STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1735

Shane A. Kennedy,
Respondent,

vs.

Kwik Kargo, Inc. Transport, et al.,
Appellants.

Filed July 17, 2017
Affirmed in part, reversed in part
Bratvold, Judge

Sherburne County District Court
File No. 71-CV-14-1656

Jon E. Stanek, Stanek Law Office, Eau Claire, Wisconsin; and

Paul O. Taylor, Taylor & Associates, Ltd., Burnsville, Minnesota (for respondent)

Daniel L. Lowin, Terrance J. Wagener, Messerli & Kramer P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

Respondent drove a truck as an at-will employee for appellant-corporation. After respondent resigned, he brought an action for unpaid wages against appellants—two

appellants are related trucking corporations and one appellant is an officer of both corporations. Appellants asserted several counterclaims including breach of contract. A jury found by special verdict that respondent prevailed on his wages claim in the amount of $2,519.68, all appellants were "joint employers," and respondent prevailed on the contract counterclaim. The jury specifically found that there was no written contract between the parties. The district court denied appellants' post-trial motions and granted respondent's request for a statutory penalty of $1,739.55 and for $50,259.80 in attorney fees. Appellants argue that the district court should have entered judgment in their favor, or granted a new trial, as follows: (1) appellant-officer was not a joint employer as a matter of law, and (2) the parties entered into a written contract, as a matter of law, because respondent signed the contract. Additionally, appellants argue that the district court abused its discretion in awarding attorney fees. Because there is no record evidence that appellant-officer was personally liable, we reverse in part. Because the record supports the jury's finding on the contract claim and the district court did not abuse its discretion in awarding attorney fees, we affirm the judgment in all other respects.

FACTS

Appellant Kenneth Kotzer serves as chief executive officer (CEO) of five corporations, including appellant Kwik Kargo Inc. Transport (Transport) and Kwik Kargo Inc. Trucking (Trucking), that together make up a trucking business known as Kwik Kargo. The parties agree that respondent Shane Kennedy entered into an at-will employment agreement as a driver for Kwik Kargo. The parties also agree that, in March 2013, Kennedy signed a written contract with Transport; the relevant terms provided that Transport could

take deductions from compensation for, among other things, repair and truck cleaning costs.

During May and June 2014, Kennedy twice drove outside his scheduled route on long-distance runs. When Kennedy returned to Minnesota on June 20, 2014 and arrived at the Kwik Kargo office, he was informed that his paychecks were not available. Upset, Kennedy quit and cleaned out his truck; appellants claimed that Kennedy damaged the truck. On June 25, 2014, Kennedy sent a text message to Kotzer requesting his unpaid wages. Instead of payment, Kennedy received an invoice listing deductions from his pay.

In September 2014, Kennedy sued Kotzer and "Kwik Kargo, Inc." in conciliation court for unpaid wages. After Kennedy prevailed in conciliation court, Kotzer appealed the judgment to the district court for trial de novo. Kennedy then filed a complaint in district court against Kotzer, "Kwik Kargo, Inc.," and another affiliated entity that is not a party to this appeal. Defendants answered asserting that Kennedy failed to sue his employer, Transport, and asserted several counterclaims, including breach of contract, negligence, and unjust enrichment. Kennedy moved to amend his complaint to include additional affiliated corporations, arguing that all corporate defendants and Kotzer were liable for Kennedy's wages under multiple theories, including piercing the corporate veil. The district court explicitly rejected all theories except for joint employment, and allowed Kennedy to amend his complaint to name Transport, Trucking, and two other corporate entities as defendants.

The case was tried to a jury for three days in February and March 2016. Before presenting evidence, the parties stipulated that Transport was Kennedy's employer from

March 29, 2013 to June 20, 2014, and agreed that the jury should determine whether any other defendants were joint employers. After Kennedy rested, the defendants moved for judgment as a matter of law as to all defendants except for Transport. Relevant to the issues on appeal, the district court denied the motion because the evidence created a fact question regarding which defendants were joint employers with Transport.

The jury returned a special verdict determining Kennedy's average daily wage was $115.97, Kennedy was owed $2,519.68 in unpaid wages, and that, in addition to Transport, Kotzer and Trucking were Kennedy's joint employers. The jury found there was no written contract between Kennedy and Transport, but also found that Kennedy's negligence had caused $397.29 in damages to Transport.

