

RENDERED: MAY 9, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-000098-MR

GREGORY DEWAYNE HUNT;  
GARY R. ADAMS; DANIEL J. CANON;  
AND MELISSA EYRE YEAGLE

APPELLANTS

v.

APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 10-CI-00127

NORTH AMERICAN STAINLESS

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: MAZE, CAPERTON, AND VANMETER, JUDGES.

MAZE, JUDGE: Gregory Dwayne Hunt, and his attorneys as real parties in interest, appeal from a post-judgment order of the Carroll Circuit Court which partially granted his motion for attorney fees and also partially granted the motion by North American Stainless (NAS) for court costs. For the reasons which follow,

we agree with Hunt that the trial court abused its discretion in determining the amount of his reasonable attorney fees and by awarding court costs to NAS.

Therefore, we reverse the trial court's attorney fees and remand for additional findings regarding the attorney fees which Hunt reasonably expended in pursuit of his statutory claim. With regard to the award of court costs, we conclude that no award was appropriate, and we therefore we must vacate that portion of the order.

For purposes of this appeal, the underlying facts of this action are not in dispute. Hunt began his employment with NAS in 2003. In 2007, he enrolled in an educational program sponsored by NAS to obtain a technical degree in applied electrical systems. NAS paid Hunt's tuition, fees and expenses for the program directly to Jefferson Community College. In addition, NAS allowed Hunt to work reduced hours while he studied in the program. Other than attendance and grade requirements, NAS did not impose any conditions on Hunt's participation in the program.

Hunt completed the program and obtained his degree in late 2009. Thereafter, in late May of 2010, Hunt tendered his resignation to NAS, announcing that he had accepted another position with another company. During his exit interview on June 9, 2010, NAS advised Hunt that it was going to require him to reimburse the company for the \$9,720 which it spent for the training program. NAS advised Hunt that he would be required either to sign a promissory note for the amount or it would deduct that amount from his final paychecks. Hunt declined to sign the promissory note. NAS withheld payment of Hunt's final

paychecks for some time, but eventually tendered full payment shortly after it filed this action.<sup>1</sup>

On July 8, 2010, NAS filed this action seeking to recover its training expenses from Hunt. NAS argued that it was entitled to recover for Hunt's breach of an express contract, breach of an implied contract, breach of covenants of good faith and fair dealing and under unjust enrichment or *quantum meruit* theories. Hunt filed an answer and counterclaim asserting that NAS had wrongfully withheld his wages in violation of Kentucky Revised Statutes (KRS) 337.020, 337.055 and 337.060.

The matters proceeded to a jury trial in September of 2011. On NAS's claim, the jury found no evidence of an express or implied contract requiring Hunt to repay the educational expenses. However, the jury found that NAS was entitled to recover under a *quantum meruit* theory, and awarded a judgment against Hunt in the amount of \$4,803.18. On Hunt's counterclaim, the jury found that NAS had wrongfully withheld Hunt's final wages for more than fourteen days in violation of KRS 337.060, and that it lacked a good faith basis for

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<sup>1</sup> NAS previously paid Hunt's wages by direct deposit to his bank account, but issued three checks covering Hunt's final wages and incentive pay. The first, for \$2,361.02, was issued on June 16, 2010, and the second, for \$879.65, was issued on June 30, 2010. These checks were received by Hunt on July 13 and were deposited the same day. The final check, covering incentive pay of \$216.02, was issued on July 15. Hunt received this check on August 3 and deposited it the same day.

doing so. Accordingly, the jury awarded damages against NAS in the amount of \$1,000.

After entry of the judgment, Hunt filed a motion to recover his attorney fees as provided by KRS 337.385. NAS also brought a post-judgment motion for court costs. On December 19, 2011, the trial court entered an order granting NAS court costs in the amount of \$612.35. In making this award, the trial court stated:

[NAS] is otherwise entitled to its full costs paid as the suit would have been unnecessary if [Hunt] had admitted what the jury found, and with which the Court agrees, was his clear debt to [NAS] for his educational expenses. That failure on his part precipitated this entire matter.

The trial court recognized that Hunt was entitled to attorney fees since NAS failed to timely pay him as the law requires. But based upon the equities between the parties, the court concluded that Hunt should not recover his full attorney fees. Consequently, the trial court granted Hunt only \$2,000 of his claimed attorney fees of approximately \$20,000.

On appeal, Hunt, and his trial counsel as real parties in interest, argue that the trial court improperly awarded reduced attorney fees based upon its appraisal of his conduct. Hunt also argues that the award of court costs to NAS was inappropriate. As an initial matter, NAS asserts that Hunt failed to identify these issues in his prehearing statement. We disagree.

