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county zoning statutes on principles of express preemption, field preemption, or conflict preemption. Therefore, we affirm the judgment of the district court.

AFFIRMED.

CHRISTY BLACK, APPELLEE, V.
LORNA BROOKS, APPELLANT.
827 N.W.2d 256

Filed March 8, 2013. No. S-12-176.

1. **Judgments: Appeal and Error.** In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict and will not be disturbed on appeal unless clearly wrong.
2. ____: ____. An appellate court does not reweigh the evidence but considers the judgment in a light most favorable to the successful party and resolves evidentiary conflicts in favor of the successful party, who is entitled to every reasonable inference deducible from the evidence.
3. **Attorney Fees.** In determining a reasonable attorney fee, the court is to consider the nature of the proceeding, the time and labor required, the novelty and difficulty of the questions raised, the skill required to properly conduct the case, the responsibility assumed, the care and diligence exhibited, the result of the suit, the character and standing of the attorney, and the customary charges of the bar for similar services.
4. **Landlord and Tenant: Attorney Fees.** The attorney fee provisions of Neb. Rev. Stat. §§ 76-1416(3) and 76-1425(2) (Reissue 2009) are mandatory.
5. **Attorney Fees.** The most common purpose behind fee-shifting statutes is to encourage private litigation to enforce a particular statute or right.
6. ____. Allowing legal services organizations recovery of statutory attorney fees generally enhances their capabilities to assist those who are financially unable to obtain private counsel.
7. ____. Insofar as a statutory attorney fee provision is designed to encourage private action to vindicate the rights granted by the statutory scheme, an award of attorney fees to the pro bono organization indirectly serves the same purpose as an award directly to a fee paying litigant.
8. **Landlord and Tenant: Attorney Fees.** To limit attorney fee awards under Neb. Rev. Stat. §§ 76-1416(3) and 76-1425(2) (Reissue 2009) to pro bono attorneys would be to insert the additional term "incurred" into the statutes.
9. **Statutes: Appeal and Error.** An appellate court may not add language to the plain terms of a statute to restrict its meaning.

Appeal from the District Court for Douglas County: LEIGH ANN RETELSDORF, Judge. Affirmed as modified.

Brent M. Kuhn, of Harris Kuhn Law Firm, L.L.P., for appellant.

Catherine Mahern and Martha J. Lemar, of Milton R. Abrahams Legal Clinic, and Wesley Van Ert, Brett Wessels, and John Beauvais, Senior Certified Law Students, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and CASSEL, JJ.

MCCORMACK, J.

NATURE OF CASE

The tenant in this case, Christy Black, brought this action against her landlord, Lorna Brooks, for noncompliance with the terms of two consecutive lease agreements and for failure to return her security deposit. Brooks counterclaimed for damages. After a bench trial, judgment was entered in favor of Black. The principal issue on appeal is whether statutory attorney fees can be awarded when the tenant is represented by attorneys working pro bono.

BACKGROUND

Black rented a house on South 38th Avenue in Omaha, Nebraska (38th Ave. property), pursuant to a written lease agreement with Brooks dated December 10, 2004. The lease was subject to a "Housing Assistance Payments" (HAP) contract with the Omaha Housing Authority. In 2008, a water break occurred at the house. The parties disagreed as to the promptness of Brooks' response to Black's complaint that the floors of the house were flooded and mold was "coming up on the walls." In any event, because of the damage, Black eventually moved into another of Brooks' properties.

On May 7, 2008, Black entered into an agreement with Brooks to lease a property located on Hoctor Boulevard in Omaha (Hoctor property). Brooks entered into another HAP agreement with the Omaha Housing Authority in connection with the lease of the Hoctor property.

The district court found that Brooks committed willful noncompliance with both lease agreements, in violation of Neb.

