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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1813**

Jeremiah Akinola,
Appellant,

vs.

Southampton Apartments, et al.,
Respondents

**Filed June 19, 2017
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-15-6697

Jeremiah Akinola, Minneapolis, MN (pro se appellant)

Christopher T. Kalla, Hanbery & Turner, P.A., Minneapolis, MN (for respondents)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Kirk, Judge.

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

WORKE, Judge

Appellant-tenant challenges the district court's award of attorney fees to respondent-landlord and respondent-property manager, arguing that the attorney-fees provision in the lease does not apply to this action and that, if it does, the award is unreasonable. We affirm.

FACTS

On April 15, 2015, appellant Jeremiah Akinnola filed a complaint against respondents Southampton Apartments and Highland Management Group, alleging that prior to signing an apartment-rental lease, he was assured that he did not have to worry about dogs, but after moving into an apartment he saw several dogs and was nearly attacked. Akinnola alleged, among other things, breach of contract, claiming that the agreement between the parties required respondents to provide him an apartment and common areas that were “safe and free of threats of dog bites.” Akinnola alleged that respondents “breached the agreement when [they] failed to provide a safe apartment unit and hallways in the condition the parties agreed to.” Akinnola sought damages in excess of \$20,000.

Respondents moved for summary judgment, which the district court granted. The district court found that Akinnola argued that respondents breached an oral promise, but that oral statements were inadmissible under the parol evidence rule because they contradicted the integrated written lease that has a pet policy allowing certain dogs.

Respondents moved for attorney fees. The district court decided the issue on the parties’ written submissions. The district court found that the lease provides for recovery of reasonable attorney fees by the prevailing party in an action brought to enforce the terms of the lease, and respondents prevailed on summary judgment. The district court also found that the attorney fees were reasonable and awarded respondents attorney fees in the amount of \$16,021. This appeal followed.

DECISION

Akinnola does not challenge summary judgment, he seeks review only of the attorney-fees award.

Hearing

Akinnola first argues that the district court should have granted him a hearing on the attorney-fees motion.

On May 20, 2016, respondents moved for attorney fees pursuant to Minn. R. Gen. Pract. 119, which sets forth a procedure for recovering attorney fees. *See* Minn. R. Gen. Pract. 119.01. The rule requires that application for attorney fees sought in excess of \$1,000 be made by motion, accompanied by an affidavit of an attorney of record and a memorandum of law discussing the basis for recovery and an explanation of the calculation of fees. *Id.*, .02, .04. The only mention of a hearing is under the provision of the rule related to default proceedings, which is not applicable here. *See id.*, .05.

Akinnola argues that the district court denied his request for a hearing. But the record shows that Akinnola did not request a hearing.

On August 5, 2016, Akinnola submitted a reply to respondents' attorney-fees motion. In it, Akinnola asserted that "a hearing will provide him the opportunity to fully address [respondents'] arguments." He concluded his reply stating, "[b]ased on the foregoing, [Akinnola] respectfully requests that this [c]ourt denies [respondents'] motion for attorneys' fees. *Alternatively, grant a hearing* to review line-by-line [respondents'] counsel bill entries." (Emphasis added.) The district court did not deny Akinnola a hearing because Akinnola did not request a hearing. The district court ruled on the motion after

reviewing written submissions, presumably not finding it necessary to “alternatively” hold a hearing on the matter.

Further, Akinola was aware that the district court did not plan to schedule a hearing. On June 21, 2016, the district court conducted a telephone conference with the parties. The district court addressed the motion for attorney fees along with issues raised by Akinola, including his request for reconsideration of the summary-judgment order. The district court stated that it would hear the motion for attorney fees on July 22, 2016. Akinola moved for a continuance due to travel plans.

On July 15, 2016, the district court issued an order stating “[g]iven [Akinola’s] unavailability, coupled with [respondents’] amenability to a briefing schedule in lieu of oral arguments,” respondents shall file a brief in support of their motion by July 29, 2016, Akinola shall file a reply brief by August 5, and respondents may file a reply brief by August 10. Thus, Akinola was aware that the district court did not plan to hold a hearing. Further, on July 16, Akinola sent a letter to the district court seeking clarification of the briefing schedule, but did not raise the issue of a hearing.