Kentucky Rules of Civil Procedure (CR) 76.03(8) states that a “party shall be limited on appeal to issues [raised] in the prehearing statement[.]” In his

amended prehearing statement filed on March 16, 2012, Hunt identified these two issues as proposed to be raised on appeal: “(1) Reduction in attorney fees awarded to Appellant; (2) Award of costs awarded to Appellee.” Although these categories are rather broad, they were sufficient to identify the specific matters which Hunt sought to raise on appeal. Moreover, we cannot find that the issues actually presented in Hunt’s brief go beyond these broad categories to any significant degree. Therefore, we find that Hunt’s prehearing statement substantially complied with CR 76.03(8).

The central issue in this appeal concerns the amount of the trial court’s award of attorney fees under KRS 337.385. The statute provides that any employer who wrongfully withholds wages in violation of KRS Chapter 337

shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and *such reasonable attorney’s fees as may be allowed by the court.* [Emphasis added].

There is very little case law interpreting the term “reasonable attorney’s fees” as used in KRS 337.385. Generally, however, when a trial court is considering whether to award statutory attorney fees and costs or how much to award, the trial court's decision should be guided by the purpose and the intent of providing an award of attorney fees and costs under the particular statute.

*Alexander v. S & M Motors, Inc.*, 28 S.W.3d 303, 305 (Ky. 2000). In this case, the “Wages and Hours” provisions of KRS Chapter 337 prohibit an employer from

withholding wages from a final paycheck for more than fourteen days after termination of employment. KRS 337.055. While KRS 337.060 allows an employer to deduct certain expenses, the educational expenses claimed by NAS are not within the scope of the Act. Furthermore, the purpose of awarding attorney fees is to ensure that all persons falling within the protection of the Act have an effective remedy for violation of their statutory rights. *Alexander*, 28 S.W.3d at 305-06.

For this reason, we take issue with the trial court's statement that Hunt precipitated this matter by refusing to pay a "clear debt" which he owed to NAS for his educational expenses. Hunt's actions justifiably may be perceived as disloyal to an employer who paid the expenses for Hunt's technical degree. However, any moral disapproval of Hunt's behavior must be viewed separately from the parties' respective legal obligations. More importantly, the jury expressly found that there was no express or implied contract requiring reimbursement of these expenses if Hunt did not remain with NAS for a certain time. While the jury allowed NAS to recover some of its expenses under *quantum meruit*, that was an equitable remedy invoked to compensate NAS for the benefit which it conferred upon Hunt without proper reimbursement. *See Lofton v. Fairmont Specialty Ins. Managers, Inc.*, 367 S.W.3d 593, 597 (Ky. 2012). Moreover, the jury specifically found that NAS had acted in bad faith when it withheld Hunt's final wages to coerce him into an admission to the disputed debt.

Nevertheless, the trial court did recognize the jury's verdict on these points, and conceded that NAS failed to pay Hunt as KRS Chapter 337 requires. If a statute provides for "reasonable attorney's fees" without specifying a rate or amount, the amount of the fees to be awarded is left to the discretion of the trial court. *King v. Grecco*, 111 S.W.3d 877, 883 (Ky. App. 2002), *superseded by statute on other grounds as stated in Meece v. Feldman Lumber Co.*, 290 S.W.3d 631, 633 (Ky. 2009). *See also Colorama, Inc. v. Johnson*, 295 S.W.3d 148, 154 (Ky. App. 2009). A trial court abuses its discretion when its decision rests on an error of law (such as the application of an erroneous legal principle or a clearly erroneous factual finding), or when its decision cannot be located within the range of permissible decisions allowed by a correct application of the facts to the law. *See Miller v. Eldridge*, 146 S.W.3d 909, 915 n. 11 (Ky. 2004). We cannot find an abuse of discretion merely because the evidence could have supported a higher award or even if this Court would have reached a different result.

There are other significant factors which could support the trial court's determination of the amount of Hunt's reasonable attorney fees. First, the amount of the wrongfully withheld paychecks totaled \$3,240.67 in net pay. This is a considerable amount which NAS was not entitled to withhold beyond fourteen days. However, Hunt's claimed attorney fees of \$20,137.50 are disproportionate to his underlying claim. Second, although NAS wrongfully delayed payment of Hunt's final wages in violation of KRS 337.055 and 337.060, it did tender full payment no later than early August of 2010 - before the filing of Hunt's

counterclaim. The jury also awarded Hunt an additional \$1,000 over the amounts wrongfully withheld. And finally, in his motion to the trial court, Hunt merely submitted the full amount of his attorney fees without any adjustment to account for the time spent on NAS's direct claim.

