STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2187

Igbanugo Partners Int'l Law Firm, PLLC,
Appellant,

vs.

Ali Sabhari, et al.,
Respondents.

Filed September 3, 2013
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-11-20048

Herbert A. Igbanugo, Igbanugo Partners Int'l Law Firm, Minneapolis, Minnesota (for appellant)

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant argues that the district court erred by granting summary judgment to respondents and awarding them $15,539.56. We affirm.

FACTS

The history between appellant Igbanugo Partners Int'l Law Firm PLLC (the law firm) and respondents Ali Sabhari and Susan Sabhari is complex and spans more than ten years of legal representation. Ali Sabhari immigrated to the United States from Kuwait in the early 1990s; soon married Susan Sabhari in the United States; and engaged attorney Herbert Igbanugo, then of Blackwell Igbanugo, P.A. (BIPA), to provide immigration-related legal services. This case arises out of contracts between the law firm and the Sabharis, who allege that the law firm breached the contracts. Sabharis and BIPA executed the contract that is pertinent to this appeal in December 2005. Under that contract, BIPA agreed to assist Sabharis with a complaint for declaratory relief in federal district court. In 2006, Herbert Igbanugo left BIPA and founded the law firm. Sabharis transferred their legal work to the law firm. On April 5, 2007, Sabharis executed a contract that provided that the law firm would assist Sabharis in responding to the government's appeal to the federal appeals court.

The law firm was partially successful in its representation of the Sabharis in connection with their immigration litigation and sought a fee award from the government under the Equal Access to Justice Act (EAJA), obtaining a fee award in 2010 in the amount of $52,500. But the law firm did not inform Sabharis that it was seeking an EAJA fee award and did not provide Sabharis with documents related to these efforts. Only in late December 2010, after the law firm invoiced Sabharis for $52,500 in legal fees, crediting them $9,200.06 and seeking payment of $49,315.36, did Sabharis discover that the law firm had received the EAJA award of $52,500. When Sabharis did not pay the

invoice, the law firm sued them, alleging that Sabharis owed them attorney fees and costs under contracts executed with the law firm on December 30, 2005; January 4, 2006; September 25, 2006; November 1, 2006; and April 5, 2007. The complaint alleged that Sabharis owed the law firm $49,315.36. In October 2011, the law firm moved for default judgment. At the default hearing, the law firm conceded that Sabharis owed the firm $38,799.94, not $49,315.36. The district court denied the motion for default judgment.

On May 16, 2012, Sabharis served the law firm with notice of their intent to move the district court for summary judgment at a hearing on June 13. On June 5, one day after the deadline for responsive submissions, the law firm mailed a memorandum in opposition to Sabharis' summary-judgment motion to Sabharis' counsel, and the law firm filed the memorandum on June 6.[1] At the summary-judgment hearing, the district court noted the law firm's failure to submit an affidavit, and counsel for the law firm acknowledged that "[i]t may have been an oversight on [his] part." On June 25, the law firm filed a "Motion for Leave to File Affidavits and Supplemental Evidence" (motion for leave) to which it attached Herbert Igbanugo's affidavit, attesting to numerous facts and verifying the authenticity of the exhibits attached to the law firm's memorandum in opposition to summary judgment, and attaching nine additional exhibits, not previously submitted to the court. The law firm also filed an affidavit from one of its attorneys, Raymond A. Gwenigale, stating that the district court, through its law clerk, had orally granted him a one-day extension of the filing deadline in regard to the law firm's

[1] In its memorandum in opposition to summary judgment, the law firm acknowledged that Sabharis had paid $33,814 in legal fees during the course of the law firm's representation of them.

memorandum in opposition to summary judgment and that counsel had e-mailed the law firm's memorandum of law in opposition to summary judgment to Sabharis on June 5. Sabharis objected to the law firm's motion for leave.

The district court denied the law firm's motion for leave; granted summary judgment to Sabharis; awarded Sabharis $1,839.50 in attorney fees for the expense of responding to the law firm's motion for leave; and entered judgment in favor of Sabharis in the amount of $15,539.56. The court calculated the judgment amount by subtracting from the EAJA award recovered by the law firm the amount that the law firm acknowledged at the summary-judgment hearing that the Sabharis owed and then adding the award of attorney fees: $52,500−$38,799.94+$1,839.50=$15,539.56. In its order, the court stated that it considered the law firm's memorandum in opposition to summary judgment despite its tardiness because it did not "obviously prejudice[]" Sabharis. But the court "refuse[d] to consider [the law firm's] untimely post-hearing affidavits and evidence," because the law firm

> failed to provide a good-faith basis for its failure to adhere to the requirements of Minnesota Rule of Civil Procedure 56.05 and Rules of General Practice 115.03 and 115.06, which require that evidence submitted in opposition to a motion for summary judgment be attached to an affidavit for consideration by the Court.

