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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0821**

Peter J. Andersen, Sr., as Trustee for
the Peter J. Andersen, Sr. Family Trust,
Appellant,

vs.

Pamela J. Karahalios, et al.,
Respondents,

Shelly Billiet, et al.,
Respondents.

**Filed March 12, 2018
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-15-16117

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appellant Peter J. Andersen, Sr. as Trustee for the Peter J. Andersen, Sr. Family Trust)

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Stanford P. Hill, Bassford Remele, P.A., Minneapolis, Minnesota (for respondents Shelly
Billiet and Edina Realty, Inc.)

Considered and decided by Kirk, Presiding Judge; Halbrooks, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of her (1) motion to amend the complaint to add a punitive-damages claim, arguing that the district court applied an incorrect legal standard and improperly determined that she did not meet her evidentiary burden and (2) motion for attorney fees, arguing that her real-estate transaction involved a public benefit under Minn. Stat. § 8.31, subd. 3a (2016). We affirm.

FACTS

This matter arises out of a real-estate transaction between appellant Peter J. Andersen, Sr., acting as trustee for the Peter J. Andersen, Sr. Family Trust, and respondent Pamela J. Karahalios.¹ Karahalios owned a house in the city of Hopkins that she wanted to rent, so she sought a rental license from the city. The city issued a rental-inspection report notifying Karahalios that she could not rent the house until she had completed certain plumbing, mechanical, and electrical work, some of which the city discovered had already been done but without permits. Because Karahalios did not want to pay for the required repairs, she decided to sell the house.

Karahalios hired respondent Shelly Billiet from respondent Edina Realty to serve as her real-estate agent. Karahalios was required by Minn. Stat. §§ 513.52-.60 (2016) to complete a seller's property disclosure statement detailing the property's history and

¹ Rachel Andersen, Peter J. Andersen, Sr.'s granddaughter, acted on behalf of Peter J. Andersen, Sr. in the real-estate transaction. This opinion refers to "Andersen" to reflect Peter J. Andersen, Sr. and Rachel Andersen's actions taken on behalf of the Peter J. Andersen, Sr. Family Trust.

condition. Karahalios was also required to obtain a truth-in-sale report from the city before she could sell the house. This report required a city housing inspector to determine whether the home was in compliance with the city code and whether any repairs were necessary. A city housing inspector inspected the house and determined that no repairs were required and that the house met the code. After the city issued Karahalios a certificate of approval that stated that the property “has met the requirements as specified in section 406 of the Hopkins City Code,” Karahalios listed the house for sale as a single-family residence.

A Hopkins housing inspector familiar with Karahalios’s house from the previous rental-inspection report discovered that the house was for sale and was surprised to see that no repairs were required. The inspector reviewed the property’s file and determined that Karahalios had never completed the repair orders that were listed in the rental-inspection report.

Upon learning that the city had incorrectly issued a certificate of approval, the inspector called Billiet to advise her of the rental-inspection report and to inform her that a significant amount of work had been completed without permits. The inspector asked Billiet if she wanted a copy of the rental-inspection report. Billiet explained to the inspector that she did not want a copy because it is public record, and, therefore, potential buyers could obtain their own report from the city. Billiet also told the inspector that Karahalios was aware of the rental-inspection report and was selling the property because she did not want to pay for the work that was required to get the house approved as a rental property. Although Billiet did not want a copy of the rental-inspection report, she asked for an

updated truth-in-sale report. Approximately two weeks later, the city instead mailed Billiet another copy of the certificate of approval.

Sometime later, Karahalios received a cash offer from Andersen. Andersen hired a housing inspector who discovered an issue with the furnace vent pipe during his inspection. Andersen asked Karahalios to have the “furnace vent pipe modified by a licensed contractor to the proper sloping of vent, and [to] install [a] filter.” Kinnette Downing, Andersen’s realtor, emailed Billiet to ask “if there was any paperwork from when the furnace vent pipe was installed years ago. Do you know if a permit was pulled for the work? They are just trying to establish that it was in fact compliant, for peace of mind, since it will be a rental.” Billiet asked the city for information on the furnace, and the city replied by informing Billiet that, “There were no permits in the file. . . . [M]uch of the work was done without permits—plbg, mechanical and electric. There is nothing on a furnace. Sorry—very little info to be had.”