Considering these factors and our deferential standard of review, the evidence may support an award of attorney fees which is significantly less than the full amount claimed by Hunt. On the other hand, the trial court clearly gave excessive weight to NAS's disputed claim over the jury's explicit finding that NAS acted in bad faith by withholding Hunt's final paychecks. In addition, NAS consistently refused to admit any statutory violation, which compelled Hunt to pursue his claim all the way to a jury trial. The trial court gave no consideration to this factor. Under the circumstances, we must conclude that the trial court abused its discretion by failing to consider all of the equities between the parties in calculating the amount of Hunt's reasonable attorney fees and by making findings contrary to those of the jury.

As an alternative to the trial court's basis for awarding attorney fees, Hunt urges that the trial court should have based the award of attorney fees on the method set out in *Meyers v. Chapman Printing Co.*, 840 S.W.2d 814 (Ky. 1992). Under this method, the attorney fees awarded should consist of the product of counsel's reasonable hours, multiplied by a reasonable hourly rate, which may then be adjusted to account for various special factors in the litigation. *Id.* at 825, citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-34, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d



40 (1983) (addressing attorney fees awarded under the Civil Rights Act). In light of the purpose of KRS Chapter 337, we conclude that this method is appropriate to calculate reasonable attorney fees for Hunt's wages-and-hours claim. Therefore, we remand this matter for additional findings and an award of attorney fees consistent with the evidence and this method.

Hunt also argues that the trial court abused its discretion by awarding court costs to NAS. CR 54.04(1) allows a trial court to award court costs to the prevailing party. "In the event of a partial judgment or a judgment in which neither party prevails entirely against the other, costs shall be borne as directed by the trial court." Hunt correctly notes that NAS was unsuccessful on its contract claim and only partially successful on its *quantum meruit* claim. Furthermore, the jury found for Hunt on his wages-and-hours claim. As a result, he contends that the trial court's award of court costs to NAS was not warranted. We agree.

CR 54.04(1) affords significant discretion to the trial court when awarding court costs to a partially prevailing party, but that discretion is not unlimited. In this case, the trial court awarded NAS the full amount of its claimed costs, less a deduction for a warning order attorney, which it deemed unnecessary. The trial court placed the full blame for the dispute on Hunt, stating that he should have paid the full debt claimed by NAS. As discussed above, the court's reasoning on this point is contrary to the jury's verdict, which found no contractual claim and awarded only half of the amount sought by NAS. Given the jury's verdicts on NAS's direct claim and Hunt's counterclaim, we must conclude that the trial court

abused its discretion by awarding most of the court costs claimed by NAS.

Therefore, we must vacate that portion of the trial court's judgment.

Finally, NAS argues that sanctions should be imposed against Hunt for filing a frivolous appeal. In order to impose sanctions, it is necessary for this Court to find that the appeal is "so totally lacking in merit that it appears to have been taken in bad faith." CR 73.02(4). Having found merit in both of the issues presented, we cannot conclude that Hunt's appeal was frivolous. *See Kenton County Fiscal Court v. Elfers*, 981 S.W.2d 553, 559 (Ky. App. 1998).

Moreover, we take strong exception to the personal nature of NAS's attacks on Hunt's attorneys. We also strongly disagree with NAS's suggestion that Hunt should be sanctioned merely for appealing discretionary rulings. Contrary to NAS's assertion, a court's exercise of discretionary functions simply allows it to reach a range of permissible results based upon a proper application of the facts to the law. The mere fact that a trial court exercises discretionary authority does not place that decision beyond possibility of review for abuse of that discretion. While this Court's standard of review is limited in scope, Hunt's right to seek appellate review of such rulings is not open to question. For these reasons, NAS's motion for sanctions is not only denied, but is not well-taken.

Accordingly, the December 19, 2011 order of the Carroll Circuit Court awarding attorney fees and court costs is reversed. The trial court's award of attorney fees to Hunt is remanded for additional findings and entry of a new award as set out in this opinion. The trial court's award of court costs to NAS is vacated

and set aside. Finally, the motions by NAS to dismiss the appeal and for sanctions pursuant to CR 73.02(4) are denied.

CAPERSON, JUDGE, CONCURS.

VANMETER, JUDGE, DISSENTS AND FILES SEPARATE  
OPINION.

VANMETER, JUDGE, DISSENTING: I respectfully dissent. As an initial matter, the trial court entered a final judgment on October 3, 2011.

