court abused its discretion when it determined that Widner's claims were frivolous, unreasonable, and groundless. We therefore reverse the award of attorney fees and litigation expenses. But because Ace is entitled to statutory costs, we affirm the award of statutory costs to Ace as the prevailing party.

## FACTS

*Background and Widner's Claims*

Widner is a small-business owner who lives in Coon Rapids. He became disabled in 2017 when one of his legs was amputated below the knee as the result of injuries from a vehicle accident. Widner uses mobility devices including a walker, a prosthesis, a wheelchair, a knee scooter, and a cane. The parties agree that Widner is "disabled" under Title III of the ADA. *See* 42 U.S.C. § 12102(1) (2018) (defining "disability"). Widner's brief to this court describes Widner as a "disability activist" who has "brought dozens of suits to vindicate the ADA's promises." During trial, Widner testified that he has filed more than 100 cases and recouped about $20,000.

Before Widner's 2017 accident, he worked in auto sales and towing, which led him to do business with Ace. Ace operates a used-auto-parts shop and salvage yard located on

Rice Street in St. Paul. The parties agree that Ace provides a "public accommodation" under Title III of the ADA. *See* 42 U.S.C. § 12181(7) (2018) (defining "public accommodation").

Widner visited Ace's retail premises sometime in the fall of 2019 to buy a window for a vehicle. During that visit, he was wearing his prosthesis and was feeling "frustrated" and not "up to taking any extra challenges." Widner testified that, upon arriving at Ace's premises, he "just left" without exiting his car or going into the building. According to the district court's written findings, Widner left because of the steep parking stalls and abrupt sidewalk rise. Widner agreed on cross-examination that he never tried to enter Ace's store from its west entrance—the entrance that, he claimed at trial, violated the ADA. Widner also agreed that, on the day of his visit to Ace's premises, he did not know whether anything related to the west entrance prohibited him from entering the building.

Widner testified about his contact with Ace's premises before and after his fall 2019 visit. When he was asked, "Had there been times before [the fall 2019 visit] when you had been inside the property?" he responded, "Yeah. Yep." He stated that he had not returned to Ace since fall of 2019. But when asked, "Do you intend to patronize this property again in the future, sir?" Widner answered, "Yes."

Widner sued Ace in January 2020, seeking remediation of four features on Ace's premises that, he alleged, were unlawful under the ADA. The complaint described parking signs that were "too low," parking spaces that were "too steep," a "vertical threshold change" in the walkway along the north entrance route, as well as carpets or mats that posed "tripping hazards." Ace's answer generally denied Widner's allegations, claimed

that it had made "all alleged necessary remedies," and asserted various defenses, including that Widner lacked standing to bring the claims. Discovery followed. During the litigation, Ace worked to remediate the alleged barriers, beginning no later than September 2021.

*Cross-Motions for Summary Judgment*

In September 2021, the parties filed cross-motions for summary judgment.[1] After a hearing on the motions, the district court determined that "[t]he unique timing" of the litigation made it "difficult, if not impossible," for the court to decide the issues presented. Concerned that remediation work was ongoing at Ace's premises, the district court stayed the proceedings until May 2022, at which time the parties would update the court "on the question of mootness and whether the remediation sought by [Widner] is readily achievable at the property."[2] Widner moved for reconsideration, which the district court denied.

Following the stay, the parties filed correspondence with the district court. Ace offered the findings of its accessibility expert, Julee Quarve-Peterson, who concluded that the violations identified in Widner's complaint had been remedied. Widner disagreed, arguing that the expert's affidavit was insufficient. Widner also moved to reopen discovery to allow another inspection of Ace's premises.

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[1] Widner's motion asked the district court to grant summary judgment on his parking-lot and exterior-access claims as alleged in the complaint. Widner also argued that he had standing to bring the action, that Ace's facility remained ADA-noncompliant, and that remedying Ace's violations was readily achievable. Along with challenging Widner's standing, Ace's summary-judgment motion argued that the alleged violations had been remedied, were being remedied, or were not within the scope of the ADA.

[2] The district court relied on Eighth Circuit caselaw addressing mootness in ADA lawsuits. *Davis v. Morris-Walker, LTD*, 922 F.3d 868, 870 (8th Cir. 2019).

In October 2022, the district court granted Widner's motion and reopened discovery so that Widner's expert could reinspect Ace's premises. The district court added that, for Widner's case "to be dismissed on mootness grounds, [Ace] must establish that its store is ADA-compliant and that it will remain compliant."

Widner's expert, Tyler Olson, reinspected Ace's retail premises and found two new alleged ADA violations—the ones that were submitted at trial and are at issue on appeal. Olson's report stated that the first alleged violation involved the customer-service counter inside Ace's store, which, according to Olson, was ADA-noncompliant because it was over 36 inches high (service-counter claim). Olson's report stated that the second alleged violation involved the sidewalk that ran between Ace's west entrance and the city sidewalk on the west side of Ace's property (west-sidewalk claim). The west sidewalk was ADA-noncompliant because, according to Olson's report, there were cross-slopes[3] greater than two percent and vertical rises between segments greater than one-quarter inch. Widner submitted Olson's report in support of his summary-judgment motion.

The district court then issued a summary-judgment order that granted the parties' requests in part and denied them in part. Ace moved for reconsideration; the district court granted Ace's motion in part and issued an order revising some portions of its earlier summary-judgment decision. In the May 2023 reconsideration order, the district court denied Ace summary judgment on the service-counter and west-sidewalk claims because fact issues remained for trial. The district court also determined that Ace had successfully

[3] A cross-slope is a slope perpendicular to the direction of travel, while a running slope is a slope in the direction of travel.

remediated the four violations that Widner alleged in his complaint and dismissed those claims as moot. The district court set the matter for trial with two issues remaining: "whether the interior sales and service space has ADA compliant counters" and "whether the west-side entrance access[] route is compliant with the ADA, and if not, whether remediation is feasible." A May 11 trial date was initially set and then continued to May 30 at Widner's request.

*Trial Evidence and the District Court's Factual Findings*

The case went to trial. Widner testified as summarized above.

