STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0357

Chris D. Schroeder,
Appellant,

vs.

Gary Miles Kubes,
Respondent.

Filed April 1, 2013
Affirmed
Smith, Judge

Rice County District Court
File No. 66-CV-11-1320

Jorma Cavaleri, Faribault, Minnesota (for appellant)

Stephen Ecker, Faribault, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

SMITH, Judge

In this employment contract dispute, appellant asserts that the district court erred under Minnesota and federal law because it (1) misplaced the burden of proof when determining the employment contract terms, (2) denied overtime compensation,

(3) awarded insufficient statutory damages, (4) denied attorney fees, and (5) did not grant a new trial. Finding no error warranting reversal, we affirm.

FACTS

In July 2010, respondent Gary Miles Kubes interviewed and hired appellant Chris D. Schroeder as a truck driver for his business. The parties did not enter into a written contract. Kubes told Schroeder during the interview that Schroeder would receive 25% of the gross income realized from the truck that he drove. Schroeder claims Kubes represented that this would equal $750 per week, or 40 hours at $17.50 per hour, but Kubes asserts he told Schroeder only that 25% of the gross could possibly equal $750 per week.[1]

After Schroeder began working for Kubes, he realized that being paid 25% of the gross resulted in an hourly rate of less than $17.50. Schroeder maintained a log of the hours both he and the truck worked, noting the truck's gross income and his own earnings. After numerous arguments between Kubes and Schroeder, Kubes terminated Schroeder's employment on July 24, 2010. Schroeder had performed 12 days of work for Kubes.

Schroeder filed a claim in conciliation court, and the expeditor awarded him $3,861.74 plus filing fees. Kubes appealed to the district court, and, after an August 2011 court trial, Schroeder was awarded $860.24. Schroeder appeared pro se at the trial. In November 2011, Schroeder moved the district court to amend its order and, alternatively, for a new court trial. He paid an attorney to assist him in drafting the motion to amend

[1] We note that based on a 40-hour workweek, $750 weekly equals $18.75 per hour.

but continued pro se. Following a hearing, the district court amended its order, increasing Schroeder's award to $3,290.75, but denying Schroeder's other requests. This appeal followed.

D E C I S I O N

We defer to the district court's findings of fact and will rely on them unless they are clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). A district court's findings of fact are not clearly erroneous unless we are left with a definite and firm conviction that there has been a mistake. *Id.* We review a district court's conclusions of law de novo. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). Schroeder asserts that the district court erred when it (1) determined the terms of the employment contract, (2) denied overtime compensation, (3) denied additional statutory damages, (4) denied attorney fees, and (5) did not grant a new trial. We address each argument in turn.

I.

Schroeder argues that, by finding that the employment contract provided that Schroeder would be paid 25% of the total gross income realized from the truck that he drove, the district court erroneously failed to place the burden of proving the terms of the employment contract on Kubes. *See* Minn. Stat. § 181.56 (2012) ("Where no such written agreement is entered into[,] the burden of proof shall be upon the employer to establish the terms of the verbal agreement in case of a dispute with the employee as to its terms.").

Schroeder's contention that the district court misplaced the burden of proof fails. At trial, the district court emphasized that, "if there is a dispute over what the employment contract was, [the statute] does put the burden on the employer with respect to that issue." While mindful that Kubes had the burden to establish the terms of the employment contract because it did not result in a written agreement, the district court found that Kubes successfully carried his burden. Schroeder challenges this finding, but fails to persuasively identify how the district court's finding regarding the employment contract term is clear error. Instead, Schroeder's argument implies that, because an employer has the burden to prove the terms of an unwritten agreement, a district court could never make a finding in favor of the employer. Minnesota law does not compel such a result. The district court's construction of the contract was not clearly erroneous.

II.