Appellants then moved for judgment as a matter of law or, alternatively, for a new trial, arguing that Kotzer was not personally liable and that the jury's finding of no contract was not supported by the evidence. Kennedy also filed motions and requested a statutory penalty of 15 times his daily wage, pursuant to Minn. Stat. § 181.14, subd. 2 (2016), as well as attorney fees and costs pursuant to Minn. Stat. § 181.71, subd. 3 (2016). He sought over $50,000 in attorney fees; his attorneys submitted affidavits and other supporting documentation. The district court denied appellants' motion for judgment as a matter of law or new trial, granted Kennedy's motion for a statutory penalty by applying the daily rate found by the jury, and awarded attorney fees. The district court directed entry of judgments against appellants in the amount of $2,519.68 for unpaid wages, $1,739.55 for the statutory penalty, and $50,259.80 for attorney fees. Transport, Trucking, and Kotzer appeal.

D E C I S I O N

I. The district court erred in denying Kotzer's motion for judgment as a matter of law.

Kotzer argues that the district court erred when it denied his motion for judgment as a matter of law because an owner-officer of a corporation is not personally liable for unpaid wages to an employee. A district court may grant a motion for judgment as a matter of law if "there is no legally sufficient evidentiary basis for a reasonable jury" to find for that party on an issue. Minn. R. Civ. P. 50.01. "We apply de novo review to the district court's denial of a Rule 50 motion." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). In reviewing a district court's determinations on a motion for judgment as a matter of law, "we view the evidence in the light most favorable to the prevailing party." *Id.*

Before and after the jury verdict, Kotzer argued he was entitled to judgment as a matter of law because he was not personally liable for Kennedy's unpaid wages. Both motions were denied. The district court concluded that the jury's finding that Kotzer was a joint employer was supported because the evidence established that Kotzer controlled the manner and means of Kennedy's performance because "Kotzer, in his individual capacity, . . . [made] unilateral decisions regarding how *his* trucks and *his* drivers operated," the employees "worked under [Kotzer's] strict control," and Kotzer had a "sense of ownership of the trucks and drivers." On appeal, Kennedy argues that Kotzer "exercised total control over an amorphous web of entities" and therefore is a joint employer.

We begin by noting that the application of joint-employment theory to an officer of an employer-corporation is unusual and appears to undercut the benefits of incorporating.

Davis v. Johnson, 415 N.W.2d 755, 758-59 (Minn. App. 1987) ("[D]oing business as a corporation to limit personal liability is not wrong; it is a major reason for incorporating."). Despite the novel nature of the question, we need not reach it in this case. We agree with Kotzer that the district court failed to "meaningfully distinguish [his] corporate conduct from his personal conduct when it assessed the joint employer claim."

Corporate officers are "shielded from personal liability" to allow them to act "in the best interests of the corporation." *Furlev Sales & Assocs., Inc. v. N. Am. Auto. Warehouse, Inc.*, 325 N.W.2d 20, 26 (Minn. 1982). Kotzer cannot be held personally liable for actions taken as the CEO of Trucking or Transport. *See, e.g.*, *Avery v. Solargizer Int'l, Inc.*, 427 N.W.2d 675, 684 (Minn. App. 1988) (affirming dismissal of breach-of-employment contract claims against executive officers in their personal capacities where there was "no claim respondents acted in other than a corporate capacity to incur personal liability for the alleged breaches"); *Aberman v. Malden Mills Indus., Inc.*, 414 N.W.2d 769, 773 (Minn. App. 1987) (affirming dismissal of claims against corporate officer in his individual capacity where the officer only acted in his corporate capacity).

Although there is evidence that Kotzer made many decisions regarding Kwik Kargo's operations and the actions of its employees, including Kennedy, there is no evidence that any of Kotzer's actions or decisions were taken or made in his personal capacity. In fact, the only relevant record evidence is Kotzer's testimony that his decisions regarding Kennedy's out-of-route miles were "part of [his] role as the CEO of Kwik Kargo." Kennedy points to Kotzer's references in his testimony to "my dispatch team" and "my shop." We interpret this as an argument that Kotzer subjectively believed that he

controlled the premises and his employees. Because the undisputed record evidence establishes that Kotzer took managerial actions in his capacity as CEO and there is no record evidence that Kotzer in his individual capacity controlled any aspect of Kennedy's employment, we conclude that no record evidence supports the jury's finding that Kotzer is personally liable for Kennedy's unpaid wages. Thus, we conclude that the district court erred in denying Kotzer's motion for judgment as a matter of law; we reverse, in part, and direct entry of judgment in favor of Kotzer.

