

United States Court of Appeals
For the Eighth Circuit

No. 24-3132

Sophia Wilansky

Plaintiff - Appellant

v.

Morton County, North Dakota; Kyle Kirchmeier, in his official capacity; Adam J.
Dvorak, in his personal capacity; Jonathan R. Moll, in his personal capacity

Defendants - Appellees

Thomas Iverson, in his personal capacity

Defendant

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: December 16, 2025

Filed: October 5, 2026

[Published]

Before LOKEN, L.R. SMITH, and KOBES, Circuit Judges.

PER CURIAM.

This appeal arises from the cost award determined by the district court¹ from Sophia Wilansky’s 42 U.S.C. § 1983 lawsuit against Morton County, North Dakota, Kyle Kirchmeier, Adam J. Dvorak, Jonathan R. Moll, and Thomas Iverson (collectively, “Defendants”). *See generally Wilansky v. Morton Cnty.*, Nos. 24-1911 & 24-1919 (8th Cir. June 24, 2026) (affirming the district court on the merits portions of those claims). We affirm.

I. Background

During the litigation, the parties engaged in brief periods of limited discovery. Ultimately, the district court granted summary judgment on the pleadings. Following the judgment, the Defendants filed cost bills, and Wilansky objected. The district court granted in part and denied in part the cost bills and awarded over \$35,000 to the Defendants. Wilansky appeals, arguing that that the majority of the costs are not specifically allowed under 28 U.S.C. § 1920.

II. Discussion

“A prevailing party is presumptively entitled to recover all of its costs.” *In re Derailment Cases*, 417 F.3d 840, 844 (8th Cir. 2005). Federal Rule of Civil Procedure 54 “represents a codification” of this presumption, *Greaser v. Mo. Dep’t of Corr.*, 145 F.3d 979, 985 (8th Cir. 1998), and provides that costs other than attorney’s fees “should be allowed to the prevailing party” absent some prohibition by federal statute, rule, or court order, Fed. R. Civ. P. 54(d)(1). Therefore, “[w]e review the district court’s award of costs for abuse of discretion.” *In re Derailment Cases*, 417 F.3d at 844. In reviewing for an abuse of discretion, we enforce the rule that “costs must be set out in 28 U.S.C. § 1920 or some other statutory authorization.” *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (8th Cir. 2006).

¹The Honorable Daniel M. Traynor, United States District Judge for the District of North Dakota.

Because “[f]ederal courts are bound by the limitations set out in section 1920,” *168th & Dodge, LP v. Rave Revs. Cinemas, LLC*, 501 F.3d 945, 957 (8th Cir. 2007) (quoting *Brisco-Wade v. Carnahan*, 297 F.3d 781, 782 (8th Cir. 2002) (per curiam)), “[t]he bill of costs proposed by a winning party should always be given careful scrutiny,” *Koppinger v. Cullen-Schiltz & Assocs.*, 513 F.2d 901, 911 (8th Cir. 1975). Section 1920 grants district courts the authority to award the following costs:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Moreover, the cost-seeking party bears the burden to demonstrate that the requested costs arose out of the litigation. *See Fogleman v. ARAMCO (Arabian Am. Oil Co.)*, 920 F.2d 278, 286 (5th Cir. 1991) (“While we certainly do not expect a prevailing party to identify every xerox copy made for use in the course of legal proceedings, we do require some demonstration that reproduction costs necessarily result from that litigation.”).

Here, the district court engaged in a thorough analysis of each cost before ultimately granting most, but not all. Wilansky now challenges all the deposition costs awarded by the district court.²

Wilansky first argues that because the case was ultimately dismissed on the pleadings, the depositions are not taxable because they were not necessary to the case. However, “the expense of depositions not used at the trial [can] be taxed provided they were reasonably necessary to the case and were not purely investigative in nature.” *Koppinger*, 513 F.2d at 911. In determining whether depositions were reasonably necessary, we look to “the time they were taken.” *Zotos v. Lindbergh Sch. Dist.*, 121 F.3d 356, 363 (8th Cir. 1997) (quoting *Manildra Milling Corp. v. Ogilvie Mills, Inc.*, 76 F.3d 1178, 1184 (Fed. Cir. 1996)). Here, the district court “reviewed the entire record and conclude[d] the depositions were reasonably necessary at the time they were taken.” R. Doc. 311, at 5.