In July 2016, Akinola also contacted the district court because he was having trouble filing his papers because his in forma pauperis (IFP) status expired. On August 4, 2016, the district court issued an order regarding Akinola’s IFP status, and noting that “[d]ue to [Akinola’s] unavoidable travel overseas, this [c]ourt ordered that this [attorney fees] matter be argued via a briefing schedule.” Again, Akinola was aware that the district court did not plan to hold a hearing, and he did not raise the issue of a hearing.

Because rule 119 does not contemplate a hearing under the circumstances presented here, Akinnola did not request a hearing, and Akinnola failed to object to the district court deciding the issue based on written submissions, the district court did not err by not holding a hearing on respondents' motion for attorney fees.

Attorney-fees provision

Akinnola next argues that the district court erred in its interpretation of the attorney-fees provision in the lease. An appellate court “typically will not interfere with a district court’s award of attorney fees absent an abuse of discretion.” *In re Stisser Grantor Trust*, 818 N.W.2d 495, 509-10 (Minn. 2012). And an appellate court “will not set aside a district court’s factual findings underlying an award of attorney fees unless they are clearly erroneous.” *County of Dakota v. Cameron*, 839 N.W.2d 700, 711 (Minn. 2013) (quotation omitted).

Generally, attorney fees are not recoverable unless authorized by statute or contract. *Dunn v. Nat’l Beverage Corp.*, 745 N.W.2d 549, 554 (Minn. 2008). Respondents sought attorney fees based on the parties’ lease agreement, which provides: “If a court action . . . is brought to enforce the terms of this [l]ease, the prevailing party may recover reasonable attorneys’ fees, but only to the extent that such party has actually paid attorneys’ fees and is seeking a reimbursement.” Akinnola challenges the district court’s determination that the court action was brought to enforce the terms of the lease.

The construction and effect of an unambiguous contract present questions of law, which this court reviews de novo. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). This court will not rewrite, modify, or limit the effect of a contract

provision by a strained construction when the contractual provision is clear and unambiguous. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). The attorney-fees provision is unambiguous. It allows the prevailing party in a court action brought to enforce the terms of the lease to be reimbursed for reasonable attorney fees. Akinola asserts that he brought a court action to enforce an oral promise, not the terms of the lease.

In his complaint, Akinola alleged that respondents breached the contract, stating:

The agreement between [respondents] and [Akinola] required that [respondents] provide [Akinola] an apartment unit, including a [sic] hall ways that are safe and free of threats of dog bites. In particular that [Akinola] will not be exposed to dogs threatening to bite him in exchange for [Akinola] making payments in a timely manner.

Akinola alleged that respondents “breached the agreement when [they] failed to provide a safe apartment unit and hallways in the condition the parties agreed to.” But the lease has the following provision: “The [r]esident agrees that the [o]wner has made no promises or representations that are not stated in this [l]ease or any [a]ddendums thereto. This [l]ease and [a]ddendum may only be changed in writing signed by both the [r]esident and the [o]wner.” Thus, the written lease was the only contract that respondents could have allegedly breached because the lease states that no promises were made outside of the lease.

Akinola argues that the oral promise was independent of the lease. But parol evidence of previous understandings cannot be introduced to contradict the terms of a final and integrated written expression. *Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng’g Sales, Inc.*, 436 N.W.2d 121, 123 (Minn. App. 1989), *review denied* (Minn. Apr. 26, 1989).

The determination regarding whether a contract is completely integrated and not subject to variance by parol evidence is made upon consideration of the writing itself, along with “the subject matter and purposes of the transaction, and like attendant circumstances.” *Bussard v. Coll. of St. Thomas, Inc.*, 294 Minn. 215, 224, 200 N.W.2d 155, 161 (1972). “[I]f the alleged oral agreement is one that parties similarly situated would embody in the written agreement, then the written document is complete.” *Id.* at 225, 200 N.W.2d at 162 (quotation omitted).

Here, the lease represented the entire agreement between the parties; thus, any oral statement regarding dogs was inadmissible under the parol evidence rule because it would contradict the written agreement that permits some dogs. If respondents intended to change the terms of the lease to include a provision about dogs and dog size, it would have been a written change as contemplated by the lease itself. Because the lease was a final written expression of the parties’ agreement, it was the only agreement that respondents could have allegedly breached.

Akinnola relies on caselaw outside this jurisdiction. He cites *Ross v. Cagley*, but *Ross* involved a declaratory judgment action, not a lawsuit to enforce a contract or for damages for breach of contract. 670 P.2d 190, 192 (Or. Ct. App. 1983). Akinnola alleged a breach-of-contract claim; he did not seek declaratory relief regarding his tenancy or the presence/exclusion of dogs on the property.

