COURT OF APPEALS
DECISION
DATED AND FILED

October 22, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1049 **Cir. Ct. No. 2009CV12538**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

CARL RUCKER, D/B/A RUCKER DETECTIVE AGENCY,

PLAINTIFF-APPELLANT,

V.

E.R. WAGNER MANUFACTURING CO.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY M. WITKOWIAK, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Carl Rucker, *pro se*, appeals from a judgment of the trial court, entered on motions after verdict. Rucker believes the trial court erred when it reduced the jury's damage award by almost half, disallowed consequential damages including attorney fees, disallowed pre-judgment interest,

and specified the post-judgment interest rate would be 4% rather than 12%. We discern no error, so we affirm the judgment.

BACKGROUND

¶2 For a number of years, Rucker had a contract with E. R. Wagner Manufacturing Co., under which Rucker, doing business as Rucker Detective Agency, provided private security services for Wagner. Sometime in 2008, a contract for service from January 1, 2009 through January 1, 2010, was re-signed by the parties. The contract contained no cancellation provision, but on February 9, 2009, Wagner sent Rucker a letter to terminate his services effective March 2, 2009. It appears that Wagner's motivation was its belief that Rucker's staff was not properly licensed.

¶3 Rucker filed this suit for breach of contract, claiming $80,193 in damages, plus attorney fees, certified public accountant fees, pain and suffering, and punitive damages. Wagner counterclaimed based on the lack of licensed personnel. The parties filed cross-motions for summary judgment. The trial court granted Wagner's motion in part, dismissing Rucker's claims for pain and suffering and punitive damages. The trial court further ruled that the appropriate measure of damages would not be the balance due on the contract but, rather, actual lost profits. The trial court denied the remainder of the motions.

¶4 A jury trial was held over three days in September 2011. The jury concluded that Wagner had breached the contract but Rucker had not, and awarded Rucker $60,000 in damages. Wagner filed for judgment notwithstanding the verdict or, in the alternative, a new trial. The trial court reduced the damage award to $30,371, finding that the only evidence of lost profits came from Rucker's accountant, who indicated the loss was the lower amount. The trial court

entered judgment for that amount, plus statutory costs under WIS. STAT. § 814.04. Prejudgment interest was denied.

DISCUSSION

I. Reduced Jury Award

¶5 The first issue Rucker raises on appeal is whether the trial court erred in reducing the jury's verdict from $60,000 to just over $30,000. "On review of a jury verdict, we view the evidence in the light most favorable to the verdict and uphold it if there is any credible evidence to support it." ***Poling v. Wisconsin Physicians Service***, 120 Wis. 2d 603, 608, 357 N.W.2d 293, 296 (Ct. App. 1984).

¶6 "Contract damages should compensate the wronged party for damages that arise naturally from the breach[.]" ***Magestro v. North Star Environmental Construction***, 2002 WI App 182, ¶10, 256 Wis. 2d 744, 751, 649 N.W.2d 722, 726. Lost profits are a legitimate item of damages if those profits can be computed with reasonable certainty. ***Id.***, 2002 WI App 182, ¶14, 256 Wis. 2d at 453, 649 N.W.2d at 726. Here, the jury was asked to determine the sum that would reasonably compensate Rucker for lost profits, and Wagner does not dispute the legitimacy of lost profits as the proper measure of damages.

¶7 The trial court, however, determined that only lost profits of $30,371 were supported by the evidence. Rucker's accountant had testified as to the amount, deriving it from the original contract price for the year's services and adjusting for payments already tendered. An exhibit in support of this lower amount was also admitted.

¶8 We are bound to the trial court's conclusion. Rucker does not dispute the trial court's ruling that the lower amount is the only amount supported by the record, and he does not direct us to any evidence that would support the jury's $60,000 award. Further, while we are ordinarily "obligated to search for credible evidence that will sustain the verdict," ***Poling***, 120 Wis. 2d at 608, 357 N.W.2d at 296, Rucker failed to procure the trial transcripts. We therefore assume that they would support the trial court's conclusion that there was no evidence at trial in support of the higher amount.[1] *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26–27, 496 N.W.2d 226, 232 (Ct. App. 1993). As the Record only demonstrates lost profits in the amount of $30,371, the trial court properly reduced the award.

II. Other Damages

¶9 Rucker believes that the $60,000 award included "consequential damages" like attorney fees and accountant fees, as well as fees Rucker incurred to investigate Wagner's counterclaim. Rucker contends that the trial court erred when it determined these damages were not recoverable.