Rev. Stat. § 76-1425(2) (Reissue 2009). For both properties, Brooks charged Black additional monthly "appliance fees" in excess of the stated rent amounts in the leases and in violation of the HAP contractual addendums to the leases. Specifically, for the 38th Ave. property, Brooks demanded and received a total overpayment of $5,624.50. And for the Hoctor property, Brooks demanded and received a total overpayment of $2,050. Judgment was entered in favor of Black for those amounts. Brooks does not challenge that judgment in this appeal, and Brooks does not challenge the court's finding that Brooks' noncompliance was willful.

Deposit and Counterclaim

Brooks instead challenges on appeal the district court's judgment in favor of Black for the return of a security deposit in the amount of $647. Relatedly, Brooks asserts that the district court erred in dismissing, after trial, her counterclaim for damages to the 38th Ave. property.

The deposit was originally made in connection with the lease of the 38th Ave. property. Under the terms of the 38th Ave. property lease, release of the security deposit was subject to vacating the premises with no damage beyond normal wear and tear. The lease stated that Brooks agreed to return the security deposit to Black when she vacated, less any deduction for any of the costs, within 14 days after written demand was made. Further, if deductions were made from the deposit, Brooks would give Black a written statement of any costs for damages and/or other charges to be deducted from the security deposit. The language of the lease agreement largely mirrors Neb. Rev. Stat. § 76-1416(2) (Reissue 2009), which states:

> Upon termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement or section 76-1421. The balance, if any, and a written itemization shall be delivered or mailed to the tenant within fourteen

> days after demand and designation of the location where payment may be made or mailed.

The corresponding HAP contractual addendum did not specify that a demand by the tenant was required, but stated simply that "[w]hen the family moves out . . . , the owner . . . may use the security deposit . . . as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease." But "[t]he owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant." The HAP contractual addendum provided that in case of any conflict between the provisions of the HAP contract and the provisions of the lease or any other agreement between the owner and the tenant, the requirement of the addendum shall control.

Brooks admitted that she refused to return any portion of the $647 deposit for the 38th Ave. property. Brooks claimed Black damaged the property beyond the deposit amount. The testimony relating to the alleged damages will be set forth in more detail in our analysis below. Brooks also testified that Black never demanded that deposit from her. Black admitted that she never specifically requested an itemized list of alleged damages to the 38th Ave. property. On August 14, 2009, Black mailed a demand letter to Brooks requesting that Brooks return the $647 deposit. But that letter apparently referred to the deposit having been rolled over into a deposit for the Hoctor property and sought a return of the deposit for the Hoctor property, not the 38th Ave. property. The letter itself is not in evidence.

In her complaint filed on October 15, 2009, Black alleged that the unreturned $647 security deposit for the 38th Ave. property was applied as a security deposit for the Hoctor property. She demanded return of the deposit.

At trial, Black's testimony regarding the unwritten agreement to roll over the $647 deposit into a deposit for the

Hoctor property was successfully objected to as parol evidence. Brooks testified that the lease agreement for the Hoctor property simply did not provide for a deposit. And Brooks testified that Black, accordingly, simply did not pay a deposit for that property.

The record reflects that on August 13, 2008, Brooks sent Black a "Notice to Cure or Quit" in which she stated that Black was delinquent in her appliance fee payments, as well as an unpaid deposit of $774. The Omaha Housing Authority had two versions of the Hoctor property lease in its file, and both were received into evidence. The leases were identical, except one acknowledged receipt of a security deposit of $774 and the other indicates no amount under the security deposit section.

At trial, Brooks argued that Black never demanded the deposit back from the 38th Ave. property because of the purported damage to that property. Black never paid a deposit for the Hoctor property, so there was nothing to return with respect to that lease. Brooks alternatively argued that Black's demand for the return of the $647 was deficient because Black asked for the deposit back from the Hoctor property and not the 38th Ave. property.

The court found Brooks' evidence of alleged damages relating to the 38th Ave. property was "not convincing or credible." The court found that the security deposit from the 38th Ave. property was rolled over to serve as security against damage to the Hoctor property. Regardless, the court concluded that Black had made legal demand for the $647 and that Brooks was legally required to return it.

