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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2225**

Randy Meier,
Respondent,

vs.

Wall to Wall Media, LLC, et al.,
Appellants.

**Filed June 11, 2012
Reversed and remanded
Cleary, Judge**

Hennepin County District Court
File No. 27-CV-09-526

James H. Kaster, David E. Schlesinger, Nichols Kaster PLLP, Minneapolis, Minnesota
(for respondent)

David R. Crosby, Adine S. Momoh, Leonard, Street and Deinard, Minneapolis,
Minnesota (for appellants)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Toussaint, Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

In this dispute, the parties disagree over whether an employment contract existed.

The district court denied a motion for summary judgment brought by appellants Wall to

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

Wall Media, LLC, Kristin Geer, and Bradley Geer; issued a declaratory judgment that an employment contract did exist; and submitted the case to binding arbitration. Appellants challenge the district court's order. Because the district court inappropriately made factual findings and credibility determinations when denying summary judgment and issuing the declaratory judgment, we reverse and remand.

FACTS

Wall to Wall was a media production company that produced television programs, commercials, and corporate videos, and provided media training services. Kristin Geer was Wall to Wall's co-owner, president, and chief executive officer, and she was responsible for its day-to-day operations. Bradley Geer is Ms. Geer's husband and was co-owner of Wall to Wall.

In early 2007, Ms. Geer approached respondent Randy Meier, a television personality, about appearing in the pilot show of *Blueprint for Green*, a weekly television program that Wall to Wall was producing. Meier did appear in that pilot and was paid by Wall to Wall for the work he did in connection with the pilot.

During the summer of 2007, Ms. Geer and Meier began negotiating the terms of a potential contract for Meier to work at Wall to Wall. On August 9, 2007, Ms. Geer sent Meier a letter (August 9 letter) which offered Meier employment at Wall to Wall as host of *Blueprint for Green*, *Cook What You Catch* (another television program being produced by Wall to Wall), and any other shows Meier agreed to help develop and host for Wall to Wall. The August 9 letter outlined the basic terms of employment, including a job description, salary, bonus and incentives plan, and description of benefits. The

August 9 letter did not include a provision regarding length of employment, but merely stated, “We . . . hope you will consider this a long term relationship.”

On or around September 10, 2007, Ms. Geer delivered to Meier a proposed written employment contract (proposed contract) that would make him executive vice president of Wall to Wall and program host. The proposed contract included the basic terms of employment outlined in the August 9 letter. The proposed contract provided for a two-year term of employment and stated that Wall to Wall could only terminate Meier’s employment “for cause.” The proposed contract also required any claim or controversy arising out of the contract to be submitted to binding arbitration.

At some point after that, Meier returned the proposed contract to Ms. Geer in her office at Wall to Wall. Meier claims that he had signed the proposed contract while alone and that he slid it across Ms. Geer’s desk to her. Meier claims that Ms. Geer was very happy because she could tell Wall to Wall’s employees that Meier had signed the contract and that Wall to Wall was moving forward with him as the host of *Blueprint for Green*. Meier does not recall highlighting any portion of the proposed contract, and he never received a copy of the signed contract.

Appellants claim that Meier had not signed the proposed contract when he returned it to Ms. Geer. They claim that Meier had highlighted a provision in the proposed contract which would prohibit him from providing on-air talent services not directed, owned, or produced by Wall to Wall without Ms. Geer’s prior permission and would require all proceeds from any such work to be paid to Wall to Wall. Appellants maintain that Meier told Ms. Geer that he could not accept the proposed contract because

he had an issue with the highlighted provision. Ms. Geer admits that, as far as she knows, the rest of the proposed contract was acceptable to all parties. Appellants claim that Ms. Geer put the unsigned, highlighted copy of the proposed contract into Meier's personnel file and that a written employment contract was never signed.

Meier began to work at Wall to Wall in September 2007. Meier maintains that, in or around December 2007, he raised an issue about his healthcare benefits and that he, Ms. Geer, and Jessica Dahl, Wall to Wall's business manager, looked at the language of the contract in Meier's personnel file to assist in resolving that issue. Dahl testified during deposition that this event did occur, and that she never looked to see whether the document was signed.

Appellants maintain that, in or around January 2008, Meier and the Geers attended a dinner during which Mr. Geer commented to Meier that the parties should finalize Meier's employment agreement. Appellants claim that Meier replied, "Well, as you can see, I'm not too terribly worried about that."

Meier claims that, on two occasions during his employment at Wall to Wall, Ms. Geer commented to Meier that, unlike some other employees of Wall to Wall, he was not an at-will employee. Ms. Geer does not recall having said anything about Meier not being an at-will employee.

After the housing-market collapse in 2008, *Blueprint for Green* lost nearly all of its sponsorships. On November 3, 2008, the Geers met with Meier and other employees of Wall to Wall and told them that their employment was being terminated due to the economic conditions. Immediately after that meeting, Meier and the Geers spoke

privately, and Meier stated he had a signed employment contract. The Geers denied that there was a signed contract and opened Meier's personnel file, which contained the unsigned, highlighted copy of the proposed contract.