Billiet informed Karahalios about the city’s response and told Karahalios that they could offer Andersen a warranty, fix the issue, or move on to the next offer. Karahalios advised Billiet that the city’s response was incorrect because she had made copies of the permits a few months ago. But Karahalios said that she was okay with Andersen opting to move on. Billiet emailed Downing and provided her with the furnace-inspection dates and the city’s email that stated that Karahalios had worked on the house without getting permits. Billiet forwarded Karahalios’s email to Downing but did not emphasize that the email chain included the city’s email about the lack of permits. Downing copied the dates of the furnace inspection and emailed them to Andersen, but she did not forward the city’s

email to Andersen because she did not notice that it was included in the email chain sent by Billiet.

The parties eventually closed on the property, and Andersen applied for a rental license with the city. She then learned, for the first time, that she would be required to perform mechanical, electrical, and plumbing work before the city would issue a rental license. In response, Andersen contacted Downing and requested bids from contractors to make the repairs.

Before Andersen contracted with anyone to perform the repairs, the basement flooded after a heavy rain. Although Andersen's brother was able to dry the carpets after the first storm, the basement flooded again. Andersen testified that the basement's "living area was wet, and the kitchenette area ha[d] . . . linoleum . . . that was squishing just walking on it. So there was just water throughout the basement." Andersen removed the carpet, linoleum, and tiling, demolished the finished basement, and hired someone to fix the plumbing, electrical, and mechanical issues so that the house would meet the city's housing code. Andersen eventually obtained a rental license and rented the house without a finished basement but received less rental income than she would have if the basement had been finished.

Andersen initiated a lawsuit, alleging that respondents failed to make required statutory disclosures, negligently misrepresented material facts, and intentionally omitted material facts about the home. Following a trial, the jury returned a special verdict, and the district court issued a written order. The jury apportioned fault on the negligent misrepresentation claim as follows: Peter J. Andersen Trust 15%; Karahalios 35%; Billiet

and Edina Realty 15%; and Downing 35%, and awarded \$25,000 in damages to Andersen. The district court determined that Karahalios, Billiet, and Edina Realty were jointly and severally liable to Andersen for damages.

Andersen moved the district court for judgment as a matter of law [JMOL] or a new trial, arguing that the district court erred by denying her motion to amend the complaint to add punitive damages and by denying her motion for attorney fees under Minn. Stat. § 8.31, subd. 3a. The district court denied Andersen’s posttrial motion. This appeal follows.

D E C I S I O N

I.

Andersen sought three times to amend her complaint to add punitive damages—pretrial, mid-trial, and posttrial—all of which the district court denied. Andersen argues that the district court abused its discretion by denying her motion because it applied an incorrect legal standard and improperly determined that she did not meet the required evidentiary burden to add a punitive-damages claim.

Under Minn. Stat. § 549.191 (2016), a party to a civil action may move to amend a complaint to add a claim for punitive damages. Punitive damages are an extraordinary remedy “to be allowed with caution and within narrow limits.” *Lewis v. Equitable Life Assurance Soc’y of the U.S.*, 389 N.W.2d 876, 892 (Minn. 1986). In support of a punitive-damages motion, the moving party must offer prima facie evidence that clearly and convincingly shows the defendant’s deliberate disregard for the rights or safety of others. Minn. Stat. §§ 549.191, .20, subd. 1(a) (2016); *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007). “Deliberate disregard” means the defendant “has knowledge of facts

or intentionally disregards facts that create a high probability of injury to the rights or safety of others” and “deliberately proceeds to act” either “in conscious or intentional disregard of the high degree of probability of injury” or “with indifference to the high probability of injury.” Minn. Stat. § 549.20, subd. 1(b) (2016).

