STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0187

Greg T. Kryzer, et al.,
Respondents,

vs.

Frederic W. Knaak, et al.,
Appellants.

Filed August 26, 2013
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-12-7537

Richard A. Williams, Jr., Megan A. Spriggs, R.A. Williams Law Firm, P.A., St. Paul, Minnesota (for respondents)

Wayne B. Holstad, Holstad & Knaak, P.L.C., St. Paul, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cleary, Judge.

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

CONNOLLY, Judge

Appellants, a law firm and its owner, challenge the district court's grant of summary judgment in favor of respondents on breach-of-contract claims asserted by respondents, two attorneys who performed legal work for appellants. Appellants assert

that the district court erred by determining that (1) one of the respondents was an employee and is entitled to wages owed and costs under Minn. Stat. § 181.14 (2012), despite appellants' good-faith belief that no wages were owed; and (2) the other respondent was an independent contractor and is entitled to amounts owed for services rendered, despite appellants' assertion that the right to payment was contingent on appellants being paid for that work by their clients. Because there are no material facts in dispute and the district court did not err in applying the law, we affirm.

FACTS

Appellant Frederic W. Knaak is a principal of appellant law firm, Knaak & Associates (law firm). The law firm is registered as a domestic corporation and has been registered with the Minnesota Secretary of State previously as both Knaak & Kantrud P.A. and Knaak & Kryzer P.A. Knaak has, at all times, been a majority shareholder of the law firm.

Respondent Greg Kryzer began working for Knaak in 2003, while he was still in law school. After Kryzer was admitted to practice law in 2005, he became an associate attorney at the law firm. Kryzer held this position until he terminated his employment on June 25, 2010. During his time at the law firm, Kryzer was a salaried employee. As of July 1, 2009, Kryzer's salary was $62,000 per year, payable on a monthly basis. Kryzer was typically paid on the 15th of the month for work that he did in the previous month.

The law firm did not have a formal vacation policy, but the informal policy was to grant paid time off if it worked with the court schedule and there were no scheduling conflicts. In March 2010, Kryzer notified Knaak that he would be taking a vacation from

May 13 to May 19, and Knaak approved the vacation. On May 20, Kryzer interviewed for a new job and was offered the position on May 24.

Kryzer apparently intended to quit on June 25. On June 15, Knaak gave Kryzer a check that purported to cover Kryzer's pay from June 1 to June 25. But based on the law firm's payroll policy, a June 15 check should have been payment covering Kryzer's work in May. When Kryzer confronted Knaak about this discrepancy, he was informed that the June 15 check was his final check. Kryzer thereafter refused to do any more work for the law firm and, through his attorney, made a 24-hour demand for payment as compensation for 23 days of work.[1]

Respondent Jessica Johnson began working for the law firm as a law clerk in August 2008. In October 2008, Johnson was admitted to practice law and was hired as a contract attorney at the law firm. At that time, it was agreed that the law firm would compensate Johnson at the rate of $50 per hour for each billable hour of work Johnson produced. In January 2010, Johnson informed Knaak that she would no longer provide contract services to the law firm because she was owed over $12,000 in arrears. On March 8, 2010, Johnson received a $1,000 check from Knaak. On April 30, 2010, Johnson sent Knaak an invoice reflecting an outstanding balance of $11,832.

In September 2012, Kryzer and Johnson filed a complaint against Knaak and the law firm, alleging breach of contract, promissory estoppel, and unjust enrichment, and

[1] Throughout the spring of 2010, there were several discrepancies in Kryzer's paychecks. He was overpaid for some periods of time, and not paid at all for others. In total, Kryzer worked or was on paid vacation for 23 days for which he was not compensated by the law firm.

sought the payment of wages and statutory penalties. Knaak and the law firm then answered and Knaak filed a counterclaim alleging that Kryzer breached a duty of loyalty to the law firm.[2] Kryzer and Johnson filed motions for summary judgment and sanctions. Following a hearing, the district court granted the motion for summary judgment, denied the motion for sanctions, and dismissed Knaak's counterclaim without prejudice. The district court awarded Johnson $11,832 and awarded Kryzer $6,454.68, which included statutory penalties of $2,547.90 pursuant to Minn. Stat. § 181.14. Section 181.14 provides that an employer must pay an employee's earned wages within 24 hours after the demand of the employee, or "shall be liable to the employee for an additional sum equal to the amount of the employee's average daily earnings . . . for every day, not exceeding 15 days in all . . . ."[3] This appeal follows.

