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Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0249

Sokkhan Ka,
Appellant,

vs.

Lonvigson's Service Center, Inc.,
Respondent.

Filed November 4, 2019
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-18-9119

Sokkhan Ka, Shoreview, Minnesota (pro se appellant)

Ned E. Ostenso, Merrigan, Brandt, Ostenso & Cambre, P.A., Hopkins, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this appeal from the district court's summary-judgment dismissal of appellant's claim for late payment of final wages, appellant argues that the district court erred by

dismissing his claim, dismissing respondent's counterclaim without prejudice, and awarding costs and disbursements to respondent. We affirm.

FACTS

In September 2016, appellant Sokkhan Ka began working for respondent Lonvigson's Service Center Inc. (LSC) as a sales associate. Ka's job duties included cashiering. On March 5, 2018, LSC terminated Ka's employment. On March 6, Ka sent LSC an email, requesting his final wages. On March 13, Ka received his final paycheck from LSC.

In April 2018, Ka sued LSC in conciliation court, alleging that LSC had not timely issued his final paycheck and that it owed him a penalty under Minn. Stat. § 181.13(a) (2018). In May 2018, the conciliation court dismissed Ka's claim. Ka removed the case to district court for a trial de novo.[1] In his complaint in district court, Ka asserted that under Minn. Stat. § 181.13(a), his final wages were due on March 7, 2018, "24 hours from the time [they] were demanded," and that LSC was thus "in default for a total of six (6) days." Ka alleged $672 in damages.

In July 2018, LSC counterclaimed against Ka, alleging that, subsequent to LSC's termination of Ka's employment, he intentionally turned the thermostat at LSC to its highest setting, spoiling food worth $199.26. LSC also requested costs, disbursements, and attorney fees. In December 2018, LSC moved for summary judgment, arguing that

[1] "Any person aggrieved by an order for judgment entered in conciliation court after contested trial may remove the cause to district court for trial de novo (new trial)." Minn. R. Gen. Prac. 521(a).

because Ka's job duties included the collection, disbursement, and handling of money, LSC had ten days to provide Ka with his final paycheck after his demand under Minn. Stat. § 181.14, subd. 4 (2018), and that its payment was therefore timely.

In February 2019, the district court held a hearing on LSC's summary-judgment motion. At the hearing, the district court stated that it agreed with LSC that the ten-day time limit in Minn. Stat. § 181.14, subd. 4, applied and that it would grant LSC's motion for summary judgment on Ka's claim. LSC moved to dismiss its counterclaim against Ka without prejudice. The district court granted summary judgment for LSC, dismissing Ka's claim with prejudice. The district court also dismissed LSC's counterclaim, without prejudice, and awarded LSC its costs and disbursements. This appeal follows.

D E C I S I O N

I.

Ka contends that the district court erred in granting LSC summary judgment on his unpaid-wage claim under Minn. Stat. § 181.13(a).

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court reviews a district court's grant of summary judgment de

novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). "We view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.*

Resolution of this case involves the interplay between two statutes: Minn. Stat. § 181.13 (2018), and Minn. Stat. § 181.14 (2018). Section 181.13(a) provides,

> When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. . . . If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default. In addition to recovering the wages and commissions actually earned and unpaid, the discharged employee may charge and collect a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for each day up to 15 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made.

Section 181.14, subdivision 1(a), generally provides that when any employee "quits or resigns employment," the "wages or commissions earned and unpaid at the time the employee quits or resigns shall be paid in full not later than the first regularly scheduled payday following the employee's final day of employment, unless an employee is subject to a collective bargaining agreement with a different provision." "Wages or commissions not paid within the required time period shall become immediately payable upon the demand of the employee," and "[i]f the employee's earned wages or commissions are not

paid within 24 hours after the demand," the employer is liable to the employee for a penalty identical to the penalty described in section 181.13(a). Minn. Stat. § 181.14, subd. 2.

However, section 181.14, subdivision 4, provides,

> In cases where the *discharged or quitting employee* was, during employment, *entrusted with the collection, disbursement, or handling of money or property*, the employer shall have ten calendar days after the termination of the employment to audit and adjust the accounts of the employee before the employee's wages or commissions shall be paid as provided in this section, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of the period allowed for payment of the employee's wages or commissions.

(Emphasis added.)

Ka argues that "Minn. Stat. § 181.14 (2018) does not apply to employees who were involuntarily terminated" and that the 24-hour time limit in section 181.13(a) therefore applies here instead of the ten-day time limit in section 181.14, subdivision 4. Ka argues that the title of section 181.14 "specifies it is for an employee who quits or resigns."

Ka's arguments raise an issue of statutory interpretation. Issues of statutory interpretation are questions of law that this court reviews de novo. *State v. Overweg*, 922 N.W.2d 179, 182-83 (Minn. 2019). "The goal of statutory interpretation is to effectuate the intent of the Legislature." *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018). "The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *Overweg*, 922 N.W.2d at 183 (quotations omitted). "A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation." *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012). If a statute is

unambiguous, then appellate courts must apply the statute's plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

"The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute." Minn. Stat. § 645.49 (2018); *see Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 303 n.23 (Minn. 2000) (stating that "revisor's headnotes are not part of [a] statute and thus do not determine its scope or meaning"). Thus, although the headnote for 181.14 states, "Payment to Employees Who Quit or Resign; Settlement of Disputes," that headnote is not part of the statute. *See* Minn. Stat. § 181.14.

