STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0334

LVNV Funding, LLC,
Respondent,

vs.

Joionda Wilks,
Appellant.

Filed January 11, 2021
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-19-1812

Michael Printy Arthur, Brad D. Welp, Stewart, Zlimen & Jungers, Ltd., Roseville, Minnesota (for respondent)

Darren B. Schwiebert, DBS Law LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the judgment following a court trial in this account-stated action. Because the district court did not abuse its discretion by admitting documents as business records, did not make clearly erroneous findings of fact, and properly applied the law, we affirm.

FACTS

In August 2008, a credit card account was opened with Credit One Bank, N.A. (Credit One) in the name of "Joionda Wilks," who resided on Cook Avenue East in St. Paul. The account remained active until Credit One charged it off in December 2017. The balance then due was $1,445.44. Credit One sold the account as part of a package of delinquent accounts that respondent LVNV Funding, LLC (LVNV) eventually purchased.

In December 2018, LVNV sued "Joionda Wilks" in conciliation court. Appellant JaRonda Washington[1] appeared to dispute LVNV's collection effort. After the conciliation court denied its claim, LVNV removed the case to district court. A bench trial took place in October 2019.

At trial, LVNV presented the testimony of records custodian Victoria Mason, who described several bills of sale and assignments of accounts contained in a debt portfolio LVNV purchased in early 2018. The portfolio includes the account associated with "Joionda Wilks," which lists her name, account number, Social Security number, address, date of birth, and phone numbers.

Mason testified about Credit One's general billing practices and the account statements sent to "Joionda Wilks." All of the account statements were sent to "Joionda Wilks" at the Cook Avenue address listed for the account. If any statement had been returned to Credit One as undeliverable, an automated process would have shifted the

[1] Because LVNV sued "Joionda Wilks" in district court and the identity of "Joionda Wilks" is a disputed issue on appeal, the case remains captioned as *LVNV Funding, LLC vs. Joionda Wilks*.

account into escrow and made note of that status on the next statement. None of the statements presented at trial showed the account was in escrow or that a previous statement had been returned as undeliverable.

Washington testified that her name is JaRonda Washington, she has never gone by the name "Joionda Wilks," and she has never applied for or held a credit card in any name. But she acknowledged that (1) her last name was "Wilks" at the time the account was opened, (2) her Social Security number matches the number associated with the account, (3) her phone number is the same as one associated with the account, and (4) she has lived at the Cook Avenue address for approximately seven years.

In a written order, the district court found that LVNV owns the account, Washington is "Joionda Wilks," Washington lived at the residence where the account statements were delivered, and she "received, retained, and failed to object" to the statements for an unreasonable period of time. The district court thus concluded that LVNV is entitled to recover $1,445.44 on its account-stated claim. Washington appeals.

DECISION

Washington argues that the district court abused its discretion by admitting the documents showing LVNV owns her account and that the evidence and the law defeat LVNV's account-stated claim. We address each argument in turn.

I. The district court did not abuse its discretion by admitting the documents showing the debt portfolio and the chain of assignment.

LVNV introduced several documents through Mason's testimony regarding the assignment of the "Joionda Wilks" account. The documents show that Credit One assigned

the debt portfolio containing the account to MHC Receivables, LLC (MHC) at the end of December 2017. Three assignments followed on January 17, 2018—MHC to FNBM, LLC; MHC to Sherman Originator III LLC (Sherman III); and FNBM, LLC to Sherman III. The final link in the assignment chain is an undated "Declaration of Account Transfer" showing Sherman III assigned its "right, title, and interest in and to" the portfolio to Sherman Originator LLC (Sherman), which then assigned the portfolio to LVNV.

Washington moved to exclude the documents because Mason was not qualified to testify about the billing practices of the various entities or the creation and assignment of the debt portfolio. We review evidentiary rulings concerning foundation for abuse of discretion.[2] *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994). A district court abuses its discretion if the decision is "based on an erroneous view of the law or is against logic and the facts in the record." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 754 (Minn. App. 2019) (quotation omitted).

The parties agree the documents are only admissible if they fall under the business-records exception to the hearsay rule. *See* Minn. R. Evid. 801(c) (defining hearsay), 803(6) (excepting hearsay contained in business records from exclusion). Business records are

[2] Although the district court did not expressly rule on Washington's motion, the record indicates the district court implicitly admitted the documents. First, the district court relies on the documents in finding that LVNV owns the account and that JaRonda Washington is "Joionda Wilks." Second, both parties accept that the district court's findings of fact equate to an implicit admittance of the disputed documents. Third, Minnesota law does not prohibit appellate courts from reviewing an implicit evidentiary ruling. *See Weiss v. John Hancock Ins. Co.*, 226 N.W. 516, 517 (Minn. 1929) (holding the district court had implicitly excluded evidence offered at trial because it did not rely on the evidence in making its findings).

admissible under this exception if the records custodian "or another qualified witness" lays the foundation for their admission. *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003). A "qualified witness" is one who is "familiar with how the business in question compiles its documents"; the witness need not have created the documents to establish the requisite familiarity with a business entity's record-keeping processes. *Id.* A qualified witness may also testify to documents generated and maintained by another company. *See Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 62 (Minn. 1983) (holding "it is not necessary that the person preparing" business records "testify as to their contents" so long as the testifying witness is qualified).

