

NO. A05-0440

State of Minnesota
In Supreme Court

James L. Wilson,

Relator,

vs.

Commissioner of Revenue,

Respondent.

RELATOR'S BRIEF AND APPENDIX

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LEGAL ISSUE

- I. DID THE MINNESOTA TAX COURT CORRECTLY RULE THAT THE RELATOR WAS NOT A PREVAILING PARTY IN THIS PROCEEDING ENTITLED TO RECOVERY OF ATTORNEY'S FEES AS PROVIDED IN MINNESOTA STATUTES SECTIONS 271.19 and 15.471-15.474 (2004).

Trial Court held: By an Order dated January 6, 2005, the Minnesota Tax Court denied that request, holding that Relator was not a prevailing party. The most apposite cases: *Borchert v. Maloney*, 581 N.W.2d 838 (Minn. 1998); *State by Burnquist v. Miller Home Development, Inc.*, 243 Minn. 1, 65 N.W.2d 900 (1954); *Kusniryk v. Arrowhead Reg. Corrections Bd.*, 413 N.W.2d 182, 184 (Minn.App. 1987). The most apposite statutes: Minn. Stat. §§271.19 and 15.471-15.474 (2004).

STATEMENT OF THE CASE

The issue in this case is whether Relator was a prevailing party in this litigation so as to be entitled to attorney's fees under Minnesota Statutes §§271.19 and 15.471-15.474 (2004). The trial court, the Minnesota Tax Court, by an Order dated January 6, 2005, denied the request for attorney's fees, holding that Relator was not a prevailing party in this litigation. This

case possesses a lengthy procedural history, including a related case involving Relator's wholly owned corporation. The details of that procedural history will be set forth in the Statement of Facts. To briefly summarize, the Respondent's objective in this proceeding has been to impose a penalty upon Relator for an alleged failure by his solely owned corporation to honor a wage levy by Respondent on the corporation's employee. The penalty then imposed by Minn. Stat. §290.92, subd. 23 (1994) for failure to honor a wage levy stood at the full amount of the tax due from the taxpayer, irregardless of the amount the wage levy required the employer to pay to the Respondent. Relator throughout has sought to argue and argued that the disproportion between the relatively small amount due to Respondent pursuant to the wage levy and the large amount imposed as a penalty constituted an Excessive Fine pursuant to both the United States and Minnesota Constitutions. On the first appeal to the Supreme Court, the Relator won the right to make this argument and in the second appeal to the Minnesota Supreme Court, this Court agreed with that contention.

The second Supreme Court opinion dramatically reduced the amount in controversy. The Respondent lost the power to impose the full \$35,886.78 due in tax from the taxpayer/employee who was the subject of the wage levy.

The second opinion reduced the total amount payable to the Respondent to a constitutionally permissible 25 percent of the wages actually paid to the employee and attached by the wage levy and a penalty of 25 percent of that amount.

On remand from this second appeal, the parties agreed that rather than endure yet another lengthy proceeding to define the amount due under the Supreme Court's second opinion, when the parties' differences were relatively small, both sides would agree that Relator owed nothing further to the Commissioner of Revenue and the Respondent, Commissioner of Revenue, owed no refund to Relator. After that agreement was filed with the Court, Relator requested the recovery of attorney's fees that he has incurred in this matter. (See Appendix, Item #5) After additional submissions by both parties (See Appendix, Items #5-9), the Minnesota Tax Court denied Relator's Motions for attorney's fees, costs and disbursements on the grounds that Relator was not the prevailing party.

STATEMENT OF FACTS

This case arose from the income and sales tax liabilities of J. R. Hanson, III. After Mr. Hanson became an employee of a corporation wholly owned by Relator, Hazardous Waste Controls of Bloomington, Inc.,

(hereinafter HWC), Respondent issued a wage levy against his wages from HWC. Respondent determined that HWC had failed to honor the levy and assessed a penalty against HWC for such failure. Minn. Stat. Sec. 290.92, subd. 23 (1994) authorized the Commissioner of Revenue to impose such a penalty against any party willfully failing to honor a levy. As it stood in 1994, the penalty was the full amount of the tax owed by the taxpayer irregardless of the amount required to be paid to the Commissioner of Revenue pursuant to the terms of the levy. HWC contested the assessment in the Minnesota Tax Court but the court found HWC liable. *Hazardous Waste Controls of Bloomington, Inc. v. Commissioner of Revenue*, No. 6589, 1997 WL 158263 (Minn. T.C. March 17, 1997). The Court also found that the issue of whether the disparity between the amount payable pursuant to the levy and the penalty imposed by the Commissioner violated the prohibition against Excessive Fines under the Eighth Amendment to the United States Constitution and Article I, Section 5 of the Constitution of the State of Minnesota (Excessive Fines Issue) was not properly before the court.

