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2026 VT 52

No. 25-AP-313

Gregory Lamson	Supreme Court
v.	On Appeal from Superior Court, Windsor Unit, Civil Division
James Goode and Chase Locke	September Term, 2026

H. Dickson Corbett, J.

David Bond of Law Office of David Bond, PLLC, Burlington, for Plaintiff-Appellee/Cross-Appellant.

Brooks G. McArthur and David J. Williams of Gravel & Shea PC, Burlington, for Defendant-Appellant/Cross-Appellee James Goode.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **WAPLES, J.** Defendant Goode appeals the denial of his post-trial motion for attorney's fees under the Prompt Pay Act (PPA), arguing he was the substantially prevailing party. Plaintiff cross-appeals, arguing that the court should have awarded him attorney's fees because he was the substantially prevailing party on the PPA claim. Plaintiff also appeals the judgment in favor of defendant Locke on the civil extortion claim, arguing Vermont law does not recognize a private right of action for extortion. We affirm.

¶ 2. The parties' relationship began in 2015 when plaintiff sold forty-two acres of land in Royalton, Vermont to defendant Goode. Defendant Goode subsequently hired plaintiff to build a pond on another property he owned; plaintiff subcontracted with defendant Locke to clear-cut

the area for the pond. Plaintiff also hired defendant Locke to cut timber on plaintiff's own property. Disputes arose between the parties and plaintiff filed suit against defendants in 2017.

¶ 3. Plaintiff alleged that defendant Goode breached their contract by preventing him from completing work on the pond and refusing to pay him. Plaintiff later amended his complaint to add a claim under the PPA, 9 V.S.A. §§ 4001-4009, relating to the pond contract. Plaintiff also asserted claims of conversion against defendant Goode for wrongfully using plaintiff's tractor and preventing plaintiff from accessing a crane and personal property he left at the Royalton property, as well as a claim of intentional infliction of emotional distress based on destruction of that personal property. Against defendant Locke, plaintiff asserted claims for breach of contract and conversion based on defendant Locke's sale of timber and firewood from plaintiff's property.

¶ 4. Defendant Goode filed counterclaims alleging plaintiff violated Vermont's Consumer Protection Law and seeking damages for an alleged assault, false allegations regarding the tractor, and storing plaintiff's crane. Defendant Locke filed counterclaims of breach of contract and extortion, alleging plaintiff failed to pay him for his logging work and threatened to make false police reports.

¶ 5. After a jury trial on all claims except for the PPA claim,[1] the court entered judgment for plaintiff on his breach of contract claim against defendant Goode for $7500 along with $8,149.32 in prejudgment interest. Defendant Goode was awarded $5000 on his assault claim, and defendant Locke was awarded $15,100 on his extortion claim.

¶ 6. Both plaintiff and defendant Goode moved for attorney's fees under the PPA. See 9 V.S.A. § 4007(c). Plaintiff asserted he was the substantially prevailing party because he was

[1] As discussed in greater detail below, plaintiff did not request a jury instruction on the PPA claim and the special verdict form did not ask whether plaintiff proved that defendant Goode violated the PPA. See infra, ¶ 11.

awarded $7500. Defendant Goode argued that he substantially prevailed because the PPA claim was not submitted to the jury.

¶ 7. The court denied both motions, concluding that neither party substantially prevailed because "[n]either party obtained what they wanted from the construction dispute." The court considered the jury's verdict on all the claims and calculated that defendants received $4,450.68 more than plaintiff. The court rejected defendant Goode's argument that the PPA claim was not submitted to the jury, reasoning that the jury considered the necessary aspects, including the contractual dispute and whether any amounts were withheld in good faith. Defendant Goode appeals the denial of attorney's fees. Plaintiff cross-appeals the denial of attorney's fees and defendant Locke's award on the civil extortion claim, asserting that Vermont has not recognized such a claim.

¶ 8. We begin with the attorney-fees question. "We review a trial court's ruling on the amount of attorney's fees awarded pursuant to the Prompt Payment Act for an abuse of discretion." Constr. Drilling, Inc. v. Eng'rs Constr., Inc., 2020 VT 38, ¶ 27, 212 Vt. 323, 236 A.3d 193.

