deposition transcripts were taxable because they "were reasonably necessary to the parties at the time the depositions were taken," that costs associated with both printed transcripts and electronic recordings were not taxable where the defendant "did not provide any explanation for why both" were required, that costs associated with expedited and rough ASCII transcripts and the scanning of exhibits could be recovered where the defendant established that they were necessary, and that handling expenses and expenses related to condensed and digital transcripts could not be recovered. ***Sorin Group USA, Inc. v. St. Jude Med., S.C.***, 2017 WL 3503360 (D. Minn. 8/15/2017).

JOSH JACOBSON
Law Office of Josh Jacobson
jacobsonlawoffice@att.net

IMMIGRATION LAW

JUDICIAL LAW

BIA error when petitioner is denied an opportunity to cross-examine ex-husband. The 8th Circuit Court of Appeals held that when an issue involving whether a petitioner's marriage to an ex-spouse is a good faith one, the petitioner should be given the opportunity to cross-examine the ex-spouse when the immigration judge admits the ex's affidavit and a USCIS report as part of the record. The Board of Immigration Appeals (BIA) committed error by affirming the immigration judge's decision denying the petitioner's subpoena request and denying her an opportunity to cross-examine him. "Nilesh's affidavit and the USCIS report were the only evidence directly contradicting Patel's testimony that the marriage was legitimate, and the IJ and the BIA both relied on these documents to support the conclusion that Patel failed to meet her burden of proving a good faith marriage. But Patel was provided no opportunity to probe the veracity of Nilesh's affidavit or the statements that formed the basis for the USCIS report… This error was prejudicial and rendered Patel's removal hearing fundamentally unfair." ***Patel v. Sessions***, No. 16-3619, *slip op.* (8th Cir. 8/22/2017). *http://media.ca8.uscourts.gov/opndir/17/08/163619P.pdf*

No "continuous presence" with voluntary departure under threat of deportation. The 8th Circuit Court of Appeals held the petitioner was ineligible for cancellation of removal under INA §240A(b) because he voluntarily

departed the United States under threat of deportation, thus breaking his continuous presence in the country. "When an alien [sic] is legally permitted to depart voluntarily, he should 'leave[ ] with the knowledge that he does so in lieu of being placed in proceedings' and therefore has no legitimate expectation that he may reenter and resume continuous presence." (quoting *In re Romalez-Alcaide*, 23 I&N Dec. 423, 429 (2002) (en banc))." ***Rodriguez-Labato v. Sessions***, No. 16-1623, *slip op.* (8th Circ. 8/21/2017). *http://media.ca8.uscourts.gov/opndir/17/08/161623P.pdf*

■ **Minnesota district courts may make special immigrant juvenile findings.** The Minnesota Court of Appeals recently held that Minnesota district courts have the authority to make special immigrant juvenile (SIJ) findings in dissolution proceedings involving a custody determination. The court of appeals further observed in this well-crafted exposition on SIJs that Congress broadened the availability of SIJ status to include immigrant youths placed in the custody of a court-approved individual while also removing the requirement that they must be found eligible for long-term foster care—replacing it with one that a juvenile court must find reunification with one or both parents inviable on account of abuse, neglect, abandonment, or a similar basis under state law.

The court of appeals further noted that US Citizenship and Immigration Services (USCIS), the agency empowered to review SIJ petitions, has indicated, approvingly, that custodial placement may be sufficient for purposes of an SIJ dependency/custody finding—even if the qualifying court-appointed custodial placement is with one of the parents, provided reunification with the other parent is found to be inviable due to that parent's abuse, neglect, or abandonment of the SIJ petitioner.

"The SIJ statute's legislative history and USCIS's interpretation of the present SIJ statute indicate that the custodial placement in this case was a placement 'under the custody of… an individual… appointed by a [s]tate or juvenile court.' 8 U.S.C. §1101(a)(27)(J)(i)." ***Guardado v. Menjivar***, No. A16-1973, *slip op.* (Minn. App. 9/11/2017). *http://www.mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa161973-091117.pdf*

R. MARK FREY
Frey Law Office
rmfrey@cs.com

REAL PROPERTY

JUDICIAL LAW

■ **Taking; nonconforming use.** Appellant-landowner has occupied property in Isanti County since 1992, and stored various materials of personal property on one acre of the property. The county initiated an abatement action to remove certain items because they violate solid-waste and zoning ordinances enacted after 1992. The district court determined that storage of the items was not a permissible nonconforming use, because they arrived on the property after the ordinances were enacted. The appellant argued that all items were permissible because he never used more than one acre as storage and therefore there was never an expansion. The court of appeals affirmed the district court, holding that even when the property does not expand, addition of impermissible items of personal property constitutes an impermissible expansion. ***Cnty of Isanti v. Kiefer***, No. A17-0326, 2017 WL 3469521 (Minn. Ct. App. 8/14/2017).

■ **Mechanic's lien attorney fees.** The Minnesota Court of Appeals affirmed an award of $39,872 in attorney fees (on an original request of $83,584) upon a lien claimant's recovery of $6,285 from a construction contract. The district court determined that at the start of the litigation, the homeowners owed $43,217.93 and 85% of the work was complete. After commencement of the foreclosure complaint, the homeowners paid all but $6,285. On this basis, and the fact that it was the homeowners primarily responsible for the dispute, the court of appeals affirmed the district court's determination that the attorney fee award was proportional and reasonable. ***Sela Roofing and Remodeling, Inc. v. Moot***, No. A16-1862, 2017 WL 3863122 (Minn. Ct. App. 9/5/2017).

■ **Eminent domain.** The court of appeals recently admonished South Harbor Township, near Lake Mille Lacs. The township granted a cartway petition over the petitioners' neighbors' property in 2006. A cartway petitioner is ultimately responsible for compensating the affected landowners, but township failed to collect compensation from the petitioner for the taking. While the court of appeals affirmed the district court's decision that the neighbors' demands for compensation are barred by statutes of limitations and *res judicata*, the court of appeals scolded the township for its neg-