

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0709**

Mark Lanterman,
Plaintiff,

Computer Forensic Services,
Respondent,

vs.

Michael Roman Afremov,
Appellant.

**Filed March 15, 2021
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-12-22089

Christopher W. Madel, Cassandra B. Merrick, Madel PA, Minneapolis, Minnesota (for respondent)

William R. Skolnick, Andrew H. Bardwell, Skolnick & Joyce, P.A., Minneapolis, Minnesota; and

Craig D. Singer (pro hac vice), Williams & Connolly LLP, Washington, D.C. (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by violating our remand instructions, admitting evidence of his wealth and prior federal criminal charges, and excluding the testimony of his expert witness. He also argues that the cumulative effect of these errors warrants a new trial. We affirm.

FACTS

This case returned to our court following remand in *Lantermann v. Afremov*, No. A15-0729, 2016 WL 1551602 (Minn. App. Apr. 18, 2016). Plaintiff Mark Lantermann and his company, respondent Computer Forensic Services (CFS), brought the underlying lawsuit seeking payment for two unpaid invoices for their work analyzing and preparing data for appellant Michael Roman Afremov's criminal lawsuit. *Lantermann*, 2016 WL 1551602, at *1. Additional facts of the lawsuit and initial jury trial are outlined in our previous opinion.

The facts relevant to this appeal are as follows. Our remand was the result of our reversal of the district court's judgment as a matter of law (JMOL) on Lantermann's breach-of-contract claim and our conclusion that the district court abused its discretion in instructing the jury on the measure of contract damages and improperly responding to the jury's question about the first billing invoice. *Id.* at *7-8. We expressly remanded to the district court "for proceedings consistent with this opinion." *Id.* at *1.

On remand, Afremov moved the district court to exclude, among other things, all evidence about the second invoice, Afremov's wealth, and Afremov's felony indictments. The district court denied Afremov's motions.

Following a trial, the jury found that the breach-of-contract damages amounted to \$807,587.33. Of that amount, \$628,737.33 related to the first invoice and \$178,850 to the second. The district court entered judgment adopting the jury's findings. CFS moved to amend the judgment to include interest. The district court granted CFS's motion in part, adding six percent interest per annum from the date of the invoices.

Afremov moved for a new trial based on several alleged errors, including the arguments he makes on appeal. The district court denied Afremov's motion. The district court concluded that an award of damages based on the second invoice was proper because our remand instructions did not limit damages to the first invoice. The district court stated, "The Court of Appeals did not say Plaintiffs were *only* entitled to a new trial on damages arising out of the first invoice, and Plaintiffs were *not* entitled to a new trial on damages arising out of the second invoice." The district court also concluded that it properly admitted evidence that Afremov received approximately \$300 million from a previous settlement because "federal prosecutors were seeking to forfeit this money" from Afremov and the evidence "was necessary to show the jury the scope of CFS's work under the contract." Finally, the district court determined that it "properly admitted evidence related to the indictments because its probative value to facts at the very core of this lawsuit outweighed its prejudicial effect." The indictments were "relevant to show the jury what work CFS was required to perform under the contract." This appeal followed.

DECISION

Remand instructions

Afremov first argues that the district court abused its discretion by allowing the jury to consider damages on CFS's second invoice because this court remanded for a trial on the damages from only the first invoice.

We review a district court's compliance with a remand instruction for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). A district court abuses its discretion when it acts "in a way that is inconsistent with the remand instructions provided." *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 633 (Minn. 2017) (quotation omitted). A district court also "exceeds its broad discretion on remand when it makes findings on a subject not included in the appellate court's remand instructions." *Id.*

When we previously reversed the district court's grant of JMOL on the breach-of-contract claim, we also determined that the district court abused its discretion by (1) instructing the jury that "costs," for purposes of measuring damages, included only lost revenue for employee hours and (2) in answering the jury's question about whether awarding CFS the full first price of the first invoice would violate the instruction. *Lanterman*, 2016 WL 1551602 at *7-8. We concluded that "the erroneous jury instruction, coupled with the district court's reply instructing the jury on how CFS could recover on its breach-of-contract claim, resulted in substantial prejudice warranting a new trial on damages arising from CFS's first billing invoice." *Id.* at *8.

Afremov argued to the district court that this court had by inference denied any recovery with respect to the second invoice. The district court correctly concluded that we did no such thing. It denied Afremov's posttrial motion, stating that "the Court of Appeals remanded on damages. It did not limit the scope of the remand to exclude the second invoice." The district court noted counsels' agreement that it was unclear how the first jury reached its damages award and whether the award included damages for the second invoice. It also noted that this court's opinion "did not say Plaintiffs were *only* entitled to a new trial on damages arising out of the first invoice." The district court concluded that our opinion did not need to address the second invoice because we "found substantial prejudice related to the first invoice," and "[t]he evidence the Court of Appeals found supported the jury's finding of a contract and substantial prejudice related to the first invoice also supported a jury finding of a contract covering the second invoice and substantial prejudice related to the second invoice."

