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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0354**

Neil Weaver, et al.,
Respondents,

vs.

Bruce Iverson, et al.,
Appellants.

**Filed August 27, 2012
Affirmed
Connolly, Judge**

Wabasha County District Court
File No. 79-CV-10-104

Robert B. Spelhaug, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondents)

Susan Dickel Minsberg, St. Paul, Minnesota (for appellants)

Considered and decided by Wright, Presiding Judge; Connolly, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants challenge a district court order denying their request for attorney fees under Minn. Stat. § 325C.04 (2010) for bad-faith pursuit of a trade-secrets claim, arguing

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

that respondents' bad faith is established by their continued pursuit of the claim after appellant advised them that the claim lacked merit. Because the district court did not abuse its discretion in denying the request for attorney fees after respondents dismissed their claim pursuant to the safe-harbor provision of Minn. Stat. § 549.211 (2010), we affirm.

FACTS

Appellant Bruce Iverson was employed by respondent ABA Water Systems, Inc. (ABA) for 24 years until he voluntarily left his employment in November 2009. ABA is in the business of deionizing water, and is owned by respondent Neil Weaver. After leaving his employment with ABA, Iverson began his own water deionization business, appellant Nationwide DI Water Solutions LLC (NDWS).

Respondents brought suit against appellants for misappropriation of trade secrets, conversion, unjust enrichment, and breach of contract. Appellants brought a counterclaim for unpaid vacation pay, unreimbursed business expenses, improper handling of IRA contributions, unjust enrichment, and defamation. In April 2010, appellants moved for sanctions pursuant to Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211, arguing that respondents and their counsel asserted "claims which did not have factual support," and specifically asserting that there were no trade secrets to be misappropriated. The district court denied the motion.

Appellants moved for summary judgment and served a motion for sanctions pursuant to Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211, or alternatively for attorney fees pursuant to Minn. Stat. § 325C.04. Respondents withdrew all claims "wherein a

‘trade secret’ is alleged to have been misappropriated” pursuant to the safe-harbor provision of Minn. Stat. § 549.211, subd. 4(a). The district court denied appellants’ motions for summary judgment and sanctions.

The district court heard arguments on respondent’s sole remaining claim for breach of contract. The district court determined that, although appellant Iverson breached his duty of loyalty to respondents, the record did not establish specific damages that were a result of the breach so as to withstand judgment as a matter of law.

Appellants again moved for attorney fees pursuant to Minn. Stat. § 325C.04. The district court denied the motion, noting that, while respondents initially had a claim for misappropriation, the claim was voluntarily dismissed, and their claim of bad faith was based “largely on the fact that [their] attorney told [respondents’] attorney that she did not believe [respondents] had a valid claim.” This appeal follows.

D E C I S I O N

“We review the district court’s award of attorney fees or costs for abuse of discretion.” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008). “[W]e may overrule the district court when the court’s ruling is based on an erroneous view of the law. Moreover, a district court abuses its discretion when its decision is against the facts in the record.” *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011) (citations omitted).

Generally, each party to a lawsuit bears responsibility for his or her own attorney fees. *See Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 363 (Minn. 1998). But a party may recover attorney fees if a statute or a contract allows attorney fees to be shifted.

Schwickert, Inc. v. Winnebago Seniors, Ltd., 680 N.W.2d 79, 87 (Minn. 2004). Minn. Stat. § 325C.04 provides that, if a claim of misappropriation is made in bad faith, “the court may award reasonable attorney’s fees to the prevailing party.”

Appellants argue that the district court abused its discretion in denying the motion for attorney fees pursuant to Minn. Stat. § 325C.04 because the factors the district court relied upon in denying the request for attorney fees were improper and against the facts in the record.

Appellants moved the court for attorney fees and sanctions throughout the course of litigation, arguing that respondents were bringing their claims in bad faith. The district court denied sanctions and attorney fees three times between April 2010 and December 2011. The district court’s final order denying fees under Minn. Stat. § 325C.04 noted that the misappropriation claim had been voluntarily dismissed and that appellants’ argument was based solely on their claim that they had repeatedly told the respondents that respondents could not win and did not have a case. The district court observed that it is not uncommon for litigants to state that opposing claims are without merit. This single statement by an opposing party, even if repeated frequently throughout the course of the litigation, is not sufficient to justify a finding of bad faith.

We believe that the district court was in the best position to determine whether respondents’ claims were brought in bad faith and whether appellants were the prevailing party so as to justify an award of attorney fees under the statute. The district court determined at multiple points throughout the litigation that respondents’ actions did not merit sanctions or justify an award of attorney fees to appellants. Moreover, when

appellants served a motion for sanctions in connection with their summary-judgment motion, respondents withdrew their trade-secret misappropriations claims well within the 21 days provided by the safe-harbor provision of Minn. Stat. § 549.211, subd. 4(a). Finally, under Minn. Stat. § 325C.04, an award of attorney fees is not mandatory. *See* Minn. Stat. § 645.44, subd. 15 (2010) (“‘May’ is permissive”). Based on the record, we cannot say that the district court abused its discretion in denying appellants’ motion for attorney fees pursuant to Minn. Stat. § 325C.04.

Affirmed.