Attorney Fees

The district court awarded Black $6,930 in attorney fees pursuant to §§ 76-1416(3) and 76-1425(2). Section 76-1416(3) states that "[i]f the landlord fails to comply with subsection (2) of this section, the tenant may recover the property and money due him or her and reasonable attorney's fees." Section 76-1425(2) states:

> Except as provided in the Uniform Residential Landlord and Tenant Act, the tenant may recover damages and

> obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 76-1419. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees. If the landlord's noncompliance is caused by conditions or circumstances beyond his or her control, the tenant may not recover consequential damages, but retains remedies provided in section 76-1427.

Black was represented by senior certified law students operating under the supervision of an attorney who is the director of the general civil practice clinic at Creighton University School of Law and is admitted to practice law in the State of Nebraska. The attorney submitted an itemized list of the time spent on Black's case and affidavits concerning the value of that time.

Brooks argued that attorney fees could not be recovered, because Black's attorneys were representing Black pro bono. Brooks argued that Black had no legal obligation to pay the attorney fees claimed and that any award of attorney fees would be punitive damages.

The court disagreed. The court reasoned that §§ 76-1416(3) and 76-1425(2) served to encourage claims against landlords who willfully disregard their obligations. The award of statutory fees, the court reasoned, is for the benefit of society at large, as well as for the originally named plaintiff. The court applied the standards set forth in *Coral Prod. Corp. v. Central Resources*[1] for the determination of proper and reasonable fees in Black's case.

ASSIGNMENTS OF ERROR

Brooks assigns that the district court erred in granting judgment in favor of Black in the amount of $647, the amount of the security deposit, and in awarding attorney fees and costs pursuant to §§ 76-1416(3) and 76-1425(2). She also assigns that the district court erred in finding that she failed to meet her burden under her counterclaim for damages.

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[1] *Coral Prod. Corp. v. Central Resources*, 273 Neb. 379, 730 N.W.2d 357 (2007).

STANDARD OF REVIEW

[1] In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict and will not be disturbed on appeal unless clearly wrong.[2]

[2] An appellate court does not reweigh the evidence but considers the judgment in a light most favorable to the successful party and resolves evidentiary conflicts in favor of the successful party, who is entitled to every reasonable inference deducible from the evidence.[3]

ANALYSIS

Evidence of Damages

Brooks first argues that the evidence at trial established that she incurred damages in excess of wear and tear of the 38th Ave. property for the following items: $695 in trash removal, $353.50 in pest control, $50.92 for a screen door, and more trash removal at $250, for a total of $1,349.42. Thus, Brooks argues the court erred in finding no merit to her counterclaim and in ordering the refund of Black's $647 deposit.

Brooks testified that when Black vacated the 38th Ave. property, it was dirty and Black had left a large horse tank in the backyard. Brooks testified that she paid $695 and, later, an additional $250 to haul away trash and other items left behind by Black. Brooks testified that in September 2008, before the next tenant moved in, she paid $353.50 for pest control to get rid of roaches Brooks alleged was the result of Black's leaving trash in the property. The receipt for the pest control entered into evidence, however, showed a total of only $53.50. Brooks testified that she had to replace a screen door, at a cost of $50.92, and a receipt dated August 8, 2008, reflects that expenditure. Various other receipts for repairs and work done at the 38th Ave. property were received into evidence.

The court expressed concern that many of the items reflected in the receipts, including the trash removal, were due to the

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[2] *Albert v. Heritage Admin. Servs.*, 277 Neb 404, 763 N.W.2d 373 (2009).