The language of section 181.14, subdivision 4, is unambiguous. The relevant provision expressly states that it applies "[i]n cases where the *discharged* or quitting employee was, during employment, entrusted with the collection, disbursement, or handling of money or property." *Id.*, subd. 4 (emphasis added). The only reasonable interpretation of that language is that subdivision 4 applies to discharged employees as well as employees who have quit. Indeed, the supreme court has stated that sections 181.13 and 181.14 "must be read together." *Chatfield v. Henderson*, 90 N.W.2d 227, 231-32 (Minn. 1958).

Under the plain language of section 181.14, subdivision 4, the ten-day time limit to pay a discharged employee's unpaid wages or commissions applies so long as the employee was "during employment, entrusted with the collection, disbursement, or handling of money or property." In a response to interrogatories submitted by LSC, Ka admitted that

his "job duties included cashiering" and that his duties as a cashier "included the collection of money, the disbursement of money, and/or the handling of money or property belonging to [LSC]." Because Ka admitted that his job duties involved the collection, disbursement, and handling of money or property, section 181.14, subdivision 4, applies, and LSC had ten days to pay Ka's unpaid wages after he made his demand on March 6. Thus, LSC's payment of Ka's unpaid wages on March 13 was timely, LSC does not owe Ka a penalty, and LSC is entitled to judgment as a matter of law. In sum, the district court did not err by granting LSC summary judgment on Ka's unpaid-wage claim.

II.

Ka contends that the district court violated his right to equal protection under the Fourteenth Amendment because it dismissed his claim with prejudice but dismissed LSC's counterclaim without prejudice.

The Fourteenth Amendment to the U.S. Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Minnesota Constitution similarly guarantees that "[n]o member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. "Both clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive." *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000) (quotation omitted). To establish an equal-protection claim, a claimant must show that "the claimant is treated differently from others

to whom the claimant is similarly situated in all relevant respects." *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018) (quotation omitted). If a claimant establishes that the claimant has been treated differently from others who are similarly situated, a court then reviews the merits of the equal-protection challenge under the appropriate standard of scrutiny. *Id.* at 348.

Ka fails to cite or apply the law governing an equal-protection analysis. Mere assertions of error without supporting legal authority or argument are waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). Moreover, "issues not adequately briefed are waived." *Brooks v. State*, 897 N.W.2d 811, 819 (Minn. App. 2017), *review denied* (Minn. Aug. 8, 2017). Because Ka does not support his equal-protection claim with supporting legal authority or legal argument, and prejudicial error is not obvious, his claim is waived.

Ka also contends that "[t]here is no basis of fact or law for [LSC's] dismissal without prejudice." LSC asked the district court to dismiss its counterclaim without prejudice because "Ka has done a lot of things to disrupt [LSC's] business besides this . . . and [LSC did not] put it past him to maybe do some other things where it might be useful for [it] to maintain the ability to raise that allegation at a later time."

The district court may dismiss a party's counterclaim upon motion of the party in an "order of the court and upon such terms and conditions as the court deems proper." *See* Minn. R. Civ. P. 41.01(b) (describing court-ordered voluntary dismissal of plaintiff's action); Minn. R. Civ. P. 41.03 (providing that provisions of rule 41.01 apply to the dismissal of counterclaims). Unless otherwise specified, a court-ordered voluntary

dismissal is without prejudice. *See* Minn. R. Civ. P. 41.01(b); Minn. R. Civ. P. 41.03. This court reviews the district court's decision to grant a voluntary dismissal without prejudice for an abuse of discretion. *Kelbro Co. v. Vinny's on the River, LLC*, 893 N.W.2d 390, 397-98 (Minn. App. 2017).

Given that court-ordered voluntary dismissals are generally without prejudice, and LSC's assertion that additional claims against Ka might arise, the district court did not abuse its discretion by dismissing LSC's counterclaim without prejudice.

III.

"In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred . . . ." Minn. Stat. § 549.04 (2018). "The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998). "A prevailing party is one who prevails on the merits in the underlying action, not one who was successful to some degree." *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 673 (Minn. App. 2011) (quotation omitted). Appellate courts review a district court's award of costs and disbursements, including its prevailing-party determination, for an abuse of discretion. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). The district court abuses its discretion "when its decision is against logic and facts on the record." *Id.*

Ka contends that the "District Court did not determine any prevailing party and erred in awarding Costs and Disbursements to [LSC]." Ka argues that the district court's order "reflected both parties prevailing." The record refutes that argument. The district court

granted LSC's request for summary dismissal of Ka's unpaid-wage claim on the merits. But the district court's dismissal of LSC's counterclaim was not based on the merits and was without prejudice. Although the district court did not expressly refer to LSC as the prevailing party, its award of costs and disbursements to LSC indicates that the district court correctly determined that LSC was the prevailing party on the merits of Ka's unpaid-wage claim. In sum, the district court did not abuse its discretion by treating LSC as the prevailing party and awarding it costs and disbursements.

Affirmed.