

IN THE COURT OF APPEALS OF IOWA

No. 8-1026 / 08-0072

Filed March 11, 2009

SUSAN TAPIA,
Plaintiff-Appellee,

vs.

**TIMOTHY MURPHY, Personally and
FAMILY PSYCHOLOGY,**
Defendants-Appellants.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Timothy Murphy appeals the trial court's ruling, following trial to the court,
finding he breached a contract with Susan Tapia and violated Iowa Code chapter
91A (2005) by failing to pay wages due to her. **AFFIRMED.**

Thomas K. Dyke of Winstein, Kavensky & Cunningham, Rock Island,
Illinois, for appellant.

Susan Tapia, Davenport, appellee pro se.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Timothy Murphy, personally, and Family Psychology (hereinafter collectively referred to as Murphy), appeal the trial court's ruling, following trial to the court, finding he breached a contract with Susan Tapia and violated Iowa Code chapter 91A (2005) by failing to pay wages due to her. We affirm.

Timothy Murphy is a licensed psychologist and holds a Ph.D. in psychology. He owns and operates Family Psychology. It provides mental health counseling. Susan Tapia began working for Murphy as an employee in January 2003 with her master's degree in counseling. Prior to becoming a licensed mental health counselor it was necessary for Tapia to be supervised by a licensed clinical psychologist for a certain number of hours. Due to his credentials Murphy was authorized to provide Tapia with those supervised hours as well as to bill insurance companies for her counseling work. Tapia worked for Murphy until July 2004 when she was discharged.

Following her discharge Tapia brought the present action against Murphy for money damages for unpaid wages. She alleged in her petition that Murphy had an oral contract with her wherein he agreed to pay her certain wages, including paying her sixty percent of the income received from her clients until July 1, 2004, and then seventy percent thereafter. Tapia alleged he breached this contract because he took the percentage required as the employer's share of her FICA taxes out of her share. The parties' differences included a dispute as to when Tapia was to begin to receive the increase to seventy percent. Tapia further alleged Murphy's failure to pay her proper wages was an intentional

violation of Iowa Code chapter 91A, Iowa's Wage Payment Collection Act. Based on this violation she claimed she was entitled to damages, liquidated damages, and attorney fees and costs.

The trial court issued a written ruling on September 17, 2007, finding, in relevant part, that Murphy breached the parties' contract by intentionally withholding the employer's share of FICA taxes from Tapia's sixty percent of the income she generated and by continuing to pay her sixty percent when her pay should have increased to seventy percent. The court found that these actions by Murphy were intentional violations of Iowa's Wage Payment Collection Act. The court further found that Tapia proved Murphy failed to properly pay her money he received from her clients after her employment ended in July 2004. Accordingly, the court entered judgment against Murphy for unpaid wages in the amount of \$17,957.60. Following the filing of various post-trial motions, the court further ordered Murphy to pay \$17,957.62 in liquidated damages and \$9,870.00 in attorney fees to Tapia.

Murphy served and filed an Iowa Rule of Civil Procedure 1.904(2) motion on Friday, September 28. In it he requested, in part, that the trial court address the Iowa Code section 91A.10(1) statute of limitations defense he had raised at trial. At the time of trial the court had stated that if it felt this argument had merit it would address it in its ruling. The court had not mentioned Murphy's statute of limitation defense in its September 17 written ruling. In its rule 1.904(2) ruling the court stated it had not mentioned Murphy's statute of limitations defense because it was without merit as section 91A.10(1) only prohibited the Iowa Labor

Commissioner from accepting complaints for unpaid wages after one year from the date the wages became due and payable, but it *did not* preclude recovery of wages beyond that time by an employee such as Tapia. See *Audus v. Sabre Commc'ns Corp.*, 554 N.W.2d 868, 873 (Iowa 1996). However, after this statement the court noted that if Murphy had wanted the court to specifically address this defense the proper procedure would have been to raise the issue in a timely filed rule 1.904(2) motion. After addressing and denying Murphy's alternate arguments as to why his motion should be considered timely, the trial court concluded Murphy's motion was untimely filed. Accordingly, the court specifically concluded it did not have jurisdiction to hear the motion, including the statute of limitations argument, and denied it in its entirety.

