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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0229**

Curtis Trude, et al.,
Appellants,

vs.

Glenwood State Bank, defendant, counterclaimant,
and third party plaintiff,
Respondent,

vs.

Peterson Earth Movers, Inc., et al.,
Third Party Defendants,

Golden West, LLC, third party defendant,
Respondent.

**Filed November 20, 2017
Affirmed
Larkin, Judge**

Meeker County District Court
File No. 47-CV-12-176

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Jack Atnip, III, Matthew J. Bialick, Hellmuth & Johnson, PLLC, Minneapolis, Minnesota
(for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber, Judge.*

UNPUBLISHED OPINION

LARKIN, Judge

Appellants challenge the district court's award of attorney fees to respondent bank for expenses incurred during a trial of claims against third-party defendants, which occurred after respondent obtained a default judgment against appellants. We affirm.

FACTS

Appellants JBI, LLC and Curtis Trude (JBI/Trude) appeal from a district court judgment awarding respondent Glenwood State Bank (GSB) attorney fees against JBI/Trude, Peterson Earth Movers and Lavern Peterson (PEM), Golden West, LLC and LaDon Peterson (Golden West), and Charles Peterson. The underlying litigation stems from a debt owed by PEM to GSB. After defaulting on the debt, PEM signed a confession of judgment. The judgment required PEM to pay all of GSB's past and future collection costs, including attorney fees.¹ GSB attempted to collect on the judgment by seizing certain property. In turn, JBI/Trude sued GSB for conversion, claiming that they, and not PEM, owned the property.

GSB answered the complaint, counterclaimed, and brought a third-party complaint against PEM, Golden West, and Peterson. GSB alleged that PEM had transferred property

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

¹ Although the underlying note between PEM and GSB is not a matter of record in this appeal, the parties do not dispute that the note authorized attorney fees and collection costs.

among respondents to avoid satisfaction of GSB's judgment and that respondents engaged in fraud and civil conspiracy. During discovery, JBI/Trude consistently failed to cooperate, going so far as to delete 20,000 files from a computer before turning it over to GSB and refusing to comply with court orders to divulge information. The district court eventually dismissed JBI/Trude's affirmative claims, struck their answer to GSB's counterclaim, and granted GSB partial default judgment against JBI/Trude as a sanction for their discovery violations. The district court also revoked a previously stayed default judgment against PEM and Peterson. The district court ordered that JBI/Trude "are liable as a successor in interest to PEM," and that they are jointly and severally liable for GSB's original judgment against PEM, including costs and attorney fees incurred to date.

The case proceeded to a court trial on GSB's fraud and conspiracy claims against Golden West. The district court made detailed findings showing that JBI/Trude, PEM, and Golden West conspired to avoid satisfaction of GSB's original judgment against PEM, and it awarded GSB judgment against Golden West.

JB/Trude, PEM, Golden West, and Peterson appealed. This court consolidated their cases on appeal and affirmed the judgments against them in all respects. *Trude v. Peterson Earth Movers, Inc.*, Nos. A15-0378, A15-1863, A15-1864, 2016 WL 4262804, at *1, *14 (Minn. App. Aug. 15, 2016), *review denied* (Minn. Oct. 26, 2016). The same parties petitioned for review by the Minnesota Supreme Court. While the petition for review was pending, GSB moved the district court for additional costs and attorney fees. JBI/Trude objected, arguing at the motion hearing that the district court did not have jurisdiction to hear the motion because the petition for review was pending and that

JB/Trude should not be responsible for any of the fees stemming from the GSB/Golden West trial. The district court awarded GSB attorney fees of \$316,581.32 against JB/Trude, PEM, Golden West, and Peterson, because “the parties engaged in a pattern of fraud, civil conspiracy, and fraudulent transfers that exacerbated GSB’s collection efforts.” In doing so, the district court incorporated findings of fact from its previous judgments against JB/Trude, PEM, Golden West, and Peterson. JB/Trude appeal the district court’s award of attorney fees.

D E C I S I O N

JB/Trude contend that the district court’s attorney-fee award constitutes error in three respects. First, they argue that the fees are impermissible because they were incurred after the district court entered final default judgment against them. Second, they argue that they should not be liable for fees stemming from the GSB/Golden West trial because they did not participate in the trial. Third, they argue that the district court ordered an unreasonable amount of attorney fees. “We review the district court’s award of attorney fees or costs for [an] abuse of discretion.” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008.)

I.

JB/Trude argue that, because the default judgment against them was a final judgment, the district court could not order additional attorney fees. They generally argue that the doctrine of merger and bar prevented the district court from ordering attorney fees after entry of final judgment. For the reasons that follow, we are not persuaded.