Olson testified that he determined that the height of Ace's service counter was greater than 36 inches by measuring it with a "laser level." As for the west sidewalk, he stated that there were three options for remediation. First, Ace could remove "three [noncompliant] slabs" from the west sidewalk, "rebuild them to where they are level," and then "gradually grade [the first slab] down or feather it down . . . to solve that issue"—apparently referring to a two-inch gap that Quarve-Peterson's report stated would result at the intersection of Ace's west sidewalk and the city sidewalk if Ace's sidewalk's cross-slope were remediated. Second, Ace could move its west sidewalk and "put[] in a curb landing." Third, Ace could "simply . . . remove the sidewalk."

Olson testified that, in offering these options, he was relying on a report prepared by the owner of LT1 Construction and received into evidence. The owner of LT1 did not testify at trial but stated in an email that LT1 was "certified in ADA construction" through the Minnesota Department of Transportation and that "[i]n the last three years [it has] been working with the city of Worthington in rebuilding ADA sidewalks throughout the city."

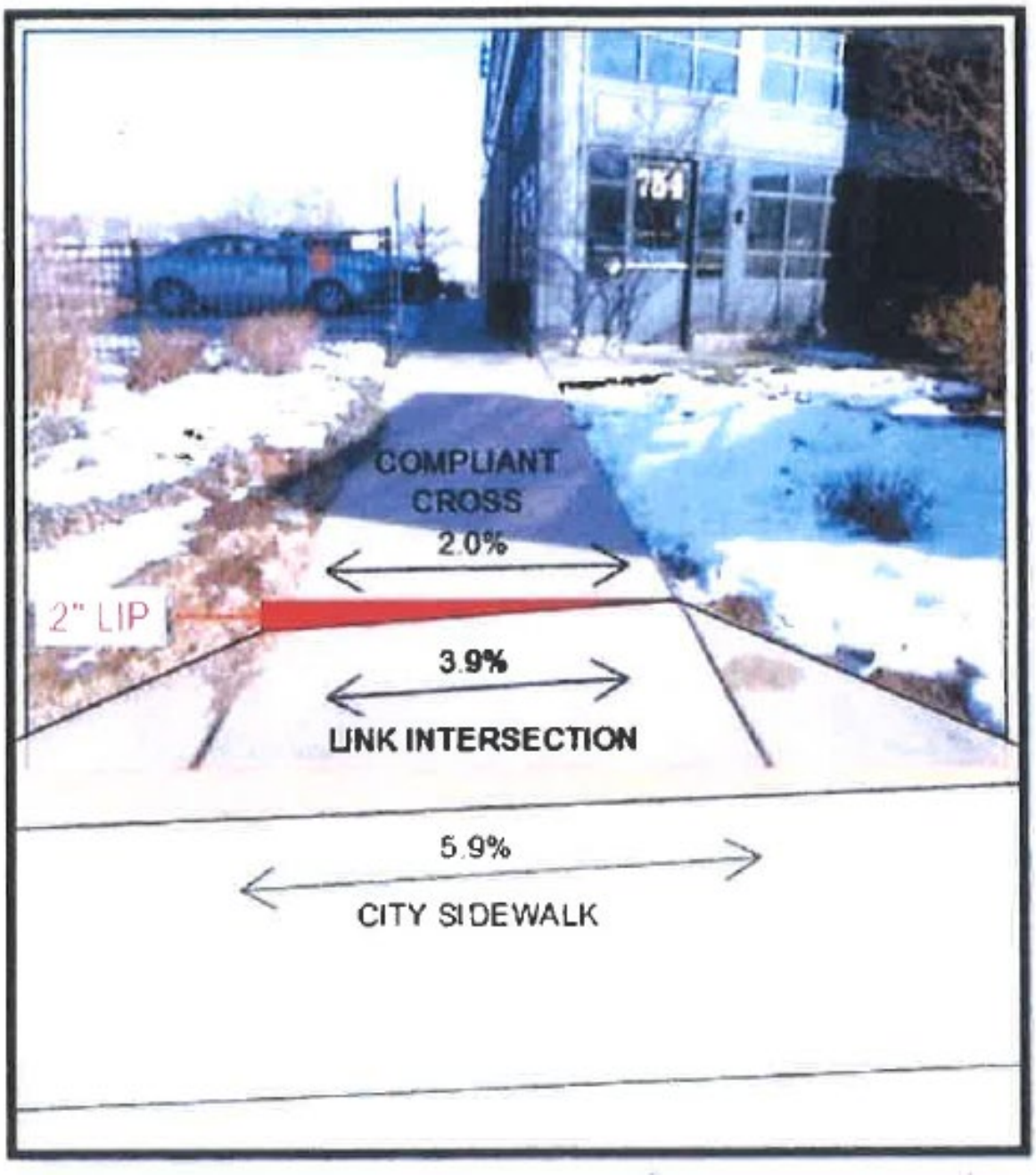
After Widner rested his case, Ace moved for a directed verdict. Ace argued first that, as to standing, Widner had testified that "he did not get in [Ace's] building" and was thus "not allowed to bring claims with respect to any alleged barriers on the interior of the building." Ace also argued that Widner's testimony on the "second prong of the standing requirement"—Widner's "intent to return" to Ace—was "not sufficient." Ace asked for the "entire case [to] be dismissed based on lack of standing."

Ace also moved for a directed verdict "with respect to remediation on the west-side entrance," arguing that Olson's reliance on LT1's report was not "reliable or trustworthy." Ace also challenged the viability of Widner's proposed remediation options, arguing that Widner had not provided enough evidence "to understand how option one or option two would actually work in real life." Ace added that Widner's other option—taking out the west sidewalk—was a "concession that it is technically infeasible to construct [the sidewalk] the way that they have proffered."

The district court denied the directed-verdict motion but observed that it was "very concerned" that the owner of LT1 never testified and that it was therefore "hard . . . to find that information helpful or credible."

