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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3074-21**

**VERONICA VILLALOBOS
and JOEL ESQUIJAROSA,**

Plaintiffs-Respondents,

v.

**BEAST COAST MOVING
LIMITED LIABILITY COMPANY,
BEN BRETTER,¹ and AMOS
BRETTER,**

Defendants-Appellants.

Submitted March 15, 2023 – Decided May 19, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-0815-20.

Kohn, Needle & Silverman, attorneys for appellants
(Daniel B. Needle, on the brief).

Stephen R. Bosin, attorney for respondents.

¹ Improperly pled as Benjamin Bretter.

PER CURIAM

In this action to collect wages due under the New Jersey Wage Payment Law (WPL), N.J.S.A. 34:11-4.1 to -4.14, defendants Beast Coast Moving Limited Liability Company, Ben Bretter, and Amos Bretter appeal from a May 17, 2022 order of judgment following a bench trial. In a comprehensive written opinion, the trial court determined plaintiffs Veronica Villalobos and Joel Esquijarosa credibly testified they were employed by defendants in their long-distance moving company and were not paid wages promised and due for their work performed from August to November 2019. The trial court determined defendants violated the WPL and awarded plaintiffs wages under the payment and liquidated damages provisions of the WPL. We affirm.

I.

A. Veronica's² Employment

According to plaintiffs, Beast Coast re-hired them in February 2019, after they were "abruptly and temporarily" fired, to assist generally with its business and to eventually handle long-distance hauls. Ben testified plaintiffs' employment commenced in April 2019. Plaintiffs were again terminated

² We refer to the parties by their first names for ease of reference and because the individual defendants share a common surname. By doing so we intend no disrespect.

because they ostensibly brought their domestic disputes to the workplace. Veronica testified Amos re-hired her and Joel in August 2019 at a meeting that took place at Amos's home after he "summoned" her there. At trial, Veronica testified that she discussed compensation and the terms of her employment with Amos at their meeting. Veronica stated Amos agreed to pay her a daily rate of \$200 for assisting with moves, plus a fifteen-percent commission on the mark-up of the packing supplies sold to customers, and for long haul road expenses. Regarding local jobs, Veronica conceded she was paid "\$15.00 per hour or \$150 per day," but contended she was supposed to be paid \$200 per day at trial.

Veronica explained she was hired as a foreperson. Her responsibilities included customer inventorying, packing, and truck loading. Veronica also maintained an inventory of supplies she purchased and records of her road expenses on long hauls. She frequently communicated with Ben and Amos during hauls. Veronica did not have a written employment agreement with Beast Coast. Plaintiffs both claimed they were to be paid on a daily basis because they were away from home on long hauls in between jobs and interconnected with other jobs.

Ben testified Veronica was not re-hired in August 2019, although he was aware she was riding along with Joel on long hauls. Rather, Ben surmised that

Joel brought Veronica with him because she was homeless and "[t]hey were living in a van." Ben also testified the situation benefitted both plaintiffs because Veronica did "whatever [Joel] instructed her to do."

Veronica testified she billed defendants' clients and sent the clients' credit card information to Beast Coast's central offices. Amos issued a Chase debit card to Veronica, which was to be used as an expense account for plaintiffs' long hauls. Joel testified the debit card was only to be used to refuel the truck. Defendants replenished funds into the expense account based on plaintiffs' reporting of the need to do so. Joel denied the debit card was used to withdraw cash. Veronica represented she and Joel were paid by funds wired through Western Union, the Chase debit card, and sometimes in cash. Veronica also testified she transmitted documentation of expenses and made requests for payment from defendants but was ignored.

B. Joel's Employment

Joel testified he was fired by defendants in June 2019 and re-hired by Amos in August 2019 as a box truck driver. He drove to and from the customers' residences. Joel testified he did not own a truck and worked exclusively for Beast Coast during this time period. Joel's other responsibilities included wrapping furniture, loading trucks, and transporting belongings to clients. He

worked under the direction of Amos and Ben at a rate of \$200 per day for local haul jobs, which increased later to \$300 per day for long haul jobs. Joel followed Amos and Ben's instructions on how to handle a job. Joel testified he spoke to Amos about financial issues because he thought Amos owned the company and Ben was the general manager. Joel required Veronica's assistance in communicating with Amos due to his limited proficiency in the English language.

According to Joel, he drove a Beast Coast truck and was responsible for its maintenance. He also used Beast Coast equipment for the deliveries. Joel testified that due to his limited proficiency in the English language, he could not have performed his job without Veronica serving as a foreperson, and Amos and Ben expected her to assist with the hauls. Veronica also assisted Joel with document management, billing the clients, customer service tasks, and communicating with Amos and Ben.

