STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2138

Southside Plumbing & Heating, Inc.,
Respondent,

vs.

Chris Plourde, et al.,
Appellants,

Western Bank, et al.,
Defendants.

Filed October 21, 2008
Affirmed as modified
Ross, Judge

Hennepin County District Court
File No. 27-CV-05-013983

Karl J. Yeager, Jonathan D. Miller, Meagher & Geer, PLLP, 33 South Sixth Street, Suite 4400, Minneapolis, MN 55402 (for respondent)

Julian C. Janes, Gislason, Martin, Varpness & Janes, PA, 7600 Parklawn Avenue South, Suite 444, Edina, MN 55435; and

Lawrence A. Wilford, Wilford & Geske, 7650 Currell Boulevard, Suite 300, Woodbury, MN 55125 (for appellants)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Huspeni, Judge.*

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

U N P U B L I S H E D O P I N I O N

ROSS, Judge

On his second appeal from a district court judgment awarding attorney fees to Southside Plumbing & Heating, Inc., Chris Plourde argues again that the district court abused its discretion. He is correct. In his first appeal, we decided that the initial attorney-fee award of $7,142.50 was unreasonable and disproportionate, and we remanded the case to the district court. On remand, the district court reduced the award by a mere $312.25. Because this *de minimis* reduction effectively shows a disregard of our determination that the initial fee award was unreasonable, we conclude that the district court failed to substantially comply with our remand instructions. We modify the district court's attorney-fee award and affirm.

FACTS

This appeal concerns a dispute over attorney fees stemming from a mechanics' lien. The facts that gave rise to the litigation are provided in the first appeal of this case, *Southside Plumbing & Heating, Inc. v. Plourde*, No. A06-1276, 2007 WL 1412969, at *1 (Minn. App. May 15, 2007). A brief overview follows.

In June 2004, Chris Plourde purchased real property and hired a general contractor for construction work on the property. The general contractor subcontracted with Southside Plumbing & Heating, Inc., which provided material and labor for which it was not paid. Southside sent Plourde a pre-lien notice by certified mail stating that the general contractor must pay Southside or Southside would file a claim against the property. Plourde received the notice.

But Plourde did not respond. In September 2005, Southside filed suit to recover $1,251.33 for the mechanics' lien, and it sought attorney fees. Plourde did not answer, but he did write to Southside alleging that it failed to give him a pre-lien notice.

In November 2005, the bank that held a mortgage against Plourde's property settled by agreeing to pay Southside $3,159.99, covering the lien amount and expenses. The bank mailed a settlement check for that amount, but after Plourde objected, the bank stopped payment on the check.

Plourde later requested a copy of the pre-lien notice from Southside, offering to satisfy the mechanics' lien of $1,251.33 pending proof of validity but objecting to paying the attorney fees. Southside gave Plourde a copy of the pre-lien notice but rejected Plourde's settlement offer because it excluded attorney fees. Southside agreed to settle for $4,000.

Plourde then filed an answer admitting that Southside was entitled to recover $1,251.33 but challenging Southside's attorney fees. In March 2006, the district court granted summary judgment for Southside, concluding that Southside incurred attorney fees because of Plourde's failure to act and his bank's breach of the settlement agreement. The district court ordered that Southside was entitled to $9,312.25: $1,251.33 for the mechanics' lien, $918.42 for costs and disbursements, and $7,142.50 for attorney fees.

Plourde appealed the fee award. A panel of this court reversed and remanded, concluding that "[t]he award for attorney fees is disproportionate to the interest being protected and is, therefore, unreasonable." *Id.* at *3. This court also explained that the

district court failed to consider the factors outlined in *Jadwin v. Kasal*, 318 N.W.2d 844, 848 (Minn. 1982). *Id*. at *2.

On remand, the district court reduced the attorney-fee award, only slightly, with the language of its order indicating that it disagreed with this court's holding and instruction. Statements in the district court's order appear to criticize this court's reasoning and conclusion. The district court did, however, address the *Jadwin* factors, finding that each weighed in Southside's favor. After considering those factors, the district court reduced the $7,142.50 attorney-fee award by $312.25. Plourde again appeals.

D E C I S I O N

Plourde argues that the district court's attorney-fee award on remand demonstrates an abuse of discretion because the reduction was miniscule. A district court must strictly execute a remanding court's instructions without altering the mandate. *Rooney v. Rooney*, 669 N.W.2d 362, 371 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Whether a district court improperly follows remand instructions is a question of law. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 217 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004). Plourde contends that the district court breached its duty on remand, and he asks this court to set an appropriate award.

In deciding Plourde's previous appeal, we remanded this case for two reasons: (1) because the district court failed to consider the *Jadwin* factors, and (2) because the

attorney-fee award was "disproportionate to the interest being protected and is, therefore, unreasonable." *Southside Plumbing & Heating, Inc.*, 2007 WL 1412969, at *3.

On remand, the district court properly considered the *Jadwin* factors. But the district court's mere $312.25 reduction in the award shows that it failed to follow this court's conclusion that, on these facts, the previous fee award was disproportionate and unreasonable. We do not address the merits of the district court's analysis contesting the determination of a panel of this court, for once this court made the legal determination, that issue is settled as law of the case and may not be disregarded by a district court on remand. *In re Trusteeship of Trust of Williams*, 631 N.W.2d 398, 404 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001). We appreciate that the district court faced two parallel bases for the panel's determination, that it assessed one of the bases directly, and that it doubted the strength of this court's analysis. But it is clear on our review that the remand intended a more substantive alteration and that the panel would not have remanded the case and subjected the parties to additional litigation costs to grapple over a $312.25 modification.

The best light we put on it leads us to conclude that the district court's compliance with this court's remand order was in form only. The tenor of the district court's order suggests that because it disagreed with this court's legal conclusions, it determined that it need not substantially comply with the remand instructions. Rather than remanding again, we modify the district court's attorney-fee award from $6,830.25 to $3,753.99, which Plourde conceded was a reasonable amount.

Affirmed as modified.