Subsequently, Respondent determined that Relator was responsible for the penalty imposed on HWC as a person in control of its payment of taxes and wages by HWC. Minn. Stat. §270.101, subd. 1(1994). Relator appealed

that determination to the Minnesota Tax Court. In this proceeding, Relator properly raised the Excessive Fines issue but the Respondent made a Motion in Limine for a ruling that, as a result of the Court's decision in the HWC case, Relator was precluded by the doctrines of Collateral Estoppel and Res Judicata from litigating that issue in this case. By an Order entered May 5, 1999, the Minnesota Tax Court granted Respondent's Motion in Limine, thereby limiting and precluding Relator from offering and producing evidence on several issues, the most important being the Excessive Fines issue. *Wilson v. Commissioner of Revenue*, No. 6918, 1999 WL 285896 (Minn. T.C. May 5, 1999). After discovery, the Respondent filed a Motion for Summary Judgment on December 15, 1999. By an Order dated March 14, 2000, the Minnesota Tax Court granted the Respondent's Motion for Summary Judgment. *Wilson v. Commissioner of Revenue*, No. 6918, 2000 WL 306677 (Minn. T.C. March 14, 2000). Relator appealed from that Order to the Minnesota Supreme Court in May 2000 (hereinafter "first appeal").

In the first appeal in this case to the Minnesota Supreme Court, the Petitioner appealed from the Minnesota Tax Court's determination that the doctrine of Res Judicata prohibited Relator from raising and arguing the Excessive Fines issue. The Minnesota Supreme Court reversed the

Minnesota Tax Court on this issue. *Wilson v. Commissioner of Revenue*, 619 N.W.2d 194 (Minn. 2000).

On remand to the Minnesota Tax Court, a trial was had in this matter on July 17, 2001. In an Opinion dated January 8, 2002, the Minnesota Tax Court held that the statute upon which the Commissioner's assessment was based imposed a remedial, not a punitive sanction. The Court also ruled that the application of the statute did not produce an excessive fine within the meaning of the "Excessive Fines" clauses of the United States and Minnesota Constitutions. *Wilson v. Commissioner of Revenue*, No. 6918, 2002 WL 58477 (Minn. T.C. Jan. 8, 2002).

The Relator appealed that decision to the Minnesota Supreme Court (hereinafter "second appeal") in March 2002. The Minnesota Supreme Court held that the assessment constituted an Excessive Fine and remanded to the Minnesota Tax Court to determine the proper amount of the assessment. The Supreme Court specifically ruled that Relator's personal liability would be limited to 25 percent of the wages paid to Mr. Hanson after the wage levy and 25 percent of that amount as a penalty for failure to honor the levy without reasonable cause. The Supreme Court's opinion noted that Mr. Wilson had claimed payments totaling \$1,040.79 toward this liability. *Wilson v.*

Commissioner of Revenue, 656 N.W.2d 547, 550-551 (Minn. 2003). The Supreme Court's second opinion, by confining the Respondent's assessment within constitutional bounds, sharply reduced the amounts in controversy. Whatever amount Relator would owe the Respondent would be computed based on amounts actually due and owing pursuant to the wage levy, an amount bound to be substantially less than the Respondent's initial assessment.

Following this second remand from the Minnesota Supreme Court, the parties settled the matter of the assessment by an agreement that Relator James L. Wilson "owes no further sums or amounts to the Appellee..." and Respondent "is not required to refund as an overpayment, any amounts paid by James L. Wilson..." By a Motion dated August 27, 2004 (See Appendix, Item #5) as further supplemented on October 20, 2004 (See Appendix, Item #8), Relator moved for attorney's fees in this matter. Respondent responded in opposition to this Motion. (See Appendix Item numbers 6 and 9). By the Order dated January 6, 2005 (see Appendix, Item #10), from which Relator appeals, the Minnesota Tax Court denied that request, holding that Relator was not a prevailing party.