Ace's expert, Quarve-Peterson, testified during Ace's case-in-chief and acknowledged, based on her earlier report, "that it would be technically infeasible to make the west sidewalk compliant with the ADA given the site constraints." She discussed Olson's west-sidewalk-remediation testimony and each of the three options. As for the first proposed option (fixing Ace's sidewalk and grading it to meet the existing city sidewalk), she testified that Ace could not match the slope of its west sidewalk to the existing city

sidewalk and remain ADA-compliant because keeping the cross-slope of Ace's west sidewalk within ADA tolerances would leave a two-inch gap where it intersected the city sidewalk. She agreed that she had not "ever seen a city come in and fix" a similar sidewalk. Quarve-Peterson offered an illustration of Widner's first proposed remediation option.



Quarve-Peterson also testified that Widner's second proposed option (involving a curb landing) would be ADA-compliant, but that it would not comply with Minnesota accessibility standards. And she testified that Widner's third proposed option (removing Ace's west sidewalk) would reduce accessibility.

Quarve-Peterson testified about Widner's service-counter claim, opining that Ace had a sales counter that met the ADA's height and size requirements. Quarve-Peterson observed one of Olson's inspections at Ace's retail premises and noted two things. First, Olson did not use standard practices while taking running-slope and cross-slope measurements. Second, Olson did not measure vertical rises on the west sidewalk using a measurement card.[4] Ace also entered into evidence the surveillance video recording of Olson's October 2022 inspection of its building.

Following trial, the district court issued findings of fact and conclusions of law, dismissed Widner's claims with prejudice, directed judgment for Ace, and awarded Ace costs and disbursements. First, regarding Widner's service-counter claim, the district court concluded that Widner lacked standing, reasoning that he had not proved that he had entered Ace's store after his 2017 injury or encountered any interior architectural barriers inside the premises since then. Second, the district court concluded in the alternative that the service-counter claim was "wholly unsupported by the record." Relying on the video recording of Olson's inspection, the district court found that "[t]here was no indication" that Olson "meaningfully measured the height of any counter," that a laser device for

[4] Quarve-Peterson testified that a measurement card is placed perpendicular to the surface being measured to determine the variation between surfaces.

measuring "was not listed in his report, nor was it visible in the video footage," and that Olson "could not credibly testify" about the interior counter heights. Finally, the district court found that Ace had an ADA-compliant counter available.

On the west-sidewalk claim, the district court rejected Ace's challenge to Widner's standing. On the claim's merits, the district court found credible Quarve-Peterson's testimony that the west sidewalk had "impermissible cross-slopes" and violated the ADA. But the district court observed that Widner's proposed remediation options for the west sidewalk "simply adopted the written submission provided by LT1" without any independent analysis and that no adequate evidence suggested that LT1 had any relevant ADA-compliance experience. The district court stated that it was therefore "highly challenging" to find Widner's remediation options credible. The district court also found that removing the west sidewalk "would lessen accessibility broadly." The district court concluded that Widner had "failed to propose any plausible alternative regarding barrier removal" on the west sidewalk.

The district court credited Quarve-Peterson's testimony that "remediation of the [w]est-side entrance access[] route cannot be readily accomplished due to fundamental constraints imposed by the property and public sidewalk." The district court found that, based on Quarve-Peterson's credible testimony, "there is no point along the property that the public sidewalk's slope is less than or equal to 2%, and that because of this slope *no sidewalk* connecting Ace's property to the public sidewalk *can comply with the ADA* without creating an impermissible . . . 2-inch lip at the junction." (Emphasis added.) The district court also determined that, given Ace's site constraints, ADA compliance was

"technically infeasible" and that the deviations in the west sidewalk had "been remediated to the maximum extent possible." The district court later clarified that the west sidewalk had been remediated to the "maximum extent *feasible*." (Emphasis added.)

*Posttrial Motions and Award*

Widner moved for a new trial and judgment as a matter of law. The district court denied Widner's motions, determining that he had failed to meet his burden of production because he did not present a "plausible plan for remediation."

Ace also applied for "Reasonable Costs, Fees, and Disbursements" under the ADA fee-shifting statute, which refers to attorney fees, litigation expenses, and costs. 42 U.S.C. § 12205 (2018). For simplicity's sake, this opinion will refer to litigation expenses, not disbursements. Ace also applied for $200 in statutory costs under Minnesota law. Widner opposed any award.

The district court granted Ace $89,317 in fees, costs, and disbursements after determining that Widner's claims were "frivolous, unreasonable, and groundless."[5] The district court identified several reasons for its decision. First, after extensive litigation, Widner "took the stand and testified that he had never entered the Ace . . . property, nor encountered any interior barriers located therein." Second, Widner and his counsel "knew" the claims lacked merit but still pursued them. In particular, Widner "failed to advance any

[5] The district court specifically ordered Widner to pay $73,644 in attorney fees and to pay "costs and disbursements" totaling $15,673.35, which represented "$1,100 in various filing and Court costs, and $14,573.35 in expert fees." Ace submitted an application claiming $200 in statutory costs under Minn. Stat. § 549.02 (2024), $300 in court filing fees, and $600 in motion fees. Ace also submitted invoices from Quarve-Peterson showing charges of $14,573.35 following the district court's order reopening discovery in October 2022.

credible remediation proposal." Third, Widner failed to secure judgment on any of his post-October 2022 claims.

The district court concluded:

> Here, [Widner] and his Counsel presented the Court with claims unwarranted by existing law and lacking evidentiary support; the Court is concerned that these claims served only to unnecessarily prolong and increase the costs of litigation, or otherwise harass [Ace] after [Widner's] initial claims were diligently remediated. Accordingly, even if the Court did not find that an award of attorney's fees was appropriate under the statute on [Ace's] motion, the Court would still Order in the Alternative for [Widner's] Counsel to show cause why he should not be sanctioned. Minn. R. Civ. P. 11.03.

Widner appeals.

## ISSUES

I. Did the district court abuse its discretion by denying Widner's motion for a new trial on the west-sidewalk claim?

II. Did the district court abuse its discretion by awarding Ace attorney fees, litigation expenses, and costs?

## ANALYSIS

Widner raises two issues on appeal. First, he argues that the district court abused its discretion by denying his motion for a new trial on the west-sidewalk claim. Second, he contends that the district court abused its discretion by awarding Ace attorney fees, litigation expenses, and costs. Ace urges that we should affirm the district court on both issues.

## I. The district court did not abuse its discretion by denying Widner's motion for a new trial on his west-sidewalk claim.