¶ 9. The PPA provides that "the substantially prevailing party in any proceeding to recover any payment within the scope of this chapter shall be awarded reasonable attorney's fees in an amount to be determined by the court or arbitrator, together with expenses." 9 V.S.A. § 4007(c). "[I]f a party has substantially prevailed as specified in the statute, an award of attorneys' fees is mandatory." The Elec. Man, Inc. v. Charos, 2006 VT 16, ¶ 6, 179 Vt. 351, 895 A.2d 193. The trial court has discretion, however, in determining whether any party substantially prevailed. Fletcher Hill, Inc. v. Crosbie, 2005 VT 1, ¶ 12, 178 VT 77, 872 A.2d 292.

¶ 10. To determine whether any party substantially prevailed, the trial court should follow a "flexible and reasoned approach focused on determining which side achieved a comparative victory on the issues actually litigated or the greater award proportionally to what was actually sought." Sweet v. St. Pierre, 2018 VT 122, ¶ 20, 209 Vt. 1, 201 A.3d 978 (quotation

omitted). We have stressed that the test "is not a mathematical calculation based on the number of claims won or the amount of money awarded" and recognized that "the trial court may decide that neither party substantially prevailed." Birchwood Land Co. v. Ormond Bushey & Sons, Inc., 2013 VT 60, ¶ 36, 194 Vt. 478, 82 A.3d 539.

¶ 11. We first address defendant Goode's argument that he substantially prevailed on the PPA claim because plaintiff abandoned that claim when he failed to request that it be included in the jury instructions or special verdict form. The PPA is not an avenue for a party to recover damages arising out of the underlying contractual dispute. Rather, "the statute obligates owners to pay contractors 'in accordance with the terms of the construction contract.' " Birchwood Land Co., 2013 VT 60, ¶ 21 (quoting 9 V.S.A. § 4002(a)). If the owner fails to pay the contractor by the due date, the contractor is entitled to interest at the statutory rate. 9 V.S.A. § 4002(d). The statute also provides for penalties if the owner unreasonably withholds payment or acceptance of the work. Id. § 4005(e). Such a penalty is "in addition to all other damages due" and is awarded by "the arbitrator or the court." Id. § 4007(b). Similarly, attorney's fees are awarded by the court or arbitrator. Id. § 4007(c). Thus, there was no PPA "claim" to be submitted to the jury; rather, the trial court had discretion to award a penalty or attorney's fees in addition to any judgment on the underlying contract claims. See Birchwood Land Co., 2013 VT 60, ¶ 29 ("The trial court has discretion in determining whether to invoke a late-fee penalty."); Fletcher Hill, Inc., 2005 VT 1, ¶ 12 (explaining that "question of whether any party to a lawsuit substantially prevailed is left to the trial court's discretion").

¶ 12. Next, defendant Goode argues that he substantially prevailed because the jury found that he acted in good faith in withholding payment. The PPA allows a homeowner to withhold "the value of any good faith claims against a[] . . . contractor." 9 V.S.A. § 4007(a). The jury awarded $7500 to plaintiff on the contract dispute claim but also found that defendant Goode

withheld payment in good faith.[2] The court was not, however, required to conclude that defendant Goode substantially prevailed because the jury found he withheld payment in good faith. See Fletcher Hill, Inc., 2005 VT 1, ¶ 14 (concluding that § 4007(c) "does not imply that there must be a substantially prevailing party in every case" but "that there can be, at most, one substantially prevailing party"). Rather, the court appropriately focused on "which side achieved a comparative victory." Burton v. Jeremiah Beach Parker Restoration & Constr. Mgmt. Corp., 2010 VT 55, ¶ 8, 188 Vt. 583, 6 A.3d 38 (mem.) (quotation omitted)

¶ 13. Plaintiff argues that the court erred in considering the net judgment on all claims—including the awards to defendant Goode on his assault claim and to defendant Locke on his civil extortion claim—when determining the substantially prevailing party. We agree but conclude that the error was harmless.