ARGUMENT

I. THE MINNESOTA TAX COURT ERRED IN RULING THAT THE RELATOR WAS NOT THE PREVAILING PARTY BY RELYING PRIMARILY ON THE SETTLEMENT AGREEMENT REACHED BY THE PARTIES TO RESOLVE THE ONLY ISSUE REMAINING IN DISPUTE UPON THE SECOND REMAND FROM THE MINNESOTA SUPREME COURT.

In a civil action brought by or against the State, Minnesota law provides that if the private party is the prevailing party, the Court shall award fees and other expenses if the position of the State was not “substantially justified” unless the Court concludes that “special circumstances make an award unjust.” Minn. Stat. §15.472 (2004). Pursuant to that section, and Minnesota Rules §1400.8401, Relator moved for attorney’s fees in this matter.

Other provisions of Minnesota law also provide that the “prevailing party” may recover costs and reasonable disbursements. *See e.g.*, Minn. Stat. §§549.02, 549.04 (2002). Case law under those sections provide additional guidance to the phrase “prevailing party.” The Trial Court is required to order costs and disbursements for a prevailing party but has discretion to determine which party, if any, qualifies as a prevailing party. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998). It

should be noted that in *Luna v. Zeeb*, 633 N.W.2d 540 (Minn. App. 2001), the Court of Appeals of Minnesota appears to have held that the determination of the prevailing party is a legal issue to be reviewed *de novo*. Minnesota law does not require that a judgment be docketed in favor of a party for that party to qualify as the prevailing party. *See e.g., Nieszner v. St. Paul School District No. 625*, 643 N.W.2d 645, 650 (Minn. App. 2002). In order to win costs and disbursements, the prevailing party need not win on all issues. *Lapinski v. Gould*, 173 Minn. 559, 564, 218 N.W. 730 (1928); or win all they initially demand, *Kusniryk v. Arrowhead Reg. Corrections Bd.*, 413 N.W.2d 182, 184 (Minn.App. 1987).

In denying Relator's request for fees and costs, the Minnesota Tax Court cited and quoted an opinion by the Minnesota Supreme Court in *Borchert v. Maloney*, 581 N.W.2d 838 (Minn. 1998), which stated that:

“In determining who qualifies as the prevailing party in an action, the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action. The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered.”

In this case, the Minnesota Tax Court determined that no party prevailed by looking at the Settlement Agreement and Stipulation for Dismissal rather than the “general result” or a comprehensive review of

which party “succeeded in the action.” As the Court stated:

“we look to the Settlement Agreement Order dismissing the action. The Settlement Agreement is clear that the parties are simply walking away from a long and arduous case; no one recovers anything more than has already been paid, no one admits to any liability, and the case is dismissed. No verdict is rendered nor judgment entered in favor or against either party. While both parties succeeded in some aspects of the litigation, neither party appears to have succeeded in the matter overall. We cannot determine that Appellant is the prevailing party. Appellant’s request for fees and costs is, therefore, denied.”

James L. Wilson v. Commissioner of Revenue, No. 6918, (MTC Jan. 6, 2005, Slip Opinion page 7.) (See Appendix Item #10, page A-128)

However, the Minnesota Tax Court’s decision in this case contradicts the very language that it quotes from *Borchert v. Maloney, supra*. That language calls upon Courts to consider the “*general result*” of the litigation in determining who has prevailed or succeeded in the action. In this case, any review of the record reveals that the principal issue in this case was the defense raised by Relator throughout this proceeding: the Excessive Fine issue. The two previous appeals to the Minnesota Supreme Court pivoted on this issue. The first appeal concerned Respondent’s attempt to prevent Relator from even litigating this issue and the second appeal directly

concerned whether the assessment constituted an Excessive Fine. The second opinion held that the assessment violated the Excessive Fines clauses of the United States and Minnesota Constitutions. As a result of the Minnesota Supreme Court's Opinion in the second appeal, Relator has prevailed on the Excessive Fines issue, seen as a purely legal issue.