II. The district court did not err when it entered judgment in Kennedy's favor on Transport's contract claim.

Transport asserted that Kennedy breached his employment contract by driving out of his scheduled route and damaging the truck, based on the terms of a written contract signed by Kennedy. The jury responded "No" to the question, "Was there a contract between Mr. Kennedy and Kwik Kargo Inc. Transport?" Post-trial, Transport moved for judgment as a matter of law on this question. The district court denied Transport's motion because "the existence of a contract is an issue of fact," and Kennedy testified that he did not have "the ability or opportunity to read the contract" before he signed it. The district court also noted that evidence permitted the jury to infer that Kotzer's wife prevented Kennedy from reading the contract and then instructed another employee to witness Kennedy's signature, despite the fact that the "witness" was not present when Kennedy signed.

Transport argues that absent fraud or misrepresentation, Kennedy is bound by the signed contract. *See, e.g.*, *Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982) ("In the

absence of fraud or misrepresentation, a person who signs a contract may not avoid it on the ground that he did not read it or thought its terms to be different."); *Greer v. Kooiker*, 312 Minn. 499, 508, 253 N.W.2d 133, 140 (1977) (noting "a party to a contract . . . . cannot avoid the duties of the document by showing he did not know its contents" in the absence of fraud, mistake, or unconscionable terms).

Minnesota caselaw also states, however, that this rule applies when a "party has the ability and the opportunity to read a written contract" and fails to do so. *See Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. App. 2001); *see also Shaughnessy v. N.Y. Life Ins.*, 163 Minn. 134, 137, 203 N.W. 600, 602 (1925) (holding a party may not avoid a contract where she "had the opportunity and the ability to read it" but failed to do so). In fact, this court has previously rejected summary judgment on a signed contract where appellant was not allowed to read the contract before signing. *See, e.g.*, *Int'l Union of Operating Engineers Local No. 49 Health & Welfare Fund v. Krejac*, 366 N.W.2d 388, 389-90 (Minn. App. 1985) (reversing because evidence supported appellant's assertion that he did not received a copy of the agreement until after he signed it, allowing him to contend that his consent was "ineffective").

During trial, Kennedy admitted that he signed the contract, but also testified that he was not allowed to read it before signing. Kennedy testified that he "was trying to read through it," but Kotzer's wife told him "we don't have time to go through all this." As a result, Kennedy testified that he did not believe he "got all the information that I was actually signing for." Additionally, the purported witness to Kennedy's signature admitted that Kotzer's wife instructed her to sign the contract, even though she did not see Kennedy

sign. Viewed favorably to the verdict, the record supports the jury's determination that Kennedy did not consent to the contract because Transport insisted that he sign without reading the contract.[1] We affirm the district court's denial of Transport's motion for judgment as a matter of law on the contract claim

III. The district court did not abuse its discretion in granting Kennedy's motion for attorney fees.

Appellants argue that the district court abused its discretion in awarding attorney fees. In a civil action to recover unpaid wages, "the court shall order an employer who is found to have committed a violation to pay to the aggrieved party reasonable costs, disbursements, witness fees, and attorney fees." Minn. Stat. § 181.171, subd. 3. "When the reasonableness of the requested attorney fees is challenged, the district court must provide a concise but clear explanation of its reasons for the fee award." *301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 569 (Minn. App. 2010). Generally, appellate courts review an award of attorney fees for abuse of discretion. *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620 (Minn. 2008). "[T]he reasonable value of attorneys' fees is a question of fact." *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400 (1973). Accordingly, a finding that a specific amount of attorney fees is reasonable is reviewed for clear error. *Id.*, 203 N.W.2d at 400-01.

[1] Moreover, we note that Transport does not appear to have been prejudiced on this issue because it prevailed on its negligence claim against Kennedy. During oral argument, appellant's counsel could not identify any contract damages that differed from the negligence damages awarded by the jury. Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

To assess the reasonableness of a requested attorney fees award, district courts should utilize the "lodestar method," by which the court determines a fee award based on "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Green v. BMW of N. Am., LLC,* 826 N.W.2d 530, 535 (Minn. 2013). When determining the reasonableness of the hours expended and the requested hourly rate, the court "must consider all relevant circumstances," including "'the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.'" *650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 495 (Minn. App. 2016) (quoting *Milner*, 748 N.W.2d at 621).

