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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0690**

John S. Drewitz,
Respondent,

vs.

Motorwerks, Inc., et al.,
Defendants,

R. Jack Walser,
Appellant.

**Filed December 4, 2017
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-04-008927

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(for respondent)

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(for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this appeal after a remand from our court, appellant argues that the district court erred, under both statutory and common law, when awarding respondent attorney fees. Respondent cross-appeals, arguing that the district court erroneously denied his motion to amend his complaint to seek punitive damages. We affirm.

FACTS

This case has a long procedural history, which is summarized in our most recent decision involving these parties, *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197 (Minn. App. 2015) (*Drewitz VI*), *review denied* (Minn. Sept. 15, 2015). The facts relevant to this appeal are set forth below.

On July 24, 2013, respondent John Drewitz obtained a \$7.9 million verdict against Motorwerks, Inc., for unpaid distributions plus preverdict interest. In 2006, while final resolution of Motorwerks' liability was pending before the Minnesota Supreme Court, appellant Jack Walser, a director of Motorwerks, and another director sold substantially all of Motorwerks' assets to a third party for nearly \$33 million. Pursuant to the purchase agreement, Motorwerks, appellant, and the other director agreed to indemnify the third party against any liability related to respondent's lawsuit. After the sale closed, appellant agreed to indemnify the other director against any liability related to respondent's lawsuit.

When respondent initiated efforts to collect, the writ of execution upon the judgment was returned unsatisfied. Respondent then discovered that appellant had distributed nearly all of the income from the asset sale to himself and the other director. Appellant received

more than \$17 million and a \$70,000 BMW convertible. After the 2006 distributions, Motorwerks retained only \$225,000 in cash, which dwindled to \$169,108 by the end of 2006, and the valuation of its assets dropped from nearly \$20 million to \$690,657. Motorwerks made additional distributions in 2007, 2010, and 2012, totaling nearly \$600,000. As majority shareholder, appellant received distributions in the amounts of \$325,600 in 2007, \$80,000 in 2010, and \$59,083 in 2012. Motorwerks was left with no funds.

After discovering these events, respondent moved to amend his complaint to add judgment-enforcing claims against appellant individually. The district court granted respondent's motion, but later dismissed his claims on summary judgment. On appeal from that dismissal, this court reversed the dismissal, directed the district court to enter summary judgment in favor of respondent on his claim for breach of fiduciary duty to a creditor, and remanded to the district court to determine "whatever equitable remedy it deems necessary under the circumstances to rectify [appellant's] breach of fiduciary duty." *Drewitz VI*, 867 N.W.2d at 210.

On remand, respondent moved for entry of summary judgment against appellant for breach of fiduciary duty. Respondent also moved to amend his judgment to add appellant as a joint debtor to the judgment against Motorwerks, for attorney fees, and for leave to amend the pleadings to claim punitive damages pursuant to Minn. Stat. §§ 549.191-.20 (2016). On January 11, 2016, the district court granted respondent's motion to enter judgment against respondent, but denied respondent's motion to amend the pleadings to add a claim for punitive damages because it was not supported by an accompanying

affidavit, it was beyond the district court's remand authority to determine equitable relief, and it was untimely and would prejudice appellant by prolonging the case.

The district court then stayed entry of judgment against appellant, set a discovery schedule, and held an evidentiary hearing to determine the appropriate equitable relief and attorney fees for appellant's breach of fiduciary duty. After the hearing, the court amended the \$7.9 million judgment against Motorwerks by adding appellant as a joint judgment debtor and awarding respondent \$340,918.66 in attorney fees and costs. The district court ruled that respondent had sufficiently pleaded a claim for equitable relief under both common-law breach of fiduciary duty and Minn. Stat. § 302A.751, subd. 1(c) (2016), and that under § 302A.751, subd. 4 (2016), the court had discretion to award attorney fees if the court found that appellant had "acted arbitrarily, vexatiously, or otherwise not in good faith."

D E C I S I O N

Appellant challenges the award of attorney fees, and respondent cross-appeals the denial of his motion to add a punitive-damages claim. Appellate courts will not reverse a district court's grant or denial of attorney fees absent an abuse of discretion. *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 26, 2007). The district court has the authority to impose sanctions, including attorney fees, under statute and as part of its inherent power. *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 462 (Minn. App. 2010). Statutory construction is a question of law that this court reviews de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). We review a district court's order denying a motion to amend a complaint to add punitive

damages for an abuse of discretion. *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff'd* 742 N.W.2d 660 (Minn. 2007).

I.