Even viewed in purely numerical terms, the Relator (Mr. Wilson) has prevailed. The Respondent initially sought \$35,886.78 by its assessment. The assessment reflected the statute then in force, Minn. Stat. Sec. 290.92, subd. 23 (1994), which allowed the imposition of the taxpayer's entire liability on an employer willfully failing to pay a wage levy. The penalty assessment had no connection, in any computational sense, with the amount that the wage levy statute required the employer to pay to the Commissioner of Revenue. The second opinion ruled the respondent's assessment invalid and the Court imposed a more reasonable computation, by reference to Minn. Stat. §270.70, subds. 8-9 (1994). That section authorizes the Respondent to assess against recipients of a tax levy notice who failed to pay without reasonable cause an amount consisting of the amount they were required to pay pursuant to the levy and a penalty of 25 percent. Therefore, Relator's liability would be computed based on the amount HWC would be

required to pay to the Minnesota Department of Revenue pursuant to the levy (25 percent of Mr. Hanson's wages) and a penalty assessment of 25%. At that point, there was no question that this amount would be substantially less than the amount originally sought by the Commissioner (Respondent), an amount in excess of \$35,000. With the Supreme Court's second opinion, the Relator had won not only the legal battle over the Excessive Fines issue; Relator had also won the numerical battle.

The only issue remaining on remand after the Supreme Court's second opinion involved the very minor issue of the wages paid to Jay R. Hanson, III. Whatever that amount turned out to be, Respondent was only entitled to 25 percent of the amount finally determined. Upon remand, the parties eventually agreed to abandon pursuit of the remaining issue in this case. In the Settlement Agreement and Stipulation for Dismissal, the Commissioner of Revenue decided to accept whatever payments Mr. Wilson had made or caused to be made as full payment of any obligation Mr. Wilson might owe to the Minnesota Department of Revenue. The Minnesota Supreme Court's second opinion listed the payments Mr. Wilson, the Relator, contended that he had made or had caused to be made, payments which totaled a little over \$1,000. It should be noted that these

payments, which the Department of Revenue has now accepted as satisfying any obligation of Relator to the Respondent, were paid before the beginning of this litigation. Any comprehensive view of who “succeeded in the action” could only conclude that Relator succeeded in this action by reducing a potential liability in excess of \$35,000 to payments made before the litigation of approximately \$1,000.

The Minnesota Tax Court, in ruling that Relator was not a prevailing party, focused exclusively upon the Settlement Agreement resolving the one minor issue remaining after the Minnesota Supreme Court’s second remand to the Minnesota Tax Court.

In this case cited by the Minnesota Tax Court, *Borchert v. Maloney*, *supra*, the Minnesota Supreme Court concluded that the Plaintiff in a personal injury case was a prevailing party when she received a verdict that the Defendant was negligent in operating his motor vehicle and that Borchert sustained injuries as a result of his negligence. Therefore, the verdict and the judgment ultimately entered in the case were in favor of the Plaintiff. As a result, the Court concluded that the Plaintiff was the prevailing party, even though she received less by the verdict than she was offered in settlement.

Furthermore, the Minnesota Supreme Court has held in state by *State by Burnquist v. Miller Home Development, Inc.*, 243 Minn. 1, 65 N.W.2d 900 (1954), that a settlement stipulation does not release a litigant's rights to recover costs and disbursements. The statute at issue in that case authorized an award of costs and disbursements to a landowner who prevailed on at least part of an appeal from a condemnation proceeding. In that condemnation proceeding, the land owner and the state reached an agreement embodied in a stipulation that reduced the amount of land to be condemned and preserved the landowner's right of access over land that continued to be condemned. As to the issues stipulated, the Minnesota Supreme Court held that the land owner was the prevailing party because the stipulation allowed the land owner to retain real estate previously subject to the condemnation proceeding as well as a right of access for another parcel. So also in this matter, the Stipulation brought the litigation in chief to an end with a result that can only be viewed as a success for the Relator in virtually eliminating an excessive liability the Respondent sought to impose.

CONCLUSION

In conclusion, the Minnesota Tax Court erred in denying the Motion for Attorney's Fees, Costs and Disbursements.

We respectfully request the Court to find the following:

1. That the Minnesota Tax Court erred in denying the Motion for Attorney's Fees, Costs and Disbursements.
2. Remand the case to the Minnesota Tax Court with instructions to grant Relator's Motion for Attorney's Fees, Costs and Disbursements and determine the proper amount payable to the Relator.

Dated this 4th day of May, 2005.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).