

IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-0241
Kossuth County No. LACV027055

WMG, L.C.,

Defendant-Appellant,

v.

NCJC, Inc.,

Plaintiff-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR KOSSUTH COUNTY
THE HONORABLE CARL J. PETERSEN

**DEFENDANT-APPELLANT WMG'S APPLICATION FOR
FURTHER REVIEW**

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly determine that a creditor can satisfy the condition precedent established by Iowa Code § 625.25 of providing proof that it had provided debtor with a reasonable opportunity to pay pre-suit, before a court can award attorney fees, when the creditor demands that the debtor pay amounts that are grossly in excess of the actual amounts due?

2. Did the Court of Appeals correctly determine that attorney fees cannot be “costs of the defendant incurred after the offer” pursuant to Iowa Code sections 677.5 and 625.22, when the underlying contract has a prevailing party attorney fee shifting provision and the plaintiff received a judgment for less than the offer amount?

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STATEMENT SUPPORTING FURTHER REVIEW

NCJC, Inc., made claims against Defendant WMG, L.C exceeding \$1,000,000.00, pursuant to a written contract (a farm lease) containing a prevailing party attorney fee shifting provision, when the true debt was only \$41,453.57. WMG offered to confess judgment for \$75,000.00. NCJC rejected the offer to confess and ultimately received a judgment at trial for \$41,453.57.

The District Court awarded NCJC both pre-offer and post-offer attorney fees. The Court of Appeals correctly determined that NCJC's fees before the offer to confess are not treated the same as its fees incurred after the offer to confess is rejected. The Court of Appeals also correctly held that NCJC is not entitled to post-offer fees. However, WMG urges that the Court of Appeals erred by holding that NCJC is entitled to fees for the pre-offer to confess period notwithstanding NCJC's pre-suit claim of over \$1,000,000 which was grossly in excess of the ultimate true debt of \$41,453.57.

WMG also urges the Court of Appeals erred, in holding, that because NCJC did get a judgment in some amount, that WMG could not be a contractual prevailing party for either the pre-offer or post-offer to confess

periods, even though WMG, LLC successfully obtained a dismissal of over 95% of NCJC Inc.'s claims, and notwithstanding the offer to confess statute.

The Court of Appeals' interpretation of the interplay among Iowa Code sections 677.5, 677.10, 625.22, and 625.25 severely limits the settlement influencing value that was the core intention of the legislature in these fees shifting and fee limiting provisions. Because this interpretation and understanding applies to virtually all contracts and contract related litigation in the State of Iowa, these issues are of extreme public importance and should be announced by the Supreme Court of Iowa. Further, these issues are principally of first impression.

TABLE OF AUTHORITIES

Cases

<i>Boyle v. Alum-Line</i> , 773 N.W.2d 829, 832-833 (Iowa 2009).....	9, 20
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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. **DID THE COURT OF APPEALS ERR WHEN IT FAILED TO HOLD THAT A CREDITOR'S ASSERTION OF A \$1,105,005.62 CLAIM, WHEN THE TRUE DEBT WAS ONLY \$41,457.57, WAS PER SE UNREASONABLE FOR PURPOSES OF THE CREDITOR GIVING THE DEBTOR NOTICE AND OPPORTUNITY TO PAY UNDER IOWA CODE § 625.25?**

Cases

Boyle v. Alum-Line, 773 N.W.2d 829, 832 (Iowa 2009)

Dutcher v. Randall Foods, 546 N.W.2d 889, 897 (Iowa 1996)

Gabelmann v. NFO, Inc., 606 N.W.2d 339, 342, 344 (Iowa 2000)

Gosch v. Jeulfs, 701 N.W.2d 90, 91 (Iowa 2005)

Harris v. Olson, 558 N.W.2d 408, 409 (Iowa 1997)

Landals v. George A. Rolfes Co., 454 N.W.2d 891, 897 (Iowa 1990)

People's Trust & Sav. Bank v. Baird, 346 N.W.2d 1, 4 (Iowa 1984)

Rick v. Sprague, 706 N.W.2d 717, 723 (Iowa 2005)

Statutes

Iowa Code § 625.22

Iowa Code § 625.25

Iowa Code § 677.10

II. DID THE COURT OF APPEALS ERR, BY FAILING TO INCLUDE POST-OFFER ATTORNEY FEES AS PART OF COSTS, AS DIRECTED BY IOWA CODE § 625.22, IN ITS AWARD OF COSTS TO WMG UNDER IOWA CODE § 677.10?

Cases

Brockhouse v. State, 449 N.W.2d 380, 383 (Iowa 1989)

Coker v. Abell-Howe Co., 491 N.W.2d 143, 153 (Iowa 1992)

CSS2 Enterprise vs. Farmers Coop. Co., 2015 WL 4935834, 2-3, 7 & 10 (Iowa App.)

Sheer Construction, Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328, 330-331, 333-334 (Iowa 1982)

Tilton v. Iowa Power & Light Co., 94 N.W.2d 782 (Iowa 1959)

Statutes

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Iowa Code § 625.22

Iowa Code § 677.10

Iowa Code § 677.4

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Iowa Code § 717A

Iowa Code § 717A.3

Iowa Code §§ 677.4-6

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Rules

Iowa R. Civ. P. 1.904

STATEMENT OF THE CASE

A. Nature of the Case.

WMG seeks further review of the Court's holding that a creditor (NCJC) who makes a claim of over 26 times what the jury awarded, has satisfied the Iowa Code § 625.25 condition precedent of providing a debtor (WMG) with "reasonable opportunity to pay the debt," thus entitling the creditor (NCJC) to attorney fees.

WMG also seeks further review of the Court's interpretation of Iowa Code § 625.22 and its failure to include WMG's attorney fees as part of the costs it awarded to WMG under Iowa Code § 677.10.