Although the trial court provided in that judgment that “any matters concerning awards of attorneys’ fees shall be taken up separately from the entry of this Judgment[,]” it also included finality language contemplated by CR 54.02. In my view, the parties and counsel were put on notice that any motions for attorneys’ fees needed to be filed within ten days, as a motion to amend judgment under CR 59.05. When Hunt’s motion for attorneys’ fees was filed outside that ten-day window, on October 18, 2011, the trial court no longer had jurisdiction to amend the judgment. *Harris v. Camp Taylor Fire Prot. Dist.*, 303 S.W.3d 479, 482 (Ky. App. 2009); *Scott v. Campbell County Bd. of Educ.*, 618 S.W.2d 589, 591 (Ky. App. 1981).<sup>2</sup>

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<sup>2</sup> In *Louisville-Jefferson County Metro Gov’t v. Brooks*, No. 2012-CA-001141-MR, 2013 WL 4512649 (Ky. App., Aug. 23, 2013), another panel of this court ruled that the trial court retained discretion to award additional attorneys’ fees upon motion filed outside of the ten-day period provided in CR 59.05, citing *Brett v. Isaac*, No. 2008-SC-000712-MR, 2009 WL 2707092 at \*2 (Ky., Aug. 27, 2009), and *Nationwide Ins. Co. v. Madison*, No. 2011-CA-001614-MR, 2012 WL 6213794 (Ky. App., Dec. 14, 2012). To the extent the court in *Brooks* relied on *Brett*, that reliance is misplaced. The issue in *Brett*, as discussed *infra*, was the trial court’s authority to award costs under CR 54.04. “Costs,” within the meaning of CR 54.04, do not include attorneys’ fees. See *Dulworth & Burress Tobacco Warehouse Co. v. Burress*, 369 S.W.2d 129, 133 (Ky. 1963). Neither *Harris* nor *Scott* have been overruled by the Kentucky Supreme Court or this court, although, as noted, *Brooks* and *Nationwide*, both unpublished, appear to reach

As an aside, the fact that NAS filed a post-judgment bill itemizing costs and Hunt objected under CR 54.04(2) does not, in my view, equate to a pending CR 59.05 motion which precludes finality. *See Kurtsinger v. Bd. of Trs. of Kentucky Ret. Sys.*, 90 S.W.3d 454, 458 (Ky. 2002) (stating that “[t]he timely filing of a CR 59.05 motion postpones finality[.]”). Under CR 54.04(2), a timely filed bill for costs is added to the judgment as a ministerial matter by the court clerk. A dispute as to costs is “resolved by the trial court in the form of a supplemental judgment.” *Id.* As a supplemental judgment, that decision is subject to its own appeals process, notice of appeal, etc., which is independent of the appeals concerning the substantive judgment. *See Brett v. Isaac*, No. 2008-SC-000712-MR, 2009 WL 2707092 at \*2 (Ky., Aug. 27, 2009) (stating that CR 54.04 “provides the obvious—costs are assessed *after* judgment. Exceptions are to be served within five days and the court is to decide by way of a ‘supplemental judgment.’ Clearly, this retained supplemental judgment jurisdiction has nothing to do with the lost jurisdiction to amend or supplement the final judgment[.]”).

Even assuming we have jurisdiction to hear this appeal, as the majority opinion correctly notes, the trial court has ample discretion in its award of attorneys’ fees. Given the underlying claims, the evidence and the jury verdict, the trial court essentially made the correct call on the amount of its award of attorneys’ fees, an award to which we should defer and uphold. The majority opinion directs

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contrary results. Whether in this case, or another, or by rule amendment, the Kentucky Supreme Court should resolve this issue one way or the other, so that confusion and uncertainty may be mitigated.

the trial court to award attorneys' fees under the formula set forth in *Meyers v. Chapman Printing Co.*, 840 S.W.2d 814, 825 (Ky. 1992). Two items about this direction: first, Hunt did not argue this basis for his attorneys' fees to the trial court, and the majority opinion should not impose it at this stage of the proceedings; and second, the Meyers formula is *reasonable* hours multiplied by a *reasonable rate, as adjusted to account for various special factors*. *Id.* (emphasis added). In other words, the trial court should exercise its discretion in awarding attorneys' fees!

Again, the motion for attorneys' fees was untimely under CR 59.05, which in turn results in an untimely notice of appeal. CR 73.02(1)(a). Hunt's appeal should be dismissed on that basis. Alternatively, in considering the merits of the appeal, the Carroll Circuit Court should be affirmed.

BRIEF FOR APPELLANT:

Mellissa Eyre Yeagle  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Nathaniel K. Adams  
Ghent, Kentucky