Akinnola also cites *Henderson v. Henderson Inv. Props.*, in which the Supreme Court of Idaho determined that members of a limited liability company (LLC) were not entitled to attorney fees. 227 P.3d 568 (Idaho 2010). In *Henderson*, a member of an LLC

sought to dissolve the company. *Id.* at 569. The supreme court reversed the award of attorney fees to the other members of the LLC because the dissolution action was not an action to enforce the parties' operating agreement; rather the party sought a judicial dissolution to terminate the operating agreement. *Id.* at 571-72. Akinola did not seek to terminate the lease; thus *Henderson* is inapplicable, as are other cases cited by Akinola. *See, e.g., Cascade Steel Fabricators, Inc. v. Citizens Bank of Or.*, 612 P.2d 332 (Or. Ct. App. 1980) (inapplicable because action filed was for damages for tort not to enforce a contract); *Smith v. Crossman*, No. M2003-01108-COA-R3-CV, 2004 WL 1732319, at *2 (Tenn. Ct. App. Aug. 2, 2004) (inapplicable because lease did not include recovery of attorney fees for "prevailing party" as it does here).

Accordingly, because Akinola alleged breach of contract and the only contract that respondents could have allegedly breached was the lease, respondents' motion was properly brought by the prevailing party for reimbursement of attorney fees in an action to enforce the terms of the lease.

Reasonableness of fees

Akinola argues that even if the district court did not abuse its discretion in awarding respondents attorney fees, the award is unreasonable.

Minnesota courts use the lodestar method for determining the reasonableness of attorney fees. *Cameron*, 839 N.W.2d at 711. The lodestar method first requires "the number of hours reasonably expended on the litigation" to be multiplied by "a reasonable hourly rate." *Id.* (quotations omitted). All relevant circumstances are considered when evaluating the reasonableness of the hours expended and an attorney's hourly rate. *Id.*

Relevant factors include the hours expended; hourly rates; nature and difficulty of the litigation; amount in controversy; results obtained; fees customarily charged for similar services; experience, reputation, and ability of counsel; and the fee arrangement between counsel and client. *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 819 (Minn. App. 2011).

The district court determined that the fees were reasonable, relying in part on this court granting respondents' motion for attorney fees against Akinola in the appeal of the related eviction action. This court stated:

In light of the numerous issues raised by Akinola, the brief submitted by respondent, the supporting documentation provided with the fee request, the results obtained, the awards made by this court in similar cases, and the records as a whole, we conclude that the requested fees, costs, and disbursements are reasonable.

Arrow Southampton, LLC v. Akinola, No. A15-0731 (Minn. App. May 10, 2016) (order).

The district court also noted the attorneys' hourly rates (\$195 prior to August 2015 and \$225 thereafter), that the fee arrangement was on an hourly basis, and the total hours billed.

The district court also addressed Akinola's argument that the attorney fees had no direct nexus to the underlying action and were needless and excessive, stating: "[Akinola] has brought a number of frivolous motions in support of what the [c]ourt twice deemed a frivolous claim," and "[t]hroughout the course of litigation, [Akinola] has filed numerous briefs, sent a large number of emails, and has, without merit, moved the [c]ourt to take action. [Respondents] are well within their rights to review these documents and respond in kind."

The district court stated in its order granting summary judgment that Akinola scheduled a discovery conference, moved to amend the complaint, moved to compel production of documents, deposed two witnesses, supplemented his motion to compel, moved a second time to amend the complaint, moved to continue summary judgment, and moved to amend the scheduling order to allow additional discovery. Following summary judgment, Akinola sought reconsideration of the summary judgment order, filed an appeal with this court that was dismissed, moved for a continuance, and required the district court to order respondents to file a motion explaining a technical error in their filing. The record is dense, containing nearly 1,200 pages.

Respondents' attorney filed a memorandum in support of their motion and an affidavit with a printout of logged hours. Akinola argues that some entries are related to the eviction case, but provides no support for this. He also asserts that needless or excessive hours were spent on e-mails, but fails to cite any caselaw that prohibits billing for electronic communication. Akinola similarly challenges hours billed related to settlement efforts without citation to legal authority that this work was inappropriately billed. Akinola's legal argument insufficiently supports his challenge to the attorney-fees award. Because the record shows that the attorney fees sought for reimbursement are reasonable, the district court did not abuse its discretion in awarding respondents their requested attorney fees.

Affirmed.