The district court determined that Minn. Stat. § 302A.751, subd. 4 provided grounds for awarding respondent attorney fees. Minn. Stat. § 302A.751, subd. 4 gives district courts discretion to award fees:

If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

In 2015, this court recognized that respondent's breach-of-fiduciary-duty claim was the type of claim expressly authorized by Minn. Stat. § 302A.751, subd. 1(c), because respondent, as a creditor of Motorwerks, executed a judgment against Motorwerks that was returned unsatisfied. *Drewitz VI*, 867 N.W.2d at 205 n.3. After a bench trial on remand, the district court concluded that appellant acted arbitrarily, vexatiously, or otherwise not in good faith, which entitled respondent to attorney fees under Minn. Stat. § 302A.751, subd. 4. Appellant does not challenge the factual bases for awarding attorney fees under the statute. Instead, he argues: (1) the fee award was beyond the scope of the remand, (2) Minn. Stat. § 302A.751, subd. 1(c), cannot apply to corporate distributions, and (3) he did not have proper notice of respondent's attorney-fees claim.

Appellant argues that because this court's 2015 remand instructions did not allow respondent to present a claim for attorney fees, the district court went beyond its remand instructions in allowing the claim. A district court's compliance with remand instructions

is reviewed for abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). District courts may “act in any way not inconsistent with the remand instructions provided.” *Id.*

The remand instructions were as follows:

On remand, the district court, sitting as a court of equity, may fashion whatever equitable remedy it deems necessary under the circumstances to rectify [] [appellant’s] breach of fiduciary duty. This includes, but is not limited to, amending the judgment against Motorwerks to include [appellant] as a party from whom [respondent] can seek recovery of his \$7.9 million award.

Drewitz VI, 867 N.W.2d at 210.

This remand language is permissive. It explicitly states that the district court was not limited to adding appellant as a joint debtor of the judgment. Additionally, this court expressly stated that these circumstances authorized a claim under Minn. Stat. § 302A.751, subd. 1(c). *Id.* at 205 n.3. Since subdivision 4 of that same statute gives a district court discretion to award attorney fees when “a party to a proceeding under this section has acted arbitrarily, vexatiously, or otherwise not in good faith,” the district court’s fee award under that statute was consistent with this court’s 2015 analysis. Thus, the district court had discretion to find a party acted “arbitrarily, vexatiously, or otherwise not in good faith,” and to award “reasonable expenses, including attorneys’ fees and disbursements. . . .” Minn. Stat. § 302A.751, subd. 4.

Appellant next argues that Minn. Stat. § 302A.751 (2016) cannot apply to situations involving corporate distributions because Minn. Stat. §§ 302A.551-.559 (2016) explicitly supersede all other statutes; thus, appellant argues that his conduct should have been

governed exclusively by sections 302A.551-.559. Minn. Stat. § 302A.551, subd. 1, provides:

(a) The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.

(b) The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

(c) The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subdivision 3.

(d) The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

Minn. Stat. § 302A.559, subd. 1, provides:

In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 302A.551, subdivision 1, paragraph (a), or 4, or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 302A.251, is liable to the corporation, its receiver or any other person winding up its affairs jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 302A.551.

(Emphasis added). Minn. Stat. § 302A.551, subd. 3(d), states, “Sections 302A.551 to

302A.559 supersede all other statutes of this state with respect to distributions” Consequently, appellant argues that this is the exclusive remedy. We disagree.

First, we note that § 302A.559, subd. 1, specifically provides “in addition to any other liabilities.” Second, Minn. Stat. § 302A.751, subd. 1(c), and sections 302A.551-.559 are all part of Minn. Stat. § 302A (2016). The language that appellant relies on does not supersede other sections of *the same statute*; rather, it supersedes *other statutes*.

Finally, appellant argues that the district court erred by concluding that respondent’s complaint fulfilled the notice-pleading standard to allow him to pursue a claim for violation of Minn. Stat. § 302A.751, subd. 1(c), because: (1) appellant did not have proper notice of this claim and (2) respondent never moved to amend the pleadings to add this claim to his amended complaint. Minnesota’s notice-pleading standard requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Minn. R. Civ. P. 8.01; see *Hansen v. Robert Half Int’l, Inc.*, 813 N.W.2d 906, 917-18 (Minn. 2012) (holding that “Minnesota is a notice-pleading state that does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it.”). “In determining whether a complaint states a claim, the test is whether the facts alleged, liberally construed, entitled plaintiff to any relief, either legal or equitable.” *Wells Fargo Home Mortg., Inc. v. Newton*, 646 N.W.2d 888, 899 (Minn. App. 2002), *review denied* (Sept. 25, 2002). The question before this court is whether respondent met a legal standard, which is a question of law that we review de novo. *Harlow v. State Dep’t of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