The district court nevertheless noted that it "fully reviewed all of the untimely documents" and that "even if it were to consider this evidence, it would reach the same conclusion that, under the unambiguous language of the applicable agreements governing the parties' relationship," Sabharis would prevail.

This appeal follows.

D E C I S I O N

Denial of Law Firm's Motion for Leave to File Affidavits and Supplemental Evidence

We review the district court's order for an abuse of discretion. *See Superior Constr. Servs., Inc. v. Belton*, 749 N.W.2d 388, 392–93 (Minn. App. 2008) (concluding that district court "acted within its discretion" when it did not consider affidavits submitted by plaintiff on day of summary-judgment hearing); *see also* Minn. Stat. § 484.33 (2012) ("[I]n furtherance of justice, [the General Rules of Practice] may be relaxed or modified in any case, or a party relieved from the effect thereof, on such terms as may be just.");[2] *Maudsley v. Pederson*, 676 N.W.2d 8, 12 (Minn. App. 2004) (noting that "whether or not to enforce its own scheduling order is clearly within the district court's discretion" and that "the time limits of the rules of general practice may be readily modified by the court" (quotation omitted)); *Hopkins by LaFontain v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991) ("Enforcement of local rules is left to the discretion of the district court.").

The exhibits that the law firm attached to its memorandum in opposition to Sabharis' motion for summary judgment consisted of collection letters, contracts and retainer agreements, and invoices, and none authenticated by an affidavit or otherwise verified. The law firm does not argue that the district court abused its discretion by

[2] We cite the most recent version of section 484.33 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

initially declining to consider the exhibits attached to its memorandum in opposition to summary judgment. Indeed, the district court properly declined to consider the exhibits because they were not authenticated. *See Kay v. Fairview Riverside Hosp.*, 531 N.W.2d 517, 520 (Minn. App. 1995) (stating that "facts . . . in the police reports and [a] psychologist's report may not be considered for purposes of the summary judgment determination because they were not submitted in proper affidavit form"), *review denied* (Minn. July 20, 1995); *see also* 2 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 56.17 (5th ed. 2011) (discussing "Rule 56 evidence" and stating that "[a] court may . . . rely upon exhibits or documents properly authenticated and supported by necessary foundational requirements").

The law firm argues that the district court acted "arbitrarily and unfairly" when it denied the law firm's "good-faith motion" to file supplemental affidavits and exhibits because the court had discretion to grant the motion and denial caused irreparable harm to the law firm. Although the district court "*may* waive or modify the [filing] time limits" if "irreparable harm will result absent immediate action by the court" or the "interests of justice otherwise require," nothing in the rules *requires* the court to allow a continuance or relax filing time limits to accept untimely submitted evidence. Minn. Gen. R. Prac. 115.07 (emphasis added). And the law firm fails to specify the irreparable harm that allegedly resulted. We conclude that the district court acted well within its discretion by denying the law firm's motion. *See Belton*, 749 N.W.2d at 392–93 (concluding that district court was within its discretion when it excluded affidavits submitted by plaintiff on day of summary-judgment hearing); *Am. Warehousing & Distrib'g, Inc. v. Michael*

Ede Mgmt., Inc., 414 N.W.2d 554, 557 (Minn. App. 1987) (concluding that district court acted within its discretion when it declined to consider affidavit submitted without explanation after summary-judgment hearing), *review dismissed* (Minn. Jan. 20, 1988).