If the district court finds prima facie evidence in support of the motion to amend, it “shall” grant the amendment. Minn. Stat. § 549.191. “Prima facie evidence is that evidence which, if unrebutted, would support a judgment in that party’s favor.” *McKenzie v. N. States Power Co.*, 440 N.W.2d 183, 184 (Minn. App. 1989). “[P]rima facie’ does not refer to a quantum of evidence, but to a procedure for screening out unmeritorious claims for punitive damages.” *Swanlund v. Shimano Indus. Corp.*, 459 N.W.2d 151, 154 (Minn. App. 1990). But “[a] district court may not allow an amendment for punitive damages when the motion to amend and supporting affidavits do not reasonably allow a conclusion that clear and convincing evidence will establish that the defendant acted with willful indifference.” *J.W. ex rel. B.R.W. v. 287 Intermediate Dist.*, 761 N.W.2d 896, 904 (Minn. App. 2009). We review a district court’s denial of a motion to add a claim for punitive damages for abuse of discretion. *See id.* A “district court abuses its discretion if it bases its ruling on an improper application of the law to the facts.” *TC/Am. Monorail, Inc. v. Custom Conveyor Corp.*, 840 N.W.2d 414, 417 (Minn. 2013).

Andersen contends that the district court abused its discretion because the district court applied an incorrect legal standard. The district court addressed the motion to amend three times. In its pretrial order, the district court summarily stated that “[b]ased upon the file, record and proceedings,” Andersen’s “Motion to Amend the Complaint to Add

Punitive Damages is denied.” In denying Andersen’s mid-trial motion to amend the complaint, the district court stated that it would allow Andersen to renew it after the jury returned its verdict, reasoning:

In no instance would I have ever allowed the punitive damage to be submitted simultaneous with this. . . . But I want to make it clear, at least in terms of the record, that my reason for denying it now really is, I don’t need to. It’s pretty clear to me that there’s no reason I would ever do that if they came back with a defense verdict.

In its order denying Andersen’s posttrial motion to amend the complaint,² the district court stated:

[T]he evidence in this case simply does not warrant punitive damages. . . . The longstanding purpose of punitive damages is to punish willful and malicious conduct that is intended to harass and oppress another. . . . So, while at least in theory punitive damages could apply in a real estate sale, the facts in this case do not warrant them.

Andersen argues that the district court’s posttrial order demonstrates that it failed to apply the deliberate-disregard standard because its ruling is phrased in terms of whether the purpose of punitive damages—to “punish willful and malicious conduct that is intended to harass and oppress another”—was satisfied by the evidence. The district court addressed

² Following the verdict, Andersen moved the district court for JMOL, or in the alternative, a new trial. When a district court considers a motion for JMOL, “it must determine whether, viewing the evidence in the light most favorable to the nonmoving party, the verdict is manifestly against the entire evidence or whether despite the jury’s findings of fact the moving party is entitled judgment (sic) as a matter of law.” *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 239-40 (Minn. 2010) (quotation omitted). Here, the jury did not consider punitive damages because the district court denied Andersen’s motion to amend the complaint. And Andersen has not contested the jury’s allocation of fault. Therefore, we analyze Andersen’s motion for JMOL or new trial as a renewed motion to amend the complaint to add punitive damages.

early Minnesota caselaw that articulated the willful and malicious standard. *See Lynd v. Picket*, 7 Minn. 184, 201 (1862). But the legislature, in response to what it perceived to be an increasing frequency and amount of punitive-damages awards, subsequently enacted Minn. Stat. § 549.20, subd. 1 (1978), which made punitive damages “available ‘only upon clear and convincing evidence that the acts of the defendant show a willful indifference to the rights or safety of others.’” *Jensen v. Walsh*, 623 N.W.2d 247, 250 (Minn. 2001) (quoting Minn. Stat. § 549.20, subd. 1 (1978)). Some years later in 1990, the legislature replaced the phrase “willful indifference” with “deliberate disregard.” *See* Minn. Stat. § 540.20, subd. 1 (1990); *Jensen*, 623 N.W.2d at 250.

But even as the statute has changed, the supreme court, in addressing the appropriateness of a punitive-damages claim, has continually considered that “[t]he purposes of punitive damages are to punish the perpetrator, to deter repeat behavior and to deter others from engaging in similar behavior.” *Jensen*, 623 N.W.2d at 251; *see also Rosenbloom v. Flygare*, 501 N.W.2d 597, 601 (Minn. 1993) (“The purpose of punitive damages is to both punish and deter according to the gravity of the act giving rise to a punitive damage award, but an award should not exceed the level necessary to properly punish and deter.” (quotation omitted)).