B. Course of Proceedings.

On 3/31/17, NCJC filed its Petition requesting damages for breach of a written farm lease. (3/31/17 Petition; App. 10-14). NCJC never presented any evidence as to the amount of its demand but its lawsuit sought \$190,564.62 for nutrient reimbursements ("reimbursement claim"), and \$914,441.00 on other claims ("other contract claims").¹ Appendix pages 288-290 are attached to this Application For Further Review. NCJC

¹ The \$914,441 is arrived at by totaling all NCJC's claims except for the reimbursements claim. (Motion to Enlarge, Ex. A; Exhibit 110; App. 288-290).

originally brought its \$190,564.62 input reimbursement claim in another lawsuit, *Afshar et al. v. Goche et al.*, but on 4/5/17, dismissed it. (10/10/17 Motion to Consolidate and Continue Receivership, ¶¶ 2-3 & Ex. A, pp. 2-3; App. 28-29, 34-35). Exhibit 110, which NCJC filed on January 9, 2017 in *Afshar*, shows that NCJC was claiming \$190,564.62 just on its nutrient reimbursements claim, alone. (App. 290).

On 11/13/17, NCJC served responses to WMG's discovery requests, reducing its reimbursement claim from \$190,564.62 to \$74,446.09 but NCJC was still asking for \$914,441.00 on other contract claims. (11/13/17 Plaintiff's Notice of Serving Discovery; 12/18/18; Ex. 110; App. 57, 288-290).

On 11/17/17, WMG served Notice of Defendant's Intent to Offer to Confess Judgment Pursuant to Iowa Code § 677.4 and Request for Immediate Hearing in favor of Plaintiff "*in the total amount of \$75,000.00 on all monetary damage claims in this lawsuit, exclusive of interest, costs and attorney fees.*" (Notice of Offer; App. 58).

On 11/30/17, NCJC rejected the offer.² (Stipulation; App. 71-72); (Order; App. 73-74).

On 2/28/18, the Court entered an Order granting WMG's Motion for Partial Summary Judgment, dismissing \$914,441.00 of NCJC's other contract claims. (App. 79 – 90). NCJC's \$74,446.09 reimbursement claim remained for trial.

C. Trial.

The case proceeded to trial and on 5/9/18, the jury awarded \$41,453.57 to NCJC on its reimbursement claim which was less than the \$75,000.00 offer to confess. (Jury Instructions and Verdict of the Jury; App. 94-103).

D. Post-Trial.

The parties filed competing motions for attorney fees. The only evidence as to the amount of the debt, that NCJC demanded that WMG should pay pre-suit, was that NCJC claimed it totaled more than \$1,000,000. (App. 288-290).

On 11/29/18, the Court entered its Ruling on Post Jury Trial Motions

² Two subsequent pleadings corrected a caption error: a 12/21/17 Motion for Order Nunc Pro Tunc and a 12/22/18 Order Nunc Pro Tunc Correcting Caption in 2 Filings. (Motion for Order Nunc Pro Tunc and Order Nunc Pro Tunc Correcting Caption in 2 Filings; App. 75-78).

holding that WMG was a successful party under Iowa Code Chapter 677 and awarded WMG post-offer costs. (Ruling, pp. 7-8; App. 270-271). However, the Ruling did not allow and tax as part of costs WMG's post-offer attorney fees under Iowa Code § 677.10. *Id.*

WMG urged that Iowa Code § 625.25 precluded an award of attorney fees to NCJC because its excessive claim never provided WMG with a reasonable opportunity to pay. (Ruling, pp. 3, 7; App. 267, 271). However, the Trial Court then held that Iowa Code § 625.25 should “*not determine the issue of attorney fees in this case.*” (Ruling, p. 7; App. 271). Then, the Court, after having already held that WMG was a successful party under Iowa Code § 677.10 who had been awarded costs, held that NCJC was also a successful, “prevailing” party. (Ruling, pp. 8-13; App. 272-277). The District Court then awarded NCJC attorney fees including post-offer attorney fees. *Id.* The Court of Appeals did strike all post-offer attorney fees included in the award to NCJC. (Opinion, p.p. 8-12).

On 2/8/19, WMG filed its Notice of Appeal. (Notice of Appeal; App. 302-306). NCJC did not cross appeal.

E. Court of Appeals.

The Court of Appeals filed its decision on May 13, 2020 which held that NCJC had satisfied the Iowa Code § 625.25 condition precedent of giving WMG a reasonable opportunity to pay the ultimate \$41,453.57 debt. (App. 288-290; Opinion, p. 7). Further, the Court agreed with the District Court that NCJC was entitled to pre-offer fees. (Opinion, p. 6).

The Court of Appeals also held that although WMG was a successful party and entitled to costs under Iowa Code Chapter 677, it was not a “prevailing party” under the lease and therefore was not entitled to have its post-offer fees taxed as costs under Iowa Code § 625.22. (Opinion, p. 6).

WMG has now asked the Supreme Court for Further Review.

STATEMENT OF FACTS

WMG is an Iowa limited liability company whose members were Michael Goche, Jeanne Goche-Horihan, Joseph Goche, and Renee Afshar. (3/31/17 Petition, ¶ 2; App. 10-14).³

³ The Court in *Afshar et al. v. Goche et al.* appointed attorney Larry Eide, of Mason City, to act as receiver for WMG. (10/10/17 Motion to Consolidate, p. 2; App. 29). Controversy among the Goche siblings, WMG, and NCJC (a company owned by Joseph Goche) has resulted in three different lawsuits. (11/29/18 Ruling, p. 1; App. 265). See also a recent Court of Appeals

Prior to 3/1/17, WMG leased 600 acres of farmland in Kossuth County, Iowa to NCJC with NCJC paying \$136,449.70 for annual cash rent. (App. 307-308) (4/30/18 Stipulation, App. 91-92). WMG terminated the lease on 3/1/17. *Id.* The written lease between the parties provided that if WMG terminated the lease, it would reimburse NCJC for certain unused nutrients that NCJC had applied. (Ex. 1, p. 3; App. 309). The lease also provides that “[i]f either party files suit to enforce any of the terms of this lease, the prevailing party shall be entitled to recover court costs and reasonable attorney fees.” (11/29/18 Ruling, p. 2; Ex. 1, ¶ 20; App. 266 & 314).