[3] See *Hilliard v. Robertson*, 253 Neb. 232, 570 N.W.2d 180 (1997).

cleanup of the water damage and not due to any alleged damage caused by Black. Brooks entered into evidence two move-out inspection lists that the court likewise viewed with skepticism. The inspection lists were allegedly filled out during an exit walk-through conducted by Brooks' granddaughter with Black. The documents have two columns. The left side was for the move-in inspection, and the right side was for the move-out inspection. The damages to the 38th Ave. property were written on both the move-in and move-out sides of the documents. One list shows the alleged signatures of both Black and Brooks' granddaughter, under the side labeled "Move-In Inspection Results Hereby Accepted." There are no signatures under "Move-Out Inspection Results Hereby Accepted." There are no signatures on the second list. The signed list is dated June 28, 2008, which is when Brooks' granddaughter claimed the exit walk-through took place, and she testified that all of the items written on the list reflected damages she personally observed on June 28.

Black denied ever participating in an exit walk-through for the 38th Ave. property. In fact, Black had moved out of the 38th Ave. property approximately 2 months before the alleged exit walk-through. Black denied having ever seen the walk-through lists before the filing of her action. Black testified that she never received any receipt from Brooks for any damages for the 38th Ave. property.

Black generally denied all of the alleged damages to the 38th Ave. property. She admitted to leaving a "NASCAR board" in a bedroom. She also admitted that she left Christmas lights on the gutter. Black explained that she was in a hurry to move out because she was concerned about the mold. Black specifically denied that any doors were damaged or that she left any trash behind. Black testified that she left the property as clean as she could in light of the flooding. Black's attorney pointed out that, according to the receipts entered into evidence by Brooks, almost all of the damage listed in the inspection documents proffered by Brooks would have been repaired or remedied well before the alleged June 28, 2008, walk-through.

The record thus reflects conflicting evidence pertaining to the alleged damage to the 38th Ave. property. We do not reweigh the evidence but consider the judgment in a light most favorable to the successful party and resolve evidentiary conflicts in favor of the successful party, who is entitled to every reasonable inference deducible from the evidence.[4] In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict and will not be disturbed on appeal unless clearly wrong.[5] Resolving the evidentiary conflicts in favor of Black, we find that the district court was not clearly wrong in concluding that the damage claimed by Brooks was not attributable to Black.

Sufficiency of Demand of Deposit

Brooks argues that regardless of whether Black caused any damage to the 38th Ave. property, the court erred in ordering the return of the $647 deposit for that property. Brooks explains that Black failed to properly demand its return and that, therefore, Brooks' obligations under § 76-1416(2) were not triggered.

Brooks emphasizes that § 76-1416(2) states a landlord's duty to return a deposit is contingent upon a "demand and designation of the location where payment may be made or mailed" and that the statute refers to such demand being "[u]pon termination of the tenancy." In her brief, Brooks defines the terms "tenant," "tenancy," "estate of a tenant," "term or interest of a tenant," and "general tenancy."[6] The significance of these phrases and definitions as concerns Brooks' argument is somewhat unclear. In sum, Brooks argues that Black asked for her deposit back only for the Hoctor property tenancy, and not for the 38th Ave. property tenancy. And since Black did not pay a deposit for the Hoctor property tenancy, but paid a deposit only for the 38th Ave. property tenancy, Black never properly demanded the return of her deposit.

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[4] See *id.*

[5] *Albert v. Heritage Admin. Servs., supra* note 2.

[6] See brief for appellant at 9.

In *Hilliard v. Robertson*,[7] we held that the 14-day limitation language of § 76-1416(2) refers to the time allowed for the landlord to return the deposit, not the time in which a demand must be made by the vacating tenant. We held that the tenant's filing of a counterclaim to the landlord's suit was sufficient to trigger the landlord's obligation to refund the security deposit.

In this case, Black filed suit demanding the return of her $647 deposit. Regardless of which property Black believed the deposit pertained to, the demand was sufficiently clear. Brooks was on notice as to what she needed to show in order to justify keeping any of the deposit. In fact, as described above, Brooks attempted to show damage to the 38th Ave. property in order to keep the $647 deposit. We agree with the district court that nothing in the language of § 76-1416(2) precludes a judgment ordering that the $647 deposit be returned to Black.