In contrast, Ben, defendants' sole witness, testified plaintiffs were paid hourly, and Joel was expected to complete the hauls by himself. According to Ben, Veronica went "along for the ride voluntarily" so she could spend time with Joel. Ben also claimed he is the sole owner of Beast Coast, and his father, Amos, was an employee and general manager of the company who dealt "with all the

trucks and dispatching." Ben testified that he works in sales and payroll for Beast Coast, however, he acknowledged his father spoke to plaintiffs about compensation. According to Ben, Beast Coast did not agree to pay plaintiffs for days they did not work.

In November 2019, Veronica, Amos, and Ben had a "blow up" when Amos demanded plaintiffs return the company truck to New Jersey, and they were terminated. Joel testified plaintiffs were fired by Amos when Joel demanded to be paid. Veronica testified defendants promised to pay plaintiffs when they returned the company's truck, which occurred the week before Thanksgiving. Veronica reconciled all the contracts, maintained driver logs, and kept a personal journal outlining her commissions due and receipts for expenses, which were sent to defendants but never paid. Ben testified that plaintiffs did not perform any jobs in the last week of their "claimed" employment.

At trial, Veronica testified she worked for 101 days between August 8 and November 19, 2019, at a daily rate of \$200, but was only paid \$5,350 instead of \$20,200, a shortfall of \$14,850 in unpaid wages. She also contended defendants owed her \$1,818.13 in out-of-pocket expenses and \$894 in commissions. Ben testified that Veronica was not entitled to any wages, commissions, or expenses since she was never hired by Beast Coast as an employee. Ben acknowledged

defendants transferred money via Western Union in Veronica's name to compensate Joel because she handled the money.

Joel testified he also worked 101 days during the relevant time period, at a daily rate of \$300, which totals \$30,300. He also claimed he worked one additional day on August 7 at an hourly rate of \$18 per hour. Veronica did not work on August 7. Joel's wages for 102 days totaled \$30,660. Since defendants only paid him \$8,160, Joel claimed he was owed \$22,500 for unpaid wages. Joel refuted defendants' contention he was supposed to pay Veronica out of his wages. Joel asserted defendants evaded paying him, and when they did pay him, it was in fragments.

Ben testified he only paid Joel for the days he was actively working on pickups and deliveries, not for days when he was in between moving customers. Ben explained that plaintiffs were assigned their hauling destinations by email from Beast Coast. Once plaintiffs started doing long hauls, mostly out-of-state, in August 2019, Ben no longer considered them employees and did not maintain any payroll records for them. Ben testified Joel understood that he was an independent contractor and the company issued him a 1099 tax form. In addition, Ben admitted Beast Coast owed money to Joel, but defendants "interrupted" payment to him after the lawsuit was filed.

On February 4, 2020, plaintiffs filed a complaint in the Law Division against defendants alleging a violation of the WPL by Beast Coast (count one); Ben (count two); and Amos (count three). In the complaint, Veronica claimed she was owed \$44,550, and Joel alleged he was owed \$67,500. Plaintiffs alleged Ben and Amos were personally liable as employers as defined by the WPL in light of the fact that plaintiffs believed Beast Coast was no longer in business. Plaintiffs also alleged breach of contract by Beast Coast (count four) and sought damages in the amount of \$2,712 as to Veronica under count four.³ Plaintiffs also sought liquidated damages equal to 200 percent of the wrongfully withheld wages, counsel fees, and costs under the WPL. Defendants filed an answer and denied plaintiffs were employees under the WPL.

Veronica, Joel, and Ben testified at trial. Amos did not testify. Joel required the assistance of a Spanish interpreter. Plaintiffs moved Veronica's summary of calculations based on her daily journals with dates, locations, and job numbers, as well as an "unpaid expenses" summary supported by receipts, into evidence. Defendants did not proffer any evidence to counter the

³ In count four of the complaint, Veronica alleged defendants owed her \$1,818 in out-of-pocket expenses and \$894 in commissions, totaling \$2,712. However, she later testified at trial that defendants owed her \$1,818.13 in out-of-pocket expenses.

calculations and documentation prepared by Veronica, which was supported by receipts and email communications.

In its opinion, the trial court found plaintiffs' testimony to be credible and Ben's testimony "shocking[ly] weak and not credible." The trial court highlighted that Ben had no first-hand knowledge about the wages negotiated by Amos. Ben's testimony that Veronica's labor was voluntary and gratuitous was discounted by the trial court as "nonsense." The trial court found both plaintiffs were entitled to recover wages under the WPL, and liquidated damages under the WPL, jointly and severally, against defendants.