Wilansky cites *Marmo v. Tyson Fresh Meats, Inc.* in support of her assertion that the district court erred in permitting costs for depositions not used at trial. 457 F.3d 748 (8th Cir. 2006). *Marmo* concerned only the Bill of Costs Handbook used by the District of Nebraska. *See id.* at 762 (noting that “[t]he Bill of Costs Handbook used by the District of Nebraska details what deposition transcripts are necessary” before discussing what the Handbook “provides.”). In discussing the requirements of that particular handbook, this court noted that to recover costs “a prevailing party [must] show that the deposition was introduced into evidence, relied upon for cross-examination or impeachment purposes, or otherwise useful in assisting a resolution

²The district court granted costs for (1) deposition transcripts and videos, (2) synchronizing video, (3) additional copies, (4) multiple transcript formats, and (5) overtime court reporter fees. It denied costs for (1) shipping, handling, and delivery charges; and (2) unexplained reporter expenses.

of contested issues.” *Id.* at 763. *Marmo* does not apply. Here, we are not applying the District of Nebraska’s handbook, nor does that reflect a circuit rule.³

Wilansky next argues that the district court improperly awarded costs for transcripts and videos of the depositions. Wilansky relies on *Ventura v. Kyle* for the proposition that the use of “or” in § 1920 requires “the prevailing party . . . to make a choice between recovering the costs of the printed transcript . . . or the cost of video-recording it.” No 12-472 (RHK/JJK), 2015 WL 12826467, at *2 (D. Minn. 2015) (emphasis added) (quoting *EEOC v. Hibbing Taconite Co.*, Civ. No. 09-729, 2010 WL 4237318, at *2 (D. Minn. Oct. 21, 2010)). We disagree. The plain language and context of § 1920 indicates that parties may recover costs for printed transcripts or video recordings, not either printed transcripts or video recordings, as part of a list of approved costs so long as the recordings are “necessarily obtained for use in the case.” 28 U.S.C. § 1920. We affirm the district court’s decision to grant both.

Wilansky also argues that the district court erroneously granted costs for condensed transcripts. The inquiry here, as Wilansky observes, is whether the transcripts were necessary. 28 U.S.C. § 1920. The district court is best positioned to make that determination, and because Wilansky has not provided any caselaw from this circuit barring granting costs for multiple transcript formats or quantities, we affirm. As the district court observed, “[t]his has been a complex case, involving years of litigation, with several dispositive and non-dispositive motions filed.” R. Doc. 311, at 7; *see also Jacobson Warehouse Co. v. Schnuck Mkts., Inc.*, No 4:17-cv-764, 2020 WL 853736, at *5 (E.D. Mo. Feb. 20, 2020) (concluding condensed transcript costs are proper given, *inter alia*, “the expansiveness of [the] discovery requests . . . in this complex case”). Where, as here, the district court determines that the condensed transcripts materially advanced the litigation, they are appropriate to

³Wilansky also argues that “defendants cited only about 100 pages of her 258-page deposition” and “[t]hus, only a portion of that deposition cost was ‘necessarily obtained for use in the case.’” Appellant’s Br. 10 (quoting 28 U.S.C. § 1920(2), (4)). Wilansky cites no caselaw in support of the notion that a court should prorate the awarded costs by the number of pages cited, and we decline to establish one here.

expense. See *McDowell v. Safeway Stores, Inc.*, 758 F.2d 1293, 1294 (8th Cir. 1985) (per curiam) (“[T]he court should determine that transcripts were not obtained primarily for the convenience of [the] parties but were necessary for use in the case.”).

Wilansky also appeals to *Race Tires America, Inc. v. Hoosier Racing Tire Corporation* for the proposition that § 1920 does not permit awarding costs for “production of [electronically stored information (ESI)].” 674 F.3d 158, 171 (3rd Cir. 2012).

Although the Eighth Circuit has not yet addressed the extent to which ESI related charges are taxable under § 1920(4), other Circuit courts and courts within the Eighth Circuit permit recovery of ESI costs if the costs fall within the meaning of “exemplification” or “making copies.”

Inline Packaging, LLC v. Graphic Packaging Int’l, LLC, No. 15-3183, 2019 WL 3387777, at *4 (D. Minn. July 26, 2019). We need not answer that question here. On this record, we agree with the district court that “[t]he term ‘making copies’ has been ‘interpreted to include scanning documents and converting native files to a readable format.’” R. Doc. 311, at 11 (quoting *Inline Packaging*, 2019 WL 3387777, at *4); see *Jacobson Warehouse*, 2020 WL 853736, at *6 (finding storage fees and user fees recoverable). We also note that Wilansky and her attorneys demanded that Morton County, and affiliated enforcement entities, preserve copious amounts of ESI; Wilansky did so before commencing her lawsuit. The district court carefully analyzed which ESI costs Morton County could recover and which it could not. For ESI costs “directly related to the cellphone extraction and preservation process . . . analogous to exemplification or copying,” the district court granted to Morton County. R. Doc. 311, at 12. On this unique record, we affirm these costs.

