

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDWARDS PUBLICATIONS, INC.,

Plaintiff/Counter Defendant-  
Appellee/Cross Appellant,

v

TRACY KASDORF,

Defendant-Appellant/Cross  
Appellee,

and

BILBEY PUBLICATIONS, LLC,

Defendant/Counter Plaintiff.

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UNPUBLISHED

May 3, 2011

No. 293617

Tuscola Circuit Court

LC No. 06-023444-CK

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff proceeded to trial on three counts: (1) breach of contract; (2) intentional interference with business relationships; and (3) civil conspiracy. The jury found no cause of action on the first two claims. However, the jury did find in plaintiff's favor on the claim for civil conspiracy and awarded \$15,822. Defendant Kasdorf<sup>1</sup> moved for judgment notwithstanding the verdict (JNOV) or, alternatively, a new trial. At the same time, plaintiff moved for an amended judgment and attorney fees or, alternatively, a new trial. Both motions were denied. Because we conclude that the jury's verdict was irreconcilably inconsistent and contrary to law, we reverse and remand for a new trial.

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<sup>1</sup> Defendant Bilbey Publications was dismissed by stipulation below and is not a party to this appeal. Thus, references to "defendant" in the singular throughout this opinion pertain to defendant Kasdorf only.

## I. BASIC FACTS

Defendant began working as a sales representative for plaintiff in 1992. As a condition of employment, defendant signed a non-competition agreement<sup>2</sup> which prohibited her from working for a competitor within a 25-mile area for a period of two years after leaving plaintiff's employment. Defendant was compensated for her concurrence to this agreement.

In 2005, defendant discontinued her employment relationship with plaintiff and began working as a sales representative for Bilbey, a direct competitor of plaintiff located within a 25-mile distance. Bilbey was aware of the agreement defendant had signed with plaintiff but nevertheless decided to hire her. Defendant was assigned customers when she went to work for Bilbey, some of whom had been her customers while working for plaintiff. As a result, plaintiff sent cease-and-desist letters to defendant and her new employer. While defendant acknowledged receiving the letters, she continued to work for Bilbey.

In 2006, the year after defendant left plaintiff's employment, plaintiff's sales revenue decreased dramatically. While small gains were made in later years, overall sales figures were still lower than when defendant worked for plaintiff. In contrast, Bilbey expanded its sales routes and increased sales dramatically in the same time period.

## II. PROCEDURAL HISTORY

After plaintiff instituted its multi-count lawsuit, defendant moved for summary disposition on all counts, which the trial court granted. Plaintiff appealed that decision. In that prior appeal, this Court affirmed in part, reversed in part, and remanded the matter for further proceedings. See *Edwards Publications v Kasdorf*, unpublished opinion of the Court of Appeals, issued January 20, 2009 (Docket No. 281499). This Court upheld the trial court's grant of summary disposition in favor of defendant on plaintiff's claims for breach of contract based on non-disclosure or confidentiality provisions, and for violation of the uniform trade secrets act, MCL 445.1901 *et seq.* *Id.* at slip op 6, 8. However, this Court concluded that at least one of the employment agreements was valid and had been violated as a matter of law requiring further proceedings to determine causation and damages. *Id.* at slip op 7. In addition, this Court found that the trial court erred in summarily dismissing plaintiff's claim for tortious interference and civil conspiracy. *Id.* at slip op 6-8.

Following remand, the matter proceeded to trial on the remaining counts. A three-day trial was held and the jury reached the result detailed above.

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<sup>2</sup> Defendant signed a second agreement in 2002. However, at trial plaintiff relied solely on the agreement executed in 1992.

### III. JNOV

Both parties argue that the trial court should have granted JNOV in their favor or, alternatively, a new trial.<sup>3</sup> Specifically, defendant argues that the trial court should have entered a judgment of no cause of action on all of plaintiff's claims. In contrast, plaintiff argues that the trial court should have entered a judgment in plaintiff's favor for its claims of tortious interference and civil conspiracy, rather than just civil conspiracy. Both parties premise their arguments on the fact that the jury found no cause of action on plaintiff's claim for tortious interference, yet found in plaintiff's favor on the claim for civil conspiracy.

We review a trial court's ruling on a motion for JNOV de novo. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). We also review a claim of inconsistent verdicts, which is a question of law, de novo. See *Lagalo v Allied Corp*, 457 Mich 278, 282-285; 577 NW2d 462 (1998).

When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 123-124; 680 NW2d 485 (2004). If the evidence is such that reasonable jurors could disagree, JNOV is improper. *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005).

We conclude that the trial court properly declined to grant JNOV to either party. The evidence presented at trial did not preclude judgment for either party as a matter of law. However, even though JNOV was inappropriate for either party, a new trial should have been granted due to the irreconcilable verdict reached by the jury.

"A civil conspiracy is a combination of two or more persons, by some concerted action to accomplish a criminal or unlawful purpose, or to accomplice a lawful purpose by criminal or unlawful means." *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). For a claim of civil conspiracy to succeed, "it is necessary to prove a separate, actionable tort." *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986). The instruction provided to the jury accurately reflected the law and required the jury to find that all of the elements of the claim had been proven, including proof of the underlying claim for tortious interference, to find in plaintiff's favor. In spite of this instruction, the jury concluded that plaintiff had failed to prove its claim for tortious interference, yet could succeed on its claim for civil conspiracy.

Trial courts are required to make every effort to reconcile a seemingly inconsistent verdict. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). The verdict should be upheld "if there is an interpretation of the evidence that provides a logical explanation

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<sup>3</sup> Plaintiff framed its motion as a request to amend the judgment. However, the relief requested effectively amounts to a request for JNOV.

for the findings of the jury.” *Id.* (internal quotation marks and citation omitted). Here, there is no logical explanation for the jury’s conclusion that plaintiff’s claim for tortious interference should fail, yet also conclude that plaintiff’s conspiracy claim should succeed despite receiving specific instruction prohibiting such a result. It is tempting to merely conclude that the conspiracy verdict should be set aside in light of the verdict on the tortious interference claim. But that would require that we have the ability to read the jurors’ minds and be able to confidently conclude that their error lay in a misunderstanding of the elements of conspiracy and that the jury would have returned a verdict for defendants had they properly understood it. But it is also possible that the jury merely felt more comfortable with their understanding of civil conspiracy over the more complicated tort of tortious interference and merely hung their judgment on that claim. And because we lack the ability to read the jurors’ minds, we are not confident in divining which result they truly reached. Accordingly, we conclude the proper remedy is to remand for a new trial to allow a new jury to reach a consistent verdict.

#### IV. ATTORNEY FEES

Plaintiff’s cross appeal included an argument that the trial court improperly denied its request for attorney fees. In light of our conclusion that a new trial is required, it is not necessary to address this issue.

Reversed and remanded for a new trial. We do not retain jurisdiction. No costs.

/s/ David H. Sawyer

/s/ Michael J. Kelly