Award of Attorney Fees

The law firm contests the district court's award of attorney fees. "This court will not reverse a district court's award of attorney fees absent an abuse of discretion." *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 461 (Minn. App. 2010) (citing *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987)). Attorney fees are "available by statute and by court rule." *Id.*

The law firm does not dispute that it failed to comply with rule 56.06. Rather, it argues that its supplemental affidavits were "not presented in bad faith, but were offered to rebut false claims that . . . Sabharis made at the summary judgment hearing and to address the court's concerns that an affidavit was not attached to the opposition memorandum." The law firm's argument is unpersuasive. The district court did not award attorney fees against the law firm because it presented the affidavits and supplemental evidence in bad faith. The district court stated that Sabharis "necessarily incurred attorneys' fees in responding to [the law firm's] Motion, which was brought solely because [the law firm] failed to abide by the requirements of [Minn. R. Civ. P.] 56.06" and held that Sabharis were entitled to attorney fees under Minn. Gen. R. Prac. 115.06, which provides that "[f]or a dispositive motion, the court, in its discretion, . . . may allow reasonable attorney's fees, or may take other appropriate action" against a party who fails to "fil[e] the required documents." We conclude that the district court did not abuse its

discretion by awarding attorney fees to Sabharis for the expense they incurred in responding to the law firm's motion for leave.

Grant of Summary Judgment to Sabharis

The district court determined that Sabharis were entitled to the EAJA award and granted Sabharis' motion for summary judgment on that basis, awarding Sabharis a judgment against the law firm in the net amount of $13,700.06. The law firm argues that the district court erred by determining that Sabharis were entitled to the EAJA award and that its grant of summary judgment to Sabharis was therefore erroneous.

On appeal from summary judgment, an appellate court's task "is to determine whether genuine issues of material fact exist, and whether the district court correctly applied the law." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). A district court properly grants summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Appellate courts conduct a de novo review of the district court's summary-judgment decision and we "view the evidence in the light most favorable to the party against whom summary judgment was granted." *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013).

The law firm does not dispute that it received a $52,500 fee award under the EAJA. The EAJA provides a limited waiver of sovereign immunity by permitting prevailing private parties to recover attorney fees incurred in litigation with the federal government. *Scarborough v. Principi*, 541 U.S. 401, 404–05, 419–22, 124 S. Ct. 1856,

1860, 1868–70 (2004). "[T]he specific purpose of the EAJA is to eliminate for the average person the financial disincentive to challenge unreasonable governmental actions." *Comm'r v. Jean*, 496 U.S. 154, 163, 110 S. Ct. 2316, 2321 (1990). The EAJA provides that, generally, "a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action . . . brought by or against the United States in any court having jurisdiction of that action," unless the court "finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A) (2006). The "plain text" of the EAJA "'awards' the fees to the litigant," rather than awarding them "directly to the attorney," although an attorney "may have a beneficial interest or a contractual right" in the fees. *Astrue v. Ratliff*, 130 S. Ct. 2521, 2526–27 (2010).

Assignment of Rights to EAJA Award

The law firm argues that Sabharis assigned to the law firm their right to an EAJA award and that the "terms of the agreements and the purpose of EAJA do not require [the law firm] . . . to offset any attorney's fees by recovery under the EAJA." The law firm argues that Sabharis received "the immediate benefit of discounted legal fees, while [the law firm] accepted the risk of a reduced flat fee in exchange for a future, possible opportunity to seek attorney's fees under EAJA." The law firm argues that the December 2005 contract does not state that, after compensating the law firm, any excess or remaining portion of the EAJA award would be returned to Sabharis. The district court concluded that the "agreements merely granted [the law firm] the authority to seek an

EAJA award on [Sabharis'] behalf; which is a far cry from specifically and unambiguously assigning the right to any such EAJA award to" the law firm. We agree.

Interpretation of contracts is a question of law that is subject to de novo review. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012). Appellate courts "review the language of a contract to determine the intent of the parties." *Id.* If the language is "clear and unambiguous," we "enforce the agreement of the parties as expressed in the contract." *Id.* Whether a "contract is ambiguous is a question of law," which appellate courts review de novo. *Id.* "If there is ambiguity, extrinsic evidence may be used, and construction of the contract is a question of fact for the jury unless such evidence is conclusive." *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005). Because construction of a written contract is generally "a question of law for the district court . . . [,] summary judgment is particularly appropriate." *Auto Owners Ins. Co. v. Perry*, 730 N.W.2d 282, 284 (Minn. App. 2007) (quotation omitted), *aff'd*, 749 N.W.2d 324 (Minn. 2008).

Sabharis timely submitted to the district court the December 2005 and April 2007 contracts, referenced above, and the district court considered these two contracts.[3] The December 2005 contract, regarding Sabharis' complaint for declaratory relief in federal district court, provides in pertinent part:

[3] The law firm argues that the most "pertinent agreements" to the question of whether Sabharis assigned the EAJA fees to the law firm are a January 4, 2006 contract and rider. But the law firm attached the January 4, 2006 contract and rider as an exhibit to the law firm's memorandum in opposition to summary judgment and the district court declined to consider it. Regardless, the language in the January 4, 2006 contract and rider that pertains to an EAJA award is identical to the December 2005 contract and rider.