In his second amended complaint, under Count VII “Breach of Fiduciary Duty to Creditor of Insolvent Corporation” respondent alleged:

52. When a corporation is insolvent, or on the verge of insolvency, its directors and officers become fiduciaries of the corporate assets for the benefit of creditors under *Snyder Electric Co. v. Fleming*, 305 N.W.2d 863, 869 (Minn. 1981).
53. As fiduciaries, corporate directors and officers cannot by reason of their special position treat themselves to a preference over other creditors.
54. As the controlling shareholder-director of Motorwerks, Inc., [appellant] breached a fiduciary obligation to judgment creditor [respondent] by transferring corporate assets to himself which made Motorwerks, Inc. insolvent and unable to pay the judgment debt owed to [respondent].
55. Therefore, the transfers of corporate assets to [appellant] which made the corporation insolvent must be set aside, and the funds should be used to pay judgment creditor [respondent] pursuant to *Snyder Electric*.

Respondent’s complaint also included the following requests for relief:

8. For a finding that [appellant has] acted arbitrarily, vexatiously, or not in good faith, and ordering an award to [respondent] of all costs, disbursements, interest and attorney’s fees incurred by him in connection with this proceeding as authorized by Minn. Stat. § 302A.751, [s]ubd. 4.

. . . .
11. On Amended Complaint Count Seven, for an Order holding the transfers of corporate assets to [appellant] which made the corporation insolvent shall be set aside, and the funds shall be applied toward satisfaction of the

judgment entered in favor of [respondent] under *Snyder Electric Co. v. Fleming*, 305 N.W.2d 863 (Minn. 1981).

This language satisfies the requirements of rule 8.01. It is a short and plain statement of respondent's claim that he is entitled to judgment against appellant for money owed under respondent's judgment against Motorwerks, and it demands a finding of bad faith to support an award of attorney fees under section 302A.751, subd. 4.

Further, the district court, after concluding that respondent could bring a claim for attorney fees, did not immediately award them. Rather, it held a hearing and allowed the parties to present evidence on the issue. Indeed, before the district court held the evidentiary hearing on the attorney-fees issue, it ordered and received briefing regarding the scope of the issues to be addressed. Appellant presented the district court with the same lack-of-notice argument. Consequently, appellant suffered no prejudice.

The district court did not err by awarding respondent attorney fees under Minn. Stat. § 302A.751, subd. 4. Because we affirm on the statutory grounds, we decline to reach the common-law issue.

II.

Respondent argues that the district court erred by denying his motion to amend his complaint to seek punitive damages. The district court denied respondent's motion on three different grounds, including that the motion was untimely and prejudicial.

A district court has discretion to allow amendment of a complaint, and this court will reverse that decision only for a clear abuse of discretion. *Cherne Contracting Corp. v. Wausau Ins. Cos.*, 572 N.W.2d 339, 344 (Minn. App. 1997), *review denied* (Minn.

Feb. 19, 1998). When deciding whether to allow the amendment, the district court may consider the proposed amendment's timing in relation to the stage of proceedings. See *Meyer v. Best Western Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997) (holding a party must act with due diligence when attempting to amend complaint), *review denied* (Minn. June 26, 1997).

The district court found that respondent's motion on remand was untimely and prejudicial because respondent failed to seek punitive damages around the time that respondent moved to amend his complaint to add the judgment-enforcing claims against appellant. We agree. Respondent moved to assert these claims after deposing appellant and realizing that appellant had distributed Motorwerks' assets to himself and another director. As the district court noted and appellant now argues, the facts that respondent relied upon in his August 2013 motion to amend his complaint to add the breach-of-fiduciary-duty claim against appellant were the same facts that he relied upon to support his punitive-damages motion filed in October 2015. Respondent failed to seek punitive damages between the time he became aware of the factual basis for his claim in July 2013 and the time the parties cross-moved for summary judgment in March 2014, a period of nine months.

The district court also concluded that allowing respondent's motion would prejudice appellant because adding a claim for punitive damages would require the reopening of discovery, motion practice, and trial, causing additional delay in finally resolving this case. We review a district court's finding of prejudice for an abuse of discretion. See *e.g.*, *State v. St. Paul Fire and Marine Ins. Co.*, 434 N.W.2d 6, 9 (Minn. App. 1989). Respondent

argues that the punitive-damages issue could have been fully litigated while the district court considered the appropriate equitable relief; however, the district court stated that, compared to the punitive-damages issue, there would be minimal, if any, delay and discovery necessary to resolve the equitable relief issue. The district court did not abuse its discretion by finding that respondent's motion was untimely and would unreasonably delay the case and prejudice appellant.

Affirmed.