We similarly affirm the district court’s decision to grant costs for the court reporter’s overtime, the additional transcript copy, and the transcript from another sister case filed by Wilansky. See, e.g., *Brisco-Wade*, 297 F.3d at 782 (“Under 28 U.S.C. § 1920, a judge or court clerk ‘may tax as costs’ fees of the clerk and marshal,

fees of the court reporter, fees and disbursements for printing and witnesses, fees for copies of necessary papers, docket fees, and compensation of court-appointed experts and interpreters.” (quoting 28 U.S.C. § 1920)). Wilansky fails to raise circuit precedent barring these costs, and we find that § 1920 permits them.

III. Conclusion

For these reasons, we affirm.

KOBES, Circuit Judge, dissenting.

In two related lawsuits, we rejected Wilansky’s appeal from the dismissal of her excessive force claims against law enforcement officers and Morton County. *Wilansky v. Morton County*, 179 F.4th 633, 637 (8th Cir. 2026) (Kobes, J.). In this appeal, she argues that the district court erred by taxing costs in those cases. I partially agree with her. The district court’s order was thorough, and for the most part, correct. But it awarded costs “reasonably related” to making copies of electronically stored information. With respect, that is an overly broad reading of 28 U.S.C. § 1920(4).

Costs can only be taxed if authorized by statute. *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (8th Cir. 2006). Section 1920(4) allows the taxation of costs for “exemplification” and “making copies of any materials” necessarily obtained for use in the case. Although we have not explained how this section applies to electronically stored information, other circuits have. In the Third Circuit and elsewhere, costs for converting files to usable formats and for scanning documents are considered “making copies” and are taxable under § 1920(4), but those incurred collecting, preserving, processing, indexing, and searching electronically stored information are not. *Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158, 167 (3d Cir. 2012); *see also Country Vintner of N.C., LLC v. E. & J. Gallo Winery, Inc.*, 718 F.3d 249, 260 (4th Cir. 2013) (adopting *Race Tires Am., Inc.*); *United States v. Halliburton Co.*, 954 F.3d 307, 312 (D.C. Cir. 2020) (similar).

I agree with our sister circuits. “[S]ection 1920(4) authorizes taxation of costs for the digital equivalent of a law-firm associate photocopying documents to be produced to opposing counsel.” *Halliburton Co.*, 954 F.3d at 311. “[S]ervices leading up to the actual production” are not taxable. *Race Tires Am., Inc.*, 674 F.3d at 169. The distinction matters. Here, the district court properly awarded approximately \$1,000 for processing file-format conversions. *See, e.g., id.* at 167. But it also taxed several thousand dollars for extracting data, reviewing and detailing information, creating spreadsheets, and for digital hosting fees. Those costs may be “reasonably related” to the production of electronically stored information, but they are not recoverable under § 1920(4) because they are not “making copies.” *See Race Tires Am., Inc.*, 674 F.3d at 170 (“[G]athering preserving, processing, searching, culling, and extracting ESI simply do not amount to ‘making copies.’”); *see also CBT Flint Partners, LLC v. Return Path, Inc.*, 737 F.3d 1320, 1328 (Fed. Cir. 2013) (“[O]nly the costs of creating the produced duplicates are included, not a number of preparatory or ancillary costs commonly incurred leading up to, in conjunction with, or after duplication.”).

The court refuses to engage with § 1920(4) because Wilansky “fails to raise circuit precedent barring these costs.” But, as the district court noted, this is a case of first impression in the Eighth Circuit.⁴ And whether § 1920(4) authorizes these costs is a question of law we review *de novo*. *See Stanley v. Cottrell, Inc.*, 784 F.3d 454, 464 (8th Cir. 2015).

In the end, the court affirms because Wilansky “demanded” the preservation of “copious amounts” of electronically stored information “before commencing her lawsuit.” I’m not sure that is relevant to whether the costs taxed here fall within the

⁴District courts are reaching inconsistent results. *Compare Inline Packaging, LLC v. Graphic Packaging Int’l, LLC*, Civ. No. 15-3183, 2019 WL 3387777, at *5 (D. Minn. July 26, 2019) (denying costs for gathering, preserving, and extracting ESI) with *Jacobson Warehouse Co., Inc. v. Schnuck Markets, Inc.*, No. 4:17-CV-00764, 2020 WL 853736, at *5–6 (E.D. Mo. Feb. 20, 2020) (granting costs for pulling, formatting, and processing ESI).

text of § 1920(4). *See Smith*, 436 F.3d at 889 (citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 438 (1987)). But setting that aside, there is nothing “unique” about demanding the preservation of electronic evidence. And if the court means what it says, non-prevailing parties in this circuit should be prepared to pay much more for electronic discovery costs.

I respectfully dissent.
