STATE OF MINNESOTA
IN COURT OF APPEALS
A11-618

Mark Lanterman,
Appellant,

vs.

Sela Roofing and Remodeling, Inc., et al.,
Respondents.

Filed January 17, 2012
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-09-8949

John M. Degnan, Tara Reese Duginske, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

John Steffenhagen, Hellmuth & Johnson, PLLC, Edina, Minnesota (for respondents)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

In this contract dispute, appellant Mark Lanterman contends that the district court erred by: (1) rejecting his post-trial assertion that he was not a party to a written contract signed by his wife, and awarding respondent Crown Masonry, Inc. (Crown) attorney fees

under the written contract; (2) awarding an unreasonable amount of attorney fees; and (3) denying his motion for a new trial. We affirm.

D E C I S I O N

This dispute arises out of a written agreement for Crown to perform brick work on Lanterman's home. In April 2006, Lanterman inquired whether respondent Sela Roofing and Remodeling, Inc. (Sela), which Lanterman had hired to replace three roofs on his property, could also repair loose bricks on walkways leading up to his home. Sela sent respondent John Duffy of Crown, a Sela subsidiary, to prepare an estimate. Duffy gave the estimate to Lanterman's wife, Connie Lanterman, who relayed the quote to Lanterman by phone. Lanterman told his wife "to go ahead and schedule it," and Lanterman's wife signed a term sheet on April 21, 2006, calling for Crown to "[g]rind and tuckpoint all open and broken mortar joints on brickwork along both sidewalks and front brick step. Reset all loose bricks in same area." The price listed on the term sheet was $2,200, and the contract provided, "A late fee of 5% will be imposed on any balance not paid within five (5) days of due date. Owner shall pay all Contractor's collection costs, including attorney's fees, if Owner defaults on payment."

Crown completed the repair work shortly thereafter, but Lanterman was unhappy with the worksmanship. In an effort to satisfy him, Crown reset the bricks, but Lanterman remained unhappy. In addition, Lanterman alleged that Crown employees damaged the concrete portion of the walkway. To repair the damage, Crown tore up and re-laid the walkways at least twice, but Lanterman still complained about the quality of Crown's brickwork. He further alleged that Crown employees or agents damaged his

driveway, retaining wall, sprinkler system, front lawn, and landscaping. Lanterman did not pay Crown. Instead, he hired another contractor to remove the walkways, sod, driveway, and retaining wall and replace them with upgraded materials at a total cost of more than $70,000.

Lanterman filed a complaint in the district court accusing Sela, Crown, and Duffy of breach of contract and negligence. In his complaint, he alleged that "Plaintiff and Defendants are parties to a valid and enforceable contract," and he sought damages in excess of $50,000. Sela, Crown, and Duffy filed a joint answer denying Lanterman's claims and counterclaimed for breach of the April 21, 2006 written contract and the value of the work Crown performed under a quantum meruit theory. Lanterman did not file an answer to these counterclaims.

After a court trial, the district court dismissed both of Lanterman's claims and found him liable to Crown for breach of contract. Because Lanterman had not paid Crown, the district court found Lanterman liable to Crown for $2,200 and awarded $38,697.23 in attorney fees as a cost of collection under the term sheet.

Lanterman filed a motion for amended findings or a new trial, arguing for the first time that only his wife, and not he, was a party to the written term sheet. He also argued that the court's findings should be amended or a new trial ordered to consider evidence briefly discussed at trial but not entered into evidence. The district court denied Lanterman's post-trial motion.

I.

Lanterman argues that the district court erred in concluding that he was a party to the written term sheet that he did not sign. Thus, he contends that both the judgment against him and the award of attorney fees must be vacated and that the district court erred by failing to amend the findings accordingly. *See Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 714 (Minn. 1991) (holding that attorney fees are generally not available absent a contractual agreement or statute).

Whether the parties have agreed to be bound by specific contract terms is primarily a question of fact. *W. Insulation Servs., Inc. v. Cent. Nat'l Ins. Co. of Omaha*, 460 N.W.2d 355, 358 (Minn. App. 1990). "But where the relevant facts are undisputed, the existence of a contract is a question of law, which this court reviews de novo." *TNT Properties, Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004). When the existence of a contract or its terms are in dispute, a reviewing court will defer to the district court's findings as to the parties' intent unless the court concludes that, after viewing the evidence in the light most favorable to the findings, they are clearly erroneous. *See* Minn. R. Civ. P. 52.01 (stating that findings of fact shall not be set aside unless clearly erroneous and that due regard shall be given to the district court's credibility determinations).

