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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-921**

Don Bye,
Respondent,

vs.

Boise Cascade, Inc., et al.,
Defendants,

International Association of Machinists Local W-33,
Appellant.

**Filed May 4, 2010
Affirmed
Johnson, Judge**

Koochiching County District Court
File No. 36-C0-05-000344

Mark W. Gehan, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for
respondent)

Mark W. Bay, Peterson, Engberg & Peterson, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 1998 and 1999, Don Bye, an attorney, was retained to work on a labor-management dispute that resulted in a \$2.16 million settlement in favor of his clients. Bye then sought payment of a contingent fee of one third of the settlement, but the clients refused. In this action by Bye to recover payment for his legal services, a Koochiching County jury found that there was no enforceable contingent-fee agreement, but the district court concluded that Bye is entitled to a recovery of approximately \$209,000 on the equitable theory of *quantum meruit*. The district court denied a motion for a new trial filed by one of the defendants, which now appeals. We affirm.

FACTS

Boise Cascade, Inc., operates a paper-manufacturing plant in International Falls. Its employees are represented by several labor unions. In the mid-1990s, some of those unions disputed the wage rates paid by Boise Cascade. The dispute was the subject of an arbitration proceeding. An arbitrator ordered Boise Cascade to conduct job evaluations and to determine the amount of back pay, if any, owed to persons occupying various positions within the plant, using a formula designed by Boise Cascade. When Boise Cascade and the unions applied the formula to some positions, the formula suggested increases in hourly wages for those positions. The implementation of the arbitrator's award stalled. In February 1998, eight unions, all of which were members of a Joint Union Council, retained Bye to represent them and their members' interests in enforcing the arbitrator's award.

At trial in this case, Bye sought to prove his claims with his own testimony and with a number of exhibits relating to the dispute with Boise Cascade. Bye's evidence concerning the legal services he provided to the unions, construed in the light most favorable to the district court's findings and conclusions, may be summarized as follows.

Bye testified that he is an experienced union-side labor lawyer. He described the contested issues concerning job evaluations and back-pay that arose from the 1996 arbitration award. There were nine job classifications, encompassing at least 41 positions, at the Boise Cascade plant. Bye was required to acquaint himself with those positions in order to adequately represent the interests of the unions' members. Bye requested and obtained a meeting with Boise Cascade in June 1998 to discuss the job evaluations. Bye testified that Boise Cascade took positions that made his task difficult.

For strategic reasons that later were validated, Bye sought additional rulings from the arbitrator. The arbitrator held a contested hearing in late June 1998. Bye traveled to and attended meetings in Hinckley and St. Cloud in preparation for the arbitration. After the arbitration hearing, Bye prepared and submitted a post-hearing brief. In September 1998, the arbitrator issued a written decision stating that Boise Cascade had not substantially complied with the previous arbitration award. The arbitrator directed the company to take several actions to remedy its non-compliance. Bye testified that the arbitrator's second decision was very favorable to the unions.

After the unions' success with the arbitrator in the fall of 1998, Boise Cascade commenced an action in federal district court to vacate the arbitrator's second decision or to declare it non-final and non-binding. In response, Bye prepared, served, and filed at

least eight separate answers on behalf of the unions and the Joint Union Council. He attended a conference with the magistrate judge in Duluth and another conference with the district court judge in St. Paul. Bye testified that he spent a considerable amount of time in 1998 and early 1999 on tasks related to the federal court action.

In the spring of 1999, Bye turned his attention to negotiations with Boise Cascade, which became increasingly intense. Bye made at least two trips to International Falls for that purpose in April and May 1999. He was there for several days on each visit. A number of persons were involved in the collective-bargaining process during the evenings as well as typical business hours. In May 1999, the dispute was settled; Boise Cascade agreed to give back pay totaling \$2.16 million to 268 of its employees who were deemed to have been underpaid between 1994 and 1999. The amount of the settlement is more than 26 times greater than the \$80,000 demand that the Joint Union Council made before retaining Bye, which demand Boise Cascade rejected.

After the settlement, Bye unsuccessfully sought payment for his services. In June 2005, Bye commenced this action against the unions and Boise Cascade. He pleaded two theories of relief. First, he alleged that he and the unions had entered into a contingent-fee agreement by which he is entitled to one third of the settlement. Second, he alleged, in the alternative, that he is entitled, under principles of *quantum meruit*, to the reasonable value of the services he provided to the unions. Before trial, Bye stipulated to the dismissal of his claims against Boise Cascade and one union, and the district court granted partial summary judgment in favor of another union.

