

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Langford v. Paravant, Inc.

48 So. 3d 75 (Fla. 5th DCA 2010) · No. Nos. 5D08-4320, 5D09-2143 · Decided October 8, 2010

SUMMARY

The Florida Fifth District Court of Appeal affirmed the final judgment on liability and damages in a dispute over unpaid commissions, rejecting the appellant's challenges to trial bifurcation, evidentiary rulings, jury instructions, the verdict form, and denial of judgment as a matter of law. The court reversed the order denying attorney's fees and costs, holding that the employee was entitled to fees under section 448.08, Florida Statutes, and remanded for determination of the amount.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Sawaya, J.; Griffin, J.; Parsons, W.A., Associate Judge
JURISDICTION	Florida
DECIDED	October 8, 2010
DOCKET	Nos. 5D08-4320, 5D09-2143
DISPOSITION	other
PROCEDURAL POSTURE	Langford appealed the final judgment on liability and damages and the order denying his motion for attorney's fees and costs after a jury trial concerning unpaid commissions.
PRECEDENTIAL VALUE	Published opinion
PARTIES	William Langford v. Paravant, Inc., Paravant Computer, Etc.

TOPICS

- wage and hour
- breach of contract
- remedies
- appellate procedure
- employment law

PRACTICE AREAS

- employment law
- contracts
- remedies
- appellate procedure

QUESTIONS PRESENTED

- Whether the trial court committed reversible error by sua sponte bifurcating the trial.
- Whether the trial court improperly excluded or refused to consider evidence before the jury.

3. Whether the jury instructions and verdict form were improper.
4. Whether the trial court erred in denying Langford's motion for judgment as a matter of law.
5. Whether Langford was entitled to attorney's fees and costs under section 448.08, Florida Statutes, despite recovering less than the full amount of commissions claimed.

HOLDINGS

1. The trial court did not commit reversible error in bifurcating the trial, handling the evidence, instructing the jury, providing the verdict form, or denying Langford's motion for judgment as a matter of law.
2. A litigant who obtains an affirmative judgment for unpaid commissions is a prevailing party entitled to attorney's fees and costs under section 448.08, even if the recovery is less than the amount claimed or does not encompass every count.

KEY QUOTATIONS

"Unpaid commissions are considered wages for purposes of section 448.08." (76)

"The policy behind section 448.08 is to provide 'a means to equalize the disparate positions of employees in attempting to collect for the fruits of their labors.'" (76)

"We hold that a party prevails within the meaning of section 448.08 when there is an affirmative judgment rendered, even if it is for less than the amount claimed and recovery is not had on all counts." (76)

FACTUAL BACKGROUND

Langford sought unpaid commissions from his former employer, Paravant, Inc. A jury trial resulted in an affirmative judgment for Langford, but the recovery was less than the total amount of commissions he claimed. The trial court denied his request for attorney's fees and costs under section 448.08, Florida Statutes.

PROCEDURAL HISTORY

The trial court entered final judgment on liability and damages in Langford's favor for less than the total commissions he claimed, and denied his motion for attorney's fees and costs. Langford appealed both rulings. The Fifth District affirmed the liability and damages judgment, reversed the fee order, and remanded for determination of the amount of fees and costs.

DISPOSITION

other

REMAND INSTRUCTIONS

Affirm the final judgment on liability and damages; reverse the order denying Langford's motion for attorney's fees and costs; remand to the trial court to determine the amount of fees and costs to award Langford.

CASES CITED

- Hingson v. MMI of Fla., Inc., 8 So. 3d 398, 401 (Fla. 2d DCA 2009)
- Tampa Bay Publ'ns, Inc. v. Watkins, 549 So. 2d 745, 747 (Fla. 2d DCA 1989)
- Community Design Corp. v. Antonell, 459 So. 2d 343, 346 (Fla. 3d DCA 1984), review denied, 469 So. 2d 748 (Fla. 1985)
- Hub Cap Heaven, Inc. v. Goodman, 431 So. 2d 323 (Fla. 3d DCA 1983)
- American Insulation of Fort Walton Beach, Inc. v. Pruitt, 378 So. 2d 839 (Fla. 1st DCA 1979)
- Peter Marich & Associates, Inc. v. Powell, 365 So. 2d 754 (Fla. 2d DCA 1978)

OPINION

SAWAYA, J.