Here, both parties structured their arguments in their pretrial and posttrial memoranda based on the deliberate-disregard standard. And while the district court did not articulate the legal standard that it used, the district court did address the purpose of punitive damages, stating, “The philosophy is simple: people who commit acts with a fraudulent or evil motive should be punished and . . . the offender and others should be

deterred from such behavior in the future.” The district court also stated that “[t]he facts presented at trial and the jury’s decision are a stain on the reputation of Edina Realty, Shelly Billiet and Pamela Karahalios. . . . But the evidence in this case simply does not warrant punitive damages.” While we urge district courts to support their decisions based on terminology derived from the statutes, considering this record in its entirety, we conclude that the district court did not abuse its discretion by denying Andersen’s motion to amend the complaint to add punitive damages.

II.

Andersen argues that the district court abused its discretion by denying her motion for attorney fees under the “Private Remedies” section of the Minnesota Attorney General Statute. Minn. Stat. § 8.31, subd. 3a. She contends that she should have been awarded attorney fees because she was injured as a result of a violation of the Minnesota Prevention of Consumer Fraud Act. Minn. Stat. §§ 325F.68-.70 (2016).

The attorney general has broad statutory authority to enforce laws regarding unlawful business practices, including the consumer-fraud act. Minn. Stat. § 8.31, subds. 1, 3a (2016). Additionally, the private attorney general statute provides that “any person injured by a violation of [the Prevention of Consumer Fraud Act] may bring a civil action and recover damages, together with costs and disbursements, including . . . reasonable attorney’s fees.” *Id.*, subd. 3a. The supreme court has held that “the Private AG Statute applies only to those claimants who demonstrate that their cause of action benefits the public.” *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). The supreme court has clarified that the scope of a private citizen’s claim under the private attorney

general statute is limited by “the role and duties of the attorney general with respect to enforcing the fraudulent business practices laws.” *Id.* at 313. Whether Andersen’s lawsuit benefited the public involves the interpretation and application of existing caselaw, which we review de novo. *Collins v. Minn. Sch. of Bus., Inc.*, 655 N.W.2d 320, 329 (Minn. 2003).

Andersen contends that a public benefit exists here because (1) respondents published the seller’s disclosure statements through the online MLS listing, (2) numerous prospective buyers could have learned of the seller’s disclosure statements, and (3) respondents provided the disclosure statement to a second prospective buyer. Andersen relies on a series of cases that addressed whether claims involving false or misleading advertisements that affect the public at large constitute a public benefit. *See, e.g., Johnson v. Bobcat Co.*, 175 F. Supp. 3d 1130, 1142 (D. Minn. 2016) (stating that public benefit existed when promotional materials that may have reached “consumers throughout the United States” may have influenced thousands of consumers to purchase product); *Khoday v. Symantec Corp.*, 858 F. Supp. 2d 1004, 1017 (D. Minn. 2012) (determining that public benefit existed when one of the largest dedicated security technology companies automatically placed software download purchase in every customer’s cart because it was made to “the public at large”); *Collins*, 636 N.W.2d at 820-21 (discussing that a public benefit existed when a college advertised false statements regarding its program that led to 21 students enrolling). But these cases are factually distinguishable because they involved a large segment of the public and goods that could have been sold to more than one consumer, such as education degrees, software insurance policies, and snow-loading

machines. This transaction involved the sale of a house between one purchaser and one seller.

The supreme court has stated that a public benefit does not exist when “[a]ppellant was defrauded in a single one-on-one transaction in which the fraudulent misrepresentation . . . was made only to [the injured party].” *Nystrom*, 615 N.W.2d at 314. Here, the district court determined that this one-on-one real-estate transaction that involved a failure-to-disclose claim is no different than any other single real-estate transaction. We agree. Although it is possible that other potential buyers reviewed the online listing, Andersen was the only party who was ultimately affected by this transaction. Because this cause of action did not benefit the public, the district court did not err by denying Andersen’s claim for attorney fees under Minn. Stat. § 8.31, subd. 3a.

Affirmed.