Attorney Fees

Finally, Brooks argues that the district court erred in awarding attorney fees, because Black was represented pro bono. Section 76-1416(3) states that "[i]f the landlord fails to comply with subsection (2) of this section, the tenant may recover the property and money due him or her and reasonable attorney's fees." Section 76-1425(2) similarly states in relevant part that "[i]f the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees."

We have never directly addressed whether pro bono work can qualify as "reasonable attorney's fees" under these provisions. But this is not the first time attorney fees have been awarded for pro bono work in Nebraska.[8] Furthermore, comment 4 of § 3-506.1 of the Nebraska Rules of Professional Conduct contemplates that attorneys working pro bono will be awarded statutory attorney fees. The comment explains that in

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[7] *Hilliard v. Robertson, supra* note 3.

[8] See, e.g., *Ray v. Thirty LLC*, No. A-08-1020, 2009 WL 1819288 (Neb. App. June 23, 2009) (selected for posting to court Web site).

order for work to be considered pro bono, the attorney's service must be provided without any fee or any expectation of a fee.[9] However, an attorney working pro bono can ultimately accept an award of statutory attorney fees without disqualifying the services as pro bono.[10]

The comment notes that a pro bono attorney receiving an attorney fee award is encouraged to contribute such fees to organizations or projects that benefit persons of limited means.[11] The comment does not specifically address legal services organizations, but it stands to reason that if the legal services are provided by an organization dedicated to benefiting persons of limited means, then it would be proper for that organization to keep the statutory attorney fees in order to continue providing such services.

[3] Our law is clear that the amount of statutory attorney fees is not directly tied to the amount due under a fee agreement. Instead, the district court must determine the "reasonable attorney's fees." In making this determination, the court is to consider the nature of the proceeding, the time and labor required, the novelty and difficulty of the questions raised, the skill required to properly conduct the case, the responsibility assumed, the care and diligence exhibited, the result of the suit, the character and standing of the attorney, and the customary charges of the bar for similar services.[12]

[4] There are strong public policy reasons for statutory attorney fee awards in actions under Nebraska's Uniform Residential Landlord and Tenant Act.[13] In *Lomack v. Kohl-Watts*,[14] the Nebraska Court of Appeals explained that the attorney fee provisions of §§ 76-1416(3) and 76-1425(2) are mandatory. They are a matter of right, with broad discretion

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[9] See Neb. Ct. R. Prof. Cond. § 3-506.1, comment 4.

[10] See *id*.

[11] *Id*.

[12] *Eicher v. Mid America Fin. Invest. Corp.*, 270 Neb. 370, 702 N.W.2d 792 (2005).

[13] Neb. Rev. Stat. §§ 76-1401 to 76-1449 (Reissue 2009).

[14] See *Lomack v. Kohl-Watts*, 13 Neb. App. 14, 688 N.W.2d 365 (2004).

upon the judge only to determine their amount.[15] The court observed that the fee itself cannot be discretionary because, if it were, the full penalty would not be recovered and the purposes behind the attorney fee provision would be undermined.[16] Other courts have observed that the aggregate effect of individual tenant suits is the enforcement of important public rights.[17]

The Court of Appeals explained that the tenant need only present some evidence to the trial court upon which the court can make a meaningful award.[18] We have generally said that if an attorney seeks a statutory attorney fee, that attorney should introduce at least an affidavit showing a list of the services rendered, the time spent, and the charges made.[19] We have never said a fee agreement or any other agreement showing an obligation of the client to pay the attorney fees to the attorney is part of the proof that must be proffered in order to support an award of statutory attorney fees.

Brooks points out that most courts do not allow recovery of statutory attorney fees by persons appearing pro se. This is because courts generally consider some attorney-client relationships an essential factor to the propriety of an attorney fee award.[20] But that relationship need not be bound by a fee agreement.

Courts typically allow statutory attorney fee awards when the litigant is represented by an attorney working pro bono. Numerous courts have held under a variety of statutory attorney fee provisions—including landlord-tenant laws—that unless a

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[15] *Id.*

[16] See *id.* (citing *Beckett v. Olson*, 75 Or. App. 610, 707 P.2d 635 (1985)).

