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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1877**

Tammy Mortimore,
Plaintiff,

vs.

R.S. Eden,
Respondent,

O. J. a/k/a Ojay Wicker,
Appellant.

**Filed August 1, 2011
Affirmed; motion denied
Wright, Judge**

Ramsey County District Court
File No. 62-CV-09-8112

Timothy W. Waldeck, Lindsey J. Woodrow, Waldeck & Lind, Minneapolis, Minnesota
(for respondent R.S. Eden)

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Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's denial of his request for indemnification
from respondent R.S. Eden, pursuant to the Minnesota Nonprofit Corporation Act

(MNCA), Minn. Stat. § 317A (2010). Appellant argues that the district court erred by determining that (1) the terms of a stipulation for dismissal entered among the parties barred appellant's postjudgment claim for indemnification, and (2) appellant failed to demonstrate the mandatory criteria for indemnification under the MNCA. We affirm the district court and deny appellant's motion for attorney fees.

FACTS

In July 2009, Tammy Mortimore commenced a lawsuit against appellant Ojay Wicker and his former employer, respondent R.S. Eden, a chapter 317A nonprofit corporation, alleging that Wicker had committed sexual assault and battery against Mortimore while she was participating in R.S. Eden's "Sentence to Service" program in August 2007 under Wicker's supervision. Mortimore alleged that R.S. Eden had negligently supervised Wicker. R.S. Eden and Wicker filed separate answers, each denying all claims.

On March 23, 2010, following mediation, Mortimore signed a release of all claims against R.S. Eden and Wicker. All three parties subsequently signed a stipulation for dismissal of the action and "all its claims, including all direct and indirect claims, made or to be made . . . with prejudice [and] on the merits and without costs and disbursements to any party."

On April 5, 2010, the same day he signed the stipulation for dismissal, Wicker's counsel notified R.S. Eden by letter of his client's intent to claim indemnification under the provisions of the MNCA for "reasonable expenses" incurred in the Mortimore

litigation. The district court entered judgment of dismissal based on the stipulation on April 16, 2010.

On June 8, 2010, Wicker moved the district court for indemnification from R.S. Eden. The district court denied the motion on the ground that “[t]his case is completed, and there is no pending proceeding in which Mr. Wicker can assert his indemnification request.” The district court reasoned that the postjudgment request for indemnification was an “indirect claim” under the unambiguous terms of the stipulation for dismissal and, as such, it was expressly barred. The district court also denied the request on the ground that Wicker failed to meet the applicable mandatory criteria for indemnification under Minn. Stat. § 317A.521, subd. 2(a), which requires a claimant to establish that the complained-of conduct was in good faith and that the claimant reasonably believed the conduct was in the best interests of the corporation. The district court concluded that Wicker’s attempt to satisfy his burden solely by reference to alleged inconsistencies in Mortimore’s deposition testimony and his own general denials was insufficient. Wicker appealed and moved for an award of attorney fees on appeal.

D E C I S I O N

The issues raised by Wicker require interpretation of the MNCA (specifically Minn. Stat. § 317A.521) and the parties’ stipulation of dismissal and order for judgment, each of which presents a question of law, which we review de novo. *See Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010) (observing that district court’s interpretation of a stipulation and judgment is reviewed de novo); *Rosenberg v.*

Heritage Renovations, LLC, 685 N.W.2d 320, 324 (Minn. 2004) (stating that de novo standard of review applies to construction of statutes and contracts).

Our goal in interpreting a statute “is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). If the language of a statute is clear and unambiguous, we apply its plain meaning. *Id.*; *Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010).

Under the governing statute at issue here, indemnification generally refers to the right of employees to be reimbursed for all losses (including defense costs) incurred by them in legal or administrative proceedings related to their job responsibilities. *See Asian Women United of Minn. v. Leiendecker*, 789 N.W.2d 688, 691 (Minn. App. 2010) (discussing indemnification in MNCA case). “The right to indemnification cannot be determined until the legal proceedings have concluded.” *Id.* The MNCA provides that

a corporation shall indemnify a person made . . . a party to a proceeding by reason of the former or present official capacity of the person against . . . attorney[] fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person . . . acted in good faith [and] reasonably believed that the [complained-of] conduct was in the best interests of the corporation.

Minn. Stat. § 317A.521, subd. 2(a).

I.

Appellant argues that the district court misinterpreted the MNCA by determining that, when he asserted the indemnification claim, the case was “completed, and there [was] no pending proceeding in which [Wicker could] assert his indemnification

request.” Wicker contends that the district court erred by determining that his claim was precluded under the MNCA by virtue of the fact that the proceeding was completed.

