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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1132**

Lawrence Paul St. Marie,
Appellant,

vs.

Leslie Boedigheimer,
dba Tony B's Car Care Center LLC,
Respondent,

Ryan Bridge,
dba Bridges Custom,
Respondent.

**Filed April 29, 2019
Affirmed
Worke, Judge**

Carlton County District Court
File No. 09-CV-16-1115

John H. Bray, Dryer & Overom, Ltd., Duluth, Minnesota (for appellant)

Leslie Boedigheimer, Cloquet, Minnesota (pro se respondent)

Ryan Bridge, Cloquet, Minnesota (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Kirk,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred in denying his request for attorney fees under Minnesota's Truth in Repairs Act (the Act), Minn. Stat. §§ 325F.56-.65 (2018), and in finding that his damage estimates were speculative and conjectural. We affirm.

FACTS

Beginning in 2015, appellant Lawrence Paul St. Marie entered into several informal transactions with respondents Leslie Boedigheimer and Ryan Bridge. Boedigheimer operates Tony B's Car Care Center, and Bridge operates Bridges Custom. Boedigheimer and Bridge performed repair work on St. Marie's automobiles. Boedigheimer and Bridge would provide St. Marie with an oral estimate of the cost of their services prior to performing the work, but St. Marie never requested or received a written estimate.

In June 2016, St. Marie sued Boedigheimer and Bridge seeking the return of numerous items of his personal property, including vehicles, tools, and related items. Boedigheimer counterclaimed for unpaid storage fees. Bridge counterclaimed for unpaid invoices for repairs to three of St. Marie's vehicles. In his answer to Boedigheimer's and Bridge's counterclaims, St. Marie asserted a claim for attorney fees under the Act.

At the court trial held on October 20, 2017, St. Marie testified that Boedigheimer was responsible for \$5,410.28 in damages for unsatisfactory paint and repair work, including \$904.15 in damage to a Camaro, \$4,322.13 in damages to a Nova, and \$92 per vehicle for unreturned paint. Because St. Marie's claims against Boedigheimer relied on

preliminary estimates for unperformed repairs, the district court found that the claimed damages were speculative and conjectural, and denied the claims.

St. Marie claimed that Bridge was responsible for \$1,556.72 in damages for automotive parts that were either unreturned or poorly installed. The district court denied St. Marie's claims for unreturned items because he submitted no supporting evidence regarding their value. The district court also found that the evidence supporting St. Marie's claims that Bridge failed to properly install two carburetors and fabricate an instrument bezel consisted only of Ebay listings, without any further evidence that he purchased the items or had them installed. The district court therefore denied these claims as speculative and conjectural as well.

The district court found Boedigheimer failed to prove the existence of an agreement regarding storage fees, and denied his counterclaim. The district court awarded the full amount Bridge sought on his counterclaim, finding that the invoices owed by St. Marie remained unpaid. The district court denied St. Marie's claims for attorney fees. The district court held that because the dispute with Boedigheimer only involved fees for storage, the Act did not apply. The district court held that because Bridge prevailed on his counterclaim, St. Marie could not recover attorney fees against him.

On June 5, 2018, the district court amended its finding regarding St. Marie's claims against Bridge, finding that St. Marie substantiated his claim for a Holley four-barrel carburetor in the amount of \$260, and for gauges in the amount of \$210.96. The district court accordingly amended its order for judgment, awarding St. Marie \$470.96 in damages

against Bridge, reducing Bridge's judgment against St. Marie to \$7,075.30. This appeal followed.

DECISION

Attorney fees

St. Marie argues that the district court erred in denying his claim for attorney fees against Boedigheimer when it determined that the Act did not apply to a dispute over storage fees. "The interpretation of a statute is a question of law that we review de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). "If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

St. Marie alleged that Boedigheimer violated the Act when he refused to return St. Marie's vehicle because of an unpaid storage fee. The Act authorizes an award of attorney fees for a violation of section 325F.61. Minn. Stat. § 325F.63, subd. 1. That section mandates the return of a customer's repaired vehicle when the customer has paid their bill, except for the portion that represents "repairs, service calls, or estimates which were performed but not authorized." Minn. Stat. § 325F.61(a).

In denying St. Marie's claim for attorney fees against Boedigheimer, the district court relied on section 325F.56, subdivision 2, which defines the meaning of the word "[r]epairs" for the purpose of the Act. A storage fee is not included in the Act's definition of "repair." See Minn. Stat. § 325F.56, subd. 2 (defining "[r]epairs" to mean work performed, including price of parts and materials, to restore a malfunction or worn vehicle). St. Marie does not assert that the storage fee constituted a service call or estimate.

Therefore, an unauthorized storage fee is not a violation of section 325F.61, and thus does not provide a basis for an award of attorney fees on that statutory basis.

St. Marie relies instead on section 325F.60, subdivision 1, which requires a shop to provide a customer with a written invoice upon completion of repairs. The invoice must include “a statement of any charge for storage.” Minn. Stat. § 325F.60, subd. 1(f). An invoice¹ for storage was filed with the district court, of which the district court took judicial notice. Therefore, there is no evidence in the record of any violation, and the district court did not err in denying St. Marie’s request for attorney fees under the Act.