Murphy appeals, contending the trial court erred in (1) refusing to rule on the statute of limitations defense, (2) finding Murphy had failed to pay wages to Tapia, (3) awarding liquidated damages under section 91A.8, and (4) awarding attorney fees. Our review is for correction of errors at law. Iowa R. App. P. 6.4. The trial court's findings are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 318 (Iowa 2002). We are not bound by the trial court's legal conclusions; however, we will construe the trial court's findings broadly in favor of upholding the judgment. *Id.*

We conclude the trial court was correct in determining Murphy's rule 1.904(2) motion was not timely filed. The trial court's ruling was filed on

September 17, 2007, and Murphy did not serve or file his motion until Friday, September 28, 2007. Rule 1.904(2) provides that a motion to amend or enlarge a court's findings and conclusions must be filed within the time allowed for a motion for new trial. Rule 1.1007 provides that a motion for new trial must be filed within ten days after the filing of the verdict, report, or decision with the clerk. Thus, Murphy's rule 1.904(2) motion was untimely because it was filed eleven days after the court's September 17 ruling. The timeliness of post-trial motions is a matter of jurisdiction and is not subject to waiver in Iowa. *State ex rel. Miller v. Santa Rosa Sales & Mktg. Inc.*, 475 N.W.2d 210, 214 (Iowa 1991). Accordingly, we conclude the district court did not err in concluding it did not have jurisdiction to hear Murphy's untimely rule 1.904(2) motion and denying the motion in its entirety.¹

Murphy next contends the court erred in finding he failed to pay wages owed to Tapia. As set forth above, the trial court's findings are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). We conclude a reasonable mind could conclude that Murphy failed to pay wages properly owed to Tapia. Thus, we find there is substantial evidence in the record to support the trial court's ruling, including the court's determination that Tapia's testimony in general was much more credible than that of Murphy. *See Paglia v. Elliot*, 373 N.W.2d 121, 126 (Iowa 1985) (finding the trial court is in the best position to judge the credibility of the witnesses).

¹ We note that we agree with the trial court's belief that section 91A.10(1) applies only to action by the Labor Commissioner.

We further conclude there is substantial evidence to support the trial court's finding that Murphy intentionally and willfully failed to pay Tapia wages actually due to her. Accordingly, the court did not err in awarding Tapia liquidated damages. See Iowa Code § 91A.8 (providing an employer who intentionally fails to pay an employee wages is liable to the employee for such wages plus liquidated damages, court costs, and usual and necessary attorney fees).

Finally, Murphy argues the court erred in awarding Tapia \$9,870.00 in attorney fees, for lack of evidentiary support and because the amount of the award was unreasonable. Determination of attorney fees is a matter entrusted to the discretion of the district court. *Bremicker v. MCI Telecomms. Corp.*, 420 N.W.2d 427, 428 (Iowa 1988); *Mississippi Valley Broad., Inc. v. Mitchell*, 503 N.W.2d 617, 619 (Iowa Ct. App. 1993). This court will reverse for an abuse of discretion only when such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* In the context of section 91A.8, a judge is presumed to be an expert on what are reasonable attorney fees. See *Maday v. Elview-Stewart Sys. Co.*, 324 N.W.2d 467, 470 (Iowa 1982). Here, the document setting forth Tapia's attorney fees was in front of the court as an attachment to her 1.904(2) motion. Further, the court was familiar with the case and what was involved in trying it, and thus was in the best position to determine the appropriate amount of attorney fees under section 91A.8. Accordingly, we conclude the trial court neither erred in making an award

of attorney fees nor abused its broad discretion in setting the amount of fees awarded.

For the reasons set forth above, we conclude the trial court did not err in finding that Murphy's rule 1.904(2) motion was untimely and thus denying it. The court's findings concerning Murphy's intentional failure to pay wages are supported by substantial evidence and the court did not err in awarding damages for unpaid wages and liquidated damages. The court's award of attorney fees to Tapia is not unreasonable and the court did not abuse its discretion in making the award.

AFFIRMED.