Wicker’s argument, however, misconstrues the district court’s order. The district court did not conclude that Wicker’s claim was precluded under the MNCA. Rather, the district court denied Wicker’s requested relief based on the parties’ stipulation of dismissal, which Wicker signed and which was entered as a judgment nearly eight weeks before Wicker brought his indemnification claim. Under the stipulation of dismissal, Wicker agreed to dismissal, with prejudice and on the merits, of the action and all of its direct and indirect claims, made or to be made. A stipulation of dismissal with prejudice operates as a merger of all antecedent claims included in the stipulation and bars the right to recover on them. *Wills v. Red Lake Mun. Liquor Store*, 389 N.W.2d 769, 770 (Minn. App. 1986). “Once the stipulation was filed, the [district] court had no jurisdiction thereafter to enter a judgment in the case, except in accordance with the stipulation or as otherwise necessary to close the litigation properly.” *Id.* Wicker’s indemnification claim, therefore, is merged into the stipulation and barred by it.

Under the unambiguous terms of the stipulation at issue here, the only subsequent action available to any signatory party to close the litigation properly is to “apply to the [district] court pursuant to this stipulation for an order directing that judgment of dismissal with prejudice be entered accordingly.” Wicker’s counsel signed the stipulation on April 5, 2010, and Wicker does not challenge his counsel’s authority to act on his behalf or allege that the settlement should be set aside for any other reason. *See N. States Power Co. v. City of Sunfish Lake*, 659 N.W.2d 271, 274 (Minn. App. 2003)

(observing that in the absence of evidence that any party to settlement was ignorant of its rights or that settlement should be set aside for mutual mistake of fact, misrepresentation, or any other ground, “[t]he strong public policy interest in the finality of settlements” obliges courts to enforce a stipulated agreement when “the parties made a good-faith settlement on the basis of what they then understood the law to be” (quotations omitted)), *review denied* (Minn. June 23, 2003).

The district court properly concluded that Wicker’s postjudgment claim for indemnification was barred under the terms of the parties’ stipulation for dismissal, that there was no pending proceeding at the time Wicker brought his claim, and that the district court lacked jurisdiction to hear the claim.

II.

Wicker also contends that the district court erred by concluding that he failed to meet the mandatory criteria for indemnification under the MNCA. The district court alternatively concluded that Wicker had failed to show, as he must under the statute, that he engaged in the complained-of conduct in good faith and that he reasonably believed the conduct to be in the best interests of the corporation. *See* Minn. Stat. § 317A.521, subd. 2. The district court observed that Wicker’s reliance on inconsistencies in Mortimore’s deposition testimony and his own general denials were insufficient to establish the nature of his conduct and entitlement to indemnification.

“‘Good faith’ means honesty in fact in the conduct of an act or transaction.” Minn. Stat. § 317A.011, subd. 10. The “[d]etermination of what constitutes good faith necessarily involves factual findings. It is for the trier of fact to evaluate the credibility

of a claim of ‘honesty in fact’ and, in doing so, to take account of the reasonableness or unreasonableness of the claim.” *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 728 (Minn. 1985) (internal citation omitted). “Best interests of the corporation” is not defined in the MNCA.

Here, Wicker’s deposition testimony was inconsistent. When confronted with concededly obscene text messages sent from his cell phone to Mortimore’s cell phone, he first denied the messages originated from his cell phone. When confronted with proof that they were traceable to his cell phone, Wicker suggested that he may have lent it to another worker, although he had no recollection of doing so. He also denied ever having seen the messages on his cell phone. On this record, the district court reasonably concluded that, even if the merits of his claim were reached, Wicker failed to establish that his conduct was characterized by honesty or good faith. *See State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003) (observing that weight and credibility of testimony are issues for district court), *review denied* (Minn. July 15, 2003).

Wicker also failed to establish that the intentional torts that he was alleged to have committed were undertaken in R.S. Eden’s best interests. Rather, he attempts to establish the affirmative nature of his conduct by attacking the veracity of Mortimore’s version of events. Because the matter was settled without a hearing on the merits, no trier of fact ever determined the validity of Mortimore’s claims or Wicker’s defenses. Thus, he cannot reasonably claim that his version of events is more truthful than hers. Rather than demonstrate that his conduct was in good faith and in R.S. Eden’s best interests, Wicker merely attempted to show that his conduct was not as egregious as Mortimore claimed.

The district court's finding that Wicker failed to demonstrate that he acted in good faith or in R.S. Eden's best interests is not clearly erroneous. *See* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.").

Finally, we observe that Wicker's reliance on *Rudebeck v. Paulson* is misplaced because *Rudebeck* addressed a Delaware indemnification law that did not require a determination of whether the claimant had acted in good faith or in the best interests of the company. 612 N.W.2d 450, 455-56 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). On the record before us, the district court's conclusion that Wicker failed to meet the statutory criteria for indemnification under the MNCA is legally sound.

III.

In his January 2011 motion, Wicker moved for an award of appellate attorney fees under Minn. Stat. § 317A.521, arguing that he is entitled to indemnification against costs associated with this appeal for the same reasons that he is entitled to indemnification against costs associated with the litigation before the district court. Wicker's motion for attorney fees rises or falls on the merits of his appeal. Because Wicker is not entitled to recover from R.S. Eden the costs associated with defending the underlying claim, we deny Wicker's motion for attorney fees on appeal.

Affirmed; motion denied.