Bye, the six remaining unions, and the Joint Union Council tried the case over four days in September 2008. At the conclusion of the evidence, the unions and the Joint Union Council moved for judgment as a matter of law on Bye's claim to enforce the alleged contingent-fee agreement. The district court granted the motion with respect to three unions whose members did not receive back pay. But the district court denied the motion with respect to the Joint Union Council and three unions whose members received back pay: the International Association of Machinists, Local W-33 (hereinafter Local W-33); the International Union of Operating Engineers, Local No. 50 (hereinafter Local 50); and the International Brotherhood of Firemen and Oilers, Local No. 937 (hereinafter Local 937).

In its special verdict, the jury found that there was no enforceable contingent-fee agreement between Bye and the three unions. But the jury, acting in an advisory capacity on the equitable claim of *quantum meruit*, found that Bye was entitled to damages of \$10,500 from Local 50, \$13,650 from Local 937, and \$184,800 from Local W-33, for a total of \$208,950. The district court adopted the advisory jury's findings on the *quantum meruit* claim and entered judgment for Bye.

Local W-33 moved for amended findings of fact, pursuant to Minn. R. Civ. P. 52.02, or for a new trial, pursuant to Minn. R. Civ. P. 59.01(f) and Minn. R. Civ. P. 59.01(g). In ruling on the motion, the district court noted that the jury's findings concerning the value of Bye's services "matched with Mr. Bye's hourly rate of \$150.00 per hour" in light of Bye's testimony that he had worked on the Boise Cascade matter for 1,400 hours. The district court concluded, "Due to the jury's careful eye to detail during

the trial there is no reason why this Court should disturb the verdicts by issuing new findings of fact or ordering a new trial.” Local W-33 appeals. Local 50 and Local 937 have not appealed.

D E C I S I O N

Local W-33 argues that the district court erred by denying its motion for a new trial, for two reasons. First, Local W-33 argues that the evidence does not justify the district court’s award of \$184,800. Second, Local W-33 argues that the district court erred by sustaining Bye’s objections to Local W-33’s proffered evidence concerning professional disciplinary actions taken against Bye. Both arguments implicate rule 59.01 of the Minnesota Rules of Civil Procedure, which “establishes the causes for which a court may grant a new trial and limits the grounds for a new trial to those causes.” *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 686 (Minn. 2004).

I. Rule 59.01(g) -- Evidence Justifying Verdict

A party may be entitled to a new trial if “[t]he verdict . . . is not justified by the evidence, or is contrary to law.” Minn. R. Civ. P. 59.01(g). “Whether the verdict is justified by the evidence presents a factual question and the district court may properly weigh the evidence.” *Clifford*, 681 N.W.2d at 687. In deciding whether to grant a new trial on the basis that the evidence does not justify the verdict, a district court must look to “whether the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake.” *Id.* (quotation omitted). “This cause vest[s] the broadest possible discretionary power in the trial court.” *Id.* (alteration in original) (quotation omitted). This court reviews a district

court's decision whether to grant a motion for a new trial for an abuse of that broad discretion. *Id.* Because a district court is in a better position "to assess whether the evidence justifies the verdict," an appellate court "usually defer[s] to that court's exercise of the authority to grant a new trial." *Id.*

Local W-33 contends that the evidence does not justify the district court's conclusion that Bye is entitled to a recovery on the *quantum meruit* claim and its finding that the reasonable value of his services is \$184,800. We apply a clearly erroneous standard of review to the district court's findings of fact, *see* Minn. R. Civ. P. 52.01, but "we do not defer to the district court's decisions on purely legal questions," *Friend v. Gopher Co., Inc.*, 771 N.W.2d 33, 37 (Minn. App. 2009).¹

The equitable theory of *quantum meruit* allows a party to obtain a recovery if "he or she has conferred a benefit to another and has not received reasonable compensation for this act." *Busch v. Model Corp.*, 708 N.W.2d 546, 552 (Minn. App. 2006). The theory is "based on the concept that no one who benefits by the labor . . . of another should be unjustly enriched thereby." *Black's Law Dictionary* 1243 (6th ed. 1990). The

¹The Minnesota Constitution guarantees a right to a jury trial on all claims at law. Minn. Const. art. I, § 4. "No right to a jury trial attaches to claims for equitable relief, but the Minnesota Rules of Civil Procedure permit district courts to try claims at law and claims for equitable relief in the same action." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615-16 (Minn. 2007) (citing Minn. R. Civ. P. 18.01). "To do so, a district court may empanel an advisory jury on claims for equitable relief, but findings of the advisory jury as to solely equitable claims are not binding upon the court's adjudication of those equitable claims." *Id.* at 616; *see also* Minn. R. Civ. P. 39.02, 52.01. "The jury's findings, however, are 'used only to reinforce the court's own decision on the disputed facts -- not to supplant it[,] and the court is still obligated to make its own findings.'" *Commercial Assocs. Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 778 (Minn. App. 2006) (quoting *In re Estate of Murphy*, 269 Minn. 393, 404, 131 N.W.2d 220, 227 (1964)).

