STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2005

Terrence Stellmach,
Appellant,

vs.

Michael Trowbridge,
Respondent.

Filed July 27, 2010
Affirmed
Schellhas, Judge

Crow Wing County District Court
File No. 18-C3-07-540

Michael A. Bryant, Nicole L. Bettendorf, Bradshaw & Bryant PLLC, Waite Park, Minnesota (for appellant)

Kevin F. Gray, Jessie L. Becker, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Connolly, Judge; and Willis, Judge.*

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

SCHELLHAS, Judge

In this action arising out of an automobile collision, appellant challenges the district court's denial of post-trial motions, asserting that the district court erred by failing

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

to excuse a juror for cause and denying appellant's request to decrease an award of costs and disbursements based on undue hardship or inequity. We affirm.

FACTS

Appellant Terrence Stellmach and respondent Michael Trowbridge were involved in a motor-vehicle accident. Stellmach brought suit against Trowbridge, alleging that Trowbridge was at fault and that Stellmach had suffered permanent injuries. Trowbridge admitted liability for the accident, and the district court held a trial on damages.

During voir dire, the district court asked whether any of the potential jurors was "acquainted with" or had "ever heard of" Stellmach or Trowbridge. One individual, identified here as Juror S., raised his hand and indicated that he knew of Trowbridge and remembered hearing about the accident. The district court and Stellmach's counsel questioned Juror. S. further outside the presence of the other prospective jurors. Juror S. repeated that he had heard about the accident but did not recall specifics. He stated his belief that a good friend of his was related to Trowbridge and questioned his ability to be impartial:

> You know, I'd like to say I have an open mind, but I do know the Trowbridge name as being a good family name out in my area. So, to be very honest, to say it wouldn't influence, I would probably not be truthful.

The district court excused Juror S. for cause and neither party objected.

Following completion of voir dire, the district court empanelled a jury and commenced the trial. On the second day of trial, juror M.W.J. sent a note to the court communicating his realization that he was acquainted with Trowbridge's wife. In

chambers, M.W.J. explained that he and Trowbridge's wife had volunteered together a couple of times in a church nursery about a year before trial, but he had no continuing contact with Trowbridge's wife. M.W.J. said that he could still be a fair juror. Stellmach's counsel then consulted with Stellmach and, although he told the court that had he known about M.W.J.'s acquaintance with Trowbridge's wife, he would not have exercised a peremptory challenge with respect to M.W.J., he challenged M.W.J. for cause. The district court denied Stellmach's challenge, and M.W.J. remained on the jury, ultimately serving as foreperson.

The jury returned a special verdict in favor of Stellmach, awarding $2,000 for past pain and disability, $4,379 for past medical expenses, and $0 for future medical expenses and pain and suffering. The jury found that Stellmach had not sustained a permanent injury or a 60-day disability as a result of the collision. Because the award did not meet no-fault thresholds for recovery under Minn. Stat. § 65B.51, subd. 3 (2008), the district court entered judgment in favor of Trowbridge. Because the total damages awarded by the jury were less than Trowbridge's prejudgment, pretrial settlement offer of $5,000, the district court awarded costs and disbursements to Trowbridge under Minn. R. Civ. P. 68.03(b). The district court denied Stellmach's motion for judgment as a matter of law, a new trial, or additur but reduced the award of costs and disbursements from $8,589.28 to $7,627.36.

This appeal follows.

D E C I S I O N

Stellmach challenges the district court's denial of the post-trial motions, arguing that the court erred by not dismissing juror M.W.J. for cause and not reducing or eliminating the award of costs and disbursements based on hardship or inequity. We address these arguments in turn. Stellmach also appears to challenge the adequacy of the evidence to support the jury's damages award, although it is unclear whether he is raising this as a separate basis for appeal or merely discussing it within the context of his juror bias challenge. Regardless, we do not reach this issue because Stellmach has not provided a trial transcript and the record is not sufficient for us to conduct an evidentiary review. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived); *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968) (dismissing appeal because of inadequate record); *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995) (holding that appellant bears the burden of providing an adequate record on appeal).

I.

This court reviews for abuse of discretion the denial of a motion for a new trial. *Lake Superior Center Auth. v. Hammel, Breen & Abrahamson, Inc.*, 715 N.W.2d 458, 476-77 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). "In an appeal based on juror bias, an appellant must show that the challenged juror was subject to challenge for cause, that actual prejudice resulted from the failure to dismiss, and that appropriate objection was made by appellant." *State v. Stufflebean*, 329 N.W.2d 314, 317 (Minn. 1983).