Widner argues that the district court abused its discretion by denying his motion for a new trial on the west-sidewalk claim because its findings conflicted with the record evidence and because it failed to follow applicable caselaw. This court reviews a district court's denial of a new trial for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). We review any factual findings for clear error. Minn. R. Civ. P. 52.01.

We begin with background on the relevant provisions of the ADA along with helpful federal caselaw. This court is bound by Minnesota Supreme Court and United States Supreme Court precedential decisions but may consider federal caselaw as persuasive. *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003).

Title III of the ADA prohibits discrimination against any individual "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a) (2018). The ADA requires that at least 60% of all public entrances be accessible. *See* U.S. Dep't of Just., *2010 ADA Standards for Accessible Design* § 206.4.1 (Sept. 15, 2010) [hereinafter *2010 Standards*], https://www.ada.gov/law-and-regs/design-

standards/2010-stds/ [https://perma.cc/UP6J-GFNE]; *see also Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1223 (10th Cir. 2014).[6]

An entity covered by Title III must comply with accessibility standards to the "maximum extent feasible" when "the nature of [the] facility makes it virtually impossible" to fully comply with the standards. 28 C.F.R. §§ 36.402(c), .304(d)(1) (2024). The 2010 Standards similarly require that, "where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible." *2010 Standards*, *supra*, § 202.3.

Technical infeasibility includes situations where "existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements." *Id.* § 106.5. The determination of whether remediation has occurred to the maximum extent feasible "does not ask the court to make a judgment involving costs and benefits," and the regulatory framework requires facilities to be accessible "even if the costs of doing so—financial or otherwise—is high." *Roberts v. Royal Atl. Corp.*, 542 F.3d 363, 371 (2d Cir. 2008).

As noted above, based on the evidence at trial, the district court found that Ace's west-sidewalk entrance did not comply with ADA standards, that Widner did not offer "any plausible alternative," that ADA compliance was "technically infeasible," and that Ace had mediated the west sidewalk to the "maximum extent feasible." Widner contends

[6] The U.S. Department of Justice promulgated the 2010 Standards, which are regulations implementing the ADA. *See Abercrombie & Fitch*, 765 F.3d at 1217.

that the district court should have granted a new trial for three reasons, which we discuss in turn.

### A. Burden to Produce Plausible Remediation Proposals

Widner argues that the district court improperly put the burden on him to present a plausible alternative plan for remediating the west sidewalk, contending that "[a]ffirmative defenses do not work this way." Ace responds that the district court followed applicable federal caselaw.

Federal appellate courts have concluded, like the district court here, that ADA plaintiffs have the initial burden to present a plausible plan for remediation. *Id.* at 372 (holding that, with respect to the "maximum extent feasible" standard, an ADA plaintiff has the "initial burden of production" to show that an accessibility-enhancing alteration could be made, after which the defendant bears the burden to show that the plaintiff's proposal would be "virtually impossible" (quotations omitted)); *Wright v. RL Liquor*, 887 F.3d 361, 364 (8th Cir. 2018) (collecting cases and holding that the district court's posttrial ruling in favor of the defendant properly required the ADA plaintiff to "present evidence tending to show that the suggested method of barrier removal was readily achievable under the circumstances"); *Gathright-Dietrich v. Atlanta Landmarks, Inc.*, 452 F.3d 1269, 1273 (11th Cir. 2006) (holding that an ADA plaintiff "has the initial burden of production to show . . . that the proposed method of architectural barrier removal is readily achievable" (quotation omitted)); *Colo. Cross Disability Coal. v. Hermanson Fam. Ltd. P'ship I*, 264 F.3d 999, 1005-06 (10th Cir. 2001) (holding that an ADA plaintiff "bears

the initial burden of production to present evidence that a suggested method of barrier removal is readily achievable").

The district court's decision to dismiss Widner's west-sidewalk claim because he "failed to propose any plausible alternative regarding barrier removal" comports with federal caselaw. Thus, the district court did not err by placing the burden on Widner.

**B. Remediation to the Maximum Extent Feasible**

Widner contends that the district court erroneously determined that Ace had remediated the west sidewalk to the "maximum extent feasible" under Title III of the ADA. Ace argues that the record evidence supports the district court's decision.

Widner does not directly challenge the district court's determination that it was "technically infeasible" for Ace to strictly comply with ADA requirements. *2010 Standards*, *supra*, § 202.3. And he does not argue that the district court erred by not specifically finding that full ADA compliance was "virtually impossible." 28 C.F.R. § 36.402. He instead argues that it was contrary to the law and facts in the record for the district court to determine that the west sidewalk had been remediated to the maximum extent feasible. Ace contends that Widner is taking the relevant trial testimony "out of context."

Widner highlights Quarve-Peterson's cross-examination testimony discussing whether beveling a two-inch lip at the intersection of Ace's west sidewalk and the city sidewalk would be ADA compliant:

> Q: Would you agree, ma'am that [if] a remediation of an ADA Title III barrier is technically infeasible, the facility is obligated to remediate the barriers to the maximum extent possible?

> A: That's what's stated in the requirement, yes.
>
> Q: And how would they go about remediating these to the maximum extent possible in your view?
> A: I thought I just explained that.
>
> Q: Oh, I thought you said you wouldn't do anything.
> A: I said I would fix the cracks and gaps and seasonally maintain them. And you can't do anything about the intersection that would—having it result in a lip would be a hazard to everyone. So making their segment comply, it just can't match up.
>
> Q: Could you bevel that lip that you think is going to result, ma'am?
> A: Possibly, but then the Ace's segment would not be in compliance.
>
> Q: It would be better, though, than just having the lip, correct?
> A: Yes.

Widner maintains that the district court erred because, based on this testimony, Ace could have performed further remediation by replacing the noncompliant west-sidewalk slab with a new slab and then beveling the resulting two-inch lip. We are not persuaded for two reasons. First, Quarve-Peterson's testimony suggests that it is better not to have a hazardous lip than to have one. Also, Quarve-Peterson's testimony that it would be possible to bevel a newly installed concrete slab to remove a lip *that was created by installing the new slab* does not mean that installing the new slab would maximize remediation. Widner identifies no record evidence indicating that a beveled slab would be ADA compliant or more accessible than Ace's existing west sidewalk.