theory of *quantum meruit* allows a person to recover “the reasonable value of services performed under an unenforceable oral contract.” *Roderick v. Lull Eng’g Co.*, 296 Minn. 385, 388, 208 N.W.2d 761, 764 (1973). The theory may be invoked by an attorney in private practice. *Ashford v. Interstate Trucking Corp.*, 524 N.W.2d 500, 503 (Minn. App. 1994).

Local W-33 focuses its challenge primarily on Bye’s testimony that he worked on the Boise Cascade matter for 1,400 hours. That number is significant because the product of 1,400 and Bye’s hourly rate, \$150, is \$210,000, which approximates the total recovery suggested by the advisory jury and awarded by the district court. The number of hours is significant primarily in hindsight. At trial, Bye’s testimony did not dwell on the number of hours worked, and Local W-33’s counsel cross-examined Bye only briefly on the number of hours worked. In closing argument, Local W-33’s counsel did not so much challenge the number of hours Bye said he worked but, rather, questioned the equities of awarding the amount of money that would result from multiplying the hours worked by the hourly rate. Local W-33’s counsel said to the jury, “ask yourself how much money that is,” and “that’s what I’d ask you to think about.” The district court record reveals that the jury thought about that issue and decided that \$184,800 is the reasonable value of Bye’s services to Local W-33.

On appeal, Local W-33 contends that Bye’s evidence is insufficient to prove that he worked 1,400 hours because he did not introduce documentary evidence of that fact, such as contemporaneously prepared time sheets or itemized invoices. Indeed, it is a good practice for an attorney working on a significant matter to document his or her time

in some way, even if the attorney expects to be paid on a contingent-fee basis. *Cf. City of Minnetonka v. Carlson*, 298 N.W.2d 763, 766 n.3 (Minn. 1980) (noting that “we strongly recommend that any attorney seeking attorneys fees pursuant to case law or statute maintain adequate written time records in all instances”). But Local W-33 has not identified any caselaw stating that an attorney must have documentary evidence to prove an entitlement to attorney fees, especially if the attorney is relying on the theory of *quantum meruit*. In addition, there is no such requirement in the rules of professional conduct. *See* Minn. R. Prof. Conduct 1.5. Despite Bye’s lack of documentation and Local W-33’s attempt to discredit him, the jury and the district court apparently believed Bye’s testimony concerning the amount of time he spent working for Local W-33 on the Boise Cascade matter. In light of our standard of review, we must defer to the district court’s credibility determinations. *See Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996). Furthermore, the law of *quantum meruit* is concerned not so much with the detriment to the plaintiff but with the benefit that was conferred on the defendant. *See, e.g., Busch*, 708 N.W.2d at 552. Moreover, Local W-33’s argument ignores most of Bye’s evidence about the quantity and quality of the services he performed, which we have summarized above. Thus, we reject Local W-33’s argument that the evidence does not justify the verdict simply because Bye did not introduce documentary evidence of the number of hours worked.

Minnesota courts have not set forth any particular test or criteria for determining “the reasonable value of services performed.” *Roderick*, 296 Minn. at 388, 208 N.W.2d at 764; *see also Ashford*, 524 N.W.2d at 503 (declining to adopt single method of

calculating *quantum meruit* recovery for attorney). Given the subject matter, it is appropriate to refer to the Minnesota Rules of Professional Conduct for guidance. Those rules state that an attorney “shall not make an agreement for, charge, or collect an unreasonable fee.” Minn. R. Prof. Conduct 1.5(a). A number of factors may be considered in determining whether a fee is reasonable, including:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

....

(4) the amount involved and the results obtained;
[and]

....

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services

Id. These factors support the district court’s conclusion that Bye is entitled to a recovery of \$184,800 from Local W-33. The evidence indicates that Bye spent a considerable amount of time representing the unions in their dispute with Boise Cascade. Labor law is a discrete area of the law, and Bye had several decades of experience in that subject area. The settlement obtained for the unions and their members is meaningful in sheer dollar terms and significantly more favorable than the previous demand of \$80,000, which Boise Cascade rejected before the unions hired Bye. The damages awarded to Bye are roughly 10 percent of the back pay received by members of Local W-33. In light of these factors, we conclude that the district court’s award of damages to Bye is consistent with rule 1.5.