NCJC had previously brought the same nutrient reimbursement claim against WMG in the earlier *Afshar* proceeding, seeking \$190,564.62.⁴ On 3/31/17, and while the *Afshar* lawsuit was still pending, NCJC filed this lawsuit, and on 4/5/17 dismissed its reimbursement claims in the *Afshar* lawsuit. *Id.* In Count One, NCJC again sought recovery of \$190,564.62 for

decision, *Goche v. WMG, L.C.*; No. 18-0793, for a description of the parties and some family dynamics.

⁴ *Renee Afshar v. WMG, L.C. et al.*, in the Iowa District Court in and for Kossuth County, Case No. LACV026869. (10/10/17 Motion to Consolidate and Continue Receivership, ¶¶ 2-3 & Ex. A, pp. 2-3; App. 28, 34-35, 290, 319).

nutrient reimbursements (“reimbursement claim”), and, in Count Two, sought \$914,441.00 for other lease damages. (Petition; Motion to Enlarge, Ex. A; App. 10-14, 288-290).

NCJC submitted no evidence as to the amount of any pre-suit demand that it gave WMG. However, WMG submitted evidence that until 11/13/17, NCJC presented its reimbursement claim to WMG as one totaling \$190,564.62. (Exhibit 110, App. 290). On 11/13/17, NCJC served responses to WMG’s discovery requests reducing its reimbursement claim to \$74,446.09. (11/13/17 Notice of Discovery Response; App. 57, 288-290). Four days later, on 11/17/17, WMG served NCJC with Notice of Defendant’s Offer to Confess Judgment Pursuant to Iowa Code § 677.4 in favor of Plaintiff “*in the total amount of \$75,000.00 on all monetary damage claims in this lawsuit, exclusive of interest, costs and attorney fees.*” (11/17/17 Notice of Defendant’s Offer to Confess Judgment; App. 58). NCJC did not accept. (11/30/17 Stipulation; App. 71-72).

On 2/28/18, the Court granted WMG’s Motion for Partial Summary Judgment, dismissing all \$914,441.00 of NCJC’s “other contract claims.” (2/28/18 Ruling on Summary Judgment; App. 79-90).

The “reimbursement claim” remained for trial and on May 9, 2018, a jury verdict of only \$41,453.57 was entered for NCJC. (5/09/18 Civil Jury Verdict, 5/15/18 Statement of Case and Judgment Entry; App. 102-103, 109, 114).

After trial, both parties asserted competing claims for attorney fees, as summarized in the Course of Proceeding above.

ARGUMENT

I. THE COURT OF APPEALS ERRED BY FAILING TO HOLD THAT A CREDITOR’S ASSERTION OF A \$1,105,005 CLAIM, WHEN THE TRUE DEBT WAS ONLY \$41,457, WAS PER SE UNREASONABLE FOR PURPOSES OF THE CREDITOR GIVING THE DEBTOR NOTICE AND OPPORTUNITY TO PAY THE DEBT UNDER IOWA CODE § 625.25.

A. Scope/Standard of Review and Preservation of Error.

Review of the Trial Court’s interpretation and application of Iowa Code §§ 677.10, 625.22 and 625.25 is for legal error. *Rick v. Sprague*, 706 N.W.2d 717, 723 (Iowa 2005); *Harris v. Olson*, 558 N.W.2d 408, 409 (Iowa 1997). If there is substantial evidence in the record to support the decision, the appellate court is bound by the trial court’s fact-findings. *Gosch v. Jeulfs*, 701 N.W.2d 90, 91 (Iowa 2005). However, the reviewing court is not

bound by the trial court's application of legal principles. *Id.* Review of a court's award of attorney fees is for an abuse of discretion. *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990). "*Reversal is warranted only when the court rests its discretionary ruling on grounds that are clearly unreasonable or untenable.*" *Boyle v. Alum-Line*, 773 N.W.2d 829, 832 (Iowa 2009) quoting *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 342 (Iowa 2000). A misapplication or misinterpretation of a statute constitutes abuse of discretion. *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 342, 344 (Iowa 2000).

WMG preserved error by arguing that NCJC failed to show that "*defendant had information of and a reasonable opportunity to pay the debt before the action was brought.*" (5/21/18 Resistance to NCJC's Application for Attorney Fees, p. 1; App. 154-156). (12/12/18 WMG's Motion to Reconsider, p. 3; App. 281).

B. Before a Creditor Can Recover Contractual Attorney Fees It Must Satisfy the Conditions Precedent Contained in Iowa Code § 625.25 By Providing the Debtor With the Amount of the Debt Actually Due.

Creditors must satisfy a condition precedent before they can recover contractual attorney fees: "*No such attorney fee shall be taxed . . . unless it*

shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought.” Iowa Code § 625.25. The "primary purpose of Iowa Code 625.25 is to provide the debtor a reasonable opportunity to discharge his debt before suit is filed in order to avoid payment of any cost and attorney fees . . ." *People's Trust & Sav. Bank v. Baird*, 346 N.W.2d 1, 4 (Iowa 1984). It is the creditor's responsibility, not the debtor's, as part of its “claim for attorney fees, to prove that adequate notice was given.” *Id.* Here, although NCJC submitted no proof of the amount its pre-suit demand, WMG did offer proof of the excessive amount of NCJC's claim.

The term “debt” is not defined in the statute, but it can only mean the amount that is actually due. This is hardly an unfair position to take by the legislature. For a creditor to satisfy Iowa Code § 625.25, it must give the debtor a reasonable opportunity to pay the debt which means providing information as to the amount actually due. Here NCJC's claim was more than 26 times the amount of the true debt. The Court of Appeals holding would permit banks, mortgage lenders and other routine creditors to satisfy Iowa Code § 625.25 and recover attorney fees by sending out grossly inaccurate Notices of Right to Cure and Demands. This is not what the

legislature intended by Iowa Code § 625.25.