A juror is subject to challenge if the juror's state of mind, "in reference to the case or to either party, satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging." Minn. R. Crim. P. 26.02, subd. 5(1)(1) (2008); *see* Minn. Stat. § 546.10 (2008) (providing that jurors in civil actions are subject to challenge on same bases as in criminal actions). "[T]he decision whether [an] affected juror may continue to sit involves determinations of credibility and demeanor, which are best left to the trial court." *Boitnott v. State*, 631 N.W.2d 362, 371-72 (Minn. 2001) (alteration in original). Accordingly, "this court will not lightly substitute its own judgment." *State v. Drieman*, 457 N.W.2d 703, 709 (Minn. 1990); *see also State v. Moon*, 717 N.W.2d 429, 439 (Minn. App. 2006) (explaining that "[w]e accord special deference to the district court's determination of whether the prospective juror's assertion of impartiality can be believed"), *review denied* (Minn. Sept. 19, 2006), *overruled on other grounds by State v. Reed*, 737 N.W.2d 572 (Minn. 2007).

Stellmach asserts that the district court erred by failing to dismiss juror M.W.J. for cause based on M.W.J.'s admission that he had worked with Trowbridge's wife in a church nursery. We disagree. The voir dire questioning revealed no more than a passing acquaintance between M.W.J. and Trowbridge's wife, both of whom were focused on caring for young children at the time. Prior acquaintance, without more, does not demonstrate actual bias. *See, e.g., City of St. Paul v. Hilger*, 300 Minn. 522, 523, 220 N.W.2d 350, 351-52 (1974) (rejecting bias challenge based on juror's acquaintance with key prosecution witness when "[a]ll that the record show[ed was] that this juror on a number of occasions had seen the witness at a bar which he frequented").

Stellmach suggests that M.W.J. and Trowbridge's wife were more than merely acquainted, arguing that working together in a church nursery "by its very nature is a close working relationship"; that a "church nursery is an intimate setting"; and that "working with infants in a church setting demonstrates not only a relationship as a fellow parishioner, but also a very positive and reputable image." But "mere argumentative assertions" are not sufficient to demonstrate actual bias. *Williams v. State*, 764 N.W.2d 21, 28 (Minn. 2009). Moreover, the district court successfully rehabilitated M.W.J., who affirmed that he could be impartial. "[I]f jurors indicate their intention to set aside any preconceived notions and demonstrate to the satisfaction of the trial judge that they are able to do so, this court will not lightly substitute its own judgment." *Drieman*, 457 N.W.2d at 709.

Stellmach urges that reversal is warranted in this case because M.W.J. was elected foreman. This fact may be relevant to determining the prejudicial effect of seating a biased juror. But because we conclude that M.W.J. was not subject to challenge for cause, we do not reach the issue of prejudice.

Stellmach also argues that it was error not to remove M.W.J. after removing Juror S. But, as the district court explained, there were qualitative differences between M.W.J.'s acquaintance with Trowbridge's wife, on the one hand, and Juror S.'s relationship with Trowbridge's cousin and favorable impression of the Trowbridge family name, on the other. Moreover, in contrast to M.W.J.'s certainty that he could be a fair juror, Juror S. questioned his ability to be impartial. *See State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995) (holding that district court erred by denying challenge for cause

"because the juror did not swear that he *could* set aside any opinion he might hold and decide the case on the evidence but only that he would *try*") (quotation omitted). Under these circumstances, the district court properly excused Juror S. and retained M.W.J.

II.

This court reviews the district court's allowance for costs and disbursements for an abuse of discretion. *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 209 (Minn. App. 2009) (citing *Kellar v. Von Holtum*, 605 N.W.2d 696, 703 (Minn. 2000)). Under the recently revised Minn. R. Civ. P. 68.03, the district court has discretion to reduce a costs and disbursements award to eliminate undue hardship or inequity. Minn. R. Civ. P. 68.03(b)(3):

> If the court determines that the obligations imposed under this rule as a result of a party's failure to accept an offer would impose undue hardship or otherwise be inequitable, the court may reduce the amount of the obligations to eliminate the undue hardship or inequity.

In challenging Trowbridge's request for costs and disbursements before the district court, Stellmach asserted the district court's discretion to deny costs and disbursements under the new rule, but he did not argue that the costs and disbursements requested in this case would impose undue hardship or otherwise be inequitable. Nevertheless, Stellmach asserts on appeal that, under the language of the new rule, the district court was required to make findings regarding any potential hardship and inequity. We disagree. The rule provides the district court with discretion, but not a mandate, to reduce costs and

disbursements, and we discern nothing in the language of the rule requiring the court to make fact findings when the issue of hardship or inequity is not raised by either party.

Affirmed.