

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0063**

Daniel R. Pakonen,
Appellant,

vs.

Housing Alternatives Development Company, et al.,
Respondents.

**Filed November 6, 2023
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-19-9488

David A. Davenport, Samuel T. Johnson, BC Davenport, LLC, Minneapolis, Minnesota
(for appellant)

Ellen A. Brinkman, Erin S. Conlin, Gordon Rees Scully Mansukhani, LLP, Minneapolis,
Minnesota (for respondents)

Considered and decided by Gäitas, Presiding Judge; Slieter, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from judgment following a trial, appellant asserts that the district court erred by determining that appellant was not entitled to relief on his Minnesota Payment of Wages Act claim, notwithstanding the jury’s determination that amounts owed to appellant were “wages” pursuant to the act. Because the undisputed evidence demonstrates that

appellant was never an employee, he is ineligible to receive relief pursuant to the act, and we affirm.

FACTS

In 2019, appellant Daniel R. Pakonen filed suit against respondents Housing Alternatives Development Company (HADC) and HADC Services, LLC alleging (1) breach of contract against HADC regarding the 2004 life-insurance agreement, (2) breach of contract against HADC and HADC Services regarding the 2017 employment agreement, (3) unpaid wages pursuant to the Minnesota Payment of Wages Act (wages act), Minn. Stat. § 181.13 (2022), against HADC and HADC Services, and (4) promissory estoppel against HADC and HADC Services. The following facts derive from the evidence presented during the April 2022 jury trial.

In 2004, Pakonen joined HADC's board of directors. HADC is a nonprofit corporation that owns and operates assisted-living facilities in Minnesota. In exchange for Pakonen's service on its board, HADC agreed to credit \$12,500 annually towards a life-insurance policy in Pakonen's name. At an HADC board meeting in March 2017, and following the attorney general's investigation into HADC's compensation practices, Pakonen resigned from the board effective April 1, 2017.

Pakonen signed an "employment agreement" with HADC Services effective April 1, 2017. HADC Services is a nonprofit limited liability company, and HADC is its sole member. HADC Services was created to reduce payroll costs and unemployment premiums, and it employs all persons working at HADC facilities. Similar to his 2004 agreement with HADC, Pakonen's employment agreement provided that HADC Services

would credit \$12,500 annually to an insurance policy in Pakonen's name. In December 2018, counsel for HADC Services informed Pakonen that his employment agreement was void because it was not adopted by the board, and because it violated Minnesota law prohibiting board members from engaging in self-dealing. *See* Minn. Stat. § 317A.255 (2022) (outlining the procedure when a conflict of interest arises, including self-dealing, to prevent an action from being void or voidable). HADC Services terminated Pakonen's employment on December 31, 2018.

The jury returned a special verdict determining that (1) HADC breached the 2004 life-insurance agreement and that Pakonen was entitled to \$292,573.06; (2) Pakonen's employment contract was not fair to HADC Services, nor had it been entered in good faith;¹ (3) payments promised under the 2004 life-insurance agreement were wages pursuant to the wages act; and (4) Pakonen did not suffer a loss in relying on HADC's promise to pay the life-insurance benefits pursuant to the 2004 agreement.

The district court's findings of fact, conclusions of law, and order for judgment following the jury's special verdict determined, in relevant part, that Pakonen is not entitled to judgment pursuant to the wages act against HADC because he was never an HADC employee.² Pakonen appeals.

¹ Nonprofit board members are required to administer their duties in good faith, including avoiding actions that present conflicts of interest, and a contract may be void if it presents a conflict of interest. *See* Minn. Stat. §§ 317A.251 (standard of conduct), .255 (outlining the procedure when a conflict arises to prevent a board action from being void or voidable) (2022).

² Pakonen also alleged that HADC Services is the *alter ego* of HADC so that any judgment obtained against HADC Services could be collected against HADC. "Piercing the corporate veil is an equitable remedy that may be applied when a party acts as the *alter ego*

DECISION

Minnesota Rule of Civil Procedure 49.01(a) governs the use of special verdicts. Special verdicts allow a jury to decide specific facts or issues of a case rather than ruling generally on all issues of the case. *Poppler v. Wright-Hennepin Co-op Elec. Ass'n*, 845 N.W.2d 168, 171 (Minn. 2014). Findings by special verdict are generally binding on district courts.³ *Orwick v. Belshan*, 231 N.W.2d 90, 94 (Minn. 1975). However, a district court has “the same authority to set aside and change an answer to a question in a special verdict as it has to grant judgment notwithstanding a general verdict, that is, where the evidence requires the change as a matter of law.” *Id.*

The wages act 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. . . . [T]he 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.

of a corporate entity.” *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 568 (Minn. App. 2017). The district court concluded that Pakonen’s veil-piercing claim fails because the jury denied any recovery against HADC Services and, hence, no purpose exists in piercing the corporate veil. We decline on appeal to address this issue for the same reason.

³ The jury was also asked to provide an advisory special verdict relating to Pakonen’s *alter-ego* claim, which the district court is not bound to follow. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615-17 (Minn. 2007).

Minn. Stat. § 181.13(a) (emphasis added).

Pakonen does not challenge the district court's determination that the wages act applies only to wages owed to employees. Rather, Pakonen claims that "additional findings concerning [his] employment status were not necessary" because the jury implicitly found that Pakonen was an employee for purposes of the wages act. We are not persuaded.

"An answer to a special verdict question should be set aside only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) (quotation omitted). The district court observed the facts as established by Pakonen's testimony and record evidence. It then determined that Pakonen was never an employee of HADC. The record supports this determination. Pakonen testified that he was not an employee of HADC and that he knew that he could not simultaneously serve on the board while also being an employee. Evidence shows that Pakonen was appointed to HADC's board of directors in 2004. The 2004 life-insurance agreement states that it "shall not be construed as a contract of employment." Pakonen did not receive a W-2 from HADC to indicate he received wages as an employee.

Relying on *Lakeland Tool and Eng'g, Inc. v. Engle*, Pakonen states that his testimony that he was not an employee is irrelevant because the jury "implicitly found" that he was an employee. 450 N.W.2d 349 (Minn. App. 1990). We disagree. "Once the controlling facts are determined, the question of whether a person is an employee becomes one of law." *Id.* at 352.

Because the undisputed evidence shows that Pakonen was never an HADC employee, the district court did not err by setting aside the jury's special verdict answer that the payments were wages pursuant to the wages act.

Affirmed.