Detailed findings of fact regarding the factors evaluated by the court must accompany an attorney fee award. *Dutcher v. Randall Foods*, 546 N.W.2d 889, 897 (Iowa 1996). Here, the lower Court's rulings, other than containing a recitation that a demand was made, are devoid of any reference as to the actual amount of the debt that NCJC demanded pre-suit and in fact, NCJC offered no evidence on this issue. (Opinion, p. 7). This is error. WMG, did however, offer evidence that NCJC's claim was grossly inaccurate, that WMG had no reasonable opportunity to pay the claim pre-suit, and even several months after the lawsuit was filed NCJC still refused to accept \$75,000. As a matter of law, NCJC did not satisfy the conditions precedent of Iowa Code § 625.25. Both the Trial Court and the Appeals Court erred by not considering the inaccurate and excessive amount of NCJC's claim which totaled \$1,105,005.62. (App. 288-290; Opinion, p. 7).

The \$190,654.00 that NCJC claimed for fertilizer reimbursements that was more than the annual cash rent of \$136,449.70, was itself per se unreasonable. Therefore, it is not surprising that NCJC, several months after filing suit on 11/13/17, reduced its reimbursements claim from \$190,654.00 to \$74,446.09. Then, on 11/17/17, only four days later, WMG offered

\$75,000. If WMG could not “pay the debt” by offering \$75,000, how could it discharge the debt pre-suit, when NCJC claimed that the debt it was owed totaled \$1,105,005.62? As a matter of law, NCJC did not provide WMG with any reasonable pre-suit basis to pay this claim.

The Trial Court and Court of Appeals erred holding that NCJC provided WMG with a reasonable opportunity to pay the actual debt of \$41,453.57, pre-suit. The Trial Court’s Ruling awarding NCJC pre-offer attorney fees should be reversed.

II. THE DISTRICT COURT CORRECTLY AWARDED WMG COSTS UNDER IOWA CODE § 677.10 BUT ERRED BY FAILING TO INCLUDE WMG’S POST-OFFER ATTORNEY FEES AS PART OF COSTS AS DIRECTED BY IOWA CODE § 625.22.

A. Scope/Standard of Review and Preservation of Error.

The scope and standard of review is the same as described in Section I, (A).

WMG preserved error below by filing its Motion to Tax Attorney Fees and Costs resisting NCJC’s Motion for Recovery of Attorney Fees and Costs, by filing an Iowa R. Civ. P. 1.904 Motion to Reconsider, Enlarge or Amend the Court’s November 29, 2018 Ruling, and by timely filing its

Notice of Appeal. It has preserved error here by its timely filing of this Application for Further Review.

B. The Trial Court Erred by Incorrectly Interpreting Iowa Code § 625.22 Which Directs that WMG's Post-Offer Attorney Fees Should Be Taxed as Costs Under Iowa Code § 677.10.

Iowa Code Chapter 677 provides defendants with a mechanism to control litigation expenses by offering to confess judgment under Iowa Code § 677.4. Iowa Code Chapter 677 is designed to encourage settlement, and discourage unnecessary and costly litigation, and should be construed liberally to serve those purposes. *Coker v. Abell-Howe Co.*, 491 N.W.2d 143, 153 (Iowa 1992). Iowa Code § 677.10 provides: “*If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay defendant’s costs from the time of the offer.*” WMG, under any reasonable interpretation of Iowa Code § 677.10 is the winning, successful and prevailing party for the post-offer period.

This case also involves a lease containing an agreement to pay attorney fees and is governed by Iowa Code § 625.22, which provides: “*When judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of*

the costs, a reasonable attorney fee to be determined by the court.”

Because Iowa Code § 625.22 provides that attorney fees are taxed as “*part of the costs,*” this means attorney fees are “costs.”

Although the Trial Court correctly awarded WMG costs, the Trial Court and the Court of Appeals erred by failing to include WMG’s post-offer attorney fees as costs. (11/29/18 Ruling, pp. 7-8; App. 271-272; Opinion p.p. 4-6).

The Court of Appeals incorrectly held that NCJC was the “prevailing party.” (11/29/18 Ruling, p. 6; App. 270; Opinion, p. 6). Iowa Code § 677.10 trumps any common law or contractual “prevailing party” analysis. WMG is the successful party, not NCJC. In a footnote, the Appeals Court interprets “prevailing party” as meaning “singular.” (Opinion, p. 6). There is no authority directing the Court to parse the contractual prevailing party language in that fashion. Iowa Code § 625.22 makes no distinctions about the exact language of the underlying contract or direct the court to engage in contract interpretation. What Iowa Code § 625.22 does say is that if there is a contractual provision allowing for attorney fees then there is a directive to the judge to award them. If the legislative goal was for the court to interpret the contract, there would have

been no point in the legislature enacting Iowa Code § 625.22.

The Court's decision denying that WMG's fees should be taxed as costs conflicts with its opinion in *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 10 (Iowa App.)⁵ When an Iowa Code Chapter 677 offer to confess is combined with a statute that orders the inclusion of attorney's fees as part of costs, then attorney fees must be awarded as part of Iowa Code § 677.10 costs. In *CSS2 Enterprises*, Iowa Code § 717A authorized an award of attorney fees as part of costs in a tort action for crop damage. Like *CSS2 Enterprises*, this case also contains a statute requiring taxation of costs, namely Iowa Code § 625.22.

CSS2 Enterprise involved both an offer to confess judgment and Iowa Code § 717A.3, which provides a remedy for damage to crops including "reasonable attorney fees, which shall be taxed as part of the costs." In *CSS2 Enterprise*, the defendant offered to confess judgment under Iowa Code § 677.7 for a sum certain with no mention of costs. *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 2-3 (Iowa App.) Plaintiff accepted and then asked that attorney fees be taxed as part of the court costs. *Id.* Defendant resisted. *Id.* The court held that under Iowa Code § 677.7,

⁵ *CSS2 Enterprises* does not discuss the concept of "prevailing party" at all because, in that case, the Iowa Code § 677.7 offer was accepted.

“costs follow” and then taxed attorney fees as part of court costs because of the statute taxing fees “as part of the costs.” *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 7 & 10 (Iowa App.).