48 So.3d 75 (2010) William LANGFORD, Appellant, v. PARAVANT, INC. and Paravant Computer, Etc., Appellees. Nos. 5D08-4320, 5D09-2143. District Court of Appeal of Florida, Fifth District. October 8, 2010. Rehearing Denied December 1, 2010. Edward C. Tietig, Palm Bay and Nancy Allen Wegener, Pro Hac Vice, Clarksdale, Mississippi, for Appellant. Larry A. Klein, of Holland & Knight LLP, West Palm Beach and Stephen T. Ball and David A. Jones of Holland & Knight, Orlando, for Appellees.

Prior report: 2008 WL 6171943. SAWAYA, J. William Langford appeals the final judgment on liability and damages, which he claims awarded him only a fraction of the total amount of commissions he was owed from his former employer, Paravant, Inc. Langford raises several issues: (1) whether the trial court erred when it sua sponte bifurcated the trial; (2) whether the trial court erred in refusing to allow certain evidence to be considered by the jury; 3) *76 whether the instructions and verdict form the trial court gave to the jury were improper; and 4) whether the trial court erred in denying Langford's motion for judgment as a matter of law.

We have thoroughly reviewed the record that has been provided to us, and we are unable to conclude that reversible error occurred as to any of these issues. Accordingly, we affirm the judgment under review. Langford also appeals the order denying his motion for attorney's fees. Clearly, Langford is entitled to fees pursuant to section 448.08, Florida Statutes (2008), which allows awards of attorney's fees and costs to successful litigants in actions for unpaid wages.

"Unpaid commissions are considered wages for purposes of section 448.08." Hingson v. MMI of Fla., Inc., 8 So.3d 398, 401 (Fla. 2d DCA 2009). As the court further explained in Hingson: The policy behind section 448.08 is to provide "a means to equalize the disparate positions of employees in attempting to collect for the fruits of their labors." Tampa Bay Publ'ns, Inc. v. Watkins, 549 So.2d 745, 747 (Fla.

2d DCA 1989). The fact that Hingson did not recover all the commissions she sought does not alter her status as prevailing party under section 448.08. Although she recovered less than the amount that she claimed, she established, and the trial court found, that the Employers breached

the employment agreement and that she was entitled to damages and her statutorily authorized attorney's fees as a result of that breach.

Id. Similarly, in *Community Design Corp. v. Antonell*, 459 So.2d 343, 346 (Fla. 3d DCA 1984), review denied, 469 So.2d 748 (Fla.1985), the court held: Addressing CDC's second theory, we hold that a party prevails within the meaning of section 448.08 when there is an affirmative judgment rendered, even if it is for less than the amount claimed and recovery is not had on all counts.

Cf. *Hub Cap Heaven, Inc. v. Goodman*, 431 So.2d 323 (Fla. 3d DCA 1983); *American Insulation of Fort Walton Beach, Inc. v. Pruitt*, 378 So.2d 839 (Fla. 1st DCA 1979); *Peter Marich & Associates, Inc. v. Powell*, 365 So.2d 754 (Fla. 2d DCA 1978). (These cases reached the same holding in interpreting a similar provision of the Florida Statutes, § 713.29.) Id. at 346.

We affirm the final judgment on liability and damages. We reverse the order denying Langford's motion for fees and costs and remand this case to the trial court to determine the amount to award Langford. AFFIRMED in part, REVERSED in part, and REMANDED. GRIFFIN, J., and PARSONS, W.A., Associate Judge, concur.