Damages

St. Marie argues that the district court erred in finding that his claims for damages against Boedigheimer and Bridge were speculative and conjectural, and therefore unrecoverable. “[W]e review the district court’s factual findings for clear error.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). “[W]hen determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.” *Id.* (citation and quotations omitted). “We review a district court’s application of the law de novo.” *Harlow v. State, Dep’t of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

¹ Although an invoice was provided after repairs, and in compliance with the statute, the record shows no pre-repair agreement as to storage fees, resulting in the district court’s determination that Boedigheimer could not prevail on his counterclaim.

“[D]amages which are speculative, remote, or conjectural are not recoverable. The law does not require mathematical precision . . . but only proof to a reasonable, although not necessarily absolute, certainty” *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977) (quotations and citation omitted).

St. Marie testified that the damages to the Nova were to repair “[t]he glass, the paint that’s been splashed on the fenders on the hood, and to . . . put a cover on [the foam installed under the hood] so it wouldn’t be coming out like that any more.” These repair costs were substantiated by an invoice. St. Marie testified that the damages to the Camaro were to fix “[t]he body work to be . . . redone where the quarter panel on the Camaro to be made whole again or fixed right, and then the mirrors to be repainted, taken . . . his green flames off.” These repair costs were also substantiated by an invoice.

St. Marie sought the return of certain vehicles and other personal property held by Boedigheimer and Bridge. As such, he alleged an action for replevin. *See Widgren v. Massie*, 352 N.W.2d 420, 425 (Minn. App. 1984) (“Since respondent seeks recovery of the truck, her action is a replevin, not conversion action.”). In an action for replevin, damages “may be for the possession or the value thereof in case possession cannot be obtained, and damages for the detention, or the taking and withholding.” Minn. Stat. § 548.04 (2018).

St. Marie did not testify to or claim damages he suffered as a result of Boedigheimer’s improper detention of the vehicles. Rather, he testified to repairs that were poorly performed and needed to be redone, the value of which he substantiated with estimates from a repair shop. These damages all sound in breach of contract, a claim neither pleaded by St. Marie nor addressed in the district court’s findings. A party who

fails to amend pleadings is bound by the pleadings unless the issue outside the pleadings is litigated by consent. *Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 317 (Minn. App. 2011). The record does not show that either Boedigheimer or Bridge consented to litigate claims for breach of contract. Therefore, there is no basis upon which to award St. Marie damages for unpleaded claims, regardless of whether the claimed damages were speculative.

In contrast to the unpleaded damage claims for repair/repainting of the Camaro and the Nova, the \$184 in damages asserted by St. Marie for unreturned paint do sound in replevin, even though unused paint was not listed in the amended complaint. St. Marie testified that the value of the unreturned paint was \$92 each for the two vehicles, but did not provide any evidence that he purchased the paint, or of its value. The district court did not find St. Marie's testimony as to value credible. "Assessment of witnesses' credibility is the unique function of the trier of fact." *Even v. Kraft, Inc.*, 445 N.W.2d 831, 835 (Minn. 1989). The district court did not err in denying St. Marie's claim for damages against Boedigheimer.

The district court denied St. Marie's claimed damages against Bridge that lacked evidentiary support. St. Marie testified that because Bridge never returned the keys for a Pontiac Chieftain, he had to buy a new lock assembly for \$250. He testified that he provided Bridge with a piece of fiberboard to construct a backseat for one of the vehicles with a value of \$25, which was never returned. Finally, St. Marie testified that he paid \$45 for oil and a filter, but did not state whether those items were installed or returned. St. Marie has not directed us to any evidence in the record supporting these claims.

Therefore, the district court's finding that they lacked evidentiary support was not clearly erroneous.

The district court denied St. Marie's claim for a carburetor rebuilding kit with an asserted value of \$52 because it found that Bridge installed the kit in a 1972 Nova. St. Marie testified:

the first time [Bridge] rebuilt the carburetor on the Nova . . . it ran so bad that he said, "You know what . . . Go buy another kit and I'll put it in there." So I went and bought another kit and brought that to him and he never installed it.

The district court found that Bridge's work on the Nova included rebuilding a carburetor with a rebuilding kit provided by St. Marie. This finding implicitly discredits St. Marie's testimony and is not clearly erroneous.

The final two items that St. Marie argues that the district court improperly found to be speculative and conjectural were \$299 for an instrument bezel and \$423.75 for a racing carburetor. St. Marie supplied Ebay listings showing the prices of both items, but did not provide evidence showing that he purchased either. St. Marie testified that "what I ended up having to do is . . . buy one of these bezels that was already . . . done . . . and that's the replacement cost because Mr. Bridge did not" fabricate a bezel as agreed. St. Marie further testified, "[t]hat was the price I paid for the carburetor for the yellow Camaro. They rebuilt that one as well, and it never ran. . . . so I bought another carburetor." Absent any evidence supporting St. Marie's claims that he actually purchased both items, the district court did

not find this testimony credible. The district court did not err in denying St. Marie's claimed damages against Bridge.

Affirmed.