Other cases supporting WMG’s argument that attorney fees in this case are “costs ” are *Brockhouse v. State*, 449 N.W.2d 380 (Iowa 1989), *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982), and *Tilton v. Iowa Power & Light Co.*, 94 N.W.2d 782 (Iowa 1959).

Brockhouse v. State was a condemnation case involving then Iowa Code § 472.33 (now Iowa Code § 6B.33) which awards attorney fees to the condemnee if he recovers more than the compensation commission awarded.⁶ *Brockhouse v. State*, 449 N.W.2d 380 (Iowa 1989). There, the compensation commission assessed damages at \$6,400. *Id.* The state then made an Iowa Code § 677.7 offer to confess for \$10,000, which the plaintiff rejected and the jury awarded only \$7,500. *Id.* The district court then went ahead and awarded the condemnee costs, including over \$9,000 in attorney fees under Iowa Code § 472.33 (now § 6B.33), which the state appealed. *Id.* The Supreme Court, in striking all attorney fees after the Iowa Code § 677.7

⁶ *Brockhouse v. State* was cited by the Appeals Court to deny post-offer fees to NCJC. (Opinion, p.p. 8-10).

offer, makes it clear – without the need for much discussion - that attorney fees are considered costs:

The trial court's award of attorney fees for the Brockhouses' attorneys included fees for services provided after the time of the department's offer. They are not entitled to these fees. See Iowa Code § 677.10 (1987). We reverse and remand to the trial court for recomputation of costs.

Brockhouse v. State, 449 N.W.2d 380, 383 (Iowa 1989).

The next case, *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982) involved a late completion dispute between two contractors on an Iowa DOT project. That case also involved an oral offer to confess judgment for \$3,500 made under Iowa Code §§ 677.4-6 and Iowa Code § 573.16 which provides, in part, that: “*the court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established a claim.*” *Sheer Construction, Inc.*, 326 N.W.2d at 333. Sheer Construction refused the offer, and after trial, the court granted it a judgment for only \$3500 – the same as the offer to confess - and then assessed costs against Sheer. *Sheer Construction, Inc.*, 326 N.W.2d at 330-331. Although the court denied Sheer fees because it did not recover more than the offer to confess, the

court clearly implies that when a statute includes fees as costs, then attorney fees are “costs”, by stating: “*Even where attorney fees are to be included in costs, such fees need not be specifically mentioned.*” *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328, 334 (Iowa 1982).

The last case, *Tilton*, like *Brockhouse*, was also a condemnation case involving § 472.33 (now § 6B.33) where the court held that “‘*reasonable attorney fees to be taxed by the court*’ are included with the term of ‘costs’ of appeal”. *Tilton v. Iowa Power & Light Co.*, 94 N.W.2d 782 (Iowa 1959), (partly quoting from Iowa Code § 472.33 now Iowa Code § 6B.33).

The four cases cited above, like Iowa Code § 625.22, and this case, each contain a statute which taxes attorney fees as costs.

The Court should reverse the Ruling, remand it and direct the Trial Court to tax all of WMG’s post-offer attorney fees as costs. Specifically, WMG’s post-offer fees, totaling \$30,883.95, as shown on WMG’s 6/4/18 Affidavit and appellate fees attorney fees, should be awarded by this Court, or on remand. (6/04/18 Affidavit; App. 163).

CONCLUSION

The Trial Court and Court of Appeals incorrectly held that NCJC satisfied the Iowa Code § 625.25 condition precedent of providing WMG

with a reasonable opportunity to pay NCJC's \$41,453.57 reimbursement claim prior to NCJC filing suit. Further, the Trial Court and Court of Appeals incorrectly failed to include WMG's attorney fees as part of the post-offer court costs awarded to WMG under Iowa Code § 677.10. Further, the Trial Court and Court of Appeals incorrectly held that NCJC was the pre-offer prevailing party.

The Court should:

- reverse the Trial Court's decision that NCJC satisfied the Iowa Code § 625.25 condition precedent and hold that as a matter of law that NCJC did not provide WMG with a reasonable opportunity to pay the debt pre-suit and strike any pre-offer attorney fees awarded to NCJC;
- reverse the Trial Court's decision failing to award WMG post-offer attorney fees as part of costs, and remand the case to the Trial Court with directions to award post-offer attorney fees to WMG;
- order such other relief as the court deems just and equitable.

REQUEST FOR ORAL ARGUMENT

Appellant WMG respectfully requests to be heard in oral argument on this matter.

ATTORNEY'S COST CERTIFICATE

There was no cost for printing this document as it was electronically filed with the Iowa Judicial System Electronic Document Management System.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE AND TYPE-STYLE REQUIREMENTS

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

this Brief contains 3,897 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

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this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 font size and Times New Roman type style, or

this Brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

Dated: May 27, 2020.

RESPECTFULLY SUBMITTED,

PETERSON & LIPPS



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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on May 27, 2020, I electronically filed the foregoing document with the Clerk of the Supreme Court of Iowa using the Iowa Judicial System Electronic Document Management System, which will send notification of such filing to the counsel below:

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Original filed w/ EDMS
Copies to Counsel by EDMS.

NCJC 11/13/17 Interrogatory Answers

INTERROGATORY NO. 10:

Pursuant to Gordon v. Noel, 356 N.W.2d 559 (Iowa 1984), identify the damages You suffered as of the date You filed the Petition, as well as any future damages You allege, including the following:

- (a) The total amount of damages claimed;
- (b) Each element of the damages allegedly sustained;
- (c) The amount sustained for each element of damages; and
- (d) The manner and method you used to compute each element of damages.

ANSWER:

Total Damages Claimed:

Approximately \$233,887.09, including incidental and consequential damages, together with interest, fees and costs (all of which cannot yet be calculated), and specific performance of Section 26(c) of the Lease. If specific performance is not ordered, NCJC's damages will be increased by approximately \$725,000.