[17] See, *Freeman v. Alamo Management Co.*, 221 Conn. 674, 607 A.2d 370 (1992); *McReady v. Dept. of Consumer & Reg. Aff.*, 618 A.2d 609 (D.C. 1992); *Shands v. Castrovinci*, 115 Wis. 2d 352, 340 N.W.2d 506 (1983).

[18] *Lomack v. Kohl-Watts, supra* note 14.

[19] *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 805 N.W.2d 68 (2011). See, also, *Lomack v. Kohl-Watts, supra* note 14.

[20] See, *Hairston v. R & R Apartments*, 510 F.2d 1090 (7th Cir. 1975); *Brandenburger v. Thompson*, 494 F.2d 885 (9th Cir. 1974). See, also, *Lisa v. Strom*, 183 Ariz. 415, 904 P.2d 1239 (Ariz. App. 1995).

statute expressly prohibits its fee awards to pro bono attorneys, the fact that representation is pro bono is never justification for denial of fees.[21] In fact, we have not found a case in which a court has denied statutory attorney fees because the litigant's attorney worked pro bono.

[5] The most common purpose behind fee-shifting statutes is to encourage private litigation to enforce a particular statute or right.[22] Attorney fee statutes are also intended to deter improper conduct and encourage parties to comply with the law.[23] By encouraging private action, attorney fee provisions encourage compliance with and enforcement of laws serving the public interest or protecting the disadvantaged.[24] "[A] realization that the opposing party, although poor, has access to an attorney and that an attorney's fee may be awarded deters noncompliance with the law and encourages settlements."[25]

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[21] See, *Blum v. Stenson*, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984); *Torres v. Sachs*, 538 F.2d 10 (2d Cir. 1976); *Sellers v. Wollman*, 510 F.2d 119 (5th Cir. 1975); *Brandenburger v. Thompson, supra* note 20; *Folsom v. Butte County Ass'n of Governments*, 32 Cal. 3d 668, 652 P.2d 437, 186 Cal. Rptr. 589 (1982); *In re Marriage of Swink*, 807 P.2d 1245 (Colo. App. 1991); *Benavides v. Benavides*, 11 Conn. App. 150, 526 A.2d 536 (1987); *Lee v. Green*, 574 A.2d 857 (Del. 1990); *Martin v. Tate*, 492 A.2d 270 (D.C. 1985); *Butler v. Butler*, 376 So. 2d 287 (Fla. App. 1979); *Wiginton v. Pacific Credit Corp.*, 2 Haw. App. 435, 634 P.2d 111 (1981); *In re Marriage of Brockett*, 130 Ill. App. 3d 499, 474 N.E.2d 754, 85 Ill. Dec. 794 (1984); *Hale v. Hale*, 772 S.W.2d 628 (Ky. 1989); *Henriquez v. Henriquez*, 413 Md. 287, 992 A.2d 446 (2010); *Linthicum v. Archambault*, 379 Mass. 381, 398 N.E.2d 482 (1979), *abrogated on other grounds, Knapp Shoes, Inc. v. Sylvania Shoe Manufacturing Corporation*, 418 Mass. 737, 640 N.E.2d 1101 (1994); *In re Marriage of Gaddis*, 632 S.W.2d 326 (Mo. App. 1982); *Ferrigno v. Ferrigno*, 115 N.J. Super. 283, 279 A.2d 141 (1971); *Lewis v. Romans*, 70 Ohio App. 2d 7, 433 N.E.2d 622 (1980); *Council House, Inc. v. Hawk*, 136 Wash. App. 153, 147 P.3d 1305 (2006); *Shands v. Castrovinci, supra* note 17; 20 C.J.S. *Costs* § 138 (2007).

[22] 3 *Stein on Personal Injury Damages* § 17:55 (3d ed. 1997).