First, it is common for a district court to enter judgment on the merits of a claim that authorizes an award of attorney fees and to later issue a separate judgment imposing the actual fee award. *See, e.g., T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 785-86, 789 (Minn. 2009) (holding first judgment was final where first judgment determined claimant on a lien was entitled to attorney fees, costs, and disbursements in amounts to be determined, and second judgment determined the amount of attorney fees and costs); *D.Y.N. Kiev, LLC v. Jackson*, 802 N.W.2d 821, 824 (Minn. App. 2011) (holding that first judgment was final and appealable upon its entry, despite the reservation of the amount of attorney fees).

Second, in *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, this court rejected an argument that “the district court improperly allowed [a party] to continue to supplement its claims for attorney fees.” 776 N.W.2d 172, 180 (Minn. App. 2009). We noted that the *Riverview* appellant provided “no legal authority stating that a district court is unable to add attorney fees that a party has continued to incur after . . . judgment has been entered.” *Id.* “Moreover, because the issue of attorney fees is collateral to the merits of the underlying litigation, a district court retains jurisdiction to consider the issue” *Id.* (quotation omitted). For these reasons we do not discern error in the district court’s award of additional attorney fees against JBI/Trude after entry of final default judgment against them.

II.

JBI/Trude argue that they should not be liable for attorney fees stemming from the GSB/Golden West trial because they did not participate in the trial. JBI/Trude agree they

are liable for some of the attorney-fee award and ask this court to remand for the district court to exclude fees stemming from the GSB/Golden West trial.

JB/Trude attempt to frame the issue as one involving separate disputes between distinct parties. In doing so, JB/Trude assert that the trial-related attorney fees are unrelated to the JB/Trude default judgment. This argument ignores the facts of the case, which establish that JB/Trude acted in concert with PEM, Golden West, and Peterson to avoid satisfaction of GSB's original judgment against PEM. The district court found that the parties "engaged in a pattern of fraud, civil conspiracy, and fraudulent transfers that exacerbated GSB's collection efforts," and this court upheld that finding in the earlier appeal. *Trude*, 2016 WL 4262804, at *1. JB/Trude's argument that they did not contribute to the trial-related attorney fees ignores the district court's determination that they conspired with the other respondents to avoid satisfaction of GSB's original judgment against PEM.

JB/Trude further argue that they should not be responsible for attorney fees stemming from the GSB/Golden West trial because the conspiracy ended before the trial. The alleged end date of the conspiracy is irrelevant because the default judgment against JB/Trude makes them jointly and severally liable for GSB's original judgment against PEM, which included future collection-related costs and attorney fees. Because the GSB/Golden West trial was a continuation of GSB's efforts to satisfy its original judgment against PEM, the associated attorney fees are collection costs for which JB/Trude is jointly and severally liable under the default judgment.

In conclusion, we observe that JBI/Trude’s argument that they cannot be liable for attorney fees stemming from the GSB/Golden West trial is incompatible with the concept of joint-and-several liability. When parties are jointly and severally liable, each party is liable for the whole award. *See Black’s Law Dictionary* 1054 (10th ed. 2014) (explaining that when joint-and-several liability applies “each liable party is individually responsible for the entire obligation”); *see also Erickson v. Hinckley Mun. Liquor Store*, 373 N.W.2d 318, 325-36 (Minn. App. 1985) (holding jointly and severally liable party liable for entire judgment). Because JBI/Trude are jointly and severally liable for the collection costs and attorney fees stemming from GSB’s efforts to satisfy its original judgment against PEM, and the GSB/Golden West trial was a collection effort, we are not persuaded that the district court abused its discretion by awarding the challenged attorney fees.

III.

JB/Trude argues that the district court awarded an unreasonable amount of attorney fees. The reasonable value of counsel’s work is a question of fact, and we uphold the district court’s findings on that issue unless they are clearly erroneous. *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973). “Although the reasonable value of attorney fees is a question of fact, when considering whether the district court employed the proper method to calculate the amount . . . we undertake a de novo review.” *Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 4 (Minn. App. 2005) (citations omitted).

The district court used the lodestar method to calculate attorney fees, and JBI/Trude do not challenge this method. *See Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620-21

(Minn. 2008) (stating that the supreme court has “approved the use of the lodestar method for determining reasonable attorney fees,” which “requires the court to determine the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate” (quotations omitted)). Instead, they argue that the attorney-fee award is excessive because GSB is “running up costs” and thereby “attempting to profit from its collection efforts.” This argument is unsupported by the record, which actually shows that JBI/Trude increased the costs of GSB’s collection efforts. JBI/Trude also revert back to the argument that they should not be responsible for attorney fees generated by their co-conspirators. This argument is without merit, as explained in the previous section of this opinion. In sum, JBI/Trude do not persuade us that the district court awarded an unreasonable amount of attorney fees.

Error is never presumed on appeal. *White v. Minn. Dep’t of Nat. Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). Because JBI/Trude has not shown that the district court abused its discretion by awarding GSB additional attorney fees or that the amount of the award is unreasonable, we affirm.

Affirmed.