¶ 14. "[I]n most construction cases that include PPA claims, courts typically determine the substantially prevailing party, if any, and the award of fees with reference to the broader range of claims at issue in the case rather than simply focusing exclusively on the PPA claim." Nystrom v. Hafford, 2012 VT 60, ¶ 19, 192 Vt. 300, 59 A.3d 736. "However, as a threshold matter, trial courts must consider and determine which claims do, in fact, arise from a common core of facts insofar as the evidence relevant to those claims is the same." Id. ¶ 24.

¶ 15. In this case, defendant Goode's assault claim did not arise from the same facts as the PPA claim. Rather, this was a discrete claim arising out of an altercation between the parties, not the contract to build a pond, and the evidence underlying this claim is distinct from the evidence offered concerning the PPA claim. See Sweet, 2018 VT 122, ¶ 23 (concluding that counterclaim

[2] The jury left blank the space for the amount of payment defendant Goode withheld in good faith. The court denied defendant Goode's requests to enter judgment in his favor on the PPA claim based on this jury finding. Defendant Goode does not appeal this decision; therefore, we consider only whether the good faith finding required the trial court to conclude he was the substantially prevailing party.

for assault "clearly did not share a common core of facts with the PPA claim"). The court also erred in considering defendant Locke's claim for civil extortion because defendant Locke was not a party to the PPA claim. See Nystrom, 2012 VT 60, ¶ 23 (holding court erroneously treated parents and daughter as "essentially one party" by "crediting parents in connection with their PPA claim . . . for [daughter's] 'win' on her equitable claim to occupancy").

¶ 16. Nevertheless, we conclude that this error was harmless because the court did not rely solely on the net judgment in deciding that no party substantially prevailed. See Lasek v. Vt. Vapor, Inc., 2014 VT 33, ¶ 24, 196 Vt. 243, 95 A.3d 447 (declining to reverse based on error that did not affect outcome of case); V.R.C.P. 61 (describing harmless error standard and instructing court to "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"). The court considered the net judgment in favor of defendants—including the assault and civil extortion claim—but also noted that "[n]either party obtained what they wanted from the construction dispute. Neither party obtained an outcome that justified the expenditure of time and money on the case." In considering whether any party substantially prevailed in light of the damages they sought, the court properly exercised its discretion. See Birchwood Land Co., 2013 VT 60, ¶ 36 (recognizing "flexible nature of determining the substantially prevailing party").

¶ 17. Plaintiff argues that without considering the assault and civil extortion claims, he substantially prevailed because he was awarded $7500 on his breach-of-contract claim, while the jury awarded defendant Goode nothing on his Consumer Protection Act claim. As we have explained, a party's "status as the net victor—both in terms of number of claims and monetary award—does not compel a conclusion that it substantially prevailed under the statute." Id. The court was not required to find that plaintiff substantially prevailed based on "a simple mathematical comparison of the parties' respective recoveries." Fletcher Hill, Inc., 2005 VT 1, ¶ 14.

¶ 18. Turning to the extortion judgment, plaintiff appeals the civil extortion award, arguing that Vermont law does not recognize a civil remedy for extortion. We review questions

of law, such as whether a civil cause of action exists, de novo. Garbitelli v. Town of Brookfield, 2011 VT 122, ¶ 5, 191 Vt. 76, 38 A.3d 1133.

¶ 19. Defendant Locke's counterclaim alleged that plaintiff "repeatedly threatened to make false reports" to the police and defendant Locke's parole officer "in an effort to extort money and valuable property," including a storage locker defendant Locke allegedly gave to plaintiff.

¶ 20. Prior to trial, plaintiff moved for judgment on the pleadings on the extortion claim, arguing that Vermont's criminal extortion statute did not provide for a civil remedy. The court granted the motion, concluding that Vermont had not recognized an "extortion" tort. The court later reversed that decision after defendant Locke moved for reconsideration, stating that there might be a cause of action that would entitle defendant Locke to damages.

¶ 21. Because plaintiff did not order a transcript of the first day of trial, we do not know the substance of defendant Locke's trial testimony with respect to this claim or plaintiff's response to this testimony.