Second, Quarve-Peterson's testimony supports the district court's determination that the west sidewalk had already been remediated to the maximum extent feasible. She

testified that Ace could not match the slope of its west sidewalk to the slope of the intersecting city sidewalk and remain ADA compliant and that keeping the cross-slope of Ace's own sidewalk within ADA tolerances would create the impermissible two-inch lip at the intersection with the city sidewalk.

Quarve-Peterson also testified that Widner's second remediation proposal (involving a curb landing) would be ADA compliant but would violate Minnesota accessibility standards. And Quarve-Peterson testified that Widner's third proposal (removing Ace's west sidewalk) would reduce accessibility for persons with disabilities. She testified that the "best option" for accessibility would be to forgo construction until the city could fix its sidewalk and for Ace to instead perform seasonal maintenance on the west sidewalk to ensure there were no abrupt rises or cracks. In sum, Quarve-Peterson's testimony supported the district court's determination that the west sidewalk was as accessible as it could be given Ace's site constraints and therefore was remediated to the "maximum extent feasible."

### C. District Court's Reliance on Quarve-Peterson's Testimony

Widner argues that the district court improperly found credible Quarve-Peterson's conclusions about the west sidewalk. Widner points out that, when Quarve-Peterson testified about one methodology she used to conclude that bringing the west sidewalk into compliance would result in a two-inch lip, Widner's attorney objected, stating that Quarve-Peterson's report did not disclose this methodology. The district court sustained the objection, which, according to Widner, damaged Quarve-Peterson's opinion.

A district court has "considerable discretion in determining the sufficiency of foundation laid for expert opinion." *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760-61 (Minn. 1998) (quotation omitted). Although the district court sustained Widner's objection to Quarve-Peterson's testimony about the "old-school" string method she used to determine whether Widner's remediation proposals would be ADA compliant, that was not the sole basis for her opinions about the west sidewalk. Quarve-Peterson also testified that she took measurements of the running slopes and cross-slopes of Ace's west sidewalk "at multiple location[s] in each panel of the concrete from the building corner to the segment that . . . adjoins the city sidewalk." And she testified that she analyzed these measurements using a method on which she often relied as an accessibility specialist and thereby concluded that Widner's proposed remediation would be ADA-noncompliant.

The district court did not expressly cite in its decision which measurements it credited from Quarve-Peterson's testimony. Still, the record evidence supports the district court's finding that Quarve-Peterson "credibly testified" that any remediation of the west sidewalk could not be "readily accomplished" while remaining in compliance with the ADA. The district court therefore did not err in relying on Quarve-Peterson's testimony.

For the reasons stated, the district court did not abuse its discretion in denying Widner's motion for a new trial.

## II. The district court abused its discretion in determining that Widner's claims were frivolous and awarding Ace attorney fees and litigation expenses.

Widner argues that the district court erroneously awarded Ace $89,317 in attorney fees, litigation expenses, and costs. This court reviews a district court's award of attorney

fees, litigation expenses, and costs for an abuse of discretion. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987) (attorney fees); *Kellar v. Von Holtum*, 605 N.W.2d 696, 703 (Minn. 2000) (costs and disbursements).

### A. Attorney Fees and Litigation Expenses

Widner contends that the district court abused its discretion because the award of attorney fees, litigation expenses, and costs rests on the determination that Widner's claims were frivolous. Widner argues that his claims are not frivolous under relevant caselaw because "there is no controlling precedent" on ADA standing in Minnesota, the claims survived Ace's summary-judgment and directed-verdict motions, the district court justified its decision using improper "hindsight logic," and the award "subverts" the policy of the ADA.

First, we consider what standard applies to the district court's decision to award attorney fees and litigation expenses under the ADA. After concluding that we should follow the standard embraced by the majority of federal appellate courts, we apply it to the district court's decision.

#### 1. Standard for an Award Under the ADA's Fee-Shifting Statute

The ADA grants a district court discretion to award attorney fees, litigation expenses, and costs to the prevailing party:

> In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a

> reasonable attorney's fee, including litigation expenses, and costs . . . .

42 U.S.C. § 12205. Caselaw applying this and similar provisions has clarified the circumstances in which a district court may order a plaintiff to pay attorney fees. In *Christiansburg*, the Supreme Court held that, under Title VII of the Civil Rights Act of 1964, a prevailing defendant is not entitled to attorney fees and costs unless the district court finds that the plaintiff's claims were "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." 434 U.S. at 422.

The United States Supreme Court has not expressly applied the *Christiansburg* standard to the ADA fee-shifting statute. But other federal appellate courts have recognized that "[i]t is well-established that the *Christiansburg* standard applies to an award of attorney's fees under the ADA." *Lange v. City of Oconto*, 28 F.4th 825, 848 (7th Cir. 2022) (emphasis omitted). At least six other federal circuits have adopted the *Christiansburg* standard and applied it to the ADA fee-shifting statute.[7] *See Fernandez v. 23676-23726 Malibu Rd., LLC*, 74 F.4th 1061, 1064-65 (9th Cir. 2023); *Providence Behav. Health v. Grant Rd. Pub. Util. Dist.*, 902 F.3d 448, 460 (5th Cir. 2018); *Mich. Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 433 (6th Cir. 2017); *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1176 (11th Cir. 2005); *Parker v. Sony Pictures Ent., Inc.*, 260 F.3d 100, 111 (2d Cir. 2001); *Bercovitch v. Baldwin Sch., Inc.*, 191 F.3d 8, 11 (1st Cir. 1999).

[7] And at least one other circuit has applied the *Christiansburg* standard in an unpublished decision. *Twilley v. Integris Baptist Med. Ctr., Inc.*, 16 F. App'x 923, 926 (10th Cir. 2001).

The district court here cited and relied on *Christiansburg* in awarding attorney fees. Both parties discuss the *Christiansburg* standard at length in their appellate briefs. While Widner advocates that we should apply *Christiansburg*, Ace rejects that position because neither the United States nor the Minnesota Supreme Court has ruled on whether *Christiansburg* applies to ADA claims. Instead, Ace urges us to apply the "plain meaning" of the ADA fee-shifting statute and affirm the district court's decision because Ace is a prevailing party. Alternatively, it urges affirmance if we adopt the *Christiansburg* standard.