The trial court concluded Amos and Ben qualify as employers under the WPL because they are agents having managerial control of Beast Coast. Applying the ABC test factors set forth in our Supreme Court's decision in Hargrove v. Sleepy's, LLC, 220 N.J. 289, 305 (2015), the trial court concluded defendants failed to meet their burden of establishing plaintiffs were independent contractors and not employees.⁴

⁴ The ABC test factors for determining whether an individual is an independent contractor as opposed to an employee are:

- (1) does the individual work independently of the employer's control;

The trial court also determined Beast Coast owed Veronica \$14,850 in wages, \$29,700 in liquidated damages, \$1,818.13 for expenses, and \$894 in commissions for a total of \$47,262.13. As to Joel, the trial court found Beast Coast owed him \$22,500 in wages and \$43,000 in liquidated damages for a total of \$67,500. The trial court emphasized that defendants did not present any evidence as to what amounts are owed to plaintiffs. In addition, the trial court found Ben and Amos were individually liable as employers under the WPL, citing N.J.S.A. 34:11-4.1(a). Plaintiffs were denied counsel fees because they did not submit the requisite supporting certification to the trial court. This appeal followed.

Before us, defendants no longer dispute plaintiffs were their employees. Instead, defendants contend the trial court erred by applying the definition of employer under N.J.S.A. 34:11-4.1(a) to Amos in its analysis of plaintiffs' claims because he was not an owner of Beast Coast. Rather, defendants contend Amos was an employee serving as its general manager, operations manager

(2) does the individual maintain a place of business;
and

(3) whether the individual normally provides this type
of work as an independent business.

[N.J.S.A. 43:21-19(i)(6).]

and/or dispatcher. Defendants also argue the trial court erred because there was insufficient evidence supporting its findings as to the rate of pay agreed to between the parties, erred in finding Veronica worked for Beast Coast, and the workdays for which plaintiffs were entitled to be paid. Defendants do not dispute the trial court's finding that Veronica was owed \$894 in unpaid commissions and \$1,818 for her out-of-pocket expenses.

II.

"The scope of appellate review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting In re Tr. Created By Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). "Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare, 154 N.J. at 411-12).

"Because a trial court hears the case, sees and observes the witnesses, and hears them testify, it has a better perspective than a reviewing court in evaluating

the veracity of witnesses." Ibid. (quoting Cesare, 154 N.J. at 411-12). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. State v. Parker, 212 N.J. 269, 278 (2012); Mountain Hill, L.L.C. v. Twp. Comm. of Twp. Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008).

III.

Our Legislature has enacted a series of statutes governing the payment of wages to employees, including the WPL, which is pertinent to the matter under review. The WPL governs "the time and mode of payment of wages due to employees[.]" Hargrove, 220 N.J. at 302, and "is designed to protect an employee's wages and to assure timely and predictable payment[.]" id. at 313; see also Maia v. IEW Constr. Grp., 475 N.J. Super. 44, 51 (App. Div. 2023). The WPL mandates an employer pay wages at certain regular intervals. N.J.S.A. 34:11-4.2. Upon the termination of an employee's employment, wages are to be paid "not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment . . . took place[.]" N.J.S.A. 34:11-4.3.

Subject to exceptions inapplicable here, the WPL also prohibits an employer from "enter[ing] any agreement with an employee for the payment of

wages except as provided by the statute" Hargrove, 220 N.J. at 302; N.J.S.A. 34:11-4.7. The WPL also authorizes employees to "maintain a private cause of action for an alleged violation of the law." Hargrove, 220 N.J. at 303 (citing N.J.S.A. 34:11-4.7; Winslow v. Corp. Express, Inc., 364 N.J. Super. 128, 136 (App. Div. 2003)).

Under the WPL, "wages" are defined as:

the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

[N.J.S.A. 34:11-4.1.]

"Employer" is defined under the WPL as:

any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

[N.J.S.A. 34:11-4.1(a) (emphasis added).]

We have reaffirmed the obligation of corporate officers for payment of employee wages when the corporation itself defaults on its payment obligations.

DeRosa v. Accredited Home Lenders, Inc., 420 N.J. Super. 438, 464 (App. Div. 2011); see also Mulford v. Comput. Leasing, 334 N.J. Super. 385, 399 (Law Div. 1999) (observing that under the WPL, liability of directors and officers is secondary to the corporation's liability, so that the personal liability of corporate officers comes into play only in instances where the corporation reneges on its salary obligations). In Mulford, the court concluded:

The [WPL] imposes personal liability on the managing officers of a corporation by deeming them the employers of the employees of the corporation. N.J.S.A. 34:11-4.1. . . . Employees are the obvious special beneficiaries of the statute; and to allow the civil action will plainly further its purpose. The statute thus impliedly confers on employees a private right of action in court against employers (as defined in N.J.S.A. 34:11-4.1) to protect and enforce their rights thereunder

[334 N.J. Super. at 393-94.]