D E C I S I O N

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, this court reviews de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). No genuine issue of material fact

[2] But the answer and counterclaim documents were never filed or made part of the record for purposes of this summary judgment motion.

[3] Respondents were also awarded attorney fees in a separate order, but appellants did not challenge the order awarding attorney fees.

exists "where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). We review the evidence in the light most favorable to the party against whom judgment was entered. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I. Kryzer's Claim

The district court determined that Kryzer was an employee entitled to wages in the amount of $3,906.78,[4] and a statutory penalty of $2,547.90 pursuant to Minn. Stat. § 181.14. Knaak and the law firm argue that the district court incorrectly calculated the amount of wages to which Kryzer was entitled, and also argue that the district court erred in its wages and costs determination because "(1) there was no agreement to pay wages for hours not worked, (2) Kryzer was a partner, not an employee, and therefore, not entitled to the benefit of the statute, Minn. [Stat. §] 181.14, and (3) Kryzer is not entitled to any compensation because of his breach of his duty of loyalty."

a. Wages Due

Appellants first dispute the amount of past-due wages owed to Kryzer. Appellants "reluctantly concede[] that the firm owes Kryzer for compensation for the two weeks he worked in June, but den[y] that Kryzer was not paid for the entire month of May." But the district court's award of wages was for 23 days of work, not the entire month of May.

Kryzer's payment schedule in 2010 is difficult to reconstruct because the pay periods do not follow the law firm's typical schedule of payment on the 15th of the month for the previous month's work. Instead, on April 15, Kryzer received a check

[4] Compensation for 23 days of work at a rate of $169.86 per day ($62,000/365).

which purported to be payment for April 16 through May 15, rather than for March 1 through March 31. Because of this discrepancy, Kryzer was not paid for the month of March or the first two weeks in April. Then, on May 1, Kryzer received a second check purporting to be payment for April 16 through May 15. And finally, on June 15, Kryzer received a paycheck which reflected a prospective pay period, covering June 1 through June 25.

In summary, then, Kryzer received no wages for March 1 through March 31, April 1 through April 15, and May 16 through May 31, resulting in a total of two months of unpaid wages. But he received a duplicate payment for April 16 through May 15 and he received payment for June 17 through June 25, but did not work those days due to the dispute over his wages. This resulted in Kryzer having worked 23 days without payment.[5] Appellants have provided no evidence showing that this calculation is incorrect and the information regarding Kryzer's checks comes from Knaak's own ledger records and Kryzer's pay stubs. Based on the record before the court, there was no dispute of material fact relating to how many days of wages Kryzer was owed, and the district court did not err by granting summary judgment in his favor.

b. Hours Not Worked

Next, for the first time on appeal, appellants argue that Kryzer should not have received compensation for the days in May during which he took vacation because

[5] No payment in March (31 days), April 1-15 (15 days), or May 16-31 (16 days), for a total of 62 unpaid days. But Kryzer was issued duplicate payments for April 16-May 15 (30 days) and was paid for June 17-25 (9 days), days he did not work, resulting in a total of 39 days of credited payment. By subtracting the 39 days from the 62 days, Kryzer calculated that he had earned wages for 23 days for which he was not paid.

benefits such as vacation time are not "wages." At the district court, appellants argued only that Kryzer was a partner, rather than an employee, and that Kryzer had breached his fiduciary duties to the law firm. Because the issue of vacation benefits as wages was not argued to or considered by the district court, we decline to address this issue. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

c. Partner or Employee

Next, appellants argue that the district court erred in determining that Kryzer was an employee entitled to costs pursuant to Minn. Stat. § 181.14 because he was actually a partner of the law firm. Appellants base this argument, in part, on the fact that "Kryzer did legal work for over a year under the firm letterhead of Knaak and Kryzer, P.A. Certainly he was aware when signing letters or preparing pleadings that he was named in the letterhead. Rule 11 requires that Kryzer understands that." But Minn. R. Civ. P. 11.01 requires only that "[e]very pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name . . . . Each document shall state the signer's address and telephone number, if any, and attorney registration number . . . ." It is unclear how this rule supports appellants' argument that Kryzer was a partner of the law firm.