¶ 22. After defendants rested their case, plaintiff moved for judgment as a matter of law, renewing his argument that there was no legal basis for a civil extortion claim. The court relied on Hoyt v. Dewey, 50 Vt. 465 (1878), in allowing defendant Locke's claim for extortion to go forward, reasoning that Hoyt allowed for return of money paid after a threat of making a complaint to the police if the threat was false. The court identified that type of claim as "economic duress" and concluded that "it's by that derivation that I am reading Vermont law to permit a claim of this type to be presented to a jury." The court instructed the jury: "If you find that Chase Locke has proven his claim for extortion, you may award Chase Locke damages for the value of the money or property that was delivered to Gregory Lamson."

¶ 23. Plaintiff asserts both that defendant Locke's claim should have been rejected as a matter of law and also that Hoyt cannot support the claim in this case because defendant Locke sought more than restitution. He states, without citation to the record, that defendant Locke "asked

the jury to award him $2,200.00 for the extortion, the cost of the shipping container that he turned over to [plaintiff]." Plaintiff complains that the jury instead awarded defendant Locke $15,100.00, "an amount bearing no relation to the recovery requested." Plaintiff reasons that "[b]ecause [defendant] Locke's extortion claim was premised on caselaw governed by the law of restitution, such an award of damages cannot be sustained." He argues that defendant Locke could only retain the damages he was awarded if Vermont's criminal extortion claim allowed for a private right of action, which he asserts it does not.

¶ 24. We agree with the trial court's reading of Hoyt as allowing a claim for a return of money paid under duress. In Hoyt, the plaintiff paid one of the defendants $10,000 in exchange for her silence regarding allegations that he had assaulted her. The evidence showed that the defendants had arranged to fabricate the assault claim to obtain money from the plaintiff. We affirmed the lower court's decree that the money and property must be returned to the plaintiff because of the "fraud and duress" underlying the transaction, explaining that "the law abhors the means and agencies employed in this case to extort money." Id. at 476. See also Sartwell v. Horton, 28 Vt. 370, 373 (1856) ("[I]f, under the terror of inceptive legal proceedings, fraudulently instituted, money has been paid, the party paying it may recover it back in this form of action.").

¶ 25. Hoyt is in line with the principles explained in D. Dobbs, The Law of Torts §§ 707-708 (2d ed. 2026), which the trial court also cited. These sections describe the "economic duress" tort, in which threats extract some conveyance of property. Id. § 707. Restitutionary recovery may be permitted in a tort case. Id. ("The recovery of restitution is a recovery of what the defendant gained in the transaction that resulted from the threat, not a recovery of the plaintiff's loss or damage."). "[O]ther tort remedies, such as consequential and punitive damages are seldom recoverable for economic duress." Id.; see id. § 708 (highlighting "uncertainty and subjectivity" related to scope of relief where "[r]estitutionary relief remains more prudent").

¶ 26. The court's jury instruction limited the jury's award to "the value of the money or property that was delivered to [plaintiff]"—consistent with restitution—and "[w]e presume that the jury followed the court's instructions." Carpentier v. Tuthill, 2013 VT 91, ¶ 25, 195 Vt. 52, 86 A.3d 1006. To the extent that plaintiff argues that the damage award was excessive because it went beyond restitution, he failed to preserve that argument through a Vermont Rule of Civil Procedure 59(a) motion below. See V.R.C.P. 59(a) (allowing motion for new trial within 28 days of judgment); Myers v. Langlois, 168 Vt. 432, 439, 721 A.2d 129, 133 (1998) (recognizing that failure to raise claim before trial court precludes this Court from considering claim on appeal). He also waived this challenge by failing to order a transcript of the first day of trial, which contained relevant testimony on this point. See V.R.A.P. 10(b)(1) ("By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review."); In re S.B.L., 150 Vt. 294, 307, 553 A.2d 1078, 1087 (1988) (explaining that appellant bears consequences of failing to order transcript and without transcript Court assumes that evidence supports findings). Given our conclusion, we need not consider whether to recognize a civil claim for extortion.

Affirmed.

FOR THE COURT:

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Associate Justice