Meier sued appellants for failure to pay him owed commissions, breach of contract, promissory estoppel, unjust enrichment, intentional interference with a contractual relationship, and fraudulent misrepresentation, and demanded a jury trial. Meier alleged that the Geers, "acting with malice and bad faith, destroyed Meier's employment agreement and conspired to deny its existence and deprive Meier of his rights under the employment agreement." Meier sought monetary damages, costs, disbursements, and attorney fees. Appellants filed an answer denying that there was ever a final, signed agreement and claiming that Meier had been an at-will employee at Wall to Wall. Appellants then filed a motion for summary judgment, arguing that Meier's entire case hinged "on his conjectural, self-serving testimony" and that he did not have any evidence showing there was a genuine issue for trial. Meier opposed the motion, arguing that summary judgment was inappropriate where there were facts in dispute and that he could establish a binding contract, even if there was no signed agreement, based on the conduct of the parties.

The district court held a hearing and subsequently released an order denying the motion for summary judgment. The district court issued a judgment declaring that an employment contract existed and submitted the case to binding arbitration pursuant to the terms of the contract. The district court stated in the order that it found appellants' "statement of the facts to be true"; that it did not find evidence to support Meier's claim

that the Geers had destroyed his signed employment contract; and that Meier's "testimony that he signed the contract is not persuasive." However, the district court determined that the parties' conduct formed a contract as a matter of law because the parties "acted in accordance with the terms of the unsigned contract." In support of this determination, the district court cited Ms. Geer's comments to Meier that he was not an at-will employee, and stated that "Ms. Geer's denial [that] such comments were ever made is not credible." The district court also credited Dahl's testimony that she, Ms. Geer, and Meier referenced a purported contract when an issue regarding Meier's benefits arose in December 2007, and stated that Dahl was "a third-party witness who has no bias or interest in the outcome of the case."

The parties attended arbitration, and the arbitrator issued an award and memorandum. Thereafter, the district court issued an order granting partial judgment on the counts of failure to pay owed commissions and breach of contract; dismissing with prejudice the count of fraudulent misrepresentation; and staying litigation on the counts of promissory estoppel, unjust enrichment, and intentional interference with a contractual relationship. This appeal follows.

DECISION

A district court's summary judgment decision is reviewed de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). The role of an appellate court when reviewing a summary-judgment decision "is to determine whether there are any genuine issues of material fact and whether the [district] court erred in its application of the law." *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn.

1992). When reviewing a declaratory judgment, the clearly erroneous standard is applied to the district court's factual findings and the district court's determinations of law are reviewed de novo. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007).

“A moving party is entitled to summary judgment when there are no facts in the record giving rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party's case.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995). Numerous cases have stated that making findings of fact, weighing evidence, and assessing credibility are inappropriate at the summary-judgment stage. “The district court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). “Accordingly, a court deciding a summary-judgment motion must not make factual findings or credibility determinations or otherwise weigh evidence relevant to disputed facts.” *Geist-Miller v. Mitchell*, 783 N.W.2d 197, 201 (Minn. App. 2010) (citing *DLH*, 566 N.W.2d at 70). “Weighing the evidence and assessing credibility on summary judgment is error.” *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007).

Moreover, declaratory judgment may not be used to take decisions on disputed issues of fact away from a jury when the right to a jury trial has not been waived. When a declaratory judgment proceeding

involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending; provided, that any issue of fact for which a jury trial is not required may be brought on

for trial at any special term of the court in like manner as an issue of law

Minn. Stat. § 555.09 (2008). “The procedure for obtaining a declaratory judgment . . . shall be in accordance with [the Minnesota Rules of Civil Procedure], and the right to trial by jury is retained under the circumstances and in the manner provided in Rules 38 and 39.” Minn. R. Civ. P. 57. “In actions for the recovery of money only . . . the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.” Minn. R. Civ. P. 38.01. “Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court.” Minn. R. Civ. P. 39.01.

In its order, the district court made findings of fact when material facts were in dispute. The district court found appellants’ “statement of the facts to be true,” that is, that Meier delivered to Ms. Geer an unsigned proposed contract with a provision highlighted and stated he could not accept the proposed contract because he had an issue with the highlighted provision, and that the proposed contract was never signed. The district court found that Meier’s statement of the facts, that is, that he signed the proposed contract and delivered it to Ms. Geer by walking into her office and sliding it across her desk, “is not persuasive.”

The district court also made credibility determinations when deciding that a contract as a matter of law existed. The district court determined that Ms. Geer’s denial that she ever referred to Meier as an at-will employee “is not credible.” The district court also found credible Dahl’s testimony that she, Ms. Geer, and Meier referenced a purported contract when a benefits issue arose.

It was inappropriate for the district court to make these factual findings and credibility determinations, thereby taking them away from a jury, when material facts were in dispute. Therefore, the district court is reversed on that basis, and the case is remanded for further proceedings.

Reversed and remanded.