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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0199**

Toyota-Lift of Minnesota, Inc.,
Appellant,

vs.

American Warehouse Systems, LLC, et al.,
Defendants and Third Party Plaintiffs,

Mark C. Juelich, et al.,
defendants and third party plaintiffs,
Respondents,

vs.

Les Nielsen,
Third Party Defendant.

**Filed September 4, 2018
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-12-9725

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(for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this appeal after remand for an award of penalties under Minn. Stat. § 181.14 (2016), appellant challenges the award of attorney fees, costs, and disbursements to respondents, arguing that the district court (1) exceeded the scope of the remand and (2) abused its discretion in calculating attorney fees. We affirm.

FACTS

In April 2012, appellant Toyota-Lift of Minnesota, Inc. (TLM) commenced this action against its former employees, respondents Mark Juelich and Steven Thoemke, and their company, American Warehouse Systems, LLC (AWS), which they formed to purchase the assets of TLM's allied-products division.¹ TLM alleged, in relevant part, breach of the asset-purchase agreement (APA) and unjust enrichment. Juelich and Thoemke asserted counterclaims, including that TLM breached their employment contracts and violated Minn. Stat. § 181.14, which requires prompt payment of wages and commissions after employment separation, by failing to pay their full commissions for fiscal year 2009. They sought recovery of the unpaid commissions and, under Minn. Stat. § 181.14, subd. 2, penalties for failure to pay the commissions when demanded.

After a week-long trial, the district court found that AWS breached the APA and unjustly retained customer payments owed to TLM, and awarded TLM judgment against

¹ Also parties to the litigation but not participating in this appeal are Les Nielsen, founder and president of TLM, and EMESCO, LLC, an entity composed of Juelich and Thoemke, which has an interest in Juelich's and Thoemke's rights to the 2009 commission payments.

AWS for approximately \$815,000. The district court also found that TLM failed to pay the full commissions that Juelich and Thoemke earned in 2009 and awarded them a total of approximately \$104,000 in unpaid commissions. But it determined they were not entitled to penalties under Minn. Stat. § 181.14, subd. 2, because TLM's judgment against AWS more than offset the unpaid commissions it owed to Juelich and Thoemke. The district court therefore ordered TLM to pay Juelich and Thoemke the unpaid commissions as damages for breaching their employment contracts but dismissed their section 181.14 claims. TLM was awarded costs and disbursements as the prevailing party.

AWS, Juelich, and Thoemke appealed, and TLM filed a cross-appeal. We affirmed in all respects except as to the district court's application of Minn. Stat. § 181.14. *Toyota-Lift of Minn., Inc. v. Am. Warehouse Sys., LLC*, 868 N.W.2d 689, 693 (Minn. App. 2015), *aff'd*, 886 N.W.2d 208 (Minn. 2016). We held that Minn. Stat. § 181.14 requires a district court to determine whether an employer owes a penalty for failure to promptly pay commissions by comparing the amount, if any, that the employer tendered in good faith and the amount of wages and commissions that the employee was actually due. *Id.* at 702. Because Juelich and Thoemke were owed a greater sum than the amount of commissions that TLM paid to them, TLM owed a penalty on the unpaid commissions. *Id.* We reversed in part and remanded "for the district court to determine the proper amount of penalties that TLM owes under Minn. Stat. § 181.14, subd. 2." *Id.* The supreme court accepted TLM's petition for review of the Minn. Stat. § 181.14 issue and affirmed. 886 N.W.2d at 209.

On remand, Juelich and Thoemke moved the district court to (1) order TLM to pay them penalties under Minn. Stat. § 181.14, subd. 2; (2) award them costs, disbursements, witness fees, and attorney fees under Minn. Stat. § 181.171 (2016); and (3) award them costs under Minn. Stat. § 181.14, subd. 3. The court granted the motions, awarding Juelich and Thoemke \$12,207.75 and \$8,930.10, respectively, in wage penalties, along with their costs, disbursements, witness fees, and attorney fees. Juelich and Thoemke subsequently moved for \$217,209.11 in attorney fees and \$20,287.12 in costs, which the district court granted in full. TLM appeals.

DECISION

I. The district court did not exceed the scope of remand by awarding attorney fees, costs, and disbursements as required by Minn. Stat. § 181.171.

On remand, a district court must “execute [a reviewing court’s] mandate strictly according to its terms” and lacks power to “alter, amend, or modify [that] mandate.” *Rooney v. Rooney*, 669 N.W.2d 362, 371 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). But district courts have “broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided.” *State ex rel. Swan Lake Area Wildlife Ass’n v. Nicollet Cty. Bd. of Cty. Comm’rs*, 799 N.W.2d 619, 631 (Minn. App. 2011) (quoting *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005)).