[1] In his reply brief, Rucker asserts that the statement on the transcript form does not state that trial transcripts must be made a part of every appeal, and he asserts that the transcript of the post-verdict motion hearing "place[s] him in compliance with Wis. Stat. 809.19(2)(a)[.]" However, WIS. STAT. RULE 809.19(2)(a) specifies the requirements for the contents of an appendix. The record on appeal has broader requirements. *See* WIS. STAT. RULE 809.15(1)(a).

It is true that, depending on the issues raised on appeal, not every transcript will be necessary to an appeal. However, if we are to review the sufficiency of the evidence adduced at trial to support the jury's verdict, the transcripts of said trial are vital: "[a]n appellate court cannot function if it has no way to determine whether error has been committed." ***State v. Perry***, 136 Wis. 2d 92, 105, 401 N.W.2d 748, 754 (1987).

¶10 Consequential damages are recoverable in a contract action, and are meant to "'fairly and reasonably'" compensate the injured party for his loss. *See* ***Magestro***, 2002 WI App 182, ¶11, 256 Wis. 2d at 752, 649 N.W.2d at 726 (citation omitted). However, Wisconsin adheres to the American Rule, which generally requires each party to litigation to bear its own costs. *See* ***Estate of Kriefall v. Sizzler USA Franchise, Inc.***, 2012 WI 70, ¶¶72–73, 342 Wis. 2d 29, 69–70, 816 N.W.2d 853, 872. Though there is an exception to the American Rule, first set out in our state by ***Weinhagen v. Hayes***, 179 Wis. 62, 190 N.W. 1002 (1922), that exception only applies to litigation against a third party, *see* ***Hall v. Gregory A. Liebovich Living Trust***, 2007 WI App 112, ¶¶17–18, 300 Wis. 2d 725, 735–737, 731 N.W.2d 649, 654–655.[2] Thus, these additional items of damages were properly disallowed.

III. Pre- and Post-Judgment Interest

¶11 Finally, Rucker contends that he is entitled to pre-judgment interest and that post-judgment interest should accrue at the rate of 12%. The trial court denied pre-judgment interest because it concluded the damages were not "simple liquidated damages" or easily ascertainable, therefore negating the propriety of pre-judgment interest. The trial court allowed post-judgment interest, but noted

[2] For this reason, ***Repinski v. Clintonville Federal Savings & Loan***, 49 Wis. 2d 53, 181 N.W.2d 351 (1970), does not apply to Rucker's benefit. He cites language in that case which states, "When litigation is a natural and proximate result of the breach [of contract], recovery may be had as damages for attorney's fees necessarily incurred in that litigation." ***Id.***, 49 Wis. 2d at 58, 181 N.W.2d at 354. The Repinskis were trying to apply the exception to the American Rule, as set out in ***Weinhagen v. Hayes***, 179 Wis. 62, 190 N.W. 1002 (1922), to recover attorney fees from their bank in a breach of contract action. However, the attorney fees they sought were from litigation with a third-party contractor who had foreclosed on a construction lien. Those fees were disallowed because that third-party litigation was not related to the breach. ***Repinski***, 49 Wis. 2d at 58, 181 N.W.2d at 354. In Rucker's case, there is no third-party litigation to warrant application of the ***Weinhagen*** exception.

that a recent statutory revision meant that the rate would be 4%, not 12%. *See* WIS. STAT. § 814.04(4) (2011–12). Rucker has failed to develop an argument on either point.[3] We therefore need not discuss them further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244–245, 430 N.W.2d 366, 369 (Ct. App. 1988).[4]

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[3] In any event, Rucker appears to concede that post-judgment interest should be the lower rate, as the request for relief in his reply brief asks that this court "includ[e] post-judgment interest at a rate of 4%."

[4] In his reply brief, Rucker asserts that "Wagner's Brief consisted mostly of irrelevant arguments and misleading and incorrect statements, and its Appendix contained mostly extraneous material[.]" He contends that "Wagner's response comprised a vexatious filing," that "their counsel engaged in unprofessional noncompliance," and "Wagner's overall conduct during this appeal to date has been wanton." He therefore "requests this Court to grant Rucker such relief as this Court deems appropriate." We disagree with Rucker's characterization of Wagner's submissions and, to the extent that this paragraph can even be deemed a proper motion, the motion is denied.