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IN THE
COURT OF APPEALS OF INDIANA

BOOKOUT PROPERTIES, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A05-0903-CV-157
	)	
DEBRA BYRUM,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0512-PL-66

July 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

This case returns to us following a prior remand with instructions to the trial court. Bookout Properties, Inc. ("Bookout") now appeals the trial court's judgment awarding Debra Byrum $50,647.38 for unpaid wages, damages, costs, and attorney fees. For our review, Bookout raises two issues, which we restate as: 1) whether the trial court erred by failing to hold an evidentiary hearing to determine the applicability of the wage payment statute, Indiana Code chapter 22-2-5; and 2) whether the trial court erred when it calculated the judgment. Concluding the trial court did not err and Bookout has waived review of the damages award, we affirm.

Facts and Procedural History

Byrum worked as a real estate salesperson for Bookout until she was terminated on July 14, 2005. At that time, Bookout owed Byrum commissions on eleven sales contracts, which had not reached final closing. Bookout only paid Byrum commissions for three sales, and Byrum brought suit for the remaining eight commissions. The trial court found that Byrum's written commission schedule did not satisfy the statute of frauds, and ruled in favor of Bookout. Byrum appealed.

On appeal, this court reversed the trial court, concluding the written commission schedule did satisfy the statute of frauds, and remanded to the trial court to calculate the damages owed to Byrum in light of the wage payment statute, Indiana Code chapter 22-2-5. See Byrum v. Bookout Properties, Inc., No. 18A02-0711-CV-1003, 2008 WL 2605472 (Ind. Ct. App. July 1, 2008). In its opinion, this court stated:

> We are mindful that on remand the trial court will be asked to address the application of Indiana's Wage Payment Statute, an issue Bookout developed in its brief on appeal. On remand, we instruct the trial court to address this fact-sensitive issue with the following general framework in mind.

Id. at *3.

Following remand, Byrum submitted an affidavit of attorney fees, and the trial court held a hearing on the issue on October 21, 2008. On November 7, 2008, the trial court issued the following relevant findings of fact and conclusions of law:

> 6. That the Indiana Court of Appeals also set forth various case law and statutory citings [sic] setting forth the application of statutory damages, costs and attorney fees.
>
> 7. Defendant did not contest Plaintiff's calculation of commissions due, but rather based it's [sic] defense on it's [sic] interpretation of Indiana Code § 32-21-1-10 and its counterclaim which was denied by this court.
>
> 8. That Plaintiff is entitled to recover of and from the Defendant unpaid commissions in the sum of thirteen thousand five hundred ten dollars and 52/100 ($13,510.52).
>
> 9. That pursuant to Indiana Code § 22-2-5-1 et seq., Plaintiff is entitled to recover of and from Defendant treble damages, court costs, expenses of litigation and her reasonable attorney fees calculated as follows; [sic]

a.	Treble damages for unpaid wages.	40,531.56
b.	Interest on unpaid wages from the date of the original judgment, October 17, 2007 through October 29, 2008 at 8% per annum (377 days).	3,349.12
c.	Court Costs – Delaware County	130.00
	Appellate Costs	250.00
d.	Expenses – Transcript Expense	386.75
	Smith Reporting	99.95
e.	Attorney Fees	5,900.00
	Total Judgment	$50,647.38

> 10. That Plantiff is entitled to recover of and from the Defendant fifty thousand six hundred forty seven dollars and 38/100 ($50,647.38) plus interest at the statutory rate from the date of this court's judgment.

Appellant's Appendix at 12-13. Bookout filed a motion to correct error on December 8, 2008. The trial court held a hearing on December 18, 2008, but failed to rule on the motion. Therefore, the motion was deemed denied on January 17, 2008, pursuant to Indiana Trial Rule 53.3(A). Bookout now appeals.

Discussion and Decision

I. Standard of Review

Where, as here, a trial court enters an order containing findings of fact and conclusions of law, we review the judgment using a two-step process. Garriot v. Peters, 878 N.E.2d 431, 437 (Ind. Ct. App. 2007). First, we determine whether the evidence supports the trial court's findings, and second, we determine whether the findings support the trial court's conclusions. Id. We will not set aside a judgment unless it is clearly erroneous, which occurs when no evidence supports the findings, the findings fail to support the judgment, or the trial court applies the incorrect legal standard. Id. In addition, our review of the trial court's judgment must leave us with a firm conviction that a mistake has been made before we will reverse. Id.

II. Applicability of the Wage Payment Statute

Bookout first argues the trial court failed to engage in a "fact-sensitive review of the applicability of the Wage Payment Statute" as required by this court's prior decision. Brief of Appellant at 8. Initially, we point out that Bookout misquotes this court's instructions on

remand. This court instructed the trial court to "address this fact-sensitive issue with the following general framework in mind." Byrum, 2008 WL 2605472, at *3. This court went on to state: "As a general rule, a person employed on a sales commission basis is entitled to commissions when the order is accepted even if the employee is terminated before payment is made." Id. Thus, this court's prior decision did not require the trial court to hold a new evidentiary hearing on the application of the wage payment statute; rather, it only required the trial court to apply the general framework provided to the facts of the case.

On remand, the trial court found Byrum presented evidence that her unpaid commissions totaled $13,510.52 and Bookout "did not contest Byrum's calculation …." Appellant's App. at 12. The trial court based its calculation of damages on this number. Therefore, the trial court's findings support its judgment. To the extent that Bookout argues Byrum is not entitled to the commissions under the wage payment statute, this court addressed that argument in the prior decision. See Byrum, 2008 WL 2605472, at *3, n.5. As a result, the trial court did not err when it failed to hold an evidentiary hearing on the applicability of the wage payment statute.

III. Calculation of Damages

Bookout next argues that the trial court erred when it calculated the damages owed to Byrum. We employ a limited standard of review to a trial court's award of damages. Prime Mortgage USA, Inc. v. Nichols, 885 N.E.2d 628, 656 (Ind. Ct. App. 2008). "No degree of mathematical certainty is required in awarding damages as long as the amount awarded is

supported by evidence in the record." Id. (quoting Gasway v. Lalen, 526 N.E.2d 1199, 1203 (Ind. Ct. App. 1988)).

Bookout specifically argues the trial court improperly awarded Byrum interest on the unpaid wages from October 17, 2007, the date of the original judgment, to October 29, 2008, and that the wage payment statute does not entitle Byrum to recover litigation expenses other than attorney fees. However, Bookout did not cite any authority to support its legal conclusions regarding the award of damages. As a result, Bookout has waived review of the damages award. Romine v. Gagle, 782 N.E.2d 369, 386 (Ind. Ct. App. 2003).

Conclusion

The trial court did not err by failing to hold an evidentiary hearing on the applicability of the wage payment statute. In addition, Bookout has waived review of the damages award.

Affirmed.

DARDEN, J., and BAILEY, J., concur.