WMG Prevails
2/28/18

Reduced from
\$190,564.62 -
Exhibit 110

Elements and Amounts of Damage:

- Reimbursement owed pursuant to Section 4 of the Lease totals \$74,446.09 (see the detail provided in response to Interrogatory Nos. 2 and 3).
- Incidental and/or consequential damages including the following:
 - NCJC's cost of capital at 2.6% per annum from March 1, 2017 through the date of trial;
 - Increased cost of fill that would have been taken from the Leased Properties had WMG fulfilled its obligation under Section 26(c) of the Lease = approximately \$49,595 (see documents produced by NCJC);
 - Soybean and corn seed that was purchased for use in 2017 and could not be used because WMG failed to fulfill its obligations under Section 26(c) of the Lease = approximately \$12,400 (see documents produced by NCJC);
 - Lost income from the lack of control of the Leased Properties totaling approximately \$97,446 for the 2017 growing season (447 acres x \$218 per acre (assumed rental rate on same basis as used in Lease)), and continuing to increase until such time as NCJC has an opportunity to exercise its rights under Section 26(c) of the Lease; and

WMG offers
judgment of
\$75,000

WMG Prevails
2/28/18

WMG Prevails
2/28/18

WMG Prevails
2/28/18

WMG Prevails
2/28/18



Part of Trial Exhibit
102

On 11/13/17 NCJC
Recites Attorney
Fee amounts

- Attorneys' fees, costs and interest all in amounts that cannot yet be calculated. The fees and costs are approximately \$30,000 through October 31, 2017.
- If specific performance of Section 26(c) is not ordered, additional damages equal to the present value of the lost income for the Leased Properties for a period of at least 10 years totaling approximately \$725,000 (assuming rental rates remain constant at 2017-18 rate of \$218 per acre).

WGM Prevails
2/28/18

E-FILED 2017 JAN 09 3:17 PM KOSSUTH - CLERK OF DISTRICT COURT

FERTILIZER EXPENSES TO WMG LC DUE TO LEASE TERMINATION WITH NCJC INC.

FARMS	LDY32150		GRM18116		RMS21038		RMS22154		RMS23148	
	P&K	Micro	P&K	Micro	P&K	Micro	P&K	Micro	P&K	Micro
YEAR 2009	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
YEAR 2010	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
YEAR 2011	\$	\$ 1,109.25	\$	\$ 857.82	\$	\$ 281.01	\$	\$ 1,138.83	\$	\$ 1,094.46
YEAR 2012	\$	\$ 2,403.00	\$	\$ 1,858.32	\$	\$ 608.76	\$	\$ 2,467.08	\$	\$ 2,370.96
YEAR 2013	\$	\$ 2,707.88	\$	\$ 2,094.09	\$	\$ 686.00	\$	\$ 2,780.09	\$	\$ 2,671.77
YEAR 2014	\$	\$ 4,135.20	\$	\$ 3,197.89	\$	\$ 831.58	\$	\$ 4,245.47	\$	\$ 4,080.06
YEAR 2015	\$	\$ 10,016.25	\$	\$ 7,745.90	\$	\$ 2,537.45	\$	\$ 10,283.35	\$	\$ 9,882.70
YEAR 2015 FALL	\$ 1,734.00	\$ 7,773.43	\$ 1,340.96	\$ 6,011.45	\$ 439.28	\$ 1,969.27	\$ 1,780.24	\$ 7,980.72	\$ 1,710.88	\$ 7,669.78
YEAR 2016 SPRING	\$ 2,448.00	\$10,359.0000	\$ 1,893.12	\$ 8,010.96	\$ 620.16	\$ 2,624.28	\$ 2,513.28	\$ 10,635.24	\$ 2,415.36	\$ 10,220.88
Total IN \$ per column	\$ 4,182.00	\$ 48,840.00	\$ 3,234.08	\$ 37,769.60	\$ 1,059.44	\$ 9,538.35	\$ 4,293.52	\$ 39,530.78	\$ 4,126.24	\$ 37,990.61
GENERAL TOTAL										\$ 190,564.62

NCJC's Claim until 11-13-17

Jt. Ex. 2



IN THE COURT OF APPEALS OF IOWA

No. 19-0241
Filed May 13, 2020

NCJC, INC.,
Plaintiff-Appellee,

vs.

WMG, L.C.,
Defendant-Appellant.

Appeal from the Iowa District Court for Kossuth County, Carl J. Petersen,
Judge.

WMG, L.C. appeals the district court's determinations concerning attorney fees. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.**

Thomas W. Lipps of Peterson & Lipps, Algona, for appellant.

Wesley T. Graham of Duncan Green, P.C., Des Moines, and Philip J. Kaplan of Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota, for appellee.

Considered by Tabor, P.J., and Mullins and May, JJ.

MAY, Judge.

WMG, L.C. appeals from a ruling denying its request for attorney fees but granting attorney fees to NCJC, Inc. We conclude (1) WMG was not entitled to attorney fees; (2) NCJC was entitled to some attorney fees; but (3) NCJC was not entitled to fees for services provided after WMG made its offer to confess. We affirm in part, reverse in part, and remand.

I. Facts and Prior Proceedings

In 2012, WMG and NCJC entered into a farm lease. NCJC was the tenant, and WMG was the landlord. The lease contained the following clause: “If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorney’s fees.”

In 2016, WMG terminated the lease. NCJC then brought this action. Its two-count petition alleged WMG breached the farm lease. WMG answered, raised affirmative defenses, and pled a counterclaim.

NCJC moved to dismiss WMG’s counterclaim. The court granted NCJC’s motion.

WMG moved for summary judgment as to count II of the petition. While its motion was pending, WMG offered to confess judgment in the amount of \$75,000. NCJC rejected the offer. The court later granted WMG’s motion.

The case proceeded to trial on NCJC’s surviving claim. A jury awarded NCJC \$41,453.57 in damages.

Both parties sought attorney fees and costs. The court denied WMG’s requests. Instead, the court awarded attorney fees to NCJC as “the prevailing party.” It also taxed court costs in favor of NCJC.

On appeal, WMG contends the district court erred in (1) denying its request for attorney fees and (2) granting attorney fees to NCJC. WMG also contends that (3) even if NCJC was entitled to some attorney fees, the district court's award was excessive.