[23] *Id.*

[24] See, *Dennis v. Chang*, 611 F.2d 1302 (9th Cir. 1980); *Hairston v. R & R Apartments, supra* note 20.

[25] *Benavides v. Benavides, supra* note 21, 11 Conn. App. at 155, 526 A.2d at 538.

These goals are effectively furthered only when the statutory attorney fees are awarded for fee-based and pro bono work alike.

[6] Allowing legal services organizations recovery of statutory attorney fees also generally enhances their capabilities to assist those who are financially unable to obtain private counsel.[26] Courts have observed that rules of professional conduct place great emphasis on encouraging lawyers to provide pro bono services. Allowing statutory attorney fees for pro bono work increases the resources of legal services providers and increases their ability to represent indigent individuals, thus furthering this important public policy.[27]

[7] More specifically to the statutory scheme that provides for the attorney fees, if fees are not awarded for pro bono work, then the burden of costs is placed on the organization providing the services, and the organization correspondingly may decline to bring such suits and decide to concentrate its limited resources elsewhere.[28] This would "indirectly cripple[]" the legislative intent of the statute to encourage its forceful application.[29] Insofar as a statutory attorney fee provision is designed to encourage private action to vindicate the rights granted by the statutory scheme, an award of attorney fees to the pro bono organization indirectly serves the same purpose as an award directly to a fee-paying litigant.[30] On the other hand, denying attorney fees for pro bono work would undermine the Legislature's intent and the policies behind the attorney fee provision.

[8,9] The statutory provisions in issue here state that "the tenant may recover reasonable attorney's fees."[31] The court

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[26] See, *Rodriguez v. Taylor*, 569 F.2d 1231 (3d Cir. 1977); *Hairston v. R & R Apartments, supra* note 20; *Lee v. Green, supra* note 21.

[27] See *Henriquez v. Henriquez, supra* note 21.

[28] *Hairston v. R & R Apartments, supra* note 20.

[29] *Id.* at 1092.

[30] *Brandenburger v. Thompson, supra* note 20. See, also, *Hairston v. R & R Apartments, supra* note 20.

[31] § 76-1425(2). See, also, § 76-1416(3).

in *Henriquez v. Henriquez*[32] observed that while Black's Law Dictionary may define "'attorney's fee'" as "'the charge to a client,'" Ballentine's Law Dictionary defines "'attorney's fee'" as "'[a]n allowance made by the court.'" Furthermore, the statute in *Henriquez* limited attorney fees to those which were "'just and proper under all the circumstances,'"[33] which is similar to the "reasonable" limitation found here. The court said that such modifiers of the term "attorney's fees" belie any argument that the statutory attorney fee depends on a billing obligation.[34] The court concluded that to limit attorney fee awards to pro bono attorneys would be to insert the additional term "'incurred'" into the statute.[35] We find that the same would be true of the statutory attorney fee provisions of §§ 76-1416(3) and 76-1425(2). Our court has said many times that we may not add language to the plain terms of a statute to restrict its meaning.[36]

Courts have said that it would be unreasonable to allow the losing party to reap the benefits of free representation to the other party.[37] As stated in *Lewis v. Romans*,[38] there is no reason why a landlord should benefit "from the fortuitous circumstance of a tenant's penury." And where the legal services entity is publicly funded, if statutory attorney fees were denied, then the taxpayer instead of the landlord would pay the costs of the tenant's action. This would be especially repugnant to the purposes of the fee-shifting statutes.[39]

Brooks argues, however, that the attorney fee award in this case would result in a windfall to Black, because there is no

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[32] See *Henriquez v. Henriquez, supra* note 21, 413 Md. at 300, 992 A.2d at 454 (emphasis omitted).

[33] *Id.* at 298, 992 A.2d at 453.

[34] See, generally, *Henriquez v. Henriquez, supra* note 21.

[35] *Id.* at 299, 992 A.2d at 454.

[36] See, e.g., *FirsTier Bank v. Triplett*, 242 Neb. 614, 497 N.W.2d 339 (1993).

