STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1983

Suncom, LLC,
Appellant,

vs.

Robert Feuling, d/b/a West Side Liquors of Sartell, LLC, et al.,
Respondents.

Filed September 4, 2018
Affirmed
Kalitowski, Judge[*]

Stearns County District Court
File No. 73-CV-14-1147

Ryan Simafranca, Simafranca Law Office, Minnetrista, Minnesota; and

Timothy W. Fafinski, Corporate Counsel, PA, Independence, Minnesota (for appellant)

Gordon H. Hansmeier, Matthew W. Moehrle, Christopher A. Wills, Rajkowski Hansmeier LTD, St. Cloud, Minnesota (for respondents)

Considered and decided by Florey, Presiding Judge; Halbrooks, Judge; and Kalitowski, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

This attorney-fees dispute involves a second appeal from a prolonged, five-year litigation. Appellant Suncom, LLC, challenges the district court's award of $15,650 in attorney fees to appellant, arguing that the district court erred by failing to apply the lodestar method. Respondent/cross-appellant Robert Feuling, d/b/a/ West Side Liquors of Sartell, LLC, et al., argues that the district court abused its discretion in awarding attorney fees based on a percentage of the final judgment. We affirm.

D E C I S I O N

"Generally, we review an award of attorney fees for an abuse of discretion." *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620 (Minn. 2008). "On appeal from judgment following a court trial, this court reviews whether the district court's findings were clearly erroneous and whether the district court erred as a matter of law." *In re Distrib. of Attorney's Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014). "A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. We review issues of law de novo." *Id.* (citation and quotation omitted). "[W]e view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Minnesota courts have adopted the lodestar method for determining the reasonableness of attorney fees. *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 711 (Minn. 2013); *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535 (Minn. 2013). The lodestar method first requires a determination of "the number of hours reasonably expended" on the

litigation, then multiplies the number of hours by "a reasonable hourly rate." *Green*, 826 N.W.2d at 536. The court considers "all relevant circumstances" when evaluating the reasonableness of the hours expended by the attorneys and their hourly rates. *Id.* Relevant factors include "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." *Milner*, 748 N.W.2d at 621 (quotation omitted). "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." *Id.* (quotation omitted).

Prior Appeal

We previously reversed the district court's dismissal of appellant's attorney-fees claim and remanded for further proceedings, holding that the district court erred in granting a directed verdict for respondent because appellant was entitled to recover reasonable attorney fees under the terms of the lease. *Suncom, LLC v. Feuling*, No. A16-0625, 2017 WL 474419 (Minn. App. Feb. 6, 2017) (*Suncom I*). We "limit[ed] the hearing on remand to the issues as they were frozen on October 14, 2015[;]" specifically, the hearing was limited to determining the reasonable value of appellant's attorney fees. *Id.* at *5. And appellant was limited to presenting testimony through its principal, Stuart Swenson, the only witness it had identified as of that date, and could not conduct additional discovery. We also noted that it was "within the district court's discretion to determine on remand

whether [Swenson] is competent to testify as to the reasonableness of attorney fees." *Id.* at *6.

Reasonableness of Attorney Fees

Appellant argues that Swenson was competent to testify about the reasonableness of the attorney fees and that the district court abused its discretion in determining that no evidence was provided about the reasonableness of the claimed attorney fees. At trial, the district court sustained several objections to Swenson's testimony as lacking foundation concerning the reasonableness of appellant's attorney fees. The district court then found that "[t]he record before this Court is devoid of competent evidence on the reasonableness of attorney fees." We review a district court's ruling on foundational reliability for an abuse of discretion. *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Minn. R. Evid. 602.

Swenson testified that he had little background in litigation and all of his previous matters had settled out of court. Swenson admitted that he lacks knowledge about litigation generally, did not know if the various motions and subpoenas filed by his attorneys were reasonable, and did not pay attention to the "day-to-day details" of this litigation. The district court, sustaining several objections on the basis of foundation, received no testimony from Swenson that the number of hours charged by appellant's attorneys were reasonable. Swenson never provided, and appellant's attorney failed to lay foundation for, any opinion concerning the reasonableness of the hours billed. At most, Swenson testified

that the rate charged by the attorneys was at the "low end" of what he was familiar with. Based on Swenson's admitted lack of experience with litigation and lack of personal knowledge concerning several aspects of this specific litigation, we conclude that the district court did not abuse its discretion in sustaining objections to any testimony from Swenson concerning the reasonableness of the hours billed as lacking foundation.

The district court also noted to appellant at trial that "it was incumbent upon you . . . to have an expert to testify to these matters," and stated that, with only Swenson's testimony, it did not "have any evidence whatsoever regarding most of the Lodestar factors." The district court stated that appellant could not simply submit bills for the court to determine what was reasonable, and that an expert witness who does similar litigation should have testified because the district court did not "feel [it] ha[d] any competent testimony regarding most of the Lodestar factors" and that "the record is severely lacking."

Appellant contends the district court erred, arguing that under *Wojahn v. Faul*, 242 Minn. 33, 64 N.W.2d 140 (1954), appellant was not required to produce expert testimony to support its claim for attorney fees. We disagree. In *Suncom I*, we recognized that "[t]he *Wojahn* holding has since been supplanted by caselaw employing the lodestar method, and post-*Wojahn* cases have relied upon expert testimony when determining an attorney-fees award." 2017 WL 474419, at *6 n.3. And, although we did not decide whether expert testimony was per se required for the district court to determine the reasonableness of attorney fees, we recognized that the district court had the discretion to determine whether Swenson could provide competent testimony on the key issue of the reasonableness of the fees. Because appellant "[wa]s not entitled to add witnesses or seek additional discovery

on remand," the district court could have determined that Swenson could not competently testify to the reasonableness of the claimed attorney fees and decline to award any attorney fees on that basis. *Id.* at *5.

Appellant also argues that the district court improperly assigned appellant the burden of proof concerning whether the hours expended during this litigation were reasonable. But the district court concluded "that whether or not [appellant] bears the burden of showing the requested fees are reasonable, there is no evidence before the Court showing that the requested amount of fees are appropriate in this case." Thus, the district court's decision did not rest on whether appellant had failed to meet a burden of proof; rather, it reflected that there was simply no record evidence available to the district court that would allow it to apply the lodestar method or determine whether the number of hours billed by appellant's attorneys was reasonable.

In conclusion, because the district court determined that there was no evidence from which to conclude whether the number of claimed hours was reasonable, the district court did not abuse its discretion in determining that it could not apply the lodestar method.

District Court's Fee Award

Notwithstanding its inability to apply the lodestar method, the district court recognized that appellant's attorneys "obviously worked for many hours over the course of this case" and that appellant was entitled to some amount of attorney fees. Thus, rather than declining to award any attorney fees, the district court explained that it found that a contingency fee of one-third of the $46,950 judgment awarded to appellant by the jury was a reasonable award for appellant's attorneys' work. Accordingly, it awarded appellant

$15,650 for attorney fees and costs. The district court—having been present for all of the motions, hearings, and trial—is in the best position to determine a reasonable attorney-fees award. *Milner*, 748 N.W.2d at 622. We conclude that it was not an abuse of discretion for the district court to award an amount that it found to be reasonable attorney fees when it did not have sufficient evidence to apply the lodestar method.

Affirmed.