Here, the district court properly concluded that Lanterman's failure to respond to Crown's breach-of-contract counterclaim precluded him from arguing that he was not a party to the contract. "Averments in a pleading to which a responsive pleading is required, other than those as to amount of damage, are admitted when not denied in the

responsive pleading." Minn. R. Civ. P. 8.04. Respondents' counterclaim averred that Lanterman was a party to the April 21, 2006 term sheet, that the term sheet was a "valid and binding contract between the parties," that Crown "performed all obligations . . . pursuant to the [term sheet]," and that Lanterman failed to pay the stipulated contract amount. Lanterman's failure to file an answer operates as an admission to these dispositive facts. And Minn. R. Civ. P. 8.03 requires an answering party to plead "any other matter constituting an avoidance or affirmative defense." Because Lanterman filed no answer, he gave respondents no notice of his intended defense, thereby waiving it.

Additionally, Lanterman failed to raise at trial the argument that he was not a party to the contract and he offered no other argument at trial to refute his liability under the term sheet. Instead he repeatedly acquiesced to respondents' testimony and arguments that the term sheet was the governing document.

Although we conclude Lanterman waived the argument that he was not a party to the contract, this argument also fails on the merits. Contracts signed by an individual spouse with a third party are subject to the ordinary principles of agency law. *Bergh v. Warner*, 47 Minn. 250, 251-53, 50 N.W. 77, 77-78 (1891). Agency between spouses may be implied or express. *Gorco Const. Co. v. Stein*, 256 Minn. 476, 479, 99 N.W.2d 69, 72 (1959). When an agent acts within the scope of express or implied authority, the principal is bound thereby. *Fingerhut Mfg. Co. v. Mack Trucks, Inc.*, 267 Minn. 201, 204, 125 N.W.2d 734, 737 (1964).

Here, Lanterman testified that he solicited the quote from Sela and Crown, and that after he received the quote from his wife, he told her "to go ahead and schedule it."

He now claims that his contract with Crown was an oral contract, not the written term sheet. But by authorizing his wife to proceed, Lanterman granted his wife actual authority to bind him to a contract with Crown, and the scope of this authority necessarily embraced signing the term sheet. And even if his wife lacked actual authority, Lanterman ratified the term sheet and his obligations thereunder by introducing the term sheet at trial when he had full knowledge of the material facts surrounding this dispute. *See Anderson v. First Nat'l Bank of Pine City*, 303 Minn. 408, 410, 228 N.W.2d 257, 259 (1975) ("Ratification occurs when one, having full knowledge of all the material facts, confirms, approves, or sanctions, by affirmative act or acquiescence, the originally unauthorized act of another, thereby creating an agency relationship and binding the principal by the act of his agent as though that act had been done with prior authority.").

We conclude that the district court did not err in determining that Lanterman was a party to the written term sheet, and thereby awarding Crown attorney fees as a cost of collection as permitted under the contract.

Because Lanterman's motion for amended findings rested on his assertion that he was not a party to the term sheet, the district court did not err by denying his motion for amended findings.

II.

Appellant argues that even if attorney fees were recoverable, the award of $38,697.23 in fees was unreasonable on a judgment for $2,200. Appellant also contends that the district court failed to make findings to support the award of attorney fees. We disagree.

The record indicates that Lanterman failed to challenge the amount of attorney fees in the district court and therefore this issue is not properly before us on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that issues not raised or decided in the district court are waived on appeal). Lanterman claims that he challenged the reasonableness of the fees in an affidavit in response to Crown's motion for attorney fees. But this affidavit was deemed untimely and the district court did not consider it. And Lanterman failed to challenge the amount or reasonableness of the award in his post-trial motions. Instead, he claimed that there was no basis on which to award attorney fees because he was not a party to the term sheet. Because he raises the reasonableness of the attorney-fee award for the first time on appeal, the argument is waived and we will not consider it.

III.

Lanterman argues that the district court abused its discretion by denying his motion for a new trial. We disagree.

A new trial may be ordered if "[t]he verdict, decision, or report is not justified by the evidence, or is contrary to law. . . . " Minn. R. Civ. P. 59.01(g). We review a decision whether to grant a new trial under rule 59.01 for a clear abuse of discretion. *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995), *review denied* (Minn. June 14, 1995).

Lanterman argues that he is entitled to a new trial so that the district court can consider an internal credit invoice produced by Crown that indicated a balance of $0,

which he contends proves that there was no amount due and owing under the written contract.

The record indicates that the credit invoice came into Lanterman's possession through discovery and his trial counsel elicited testimony regarding the invoice at trial. But Lanterman failed to introduce the invoice into evidence. "[M]ere inadvertence is not sufficient to require the reopening of a case to receive new evidence." *King v. Larsen*, 306 Minn. 546, 546, 235 N.W.2d 620, 621 (1975). And even if it had been offered into evidence, the credit invoice does not demonstrate that Crown intended to relieve appellant of his debt. We agree with the district court's conclusion that the credit invoice was merely an "internal record demonstrating Crown Masonry's intent to write off [appellant]'s bad debt." Therefore, we conclude that the district court did not abuse its discretion by denying Lanterman's motion for a new trial.

Affirmed.