Because the ADA is a civil-rights act, like the act at issue in *Christiansburg*, we follow the majority of federal appellate courts and hold that the *Christiansburg* standard applies to ADA attorney-fee awards in Minnesota courts. *See Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686, 689 (Minn. 1991) (turning to Eighth Circuit caselaw for "guidance" on an issue of first impression in Minnesota related to 42 U.S.C. § 1983); *see also Citizens for a Balanced City*, 672 N.W.2d at 20 (recognizing that, while not binding, federal appellate court opinions are "persuasive" when interpreting federal statutes). We therefore hold that, when a defendant is a prevailing party in an ADA claim, a district court may award attorney fees, litigation expenses, and costs if the plaintiff's claim was frivolous, unreasonable, or groundless, or if the plaintiff continued to litigate after it clearly became so.

### 2. The District Court's Decision to Award Fees and Litigation Expenses

Next, we apply the *Christiansburg* standard to the district court's determination that Widner's claims were frivolous, unreasonable, or groundless. Federal courts interpreting

*Christiansburg* have concluded that, to determine whether a lawsuit is frivolous, a court must ask whether "the case is so lacking in arguable merit as to be groundless or without foundation rather than whether the claim was ultimately successful." *Cordoba*, 419 F.3d at 1176 (quotation omitted); *see Stover v. Hattiesburg Pub. Sch. Dist.*, 549 F.3d 985, 998 (5th Cir. 2008) (applying the *Christiansburg* standard and reversing a district court's award of fees and expenses to a prevailing defendant, explaining that "plausible evidence" supported the plaintiff's Title VII claim).

Minnesota courts apply a functionally similar standard of frivolousness. *See Wallace v. State*, 820 N.W.2d 843, 850 (Minn. 2012) (concluding that a postconviction petition is frivolous "if it is perfectly apparent, without argument, that the claims in the petition lack an objective, good-faith basis in law or fact"); *Maddox v. Dep't of Hum. Servs.*, 400 N.W.2d 136, 139 (Minn. App. 1987) (concluding that a frivolous appeal from a public-benefits-overpayment action was "without any reasonable basis in law or equity and could not be supported by a good faith argument for [a] . . . modification or reversal of existing law" (quotation omitted)); *cf.* Minn. R. Gen. P. 9.06(b)(3) (defining "frivolous litigant" as one who maintains a claim "not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or that is interposed for any improper purpose"). With this standard of frivolousness in mind, we examine each of the district court's reasons for its decision.

First, the district court correctly observed that Widner testified at trial that he had never entered Ace's store after he became disabled. From this, the district court reasoned that Widner "knew his new claims lacked merit, since [he] never entered Ace Auto's

property or encountered a barrier inside Ace Auto's property." The district court added that Widner's claims were "unwarranted by existing law." We understand the district court to be referring to its conclusion that Widner lacked standing to assert the service-counter claim.

Standing is an essential element of jurisdiction. *Glaze v. State*, 909 N.W.2d 322, 325 (Minn. 2018). But it is not clear under existing law that Widner lacked standing for the service-counter claim. There is no binding Minnesota law on ADA standing, and the few federal appellate courts that have addressed the issue are split. In *Davis v. Anthony, Inc.*, the Eighth Circuit concluded that a plaintiff who had encountered parking-space violations outside a building, but who did not enter the building, did not have standing to assert ADA violations inside the building. 886 F.3d 674, 678 (8th Cir. 2018). Under the Eighth Circuit's approach, Widner may have lacked standing for the service-counter violation because he testified that he never entered Ace's store after becoming disabled. *See id.* at 677-78.

But Widner's service-counter claim would likely fare better in the Second and Ninth Circuits, which take a broader approach to ADA standing. The Second Circuit discussed standing in a factual situation similar to Widner's in *Kreisler v. Second Ave. Diner Corp*. 731 F.3d 184, 188 (2d Cir. 2013). The Second Circuit held that a plaintiff, who was deterred from entering a restaurant because of an inaccessible entrance, had standing to sue for remediation of the entrance barrier and therefore also had "standing to seek removal of all barriers inside the [restaurant] related to his disability that he would likely encounter were he able to access the [restaurant]." *Id.* In *Doran v. 7-Eleven, Inc.*, the Ninth Circuit held that a plaintiff who alleged ADA violations in his complaint, but discovered other

violations after his expert examined the facility, had standing to sue on the later-discovered violations. 524 F.3d 1034, 1043-44, 1047 (9th Cir. 2008).

*Kreisler* and *Doran* support Widner's standing for the service-counter claim. Widner testified that he was deterred from entering Ace's store because of the original parking-lot ADA violations that the district court found to be remediated before trial. *Doran* supports Widner's standing to assert ADA claims for barriers that his expert permissibly discovered, even though Widner did not encounter them, such as the service-counter violation. *See id*. (overturning district court's decision that plaintiff's standing under the ADA was limited to barriers he had encountered or had personal knowledge of and holding that standing included "all barriers" at a place of public accommodation that are "related to [plaintiff's] specific disability, including those identified in his expert's site inspections"). *Kriesler*'s analysis similarly supports Widner's standing. *See* 731 F.3d at 188. Both *Kreisler* and *Doran* require that alleged ADA violations relate to a plaintiff's disability. *See id*.; 524 F.3d at 1047. But Widner arguably satisfied this requirement because he testified that he struggled with his mobility and sometimes used a wheelchair.

To be clear, we need not and do not decide whether Widner had standing to pursue the service-counter claim.[8] Because Minnesota lacks any precedent on ADA standing and

[8] We do not expand our frivolousness analysis to consider Widner's district court argument that he had standing to assert the west-sidewalk claim. The district court's findings of fact and conclusions of law determined that the parties "consented" to Widner's standing to assert the west-sidewalk claim. From this comment, we conclude that the district court's fee award did not turn on whether Widner had standing for the west-sidewalk claim. It is therefore unnecessary for us to review the district court's ruling on Widner's standing to assert the west-sidewalk claim. *See Glaze*, 909 N.W.2d at 325 (holding that parties to an action cannot waive standing).

federal law on this issue is unsettled, we conclude that Widner's argument in district court that he had standing was not frivolous. In short, Widner's standing argument had a good-faith basis in the law. *Wallace*, 820 N.W.2d at 850.[9]

Ace argues in support of the district court's frivolousness finding, urging that Widner's attorney made "unequivocally false" representations about Widner's testimony on the facts related to standing. Ace suggests that Widner's claims would not have survived a directed-verdict motion if Widner's attorneys had been forthright with the district court. Ace first highlights Widner's pretrial brief, which stated that "[Widner] will testify he was inside [Ace] and is therefore entitled to seek remediation of the barriers within [Ace]." Second, Ace quotes a statement from Widner's attorney before trial that "[t]he testimony is going to be he went inside on other occasions. So we've got standing."[10] Ace's argument

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[9] Based on the same federal caselaw discussed for the service-counter claim, we note that Widner's argument at trial that he had standing for the west-sidewalk claim has some legal support. Widner's testimony, in substance, was that he did not personally encounter the west-sidewalk defect his expert identified in later discovery. As already discussed, some federal appellate courts have held that a plaintiff has standing to assert an ADA claim for barriers related to the plaintiff's disability, even though the evidence reflects that the plaintiff did not encounter a particular barrier. *Kreisler*, 731 F.3d at 188 (holding that a plaintiff who was deterred from entering a restaurant had standing to sue for remediation of entrance barriers and interior barriers related to his disability).

[10] Ace also focuses on Widner's attorney's statement made in response to Ace's motion for a directed verdict: "I thought [Widner] testified that he had been inside Ace or had transacted business with Ace after he sustained his injury, Your Honor. That's my recollection. I may be mistaken." This is equivocal; perhaps more importantly, it does not appear that the district court relied on the statement. The district court responded, "Okay. So let's set that aside. Let's set the interior issue aside again and let's go back now to the intent to return." During the proceedings, the parties and the district court frequently cited Eighth Circuit caselaw on standing, which requires that ADA plaintiffs "at least prove knowledge of the barriers and that they would visit the building in the imminent future but for those barriers. . . . Intent to return to the place of injury 'some day' is insufficient."

is not persuasive, first because the district court's order does not mention any misrepresentation by Widner's attorney. Also, our review of the record suggests that Widner's testimony at trial matched his attorney's statements. Widner agreed that there had "been times" before fall 2019 that he "had been inside [Ace's] property."[11]

Second, the district court based its frivolousness determination on its finding that Widner's claims "lack[ed] evidentiary support." Widner urges that this conclusion contradicts the district court's summary-judgment and directed-verdict rulings, and this point of view is supported by Minnesota law. As the supreme court has observed when reversing sanctions imposed under Minn. R. Civ. P. 11 (1989), "[a] party who has survived a summary judgment motion or a motion to dismiss certainly has no reason to believe that the court considers its claim or defense frivolous." *Uselman v. Uselman*, 464 N.W.2d 130, 144-45 (Minn. 1990) (quotation omitted).

The district court stated that Widner had presented sufficient evidence to warrant further litigation when it denied Ace's motions for summary judgment and for a directed verdict. In denying Ace's motion for a directed verdict following Widner's case-in-chief,

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*Smith v. Golden China of Red Wing, Inc.*, 987 F.3d 1205, 1209 (8th Cir. 2021) (emphasis omitted) (quotations omitted). The district court and the parties then discussed whether Widner's testimony had adequately established his intent to return to Ace's premises.

[11] While we reject Ace's argument that Widner's attorneys misled the district court on the facts related to standing, the record suggests that Widner's attorneys engaged in inappropriate behavior during litigation. At trial, the district court admonished the parties—and, seemingly, Widner's attorneys in particular—for inappropriately gesticulating, laughing, rolling their eyes, and sighing during testimony. While this inappropriate behavior may have contributed to the district court's ultimate determination of frivolousness, the district court did not expressly mention this behavior in its order awarding fees and litigation expenses.

the district court expressly agreed with Widner's statement that "we don't get to a directed verdict on this record when we've put in our prima facie case." The fact that the district court later concluded after both parties rested that Widner "failed to advance any credible remediation proposal" at trial reflects the district court's weighing of expert testimony and does not show that Widner's claims "lack[ed] evidentiary support."[12]

Third, the district court observed that "the record and the Court's prior Order demonstrate that [Widner] has failed to secure judgment on any one of his claims brought forward since October 2022." This suggests that the district court relied on post hoc reasoning. In *Christiansburg*, the Supreme Court cautioned that, in addressing a fee-shifting statute, courts must "resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." 434 U.S. at 421-22. The Supreme Court observed that such reasoning could deter plaintiffs from bringing meritorious civil-rights claims. *Id.* In light of this caution and the record in this case, we conclude that the district

[12] In discussing Widner's lack of evidentiary support, the district court stated that it was concerned Widner's claims "served only to unnecessarily prolong and increase the cost of litigation, or otherwise harass [Ace] after [Widner's] initial claims were diligently remediated." The district court stated that Widner and his attorney "knew the new claims lacked merit and yet continued to pursue them over three years all the way through to trial." The district court does not mention other instances of harassment by Widner.

The record does not support the district court's conclusion that Widner pursued the two remaining claims for over three years. This suit commenced in January 2020 and was tried in May 2023. The district court reopened discovery and allowed Widner to reinspect Ace's premises in October 2022, after which Widner supplemented his expert opinion on the alleged ADA violations. The district court granted summary judgment for Ace on the original ADA claims in May 2023 and, at the same time, set the two remaining alleged ADA violations for trial at the end of that month. Thus, Widner's discovery of the two ADA claims that were tried occurred about six months before trial.

court misapplied the *Christiansburg* standard. The question before the district court was whether Widner's claims were frivolous, groundless, or unreasonable—not whether his claims ultimately prevailed.[13] The district court's reliance on Widner's failure to secure a judgment was improper post hoc reasoning.

In sum, the record does not support the district court's determination that Widner's claims were frivolous, unreasonable, or groundless. Because the record does not support this determination, the district court abused its discretion when it awarded Ace attorney fees and litigation expenses. Thus, we reverse the award of attorney fees and litigation expenses.[14]

Because we reverse the district court's award of attorney fees on this ground, we need not reach Widner's alternative argument, raised for the first time on appeal, that the attorney-fee award must be reversed because the district court concluded that Widner lacked standing.[15] We turn instead to the district court's award of costs.

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[13] We also observe that Widner's ADA action succeeded in part. His four original claims seeking remediation of Ace's ADA-noncompliant parking facilities, signage, north entrance, and carpets and mats prompted Ace to successfully remove or remediate those barriers.

[14] Ace moved for attorney fees and litigation expenses under only the ADA fee-shifting statute, 42 U.S.C. § 12205. Although Ace moved for costs under Minn. Stat. § 549.02, subd. 1, Ace did not tax disbursements under Minnesota law. *See* Minn. Stat. § 549.04 (2024) (authorizing a prevailing party to tax reasonable disbursements). On appeal, Ace does not argue that the award for litigation expenses may be affirmed, in the alternative, under Minnesota law. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not adequately briefed on appeal are waived). We therefore conclude that the district court's award of litigation expenses must be reversed alongside the attorney-fee award.

[15] Following oral argument, Widner and Ace submitted letters to this court supplementing the argument and legal authority in their briefs related to whether an ADA fee-shifting

### B. Costs

Widner observes in his brief that the ADA fee-shifting statute's "allowance of 'costs' authorizes taxation of costs as permitted by the law of the forum in which an ADA claim is tried." Widner contends that ADA claims are equitable in nature and that, therefore, the district court has discretion whether to award costs to the prevailing party, relying on Minn. Stat. § 549.07 (2024). Ace does not directly address whether state law governs the cost award.

We conclude that a portion of the district court's cost award is supported by statute.[16] First, Minnesota law authorizes a prevailing party to tax statutory costs and Ace filed for statutory costs under the applicable statute, Minn. Stat. § 549.02.[17] Second, state law

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award may be sustained after a plaintiff's claim is dismissed for lack of standing. While we have received and reviewed these submissions, we need not decide the issue for two reasons. First, we reverse the award on other grounds. Second, Widner raises the argument for the first time on appeal and, in doing so, changes his theory on appeal to contend that he lacked standing to bring the service-counter claim. We seldom address issues raised for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the trial court in deciding the matter before it." (quotation omitted)). And a party is generally not allowed to litigate different or new theories on appeal. *Id*.

[16] The district court awarded Ace $1,100 in filing fees and costs, only part of which are statutory costs, as discussed.

[17] We observe that a district court may award costs and disbursements, even when it lacks a basis to award attorney fees. Attorney fees generally "may not be awarded to a successful litigant without explicit statutory or contractual authorization." *Fownes v. Hubbard Broad., Inc.*, 246 N.W.2d 700, 702 (Minn. 1976). But the supreme court has long held that an award of costs and disbursements "is one of the burdens ordinarily imposed upon the unsuccessful litigant." *Turnblad v. Dist. Ct.* (*In re Bd. of Park Comm'rs*), 91 N.W. 1111, 1112 (Minn. 1902); *see also State by Burnquist v. Miller Home Dev., Inc.*, 65 N.W.2d 900, 904 (Minn.

generally governs procedural awards—like costs and disbursements—that result from state court actions under federal law. *Cf. Alby v. BNSF Ry. Co.*, 934 N.W.2d 831, 834 (Minn. 2019) (concluding that an award of postjudgment interest in a state court Federal Employers' Liability Act (FELA) action is "procedural in nature" and therefore governed by state law); *Boyd v. BNSF Ry. Co.*, 874 N.W.2d 234, 237 (Minn. 2016) ("[B]ecause state courts have concurrent jurisdiction over FELA claims, FELA preempts state *substantive* law—but not state *procedural* law . . . ."). Minnesota law on statutory costs therefore governs the district court's cost award.

Ace applied for statutory costs under Minn. Stat. § 549.02, subd. 1, which states that a district court "shall" award defendants $200 "[u]pon discontinuance or dismissal or when judgment is rendered in the defendant's favor on the merits." Section 549.02 also requires the district court to award $5.50 to the "prevailing party" in the action. Minn. Stat. § 549.02, subd. 1. Widner does not dispute that Ace was the prevailing party on the service-counter and west-sidewalk claims. *See Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) ("The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered."). The district court dismissed Widner's claims and entered judgment for Ace, so Ace was entitled to $205.50 in statutory costs.

Widner suggests on appeal that, because his action was equitable, Minn. Stat. § 549.07 governs the cost award. Section 549.07 states that, "[i]n equitable actions, costs may be allowed or not." But even if we assume, without deciding, that section 549.07

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1954) (observing that, in the eminent-domain context, an award of costs and disbursements is "a procedural element and not a matter of substance").

applies to the cost award here, Widner raises this issue for the first time on appeal. Thus, we decline to consider it. *See Thiele*, 425 N.W.2d at 582.[18] We therefore affirm the district court's award of $205.50 in statutory costs to Ace.

## DECISION

The district court did not abuse its discretion in denying Widner's motion for a new trial on the west-sidewalk claim. The district court correctly concluded that the ADA authorized an award of attorney fees and litigation expenses to Ace as the prevailing party only if the district court determined that Widner's claims were frivolous, unreasonable, or groundless or that Widner continued to litigate after the claims clearly became so, as set out in the *Christiansburg* standard. But because the district court abused its discretion by concluding that Widner's claims were frivolous, unreasonable, and groundless, we reverse the district court's award of attorney fees and litigation expenses. We also conclude that Widner was entitled to $205.50 in statutory costs awarded by the district court. Thus, we affirm in part and reverse in part.

[18] Widner also argues that, because the district court, in the alternative, dismissed his service-counter claim for lack of standing, the district court lacked jurisdiction and therefore could not award costs. This is not persuasive for two reasons. First, Widner makes this argument for the first time on appeal, so we need not consider it. *Id*. Also, a district court may award statutory costs to a prevailing defendant, even when the plaintiff fails to properly serve the defendant and the district court dismisses the plaintiff's claim for lack of personal jurisdiction. *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 647, 650 (Minn. App. 2002).