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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-431**

Jayne Fragale,
Respondent,

vs.

Leeds United, L. L. C., et al.,
Appellants.

**Filed January 27, 2009
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CV-07-5290

Jayne Fragale, 52330 Azalea Avenue, Stanchfield, MN 55080 (pro se respondent)

Kenneth Hertz, Hertz Law Offices, P.A., 3853 Central Avenue NE, Columbia Heights,
MN 55421 (for appellants)

Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants challenge an award of attorney fees, arguing that the district court abused its discretion by (1) failing to make findings of fact and conclusions of law; (2) determining that the evidence was sufficient to support the award; (3) failing to require respondent to adhere to the limitations set forth in Minn. R. Civ. P. 33.01(a); (4) failing to

grant appellants a continuance; and (5) failing to find that respondent acted in bad faith. We affirm.

DECISION

Findings of Fact and Conclusions of Law

Appellants Leeds United, LLC, Aston Villa, LLC, W.S. Porto, LLC, River Villa, LLC, and Kenneth Hertz argue that the district court abused its discretion by awarding attorney fees to respondent Jayne Fragale because the order failed to include findings of fact or conclusions of law. “On review, [appellate courts] will not reverse a [district] court’s award or denial of attorney fees absent an abuse of discretion.” *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

A party may recover attorney fees when they are authorized by contract or statute. *Barr/Nelson, Inc. v. Tonto’s, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983). A district court may award attorney fees if a party fails to provide answers to interrogatories or fails to provide documents requested as part of discovery. Minn. R. Civ. P. 37.01(d)(1) (stating that the district court shall “require the party . . . whose conduct necessitated the motion . . . to pay . . . the reasonable expenses incurred in making the motion, including attorney fees, unless . . . the motion was filed without . . . a good faith effort to obtain the discovery without court action”). Answers to interrogatories must be served within 30 days of receiving the request. Minn. R. Civ. P. 33.01(b). A response to a request for production of documents must be served within 30 days of the request. Minn. R. Civ. P. 34.02.

The district court's order states:

[Appellants] have failed to answer [respondent's] Interrogatories and Request for Production of Documents within the time permitted by the rules. [Respondent] has in good faith conferred with [appellants] in an effort to secure the information and material without court action.

Respondent served the first set of requests for admission, interrogatories, and request for documents on August 22, 2007. Respondent did not receive answers to interrogatories until October 29, 2007—68 days after the initial request—and did not receive requested documents until December 12, 2007—112 days after the request. Because appellants failed to abide by the discovery rules and respondent acted in good faith to secure the documents without court action, we conclude that the district court did not abuse its discretion in awarding attorney fees to respondent.

Appellants contend that *Becker* requires that this court remand to the district court for failure to make findings of fact or conclusions of law. In *Becker*, the district court denied the request for attorney fees but did not state why. 401 N.W.2d at 661. The Minnesota Supreme Court stated that the district court “should state its reasoning for the denial of attorney fees [because] nothing in the record . . . indicated the district court’s rationale for its ruling” and the supreme court was unable to determine if there had been any abuse of discretion. *Id.*; see also *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 629 (Minn. 1988) (concluding that the district court must explain concisely and clearly the reasons for awarding attorney fees). *Becker* and *Hunter* are distinguishable from the present case because in those cases the denial or award of attorney fees followed a full trial on the merits. See *Becker*, 401 N.W.2d at 658; *Hunter*,

417 N.W.2d at 622. Here, the district court issued its order after a hearing on a motion to compel discovery, where appellants failed to appear and appellants' actions necessitated the motion to compel hearing.

Minn. R. Civ. P. 52.01 requires that:

In all actions tried upon the facts . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment . . . Findings of fact and conclusions of law *are unnecessary* on decisions on motions pursuant to Rules 12 or 56 *or any other motion* except as provided in [Minn. R. Civ. P.] 23.08(c) and [Minn. R. Civ. P.] 41.02.

(Emphasis added.) Rule 23.08 provides the process for the award of attorney fees in an action certified as a class action, while rule 41.02 deals with involuntary dismissals. Therefore, because neither exception is applicable here, the district court was not required to include findings of fact or conclusions of law in its order responding to the motion to compel discovery. Thus, appellants' argument fails.