Schroeder next challenges the district court's denial of overtime compensation, claiming 17.5 hours of overtime. The district court concluded that Schroeder is not entitled to overtime pay because the record is insufficient to establish that Schroeder worked over 48 hours in any workweek. Under the Minnesota Fair Labor Standards Act (MFLSA), an employee is entitled to compensation at a rate equal to one-and-one-half times his or her regular rate of pay for time worked in excess of 48 hours per workweek. Minn. Stat. § 177.25, subd. 1 (2012). The rules implementing the MFLSA designate the "workweek" as "[t]he period of time used for determining compliance with" the overtime requirements of the MFLSA. Minn. R. 5200.0170, subp. 1. The "workweek" is defined

as "a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods," presumptively the calendar week. *Id.*

Schroeder argues the district court erred by applying the MFLSA rather than federal law, which requires overtime compensation for time worked in excess of 40 hours per workweek. *See* 29 U.S.C. § 207(a)(1) (2006). At trial Schroeder said, "I believe [Kubes] must pay me after 40 [hours]." In his motion for amended findings, he argued that, "since [Kubes] must follow the Federal Fair Pay Initiative which holds employers to higher standards . . . I am entitled to 17.5 hours of overtime." Because Schroeder failed to plead or develop his federal claim, the district court did not consider federal statutes in its order or amended order. Failure to develop a claim affects our review. *See Kugling v. Williamson*, 231 Minn. 135, 143, 42 N.W.2d 534, 540 (1950) (declining to address some of appellant's arguments on the basis that they were mere assertions without supporting arguments or authority); *see also Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 315 (Minn. App. 2011) (declining to consider aspect of issue not pleaded or argued to the district court). We generally do not consider matters not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988.) Accordingly, we will not review Schroeder's assertion regarding federal overtime.

Schroeder also challenges the district court's application of the MFLSA. Although Schroeder does not explain how he computed the hours to determine that he is owed overtime, our review of the weekly hours Schroeder reported in his daily logbook reveals that he did not work more than 48 hours in a calendar week. He worked 45.5 hours the first week (Wednesday, July 7–Saturday, July 10), 43.25 hours the second week

(Sunday, July 11–Saturday, July 17), and 44.25 hours the third week (Sunday, July 18–Saturday, July 24). Because Schroeder has not demonstrated that the district court's finding regarding overtime is clearly erroneous, Schroeder is not entitled to overtime compensation.

III.

Next, Schroeder seeks additional statutory damages. The district court concluded that Schroeder is entitled to 15 days' wages ($2,487.75) because Kubes failed to issue Schroeder's paycheck promptly. *See* Minn. Stat. § 181.13(a) (2012). Schroeder challenges the district court's conclusion that he is not entitled to further damages under Minn. Stat. §§ 177.27 (establishing among other things that private parties may bring a civil action for violations of the MFLSA), .30 (employer must maintain employment records), 181.032 (the earnings statement must include certain information) (2012).

"Statutes should be read as a whole with other statutes that address the same subject." *Harris v. Cnty of Hennepin*, 679 N.W.2d 728, 732 (Minn. 2004). The Minnesota Payment of Wages Act (PWA), Minn. Stat. §§ 181.01-.171 (2012), is related to the MFLSA and

> covers employment and wages, is enforced by the Commissioner of Labor and Industry, and is referenced in the MFLSA. *See* Minn. Stat. § 177.27, subd. 4. The MFLSA addresses minimum wage and hour standards, and the PWA addresses how often wages must be paid and establishes penalties for late payment. *See* Minn. Stat. §§ 181.10-.15. The PWA is also similar to the MFLSA because its provisions can be enforced by either the Commissioner or by an employee in a private action. *See* Minn. Stat. §§ 181.101, .13, .171. "Thus, together, these acts provide a

> comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other."

Milner v. Farmers Ins. Exch., 748 N.W.2d 608, 617 (Minn. 2008).

"Ordinarily, unless a statute provides that its remedy is exclusive, a party should not be prevented from bringing concurrent claims." *Abraham v. Cnty. of Hennepin*, 639 N.W.2d 342, 346-47 (Minn. 2002) (holding that plaintiff could concurrently pursue claims under the Whistleblower Act and the Minnesota Occupational Safety and Health Act based on same underlying facts). "Nothing in the language of the PWA makes its remedy exclusive." *Erdman v. Life Time Fitness, Inc.*, 771 N.W.2d 58, 63 (Minn. App. 2009), *aff'd*, 788 N.W.2d 50 (Minn. 2010). Thus, when both acts apply, a plaintiff may seek relief under the PWA, the MFLSA, or both, subject to the prohibition against double recovery. *See Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 379 (Minn. 1990) (prohibiting double recovery for the same misconduct).