After considering the factors identified in *Green*, the district court found that "a fee award in the [requested] amount of $50,259.80 is reasonable and appropriate." Appellants challenge the amount awarded and make four arguments, which we discuss in turn.

First, appellants argue that the district court's finding of "reasonable hours" was not supported by the record because Kennedy's attorneys expended more time and labor than was appropriate and sued multiple parties under multiple theories. The district court found that "it was not unreasonable for [Kennedy] to bring suit against these multiple defendants on multiple legal theories" because his efforts were successful in part; he obtained judgments against two defendants, both of whom were added in the amended complaint. The district court also noted that this strategy was reasonable because "many of the added defendants shared the same business address and telephone number, received dispatches

from a common dispatcher . . . and shared common employees, assets and supervisory staff," and, before discovery was complete, it may have been difficult to determine which defendants were truly Kennedy's employers. A plaintiff must ensure that he sues the correct party in order to successfully recover. *Cf. Ortiz v. Gavenda*, 590 N.W.2d 119, 126 (Minn. 1999) (noting that the Minnesota Rules of Civil Procedure allow plaintiffs to amend complaints to add new parties "to prevent meritorious cases from being dismissed for technical, procedural violations"). The district court also appropriately noted that there was no claim that Kennedy "caused unnecessary hearings or costs in excess of what is typical in litigation."

Second, appellants argue that it was unreasonable to award fees for two attorneys because one attorney could have tried this case. The district court found that the second-chair had expertise in "legal matters within the trucking industry" and was "associated with the case to provide that expertise." We agree with the district court that this case was not "'relatively straightforward' due to the amorphous nature of many of the defendant entities." Kennedy's counsel untangled multiple related corporate entities and responded to several counterclaims. Taking appellants' first and second arguments together, we conclude that the district court did not clearly err in its determination that the amount of time expended by the two attorneys was reasonable.

Third, appellants argue that the attorney fees awarded were unreasonable because the unpaid wages and penalty was less than the fee award. This argument is not persuasive in this case. "[S]tatutory penalties permitting the award of attorney fees are designed to encourage parties with potentially modest damages to bring their claims." *Kvidera v.*

Rotation Eng'g & Mfg. Co., 705 N.W.2d 416, 424-25 (Minn. App. 2005). As the district court observed, the statutory provision authorizing a fee award was adopted, in part, to provide "an avenue of redress to plaintiffs often lacking the financial ability to pursue litigation." In this case, appellants responded to Kennedy's modest claim with what their counsel described at oral argument as "scorched earth" litigation. Under these circumstances, the district court did not abuse its discretion in concluding that the amount involved and results obtained were reasonable.

Fourth, appellants argue that Kennedy "presented no evidence his attorneys billed him for hourly charges, expected him to pay those charges, or received any payments from him," and therefore fees are not properly recoverable. *See Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 629 n.10 (Minn. 1988) ("Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary*."). But this rule merely requires attorneys requesting fees to use "billing judgment" when determining how much to request. *Id.* The rule does not prevent an attorney who operates under a contingent-fee arrangement from receiving attorney fees. *Cf. 650 N. Main Assoc. v. Frauenshuh, Inc.*, 885 N.W.2d 478, 495 (Minn. App. 2016) (rejecting appellant's argument that contingent fee agreement is the "ceiling" for the amount of a reasonable attorney fee award).

Having reviewed the briefs and the record, we find no clear error in the district court's finding "that a fee award in the total amount of $50,259.80 is reasonable and appropriate." As required, the district court provided "a concise but clear explanation of its reasons for the fee award." *Anderson*, 417 N.W.2d at 629 (quotation omitted); *301 Clifton Place*, 783 N.W.2d at 569. The district court appropriately exercised its discretion by

explicitly addressing the time and expense involved in litigating Kennedy's unpaid wages claim and responding to appellant's counterclaims, the expense and reasonableness of his hiring two attorneys, the rates charged by those attorneys, and the relationship between the attorney fees and the judgment. Accordingly, we affirm the district court's award of attorney fees.

Affirmed in part, reversed in part.