Insufficient Evidence

Respondent is acting pro se for this appeal, but was represented by counsel in the district court. Appellants argue that the district court abused its discretion because the evidence was insufficient to justify the \$2607.50 attorney-fees award. Appellants cite no authority for this argument and suggest that they were ambushed by the amount because they never received the affidavit that respondent supplied to the district court stating the amount of work necessary to bring the motion to compel. "[W]hat constitutes the reasonable value of the legal services is a question of fact to be determined by the evidence submitted, the facts disclosed by the record of the proceedings, and the court's

own knowledge of the case.” *City of Minnetonka v. Carlson*, 298 N.W.2d 763, 765 (Minn. 1980). This court considers several factors in determining the reasonableness of an attorney-fees award, including: “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.” *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008).

The district court requested and received an affidavit from respondent showing the amount of extra work necessary to litigate the discovery motion. Appellants were not at the hearing and did not object to the amount of time until this appeal. Appellants did have an invoice for attorney fees incurred through October 25, 2007. The amended affidavit, which the district court received, stated additional fees incurred from October 25 through November 30. The additional fees are for nine and one-half hours of work, including: (1) preparation of the motion to compel discovery; (2) review of answers to interrogatories; (3) drafting and finalizing reply to appellants’ opposition to motion to compel discovery; and (4) drafting memorandum in reply to Hertz opposition. Based on the record, we conclude that these costs were directly related to filing the motion to compel. The district court did not abuse its discretion by awarding attorney fees to respondent.

Failure to Abide by Rule 33.01(a)

Appellants also argue that the district court abused its discretion by failing to rule that respondent exceeded the number of interrogatories allowed by Minn. R. Civ. P.

33.01(a). The Minnesota Supreme Court held that “Rule 33 should be strictly enforced by following the foregoing Federal decisions. This is to say that failure to object to interrogatories in the manner prescribed in Rule 33 is a waiver of all defects and objections except those relating to privilege, work product, and experts’ conclusions.” *State by Mattson v. Boening*, 276 Minn. 151, 154, 149 N.W.2d 87, 90 (1967). The rule requires a party served with interrogatories to respond within 30 days after service. Minn. R. Civ. P. 33.01(b). Appellants suggest that they objected to the interrogatories in a letter dated October 10, 2007. Not only is October 10 past the 30-day deadline, but the letter does not object to the request. Instead, appellants suggested that respondent would receive the answers on October 22. Respondent, however, did not receive the actual answers with the objections until October 29. Appellants failed to object in a timely manner and have waived the right to object. The district court did not abuse its discretion by failing to rule on this matter.

Continuance

Appellants next argue that the district court abused its discretion by not granting appellants a continuance for the motion hearing. Appellants further suggest that respondent did not act in good faith because respondent did not grant appellants a professional courtesy of continuing the motion until December. Appellants fail to provide any authority for this argument. “The decision to grant a continuance is vested in the sound discretion of the [district] court.” *Liberty Mut. Ins. Co. v. Ne. Concrete Prods., LLC*, 756 N.W.2d 93, 105 (Minn. App. 2008). Importantly, appellants never requested a continuance. Whether an attorney violates the unwritten rules of professional courtesy is

not a legal issue. Because appellants did not make a formal motion for a continuance, the district court could not and did not make a ruling. There is nothing for this court to review on this matter.

Bad Faith

Finally, appellants argue that respondent acted in bad faith by failing to work with appellants to find a mutually agreeable date to review documents. Appellants again cite no authority for this argument. The district court found that respondent acted in good faith. The district court's findings must be affirmed unless they are clearly erroneous. Minn. R. Civ. P. 52.01. Appellants assert that attempts were made to set up a review of the documents. But this did not happen until October 29—nearly two months after the initial request. Three days later, on November 1, respondent sought to arrange a time for document review. Respondent did not receive a reply until November 25, 2007. The reply stated the documents could be viewed at appellants' attorney's office on November 28. Respondent attempted to view the documents on November 28, but they were not made available until November 29—the day before the motion-to-compel hearing. Because the record demonstrates that respondent made prompt and repeated attempts to view the documents, the district court finding that respondent acted in good faith is not clearly erroneous. The district court did not abuse its discretion in awarding attorney fees.

Affirmed.