Our remand instructed the district court to “determine the proper amount of penalties that TLM owes under Minn. Stat. § 181.14, subd. 2.” *Toyota-Lift of Minn.*, 868 N.W.2d at 693. It is undisputed that the district court followed this instruction, and TLM

does not challenge the penalty award. But TLM argues that the narrowly phrased instruction precluded the district court from also awarding attorney fees, costs, and disbursements. We disagree.

The district court awarded the additional sums under Minn. Stat. § 181.171. That statute authorizes private actions for violations of Minn. Stat. § 181.14 and mandates an award of attorney fees, costs, and disbursements to an employee who prevails in such an action. Minn. Stat. § 181.171, subds. 1, 3; see *Kvidera v. Rotation Eng'g & Mfg. Co.*, 705 N.W.2d 416, 424 (Minn. App. 2005) (stating that “the district court will order the employer to pay the attorney fees and court costs of the employee” if a claim authorized by Minn. Stat. § 181.171 “is successful”). Juelich and Thoemke did not initially prevail on their section 181.14 claims. Our decision reversing the dismissal of those claims, and the supreme court’s decision affirming that result, made them prevailing parties. The district court then applied mandatory Minnesota law to award attorney fees, costs, and disbursements to the newly prevailing parties on remand. Such an award, while not expressly stated in our remand instruction, is not inconsistent with or an improper alteration of the instruction.

TLM nonetheless insists that Juelich and Thoemke failed to preserve a claim for attorney fees because they did not raise the issue in the prior appeal. But before that appeal, Juelich and Thoemke lacked a basis for seeking attorney fees. The common-law contract claim on which they prevailed did not entitle them to recover attorney fees, and the district court dismissed their section 181.14 claims, precluding an award of attorney fees under

Minn. Stat. § 181.171. *See Kvidera*, 705 N.W.2d at 424. In short, Juelich and Thoemke applied for attorney fees at the first appropriate opportunity—on remand.

Finally, TLM asserts that the district court erred by “reversing its prior award of costs and disbursements to TLM.” This argument mischaracterizes the record. After trial, the district court awarded TLM costs and disbursements as the prevailing party under Minn. Stat. §§ 549.02, .04 (2016). Juelich and Thoemke neither challenged the award nor applied for costs and disbursements under Minn. Stat. § 181.14 or Minn. Stat. § 181.171 because, as explained above, there was no basis for them to do so at that time.² As a result of the appellate decisions, Juelich and Thoemke established that TLM violated Minn. Stat. § 181.14, and applied for costs and disbursements on that basis. They did not challenge the award of TLM’s costs and disbursements, and the district court did not disturb that award in concluding that Juelich and Thoemke’s success in their section 181.14 claims separately entitled them to recover costs and disbursements.

In sum, the district court’s award of attorney fees, costs, and disbursements to Juelich and Thoemke is consistent with our prior disposition and remand instruction, and within the court’s discretion.

II. The district court did not abuse its discretion in awarding Juelich and Thoemke attorney fees of \$217,209.11.

We review an award of attorney fees for an abuse of discretion. *Kvidera*, 705 N.W.2d at 424. “An abuse of discretion occurs when a district court errs as a matter of law

² As TLM notes, Juelich and Thoemke did seek costs and disbursements with respect to their successful contract claims and were denied because they were not the prevailing parties in the action. *See* Minn. Stat. §§ 549.02, .04.

in applying improper standards in an award of fees.” *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 534-45 (Minn. 2013) (quotation omitted). We defer to the district court’s credibility determinations, Minn. R. Civ. P. 52.01, and review factual findings regarding the reasonableness of attorney fees for clear error, *650 N. Main Ass’n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 497 (Minn. App. 2016), *review denied* (Minn. Nov. 23, 2016).

Minnesota courts generally use the lodestar method to determine the reasonableness of statutory attorney fees. *Green*, 826 N.W.2d at 535. That method requires a district court to “determine the number of hours reasonably expended on the litigation and then multiply those hours by a reasonable hourly rate.” *Id.* at 536. But the court must also consider other relevant circumstances, which may require adjustment of the fee upward or downward: “the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.” *Id.* (quotation omitted) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 1940 (1983)).

In awarding Jeulich and Thoemke’s attorney-fee request in full, the district court duly considered all of these factors, including the number of hours expended on the section 181.14 claims, and the average hourly rate of the multiple attorneys involved. The district court emphasized that the litigation lasted “almost six years through all levels of Minnesota’s judicial system,” involved novel legal issues, and yielded Jeulich and Thoemke a favorable result. TLM challenges both the inclusion of fees associated with

AWS's related bankruptcy proceeding and the district court's application of the lodestar method. We address each issue in turn.