> In the event that you are a prevailing party in the litigation, and BIPA pursues attorneys fees pursuant to the Equal Access to Justice Act (EAJA) on your behalf you agree that the EAJA fee award will go first towards compensating BIPA for any unpaid amount of attorneys fees that you owe to BIPA. Should you have already paid the full amount of attorneys fees that you owe, any recovery under EAJA will be paid to you.

A rider to the December 2005 contract provides in pertinent part:

> In consideration of the professional services to be rendered by [BIPA] and our discounted fees and costs for your matter, you agree at the outset of representation that [BIPA] is entitled to attorneys' fees and costs for successful litigation against the government in the federal court(s) and for litigating the fee request pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et. seq., in the event of a court order or settlement agreement.

The April 2007 contract does not contain any language relating to EAJA awards, and its rider is identical to the December 2005 rider set forth above.

The law firm argues that the language in the December 2005 contract and rider show that Sabharis "assigned their right to EAJA fees to [it] at the outset of representation." "An assignment requires the grantor's manifest intention to assign a specific right." *City of Cloquet v. Crandall*, 824 N.W.2d 648, 652 (Minn. App. 2012). We conclude that the unambiguous language in the December 2005 and April 2007 contracts and riders does not show a manifest intent on the part of Sabharis to assign their right to EAJA fees to the law firm. The contract language clearly reflects the parties' agreement that, in the event of an EAJA award, any attorney fees that Sabharis owed to the law firm would be offset by the EAJA award. Neither the December 2005 contract and rider nor the April 2007 contract and rider contain any language that can be construed as a

"manifest intention," *see Crandall*, 824 N.W.2d at 652, on the part of the Sabharis to assign their rights to an EAJA award to the law firm.

Public Policy

The district court reasoned that the purpose of the EAJA supported its conclusion that Sabharis are entitled to the EAJA award. The law firm argues that the public policy behind the EAJA "does not mandate that recovery of attorney's fees shall offset any attorney's fees owed by the Sabharis." Without deciding whether the EAJA mandates that recovery of attorney fees shall offset any attorney fees owed by Sabharis, we note that the Supreme Court has interpreted the EAJA as awarding fees to the client, not to the client's attorney. *Ratliff*, 130 S. Ct. at 2526–27, 29 (stating that the "plain text" of the EAJA "'awards' the fees to the litigant" rather than the attorney and that the EAJA "controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer") (quotation omitted)); *see also Bryant v. Comm'r of Soc. Sec.*, 578 F.3d 443, 448 (6th Cir. 2009) ("Congress appears to have intended that . . . persons [performing services for the prevailing party under the EAJA]—including the party's attorney—receive their compensation from the party who utilizes their services."); *Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (noting that the EAJA "was not enacted for the benefit of counsel to ensure that counsel gets paid"); *Panola Land Buying Ass'n v. Clark*, 844 F.2d 1506, 1511 (11th Cir. 1988) (noting that the EAJA is a federal attorney-fee statute and that such attorney-fee statutes were not "enacted for the benefit of the Bar" but rather "for the benefit of the persons the statutes are designed to reach").

Other Arguments

The law firm argues that "Sabharis . . . cannot use any portion of the EAJA fees to pay for attorney's fees and miscellaneous costs that are unrelated" to the December 2005 contract and rider because the "EAJA statute does not allow the litigant to collect EAJA fees for work that is unrelated to the successful litigation in question." This argument is unavailing. The EAJA award collected by the law firm belongs to Sabharis. *See Ratliff*, 130 S. Ct. at 2526–27, 29. The EAJA contains no language that prohibits Sabharis from using any remaining portion of their EAJA award to pay other attorney fees after paying attorney fees related to the December 2005 and April 2007 contracts and riders.

The law firm also argues that summary judgment is inappropriate because disputed material facts exist, i.e., the "record shows that the parties do not agree on the amount of legal fees that [Sabharis] owe to" the law firm. But the law firm conceded before the district court and this court that it was only seeking $38,799.94 from Sabharis, who do not contest this amount.

The district court correctly concluded that Sabharis did not assign their right to the EAJA award to the law firm, and the court did not abuse its discretion by awarding attorney fees to Sabharis. We reject the law firm's challenge to the judgment against it in the amount of $15,539.56.

Affirmed.