Defendants' claim that the trial court erred in finding Amos was an "employer" under the WPL is belied by the record.⁵ Ben conceded Amos was the "operations manager" for Beast Coast. Veronica testified Ben and Amos frequently communicated with her, and "[n]othing went on in the company that

⁵ Ben does not challenge the trial court's finding that he is an "employer" under the WPL. We note that Ben testified he is the sole owner and member of Beast Coast and its registered agent.

either son or father didn't know" about. Moreover, Amos re-hired plaintiffs at his home and established their compensation. Veronica credibly testified that she considered both Amos and Ben as "her bosses" and complied with their requests. The trial court's decision that Amos is an employer pursuant to the WPL is based upon substantial credible evidence in the record. Therefore, we agree with the trial court that plaintiffs are entitled to be compensated for unpaid wages and liquidated damages from defendants under the WPL, jointly and severally.

We note that in 2019, our Legislature amended the WPL, which now gives an aggrieved employee the right to

recover in a civil action the fully amount of any wages due, or any wages lost because of any retaliatory action taken in violation of [N.J.S.A. 34:11-4.10(a)] . . . plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees[.]

[Maia, 475 N.J. Super. at 50-51 (quoting N.J.S.A. 34:11-4.10(c) (emphasis in original)).]

Here, defendants cannot avail themselves of the liquidated damages defense provision in the WPL because they did not admit they violated the WPL, nor did they compensate plaintiffs within thirty days of notice of the violation.

See N.J.S.A. 34:11-4.10(c).⁶ Having carefully reviewed the record, we conclude there was substantial credible evidence to support the trial court's determination that Amos meets the definition of employer under N.J.S.A. 34:11-4.1(a), and the liquidated damages defense is otherwise inapplicable.

IV.

Defendants also challenge the trial court's determinations as to plaintiffs' rate of pay, that Veronica was employed by Beast Coast, and its calculation of wages for days worked. We first address defendants' claim that Veronica was not re-hired in August 2019. To reiterate, the trial court found this contention was "nonsense" based on Veronica's credible testimony, her "meticulous" records that were moved into evidence, and Ben's lack of first-hand personal knowledge of Veronica's meeting and conversation with Amos at his home. Ben

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The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within [thirty] days of notice of the violation.

did not participate in the meeting at his father's house. The trial court stressed that Amos did not testify at trial to refute plaintiffs' testimony and proofs. Consequently, the trial court found plaintiffs' testimony "credible and convincing" that they spoke to Amos "directly" in August 2019 about being re-hired and their rates of pay as stated. Therefore, we see no reason to disturb the trial court's finding that Veronica was re-hired by Beast Coast in August 2019, and was employed thereafter until November.

Next, defendants dispute the rate of pay to which the court determined Veronica was entitled to. Veronica explicitly testified Amos agreed to pay her \$200 per day for her assistance with the moves, plus commissions and expenses, as noted at the meeting which took place at his home. Veronica's testimony on this issue was uncontroverted. Moreover, defendants do not dispute the fact that she performed the services described in a satisfactory manner. Thus, the trial court properly determined, based on the testimony and evidence, that Veronica was entitled to be paid during the relevant time period in accordance with the terms she credibly explained during her testimony.

V.

Lastly, defendants contend plaintiffs were erroneously awarded wages for days that plaintiffs' records showed they did not work. Specifically, defendants

argue plaintiffs were awarded compensation for "many days of inactivity" as depicted in the driver's log. Defendants point out that plaintiffs testified they were only entitled to wages for the days they actually worked, yet the trial court awarded them wages contrary to what their records showed. Ben testified Joel was paid per job, which included driving, loading, and unloading. The trial court found plaintiffs were entitled to be paid for days that they were not moving a particular customer and days that did not indicate any activity in the driver's log on the basis plaintiffs were away from home on long hauls and they were "interconnected with other jobs either along the way or on the way back."

Ben testified Joel was not to be paid when he was not working; however, the court found Ben's testimony was not credible. Plaintiffs submitted daily journal and driver's log entries for the relevant period. Ben did not contest the receipts and proofs plaintiffs presented. And, Ben admitted at his deposition to owing Joel some amount of money, "somewhere between \$5 and \$10,000." Ben, however, did not present any evidence regarding the amount he owed Joel. In any event, contrary to defendants' assertion, the record is devoid of testimony from plaintiffs that they were not entitled to be paid wages for days that they were "not working."

The trial court held plaintiffs "completed all of the assigned hauls whether short or long to the clients' satisfaction[,] and Veronica collected the monies on behalf of defendants along the way. Based on our review of the record, we reject defendants' argument that plaintiffs were wrongfully awarded wages for days they did not work.

We conclude the factual findings of the trial court are fully supported by the record, and the legal conclusions drawn therefrom are unassailable.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION