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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-0919**

OCH Bookstore, LLC,  
Respondent,

vs.

Just Take Action, Inc.,  
Appellant.

**Filed March 31, 2025  
Affirmed in part and remanded; motion denied  
Slieter, Judge**

St. Louis County District Court  
File No. 69DU-CV-20-197

Aaron A. Dean, Aaron P. Minster, Moss & Barnett, P.A., Minneapolis, Minnesota (for respondent)

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Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Larson, Judge.

**NONPRECEDENTIAL OPINION**

**SLIETER**, Judge

In this appeal concerning the district court's award of attorney fees, appellant argues that the district court abused its discretion by (1) determining that appellant waived its right to a jury trial on attorney fees, (2) determining that the attorney-fee recovery was limited to a specific time based on the eviction proceeding, and (3) not awarding appellant its

disbursements. Because the district court acted within its discretion by determining that appellant waived its right to a jury trial on attorney fees and by not awarding additional disbursements, we affirm in part. But because it is not clear why certain attorney fees related to the eviction proceeding were excluded from its attorney-fee awards, we remand for further findings.

Respondent moves this court to strike all or part of appellant's reply brief for raising new issues on appeal that were not considered below. We deny the motion as unnecessary.

### **FACTS**

In January 2020, respondent OCH Bookstore LLC commenced an eviction action against its tenant, appellant Just Take Action Inc. (JTA), alleging various breaches of its lease. Following the commencement of the eviction action, each party commenced a separate lawsuit which the district court described as involving "interrelated claims over the" property JTA leased from OCH. The district court consolidated the three cases. In February 2020, the district court granted JTA's motion to stay the eviction action.

Between February 2020 and November 2021, the parties litigated the two "interrelated" matters, engaging in discovery and motion practice, while the underlying eviction action remained stayed.

In November 2021, the parties agreed to dismiss all matters except the eviction action "without further costs or disbursements to any party (or any right to seek attorney[] fees in relation to the prosecution or defense of those claims and counterclaims)," and OCH moved to dismiss its eviction action. In January 2022, the district court granted OCH's motion to dismiss its eviction action but reserved a determination of whether JTA is the

prevailing party for purposes of awarding attorney fees. In July 2022, the district court declared JTA the prevailing party and ordered it to file an affidavit outlining “reasonable attorney’s fees and disbursements incurred in the eviction action.” JTA never filed such an affidavit but instead, over one year later, demanded a jury trial to determine the amount of reasonable attorney fees. The district court denied JTA’s demand for a jury trial regarding reasonable attorney fees, determining that “JTA’s failure to request a jury trial for 484 days constitutes a waiver of the right to seek a jury trial.”

The district court determined JTA was entitled to reasonable attorney fees limited to the eviction action and, specifically, to those reasonable fees incurred during the one-month period prior to the eviction action being stayed. The district court again ordered JTA to file an affidavit outlining its reasonable fees. JTA submitted affidavits outlining its attorney fees, and the district court subsequently ordered OCH to pay “[\$]10,627.50 in reasonable attorney fees to Mr. Ringsred” and “[\$]8,820 in reasonable attorney fees to Mr. Paul,” and \$200 in statutory costs and did not award JTA disbursements.

JTA appeals.

## **DECISION**

### **I. The district court acted within its discretion by determining that JTA waived its right to a jury trial on attorney fees.**

Article 1, section 4 of the Minnesota Constitution provides a right to a trial by jury in all claims at law, including actions seeking attorney fees based on a contract. *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 63 (Minn. 2012). “This right, however, can be waived in civil settings where ‘an intention to

do so appears affirmatively or by necessary inference from unequivocal acts or conduct.”

*301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass’n*, 783 N.W.2d 551, 562 (Minn. App. 2010) (quoting *Hasey v. McMullen*, 123 N.W. 1078, 1080 (Minn. 1909)). And although the Minnesota Rules of Civil Procedure do not set a deadline for a jury-trial demand or waiver, “[t]he failure to make a timely demand for a jury [may] constitute[] ‘an unequivocal act from which the waiver is a necessary inference.’” *Id.* (quoting *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 728 (Minn. 1990)). Appellate courts review a district court’s determination that a party has waived the right to a jury trial for an abuse of discretion. *See Patzwald v. Olivia State Bank*, 239 N.W. 771, 772 (Minn. 1931) (asserting that the ruling on the motion for a jury trial “rests in the sound discretion” of the district court).

JTA argues that the district court abused its discretion by determining that JTA waived its right to a jury trial by failing to make a timely demand.

In July 2022, the district court declared JTA the prevailing party and ordered it to file an affidavit detailing its attorney fees. JTA did not submit an affidavit outlining its reasonable attorney fees and instead waited until October 2023 to demand a jury trial on the attorney-fee issue. Still, JTA maintains that a district court “can consider the circumstances of [a] case in determining the timeliness of a jury trial request,” including, here, that one of its two attorneys that represented it was out of the office during the latter half of 2022 due to a family health concern and that the district court judge that had been presiding over the case died in the spring of 2023. But the record shows that the district court considered these circumstances before determining that JTA waived its right to a jury

trial by waiting 484 days to make a request, and this court defers to the district court's credibility determinations, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), and does not reweigh evidence on appeal, *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021).

JTA bore the responsibility of demanding a jury trial and yet waited for over a year to make the demand. *Schweich*, 463 N.W.2d at 728; *see also 301 Clifton Place*, 783 N.W.2d at 562 (asserting that the right to a jury trial may be waived by failing to make a timely demand). The district court acted within its discretion by determining that JTA waived its right to a jury trial to determine reasonable attorney fees under these circumstances.

**II. The district court acted within its discretion to determine that an award of reasonable attorney fees is limited to the eviction proceeding, but the findings are insufficient to allow for a meaningful review concerning the amount of reasonable attorney fees.**

“The proper method to calculate an award of attorney fees is a question of law that we review de novo. Once the method is established, we review the reasonableness of a particular award for an abuse of discretion.” *State by Comm’r of Transp. v. Krause*, 925 N.W.2d 30, 32-33 (Minn. 2019) (citations omitted).

JTA argues that the district court abused its discretion by limiting its attorney-fee recovery to a one-month period related to OCH’s eviction action. But as the district court observed, the parties agreed pursuant to the November 2021 stipulation to dismiss all “interrelated” actions, except the eviction action, with prejudice and with no right to seek attorney fees. Because the parties agreed that no attorney fees would be awarded for work

performed in the collateral (or “interrelated”) lawsuits, the district court properly limited the attorney-fee awards to the eviction action.

The district court granted attorney-fee awards that were incurred between January 21, 2020, when OCH’s eviction action commenced, and February 20, 2020, when the action was stayed at the request of JTA. As we have already stated, the district court correctly limited the award to reasonable attorney fees only to those incurred in relation to OCH’s eviction action. However, the record indicates that the eviction action was subject to a motion to dismiss, following the stay, and the resulting hearing on that motion which led to the district court’s dismissal of the eviction action. And the district court made no findings as to the legal fees related to this portion of the eviction action that would allow us to meaningfully review whether excluding those fees was a proper exercise of discretion. Because there are no findings related to the subsequent motion to dismiss the eviction action and the subsequent hearing to consider that motion, we cannot determine the reasonableness of the district court’s attorney-fee awards. *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009) (considering an award of legal fees and stating that “[i]t is not within the province of [appellate courts] to determine issues of fact on appeal”) (quoting *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966)). We therefore remand to the district court for additional findings of fact related to the attorney fees associated with the motion to dismiss the eviction proceeding and the subsequent hearing on that motion. We express no opinion on the reasonableness of those attorney fees which relate to the motion to dismiss the eviction action.

### **III. The district court acted within its discretion by denying JTA disbursements.**

“Appellate courts review a district court’s determination on costs and disbursements under an abuse-of-discretion standard.” *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 127 (Minn. App. 2017), *aff’d*, 913 N.W.2d 687 (Minn. 2018). A “district court abuses its discretion when its decision is against logic and facts on the record.” *Id.* (quotation omitted).

JTA argues that the district court abused its discretion by failing to award it disbursements. In July 2022, the district court declared JTA the prevailing party, granted its motion for costs and disbursements, and ordered it to file an affidavit “detailing the reasonable attorney’s fees and disbursements incurred in the eviction action.” Over a year later, after the district court denied JTA’s motion for a jury trial on attorney fees, JTA finally filed affidavits detailing its attorney fees. JTA did not file an affidavit detailing its disbursements. By failing to provide the district court with information related to its disbursements, JTA fails, on appeal, to demonstrate that the district court’s decision to award no disbursements is against logic and facts on this record. *Id.* We therefore determine that the district court acted within its discretion by not awarding JTA disbursements.

OCH moved this court to strike portions of JTA’s reply brief for raising issues on appeal that were not raised below. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (noting that issues not raised or argued in appellant’s principal brief

cannot be raised in a reply brief). Because we did not rely on the portions of JTA's reply brief that OCH seeks to strike, we deny OCH's motion as unnecessary.

**Affirmed in part and remanded; motion denied.**