II. Standard of Review

"We review the court's award of attorney fees for an abuse of discretion." *Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829, 832 (Iowa 2009). "Reversal is warranted only when the court rests its discretionary ruling on grounds that are clearly unreasonable or untenable." *Id.* (citation omitted). "[M]isapplication of [a] statute constitutes an abuse of discretion." *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 344 (Iowa 2000).

III. Discussion

This appeal involves the interplay between a contractual attorney-fee clause and three statutory provisions. As noted, the lease's attorney-fee clause states:

If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorney's fees.

The relevant statutory provisions are Iowa Code sections 625.22, 625.25, and 677.10 (2017). They provide, in pertinent part:

When judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of the costs a reasonable attorney fee to be determined by the court.

Id. § 625.22.

No such attorney fee shall be taxed . . . , unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought.

Id. § 625.25.

If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay the defendant's costs from the time of the offer.

Id. § 677.10.

We find the meaning of statutes in the “words chosen by the legislature.” *State v. Childs*, 898 N.W.2d 177, 184 (Iowa 2017) (citation omitted). And we “generally enforce contracts as written.” *Greene v. Heithoff*, No. 10-1608, 2011 WL 5515167, at *7 (Iowa Ct. App. Nov. 9, 2011). In all matters, though, we must follow the precedents of our supreme court. See *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990).

With this background in mind, we turn to the parties' specific contentions.

A. Was WMG entitled to attorney fees?

WMG contends the district court erred in refusing to award WMG attorney fees for the period after WMG made its offer to confess, which it calls “the post-offer period.” This is true, WMG argues, because although NCJC rejected WMG's \$75,000 offer to confess, NCJC obtained a verdict of only \$41,453.57. Therefore, in the words of section 677.10, NCJC “fail[ed] to obtain judgment for more than was offered by” WMG. As a result, section 677.10 requires NCJC to “pay [WMG's] costs from the time of the offer.” And, WMG points out, under section 625.22, contractual attorney fees should be taxed as “part of the costs.” Therefore, WMG concludes, because NCJC is required to pay WMG's post-offer costs, NCJC is required to pay WMG's post-offer attorney fees.

We disagree. In Iowa, attorney fees are not allowed “in the absence of a statute or agreement expressly authorizing” them. *Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174, 182 (Iowa 2010) (citation omitted). No fees can be taxed unless “the case . . . come[s] clearly within the terms of the statute or agreement.” *Id.* (citation omitted).

In this case, no statute creates an *independent right* to attorney fees. Section 677.10 does not mention attorney fees. And section 625.22 only provides an enforcement mechanism¹ for *contractual* attorney-fee clauses. It authorizes taxation of attorney fees *only if* an “agreement” within the parties’ “written contract” requires payment of “an attorney fee.” *Id.* (noting “Iowa Code section 625.22 declares that *when attorney fees are permitted under a contract provision*, the court is permitted to tax a reasonable amount of those fees as a part of costs” (emphasis added)).

So our analysis does not *begin* with sections 625.22 or 677.10. Those provisions do not enter into our thinking unless, as a preliminary matter, we conclude the parties’ “agreement expressly authoriz[es]” WMG to recover attorney fees. *See id.*

We must focus, then, on the language of the parties’ contract. It dictates “the prevailing party” is “entitled to recover” attorney fees. “Prevailing party” is a legal term of art. *See, e.g., Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health & Human Res.*, 532 U.S. 598, 603 (2001). And when parties include a legal term of art in their contract, Iowa courts presume the parties “fully

¹ As will be explained, though, enforcement is limited by other code sections like section 622.25 and, apparently, section 677.10.

understood the legal import of the words used.” *Knott v. Burlison*, 2 Greene 600, 601 (Iowa 1850). So we find the meaning of “prevailing party” in our law. See *Buckhannon*, 532 U.S. at 603.

Black’s Law Dictionary defines “prevailing party” as one “in whose favor a judgment is rendered, regardless of the amount of damages awarded.” *Prevailing party*, Black’s Law Dictionary (11th ed. 2019). And our supreme court has said a party prevails “when actual relief on the merits of his [or her] claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Dutcher v. Randall Foods*, 546 N.W.2d 889, 895 (Iowa 1996) (quoting *Farrar v. Hobby*, 506 U.S. 103, 109 (1992)). Here, NCJC obtained a money judgment in its favor and against WMG. Under either definition, NCJC is the prevailing party—not WMG.²

Because WMG is not “the prevailing party,” the lease contract does not entitle WMG to attorney fees. So the district court did not abuse its discretion by declining WMG’s request for attorney fees.³

² We note the term “prevailing party” is not mentioned—much less defined—by Iowa Code sections 677.10 or 625.22. See also *Tri-State Agri Corp. v. Clasing*, No. 00-1344, 2001 WL 1658852, at *6 (Iowa Ct. App. Dec. 28, 2001) (“However, we do not believe the fact that a plaintiff becomes responsible for costs because it fails to obtain a judgment for more than was offered by the defendant has any significant bearing on the question of whether a party was ‘successful’ in enforcing its mechanic’s lien under the earlier version of the statute or was the ‘prevailing’ party under the current version.”).

³ WMG’s also claims it is entitled to fees for the pre-offer period during which it successfully defended against some of NCJC’s claims. WMG has not offered, and we have not found, authority to support this position. See Iowa R. App. P. 6.903(2)(g)(3). Moreover, the contract speaks of “the prevailing party,” singular. Cf. *Sager v. Farm Bureau Mut. Ins. Co.*, 680 N.W.2d 8, 14 (Iowa 2004) (finding the statutory phrase “the insured” referred only to the insured who set fire to the house—not his innocent spouse). And although WMG won some procedural battles, NCJC won the war by obtaining a money judgment against WMG. So we

B. Was NCJC entitled to any attorney fees?

Because NCJC was the “prevailing party,” it appears the contract entitles NCJC to recover attorney fees. But WMG contends section 625.25 prohibits NCJC from recovering fees.