Schroeder correctly asserts that the relief provided by the MFLSA is not limited to that sought by the commissioner. *See* Minn. Stat. § 177.27, subd. 8. The supreme court has noted that "the relief provided by [section 177.27] subdivision 7 is available to a private party in a civil action and includes civil penalties, as well as injunctive relief." *Milner*, 748 N.W.2d at 616. Encompassed by subdivision 7 are violations involving record-keeping (Minn. Stat. § 177.30) and the earning statement the employer must provide to the employee (Minn. Stat. § 181.032), as well as civil penalties for repeated and willful violations. *See* Minn. Stat. § 177.27, subd. 7. Even so, Schroeder is not entitled to additional damages. The district court awarded Schroeder an additional 15

days' wages (especially noteworthy because Schroeder performed 12 days of work for Kubes), and this award fulfilled the purpose under Minnesota law—to provide the "employee a recovery beyond the actual wages due and . . . prompt the employer to make full and timely payment." *Otis v. Mattila*, 281 Minn. 187, 199, 160 N.W.2d 691, 700 (1968) (concluding that the penalty in Minn. Stat. § 181.14 is inapplicable and unintended by the legislature when the imposition of liquidated damages under the MFLSA equals or exceeds the amount of the penalty due). Awarding Schroeder the statutory penalty under each section would penalize Kubes multiple times for closely related issues. The penalty provision does not intend such inequitable results. *See, e.g.*, *id.*, 281 Minn. at 198-99, 160 N.W.2d at 699-700. Shroeder is not entitled to relief on this ground.

IV.

We next consider whether Schroeder is entitled to attorney fees. On appeal Schroeder urges us to award attorney fees to be taxed as costs because Kubes's "conduct was so egregious that additional damages should be awarded to dissuade [Kubes] from behaving in such an unlawful manner in the future." We review an award of attorney fees for an abuse of discretion. *Milner*, 748 N.W.2d at 620. In suits brought by private parties, the MFLSA directs courts to award attorney fees when an employer has violated the act: "In any action brought pursuant to subdivision 8, the court shall order an employer who is found to have committed a violation or violations of sections 177.21 to 177.44 to pay to the employee or employees reasonable costs, disbursements, witness fees, and attorney fees." Minn. Stat. § 177.27, subd. 10.

On this record, the district court did not abuse its discretion by denying Schroeder attorney fees. Schroeder was not represented by an attorney during trial and continued to identify his status as pro se after the trial. He hired an attorney for "assistance with drafting [the] motion [to amend]" but signed the motion himself, identified himself as pro se on the motion, and argued the motion pro se. No attorney submitted work product or appeared on behalf of Schroeder, and the district court had no opportunity to evaluate the reasonableness of the submitted fees. Under these circumstances, the district court did not abuse its discretion by denying attorney fees.

V.

Finally, Schroeder argues that a new trial is warranted based on newly discovered evidence and misconduct by Kubes. In his motion to amend, Schroeder requested that, if the district court denied the other relief contained in the motion, it grant a new trial "to remedy the errors resulting in an unjust outcome from the first trial." The district court noted that Schroeder had ample opportunity to present evidence at the trial, and that the testimony Kubes gave at trial and at an unemployment compensation appeal hearing was consistent and so Kubes did not perjure himself. We review a district court's decision to deny a new trial under an abuse-of-discretion standard. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). Minnesota Rule of Civil Procedure 59.01 provides grounds for granting a new trial, including misconduct by the prevailing party and "[m]aterial evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial[.]" *See* Minn. R. Civ. P. 59.01 (b), (d).

A review of the record, including the testimony of the unemployment appeal hearing and the trial, supports the district court's finding that Kubes's testimony at the trial and the unemployment compensation appeal hearing was consistent and no misconduct is apparent. Schroeder does not identify anything else in the record that would compel a new trial. Accordingly, the district court did not abuse its discretion by denying Schroeder a new trial.

Affirmed.