Appellants' only other argument in support of their attempt to show a genuine issue of material fact as to whether or not Kryzer was a partner or employee, is that "receiving a guaranteed base payment to handle a certain volume of business does not automatically convert Kryzer from a partner to an employee." But appellants merely assert that Kryzer was a partner of the law firm, and do not support the assertion by

argument or legal authority. Therefore, this argument has been waived on appeal. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

d. Breach of Duty of Loyalty

Finally, appellants allege that Kryzer is not entitled to compensation because he breached his duty of loyalty to the law firm. Appellants counterclaimed against Kryzer, alleging a breach of the duty of loyalty. The district court dismissed the counterclaim without prejudice because the counterclaim was never filed with the court. Appellants acknowledge this and even concede that "[t]he Counterclaim is not part of this appeal." Because it was not filed with the district court, the district court did not err by dismissing the counterclaim.

II. Johnson's Claim

Next, appellants argue that the district court erred by granting Johnson's motion for summary judgment on her contract claim. Specifically, they argue that the district court erred by determining that Johnson was entitled to payment for services rendered.

The parties agree that Johnson was an independent contractor for the law firm and that the parties had a verbal contractual agreement that she would provide services for the law firm at a rate of $50 per billable hour. But appellants allege that, under the terms of the contract, Johnson would only receive payment for hours that were billed to, and *paid by*, the law firm's clients. Johnson alleges that she was to receive payment for her time,

regardless of whether the law firm in turn received payment from their clients for that work.

While there is no written evidence of the parties' contract, the district court reviewed the evidence submitted by the parties regarding their agreement. In support of their argument regarding the terms of their contract, appellants relied on Knaak's December 2012, affidavit, in which he states, "Affiant is unaware of any outstanding work done by [Johnson] for which the firm was paid and the firm, in any event, received no payment or value from the services provided by [Johnson]. [Johnson] was fully aware that she would not be paid under these circumstances." Johnson's June 2012 affidavit asserted that Knaak, as sole owner and shareholder of the law firm, verbally promised her that she would be paid "$50 for every billable hour that [she] produced."

Johnson also submitted exhibits to the district court containing e-mail exchanges between herself and Knaak in support of her contention that she was to be paid for every hour of work she produced. For example, on January 18, 2010, Johnson e-mailed Knaak the following message:

> Attached is my most recent bill, the total due is $12,832.00. The bill only represents hours that have been directly billed to the client. I cannot continue to work without receiving further payment. If you would like me to begin work again, I would need a payment of at least $5,000.

Knaak responded on the same day, saying: "Understood. Hopefully we will have those kinds of funds available in the next couple of months."

And again, on February 2, 2010, Johnson e-mailed Knaak the following message: "I wanted to check in and remind you that I am available for work. Also, I do expect to

continue to receive payment for the hours I have already billed—see attached bill." Knaak replied the very same day, stating: "Hi [Johnson]! Stay in touch. . . . As soon as I've got $5k to send to you we'll get you back in here. Not sure when that will be yet . . . ."

The district court reviewed the evidence submitted by the parties regarding this dispute and concluded that "the verbal agreement between [Johnson] and [the law firm] that required payment for her services of $50 per hour for billable work did not include the contingency that she would not be paid unless specific invoices reflecting her work were first paid by clients of the firm."[6] Quoting *DLH*, 566 N.W.2d at 70, the district court noted that, while it is inappropriate for the district court to weigh competing evidence on summary judgment, "when determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented." The district court then noted that Knaak's self-serving and uncorroborated statement in his affidavit was contradicted by the prelitigation e-mails and that reasonable persons could not rely on his affidavit statement to reach a conclusion that the parties had agreed that Johnson would receive payment only on a contingency basis.

[6] Appellants argue that the district court ruled as a matter of law that it was unreasonable that a recent law graduate would agree to work for a law firm for experience only or on a contingency compensation basis. But the district court merely held that, based on the evidence in the record, no reasonable person could find that this particular young attorney agreed to such an arrangement.

The district court did not err when it granted Johnson's motion for summary judgment. While it is not appropriate to weigh the evidence at a summary judgment stage, the sole evidence that supports appellants' assertion regarding the payment contract is Knaak's statement in his affidavit. But the e-mail exchanges between the parties do not reflect an understanding that Johnson would only be paid when the law firm received payment for her billed hours. Instead, the e-mails reflect that Johnson would be paid when the firm had funds more generally. Moreover, Johnson's actual payment history does not reflect a contingency-payment agreement. She was paid $10,000 at one time for a bill of over $22,000, and $1,000 for a bill of over $12,000. There was no indication that these payments were tied in any way to payment the law firm had received for billable hours submitted by Johnson. Based on the evidence contained in the pleadings and affidavits, there is no genuine issue as to any material fact regarding Johnson's independent-contractor-payment contract, and the district court did not err by granting her motion for summary judgment and awarding her payment of $11,832 for her outstanding bills to the firm.

Affirmed.