The district court correctly noted that the issue before us in the first appeal was whether the district court abused its discretion by instructing the jury on damages and answering the jury's question about whether awarding CFS the full price of the first invoice would violate the instruction. *See id.* Moreover, our express remand instruction was "for proceedings consistent with this opinion." *Id.* at *1. Consideration of damages from the second invoice is not inconsistent with the analysis in our earlier opinion. Afremov has not shown that the district court abused its discretion by allowing the jury to consider damages on CFS's second invoice.

Admission of evidence

Afremov next challenges the district court's admission of evidence. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). We review a district court's denial of a motion to exclude evidence for an abuse of discretion. *City of Moorhead v. Red River Valley Coop Power Ass'n*, 811 N.W.2d 151, 161 (Minn. App. 2012), *aff'd*, 830 N.W.2d 32 (Minn. 2013). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* (quotation omitted).

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Relevant evidence is generally admissible, but it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 402, 403.

Wealth evidence

Afremov first argues that the district court abused its discretion in admitting evidence of his wealth.

Before trial, Afremov moved to exclude all references to his wealth. The district court denied this motion because his wealth was relevant to the scope of work authorized by the parties' contract. The district court concluded that the probative value was not substantially outweighed by the risk of unfair prejudice from the jury hearing about his

wealth. In denying Afremov's motion for a new trial, the district court stated that evidence of Afremov's wealth, "showed why [Lanterman] would not notify . . . Afremov of the additional \$500,000.00 regeneration cost. It showed why CFS would perform \$628,737.33 of work before billing . . . Afremov." The district court also concluded that Afremov was not prejudiced because there "was no indication the jury improperly awarded CFS damages because . . . Afremov received \$300 million from [his past] settlement. [And he] cannot show that the outcome might reasonably have been different."

Afremov argues that his wealth is irrelevant to calculating breach-of-contract damages and, "[a] customer's ability to pay cannot be understood as a proxy for his willingness to pay, or as a proper basis for a company to charge more to that customer." While certainly true in some contexts, the scope of the contract between the parties was not placed in writing. At least some evidence of Afremov's wealth was relevant and necessary in setting the scope of the unwritten contract and aid the jury in calculating damages. Further, evidence of the roughly \$300 million that Afremov received from his past settlement was particularly relevant because the federal indictments sought to garnish this money. The district court correctly concluded that this aspect of Afremov's wealth was relevant to determining the scope of the contract in question. Afremov did not meet his burden in showing that the district court abused its discretion by denying his motion to exclude evidence of his wealth.

Indictment evidence

Afremov similarly argues that the district court abused its discretion by admitting evidence of his prior criminal indictments.

The district court denied Afremov's motion to exclude references to his criminal indictments because the indictments were relevant to the scope of the parties' contract.

Again, Afremov hired Lanterman to assist in preparing evidence for his criminal trial. The charges that Afremov faced are relevant in determining the scope of the work that he hired Lanterman to complete. Afremov has not met his burden in showing that the district court abused its discretion by admitting this evidence.

Expert

Finally, Afremov argues that the district court abused its discretion by denying his motion to substitute an expert witness.

Expert testimony is admissible if the proponent of the testimony passes a four-part test: (1) the witness qualifies as an expert; (2) the expert's opinion has foundational reliability; (3) the expert's testimony is helpful to the trier of fact; and (4) if the testimony involves a novel scientific theory, that it passes the *Frye-Mack* standard. Minn. R. Evid. 702; *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). We review a district court's decision denying expert testimony for an abuse of discretion. *See Doe*, 817 N.W.2d at 164.

Afremov argued in district court that his new expert should be allowed to testify because his other expert could no longer testify for reasons beyond his control, and that he timely disclosed the new expert under rule 26. The district court denied Afremov's motion, stating that the expert he was trying to replace was excluded in the first trial, so a substitute was not relevant on remand. The district court also noted that "Afremov has not provided any indication of the opinions [the expert] will offer or the basis for those opinions," and

Afremov did not show that the expert was qualified to testify about contract damages. Finally, the district court concluded that Afremov was not prejudiced by the exclusion of the expert's testimony.

The district court denied Afremov's motion for several reasons, including because he did not attach a relevant affidavit to his motion to amend. There was an affidavit from the expert relating to the standard of care and spoliation of evidence that accompanied Afremov's motion to amend. But the district court found that this was not relevant to any testimony on damages, and Afremov is not challenging that determination on appeal. Instead, Afremov argues on appeal that an affidavit about his qualifications was already filed two years before trial. This affidavit is not part of the record on appeal. Regardless, Afremov is arguing that the district court abused its discretion because it did not reference an affidavit submitted several years before Afremov's motion in a case with thousands of documents in the record. Afremov has not met his burden in showing that the district court abused its discretion by denying his motion to substitute an expert witness.

Because Afremov has not shown any error by the district court, we need not analyze his argument about cumulative prejudice.

Affirmed.