To understand WMG’s argument, it helps to consider sections 625.22 and 622.25 together. As explained, section 625.22 permits taxation of attorney fees where, as here, they are authorized by a contractual fee-shifting clause. But section 625.25 limits the effect of section 625.22 by creating a prerequisite to the taxation of fees. It states, in pertinent part: “No such attorney fee shall be taxed . . . *unless* it shall be made to appear that such defendant had *information of and a reasonable opportunity to pay* the debt before action was brought.” Iowa Code § 625.25 (emphasis added).

WMG claims this prerequisite was not fulfilled. We disagree. In its petition, NCJC alleged that, “[d]espite a demand by NCJC” for amounts owed under the lease, “WMG [had] failed and refused to make any payment” to NCJC. And in its answer, WMG “[a]dmitted that WMG has not paid NCJC for the amounts demanded.” So it is undisputed NCJC demanded reimbursement from WMG before bringing this action. And although NCJC reduced its demand during the course of litigation, WMG has not shown NCJC’s pre-suit demand lacked a reasonable basis. We find no abuse of discretion in the district court’s determination that section 625.25 should “not determine the issue of attorney’s fees in this case.”

see no abuse of discretion in the district court’s determination that WMG was entitled to no attorney fees.

C. Was NCJC entitled to attorney fees for the post-offer period?

We turn next to WMG's contention that—even if NCJC was entitled to some attorney fees—it was not entitled to fees for the post-offer period. Here again, WMG points to NCJC's failure to obtain a judgment in excess of WMG's offer to confess. Because of this failure, section 677.10 prohibits NCJC from “recover[ing] costs” for the post-offer period. And section 625.22 states: “When judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and *tax as a part of the costs* a reasonable attorney fee to be determined by the court.” (Emphasis added.) Therefore, WMG contends, “NCJC cannot recover post-offer attorney fees because such attorney fees, by statute—Iowa Code [section] 625.22—are a component of costs.”

As support for this view, WMG draws our attention to *Brockhouse v. State*, 449 N.W.2d 380, 381 (Iowa 1989). *Brockhouse* arose from the Department of Transportation's (DOT) condemnation of some property. 449 N.W.2d at 381. The county compensation commission assessed damages of \$6400. *Id.* But the property's prior owners—the “condemnees”—were not satisfied with the commission's award. *Id.* So they appealed to the district court. *Id.*

Prior to trial, the DOT offered to confess judgment in the amount of \$10,000. *Id.* The condemnees refused the offer. *Id.* Ultimately, the jury awarded \$7500 to the condemnees. *Id.*

The district court assessed costs against the DOT. *Id.* As part of those costs, the district court awarded attorney fees pursuant to Iowa Code section 472.33 (1987). *Id.* As then codified, section 472.33 required the DOT to “pay all

costs occasioned by the appeal [to the district court], including reasonable attorney fees to be taxed by the court.”⁴

The DOT then appealed to our supreme court. Among other things, the DOT argued the attorney fee award was excessive. *Id.* at 383. The supreme court agreed and stated:

The trial court’s award of attorney fees for the Brockhouses’ attorneys included fees for services provided after the time of the department’s offer. *They are not entitled to these fees.* See Iowa Code § 677.10 (1987). We reverse and remand to the trial court for recomputation of costs.

Id. (emphasis added).

We believe *Brockhouse* stands for the proposition that, when section 677.10 (2017)⁵ prohibits a plaintiff from obtaining post-offer costs, the plaintiff cannot recover post-offer attorney fees under a statute that authorizes taxation of attorney fees as costs. Applying *Brockhouse* here: Because section 677.10 prohibits NCJC from recovering post-offer costs, NCJC cannot recover post-offer attorney fees

⁴ Iowa Code section 472.33 (1987) provided as follows:

The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The applicant shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. *The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court,* unless on the trial thereof the same or a less amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

(Emphasis added.)

⁵ The text of section 677.10 was the same in 1987 and 2017.

under section 625.22—a statute that authorizes taxation of attorney fees as a part of the costs.

We have considered all of the authorities cited by NCJC. We do not think they permit a different conclusion.

For example, *Dutcher* dealt with attorney fees under employment-law statutes. 546 N.W.2d at 895. *Dutcher* did not mention Iowa Code section 677.10. Nor was it relevant: the plaintiff in *Dutcher* recovered more than the defendant had offered to confess. *Id.* at 895 (“Randall points out that it had made an offer to confess judgment in the amount of \$2000 prior to trial and Dutcher’s recovery of \$2128 exceeds that figure by only \$128.”).

But NCJC relies most heavily on *Weaver Constr. Co. v. Heitland*, 348 N.W.2d 230, 233 (Iowa 1984)—and understandably so. There the supreme court affirmed the district court’s refusal to award attorney fees as “costs” under section 677.10. *Weaver*, 348 N.W.2d at 233. And the *Weaver* court said: “We do not agree . . . that the word ‘costs’ should be so liberally stretched as to include attorney fees.” *Id.*

Even so, the *Weaver* court expressly distinguished situations in which “[t]he legislature has in selected areas provided for the taxation of reasonable attorney fees as part of costs.” *Id.* at 232 (quoting with approval the trial court’s “well-reasoned opinion”); see also *id.* at 233. Likewise, we distinguish *Weaver* from cases like *Brockhouse*—and the case before us now—in which a separate statute authorizes taxation of attorney fees as part of costs. See *Brockhouse*, 449 N.W.2d at 381 (addressing assessment of attorney fees under Iowa Code 472.33 (1987)).

In short, we believe *Brockhouse* requires the conclusion that NCJC is not “entitled” to attorney fees “for services provided after the time of [WMG’s] offer.” 449 N.W.2d at 383. As to that issue, we must reverse.

IV. Conclusion

We affirm the district court’s denial of WMG’s request for attorney fees. We reverse the district court’s award of attorney fees to NCJC insofar as it includes fees for services provided after WMG’s offer to confess. We remand for entry of a corrected award of attorney fees in favor of NCJC.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
19-0241

Case Title
NCJC, Inc. v. WMG, L.C.

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