[37] *Benavides v. Benavides, supra* note 21.

[38] *Lewis v. Romans, supra* note 21, 70 Ohio App. 2d at 9, 433 N.E.2d at 623.

[39] See, *Benavides v. Benavides, supra* note 21; *Ferrigno v. Ferrigno, supra* note 21.

written agreement obligating Black to pay the award over to the Creighton Legal Clinic. Brooks argues that Black would receive more than her actual damages and costs and that the judgment would constitute punitive damages, in violation of the Nebraska Constitution.[40] A number of courts have directly addressed the potential windfall to a litigant who has no written obligation to pay over a statutory attorney fee to his or her attorney. Those courts hold that the remedy is not to deny the attorney fee award altogether. Instead, the remedy is to award the statutory attorney fee directly to the entity providing pro bono legal services.[41]

While a determination of an award should not turn on the question of whether the litigant was actually required to pay an attorney, in the interest of justice, it likewise should not result in a windfall to the litigant.[42] Direct awards to pro bono organizations have been held to be proper despite the general rule that attorney fees belong to the litigant and not to the attorney[43] and despite statutory language authorizing the fee award to the "prevailing party" or similar.[44] While most courts find it self-evident that such a direct award is within the power of the courts, one court has explained that this power derives from the court's powers to give effect to the jurisdiction of the court and to enforce its judgments, orders, or decrees.[45]

We hold that because there is no dispute that Brooks acted willfully, the district court did not err in awarding attorney fees. And Brooks does not dispute that the amount ordered was "reasonable." However, in order to prevent a windfall to

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[40] See, e.g., *Abel v. Conover*, 170 Neb. 926, 104 N.W.2d 684 (1960).

[41] See, *Dennis v. Chang, supra* note 24; *Hairston v. R & R Apartments, supra* note 20; *Miller v. Amusement Enterprises, Inc.*, 426 F.2d 534 (5th Cir. 1970); *In re Stoltz*, 392 B.R. 87 (D. Vt. 2001); *Benavides v. Benavides, supra* note 21; *Lee v. Green, supra* note 21; *Shands v. Castrovinci, supra* note 17.

[42] See *In re Stoltz, supra* note 41.

[43] *Griffin v. Vandersnick*, 210 Neb. 590, 316 N.W.2d 299 (1982).

[44] See, 1 Robert L. Rossi, Attorneys' Fees § 6:12 (3d ed. 2012); *Dennis v. Chang, supra* note 24.

[45] *Lewis v. Romans, supra* note 21.

Black, we follow the reasoning of those courts that order the attorney fees be awarded directly to the legal services provider. We remand with directions for the attorney fees awarded by the district court to be awarded directly to the Creighton Legal Clinic.

CONCLUSION

We affirm the judgment in favor of Black in all respects, but modify the designee of the attorney fee award. We direct the district court to amend its order so as to award the attorney fees directly to the Creighton Legal Clinic.

AFFIRMED AS MODIFIED.

MILLER-LERMAN, J., participating on briefs.

STATE OF NEBRASKA, APPELLEE, V.
THOMAS P. MERCHANT, APPELLANT.
827 N.W.2d 473

Filed March 8, 2013. No. S-12-191.

1. **Rules of Evidence.** In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility.
2. **Rules of Evidence: Appeal and Error.** Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion.
3. **Judgments: Words and Phrases.** An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.
4. **Jury Instructions: Judgments: Appeal and Error.** Whether jury instructions given by a trial court are correct is a question of law. When dispositive issues on appeal present questions of law, an appellate court has an obligation to reach an independent conclusion irrespective of the decision of the court below.
5. **Expert Witnesses: Evidence.** Expert testimony is relevant and admissible only if it tends to help the trier of fact understand the evidence or to determine a fact issue, and expert testimony concerning the status of the law does not tend to accomplish either of these goals.
6. ____: ____. Expert testimony concerning a question of law is generally not admissible in evidence.
7. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not needed to adjudicate the controversy before it.