TLM argues that the award includes fees that counsel previously swore in AWS's bankruptcy proceeding were incurred "for actual and necessary legal work performed for AWS." We are not persuaded. AWS filed for bankruptcy in September 2014. Counsel for AWS, Juelich, and Thoemke filed a proof of claim in the bankruptcy case stating that AWS owed attorney fees for "actual, necessary services rendered by [counsel]" in this litigation, including the prior appeal. The record reflects, and it is undisputed, that some of these fees were related to work performed on Juelich's and Thoemke's section 181.14 claims because AWS agreed to pay all attorney fees for AWS, Juelich, and Thoemke. Accordingly, the district court did not clearly err by finding that "there is nothing in the record that would reflect that [Juelich and Thoemke's] counsel swore that its work was exclusively for AWS's benefit or had nothing to do with Juelich and Thoemke's wage claims." The record also defeats TLM's contention that the fee award constitutes a double recovery. Counsel explained to the district court that it had "agreed with [the bankruptcy trustee] that to the extent the Defendants recover their attorneys' fees and costs in this action, [counsel] will reduce its unsecured or administrative claims, as appropriate, in the bankruptcy case to ensure there is no risk of double recovery." On this record, the district court did not abuse its discretion by including in the attorney-fee award fees claimed in AWS's bankruptcy.

As to the lodestar analysis, TLM contends that the district court should have reduced the award because (1) counsel failed to demonstrate that the claimed fees were solely

attributable to Juelich's and Thoemke's successful section 181.14 claims; (2) the claimed fees are disproportionate with the underlying award; and (3) the claimed fees are excessive. These arguments are unavailing for several reasons.

First, the district court accounted for the complexity of this litigation and appropriately limited the award to those attorney fees incurred in pursuing Juelich's and Thoemke's section 181.14 claims. As counsel explained in the declaration supporting the fee application, each of the eight attorneys who worked on the section 181.14 claims over the course of the litigation "isolated" the work performed in connection with those claims "from work performed for AWS." The declaration attached "true and correct" copies of "isolated time entries for [those] claims." Counsel also noted that the \$217,209.11 in fees incurred in furtherance of those claims accounts for less than half of the \$484,501.73 in fees incurred throughout the course of the litigation. The district court credited this explanation, finding that "simply because the legal issues were intertwined does not mean that [Juelich and Thoemke's] counsel could not have isolated the work they performed for their clients, as they have demonstrated through their submissions to the Court." TLM asks us to reject that credibility determination but does not substantiate its argument with any examples of time entries that do not reflect work attributable to the ultimately successful section 181.14 claims. The district court did not clearly err by finding that the fees for which counsel applied were only those incurred in furtherance of those claims.

Second, the district court expressly considered the "amount involved and the results obtained," and our supreme court's explanation that doing so does not require strict proportionality. *Green*, 826 N.W.2d at 536-38; *see also Braatz v. Parsons Elec. Co.*, 850

N.W.2d 706, 712 (Minn. 2014) (recognizing that rejecting an attorney-fee award “simply because it exceeds the amount . . . the attorney obtained for his client,” could hamper the ability of those protected by fee-shifting statutes to find counsel). The court acknowledged that the requested fees exceed Juelich and Thoemke’s recovery on their section 181.14 claims,³ but found the amount reasonable because TLM’s “steadfast opposition throughout the course of this case” prolonged the litigation and led Juelich and Thoemke to “incur[] significant attorneys’ fees, in excess of the underlying award for commissions.” And the district court noted the novel issues involved—as demonstrated by our published decision and the supreme court’s grant of review—and that public policy favors timely payment of wages to employees and penalizing recalcitrant employers. *See Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012) (stating that the Minnesota Payment of Wages Act, Minn. Stat. §§ 181.01-171 (2016), is intended to “penalize employers that fail to promptly pay their employees’ wages”). We discern no abuse of discretion in the district court’s determination that these circumstances justify an award of attorney fees greater than the underlying recovery.

Third, TLM fails to support its argument that the claimed fees are excessive. TLM points to the involvement of eight attorneys, contending that, because it relied on the work of only two attorneys, Juelich and Thoemke’s attorney-fee request should be reduced by “at least six of the attorneys’ charges.” But TLM does not identify even one allegedly

³ Juelich and Thoemke recovered approximately \$104,000 in unpaid commissions, which, with interest, resulted in judgments against TLM of approximately \$122,000. The related penalties are approximately \$21,000 for a total recovery of approximately \$143,000.

excessive charge due to the involvement of multiple attorneys. Moreover, the record reflects that the bulk of the time charged (more than 500 hours) was attributable to two attorneys—the primary trial attorney and the primary appellate attorney. The district court did not abuse its discretion by declining to reduce the award absent any indication that the other attorneys’ contributions were unnecessary or excessive.

Affirmed.