Local W-33 also contends that its portion of the award -- \$184,800 of the total award of \$208,950 -- is not justified by the evidence because there is “no factual basis upon which [the advisory jury or the district court] could make such an allocation.” Local W-33’s argument is contrary to the evidence. It appears that the jury allocated attorney fees to the three unions on a per capita basis. The record reflects that, at the time of the settlement, Local W-33 had 420 members, Local 937 had 30 members, and Local 50 had 25 members. The jury apparently divided the total award (\$208,950) by the total number of union members (475) to arrive at a figure of approximately \$440 per member. That per capita number, when multiplied by the number of Local W-33’s members, amounts to \$184,800, which is precisely what the jury recommended for Local W-33. The theory of *quantum meruit* is flexible enough to allow this method of calculating the amount of an attorney’s equitable recovery. *See Ashford*, 524 N.W.2d at 503 (stating that *quantum meruit* “does not require that attorneys be paid on an hourly basis”). Thus, the evidence supports the advisory jury’s and the district court’s allocation of damages to Local W-33.

Finally, Local W-33 contends that a new trial is required because “the parties directed their presentation of evidence (and discovery efforts) exclusively towards the issue of whether a contingency fee contract existed” such that the *quantum meruit* issue “was treated as an ‘after thought’ by the parties and the advisory jury.” This argument is based on a different part of rule 59.01, which permits a new trial for “[a]ccident or surprise which could not have been prevented by ordinary prudence.” Minn. R. Civ. P. 59.01(c). But Local W-33 did not present such an argument to the district court. The

reason is fairly obvious; Local W-33 could not have convinced the district court that there was any accident or surprise. The *quantum meruit* claim was pleaded in Bye's amended complaint more than two years before trial. Furthermore, the *quantum meruit* claim was, without objection, included in the jury instructions and the special verdict form. The unions' counsel had an opportunity to cross-examine Bye about all issues relevant to the *quantum meruit* claim and did so. And counsel for both parties mentioned the *quantum meruit* claim during closing arguments. Thus, Local W-33 is not entitled to a new trial for the reasons stated in rule 59.01(c).

In sum, the evidence in the record justifies the award of damages in favor of Bye and against Local W-33. The district court's award is not "so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Clifford*, 681 N.W.2d at 687 (quotation omitted).

II. Rule 59.01(f) -- Evidentiary Rulings

A party also may be entitled to a new trial due to "[e]rrors of law occurring at the trial." Minn. R. Civ. P. 59.01(f). The erroneous exclusion of evidence is one type of error of law that may give rise to a new trial. *Myers v. Winslow R. Chamberlain Co.*, 443 N.W.2d 211, 215 (Minn. App. 1989), *review denied* (Minn. Sept. 27, 1989). "Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court's sound discretion and will only be reversed when that discretion has been clearly abused." *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the

complaining party's ability to demonstrate prejudicial error." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (quotation omitted).

Local W-33 contends that the district court erred by refusing to admit evidence regarding professional disciplinary actions taken against Bye by the Minnesota Board of Professional Responsibility in 2001 and 2003. Specifically, Local W-33 proffered two exhibits that were excluded by the district court: two disciplinary orders, dated November 28, 2001, and November 14, 2003, that refer to Bye's disciplinary history. The district court sustained Bye's objection to the admission of the two disciplinary orders.

In response, Bye contends that the district court's exclusion of the two proffered exhibits should be considered in light of the district court's rulings allowing Local W-33 to cross-examine Bye and others extensively concerning Bye's abuse of alcohol during the relevant time periods. The district court allowed one of Local W-33's witnesses to testify that Bye was drinking in his hotel room one morning during the negotiations and allowed another of Local W-33's witnesses to testify that Bye was intoxicated during the negotiations. More importantly, the district court allowed Local W-33 to cross-examine Bye concerning the fact that he had been subjected to professional discipline for actions related to alcohol abuse.

We agree with Bye that the district court's evidentiary rulings reflect an appropriate balance between the probative value of the evidence concerning Bye's alcohol abuse and professional discipline and the potential for unfair prejudice to Bye arising from that evidence. *See* Minn. R. Evid. 403. The district court took a nuanced view of the evidence at issue and made appropriate distinctions based on the factual

issues that were in dispute. In light of the evidence that was admitted, the district court's exclusion of the two proffered exhibits placed only slight restrictions on Local W-33's ability to present its case. We conclude that the district court did not abuse its discretion by sustaining Bye's objections to the two disciplinary orders.

In sum, Local W-33 is not entitled to a new trial.

Affirmed.