

IN THE COURT OF APPEALS OF IOWA

No. 9-018 / 08-0350
Filed March 11, 2009

WES GLASGOW,
Plaintiff-Appellant,

vs.

WILLIAMSON NISSAN, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Marsha Bergen,
Judge.

Appellant Wes Glasgow appeals from the district court decision denying his petition for unpaid wages, liquidated damages, and attorney fees against his former employer, appellee Williamson Nissan, Inc., an auto dealership.

AFFIRMED.

Steven Howes and Curtis Den Beste of Howes Law Firm, P.C., Cedar Rapids, for appellant.

Thomas D. Hobart of Meardon, Suepell & Downer, P.L.C., Iowa City, for appellee.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

SACKETT, C.J.

The appellant, Wes Glasgow, appeals from the district court decision denying his petition for unpaid wages, liquidated damages, and attorney fees against his former employer, the appellee, Williamson Nissan, Inc., an auto dealership. He contends the court erred in finding he was paid all the wages due him. We affirm.

Scope of Review. Our review of actions at law is for correction of errors at law. Iowa R. App. P. 6.4; *Meinke v. Northwest Bank & Trust Co.*, 756 N.W.2d 223, 227 (Iowa 2008).

The district court's findings of fact are binding on the court if they are supported by substantial evidence. We view the evidence in the light most favorable to the judgment when a party argues the trial court's ruling is not supported by substantial evidence. Evidence is substantial when reasonable minds accept the evidence as adequate to reach a conclusion. Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding. However, appellate courts are not bound to a district court's conclusion of law or that court's application of legal conclusions.

Meinke, 756 N.W.2d at 227 (citations omitted).

Background Facts and Proceedings. Glasgow was employed by the auto dealership as finance director between March of 2005 and April of 2006. He was paid on a written commission plan as set forth in a document dated March 4, 2005. It provided:

- 1) F&I Manager will be paid on a commission plan as described below, with draws paid each 2 week period which will be subtracted from the total commission earned for the month.
- 2) Deficit earnings between draws paid and commissions earned will not be carried forward to the following month.

3) A \$4,500 draw will be paid each month (\$2,076.92 per pay period).

4) The commission detail is as follows:

5) 90 days no charge backs from start date

A) 15% commission on total net Finance Reserve revenue (net of charge-backs)

B) Monthly retail unit bonus:

-80-89 units \$500

-90-99 units \$750

-100+ units \$1,500

A minimum commission will be paid after close of month of \$2,000.

Twice annually, the manufacturer rebates to successful dealerships an amount based on the dealership's sales of warranties and service contracts during the preceding six months. The rebate periods close in March and September each year, with the rebate being received by the dealerships two or three months later. The rebate increases the net Finance Reserve in the month it is received.

The amount of the rebate for the period ending in March of 2006 was \$28,072. Glasgow's employment ended in April. The rebate was received by the dealership in July. Glasgow was paid all of the commission guarantees for March and the prorated commissions for April to the date his employment ended. He was not paid any of the rebate the dealership received in July. He filed suit under Iowa Code chapter 91A (2007), claiming he was owed \$4210.80 in wages, plus a statutory penalty of up to 100 percent of the wages owed, plus attorney fees necessary to recover the unpaid wages. See Iowa Code § 91A.8.

Following a trial to the court, the district court found the written commission plan was unambiguous and provided for payment from each month's net finance reserve revenue, an employee must be working for the dealership in order to have a commission calculated, and the dealership paid Glasgow his guaranteed commission for March and a prorated commission for the portion of April he worked for the dealership. The court further found the testimony of the dealership's witness credible and persuasive concerning the dealership's policies about calculating commissions. It noted:

The court finds that, consistent with operating on a cash basis, Defendant's policy has been to include the dealer bonus rebate in company reserves when actually received. Thus, calculations for commissions based on the reserve can only be made after the revenue has been received by Defendant company. Further, the policy has been that, if an employee is no longer working for Defendant when the dealer bonus rebate is received, that employee is not entitled to be paid a commission.

The court ruled:

Plaintiff employee failed to carry the burden of proof to show any agreement or policy whereby Defendant car dealership owed Plaintiff employee a fifteen percent commission on rebate funds paid to Defendant by the national company over two months following Plaintiff employee's last date of employment, even though the national rebate was based upon dealership activity during the period of Plaintiff's employment.

Glasgow appeals from the ruling that dismissed his claim for unpaid wages, liquidated damages, and attorney fees. He contends the court erred in finding he was paid all wages owed him.

Discussion. Upon our review of the record, we conclude the district court findings are supported by substantial evidence. From the testimony of the dealership's witness and its exhibits, the district court correctly found the

dealership handles its commission compensation on a cash basis, calculated monthly. Glasgow's fifteen percent commission was based on the total net finance reserve revenue each month. The semiannual rebates from Nissan are included in the net finance reserve revenue for purposes of calculating the commission as set forth in Glasgow's pay plan document. The dealership has followed this commission compensation policy with other employees and did not modify its policy in Glasgow's case. Glasgow was guaranteed a monthly commission of \$6500. The dealership paid Glasgow all of the guaranteed commissions to which he was entitled under the pay plan.

Although not bound by them, we agree that the district court's conclusions of law correctly set forth the applicable law as applied to the facts of this case. It was Glasgow's burden to show there was an agreement or policy to pay certain wages. Iowa R. App. P. 6.14(6)(e). The district court concluded he:

failed to carry the burden of proof to show any agreement or policy whereby Defendant car dealership owed Plaintiff employee a fifteen percent commission on rebate funds paid to Defendant by the national company over two months following Plaintiff employee's last date of employment, even though the national rebate was based upon dealership activity during the period of Plaintiff's employment.

"We will not interfere on appeal unless we find the party carried his burden as a matter of law." *Crookham v. Structural Contractors, Ltd.*, 466 N.W.2d 277, 278 (Iowa Ct. App. 1990). From our review of the evidence and applicable law, we agree with the district court Glasgow failed to carry the burden of proof. The district court correctly denied his petition. We affirm the decision of the district court.

Because we have affirmed the district court's determination the dealership did not owe Glasgow any unpaid wages, we need not address his arguments concerning liquidated damages and attorney fees under Iowa Code section 91A.8.

AFFIRMED.