Washington argues that Mason was not qualified to lay foundation for the documents because she is not a certified public accountant and lacks education or training on recordkeeping or computer software. But the business-records exception does not require particular training. *Simon*, 662 N.W.2d at 160. Mason is not certified in financial or software analysis, but she has almost a decade of experience in her professional capacity. She testified that she is the records custodian for LVNV, was trained by Credit One in its billing and account-management practices, and deals with delinquent accounts LVNV obtains "on a daily basis." And, using the documents, she traced the debt portfolio containing the "Joionda Wilks" account from Credit One's charge-off process through its final transfer to LVNV. In short, Mason testified that she was familiar with how the accounts were developed, maintained, and transferred. On this record, we discern no abuse of discretion by the district court in implicitly finding Mason was qualified to provide foundation for admission of the documents under the business-records exception.

II. The record and the law support judgment in favor of LVNV's account-stated claim.

A party may establish liability for a debt through the doctrine of account stated. *Am. Druggists Ins. v. Thompson Lumber Co.*, 349 N.W.2d 569, 573 (Minn. App. 1984). An account stated is "a manifestation of assent by a debtor and creditor to a stated sum as an accurate computation of an amount due the creditor." *Id.* To recover on an account stated, the claimant must "show (1) a prior relationship as debtor and creditor, (2) a showing of mutual assent between the parties as to the correct balance of the account, and (3) a promise by the debtor to pay the balance of the account." *Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010). Retention of a statement of account without objection for an unreasonable time manifests assent permitting "the legal inference that an account stated has been established." *Meagher v. Kavli*, 88 N.W.2d 871, 879 (Minn. 1958); *see also Am. Druggists Ins.*, 349 N.W.2d at 573. Once shown, an account stated is only prima facie evidence as to accuracy of the account and the liability of the debtor; such a showing may be overcome by clear and convincing evidence of fraud or mistake. *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977).

Washington challenges two of the district court's findings of fact and its legal conclusion that she assented to the account. We consider each argument below.

A. The district court did not clearly err by finding that Washington is "Joionda Wilks."

A district court's findings of fact following a bench trial merit "great deference." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review*

denied (Minn. June 26, 2002). Such findings "shall not be set aside unless clearly erroneous," with due deference afforded to the district court regarding "credibility of the witnesses." Minn. R. Civ. P. 52.01. We view the evidence in the light most favorable to the judgment, and do not disturb the district court's findings if there is reasonable evidence to support them. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Washington contends that the district court clearly erred by rejecting her testimony that she is not "Joionda Wilks" and has never had a credit card. We are not persuaded. The district court found that she is "Joionda Wilks" because the account information, "including social security number, address, date of birth, and home phone number," matches that associated with Washington herself. The evidence supports this finding. The account information shows that Washington lives at the "Joionda Wilks" address. Washington agreed that her Social Security number matches the one associated with the account, as does her phone number. And she testified that her last name was Wilks at the time the account was opened. The district court credited this evidence over Washington's contrary testimony. We see no reason to second-guess the district court's credibility determination. *See* Minn. R. Civ. P. 52.01; *Drews v. Fed. Nat'l Mortg. Ass'n*, 850 N.W.2d 738, 741 (Minn. App. 2014) ("We defer to the district court's credibility determinations.").

B. The district court did not clearly err by finding that LVNV is the final assignee and owner of the account.

Washington's assertion of clear error largely turns on the documentary evidence that we concluded the district court admitted within its discretion. These documents provide ample support for the district court's finding that LVNV owns the account. The same data

file is referenced on each bill of sale and the declaration of account transfer. This data file contains a debt portfolio which includes the "Joionda Wilks" account. Each transfer conveyed all rights the entity possessed as to the accounts contained in the data file. The data file was transferred from Credit One to MHC on December 31, 2017. Although three assignments take place seemingly simultaneously on January 17, 2018, the end result is the same—the portfolio ended up in the hands of Sherman III. And the declaration of account transfer demonstrates the portfolio passed from Sherman III to Sherman and lastly to LVNV. Accordingly, we see no clear error in the district court's finding that LVNV owns the account.

C. The district court did not err by concluding that Washington assented to the account.

Whether Washington manifested assent to the account depends on a factual determination that she retained the account statements without objection for an unreasonable period of time. *Am. Druggists Ins.*, 349 N.W.2d at 573. This presents a mixed question of law and fact. *See Estate of Whish v. Bienfang*, 622 N.W.2d 847, 849 (Minn. App. 2001) (stating a mixed question of law and fact exists where a legal conclusion is predicated on factual findings). When reviewing mixed questions, we correct an erroneous application of law but otherwise afford the district court due discretion in its "ultimate conclusions." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

Washington argues that the district court erred by concluding she assented to the account because LVNV did not prove she received and kept the statements sent to her

address. This argument is unavailing. Assent is established by evidence that the debtor received and failed to reject an account statement or object to its contents. *See Lampert Lumber Co. v. Ram Constr.*, 413 N.W.2d 878, 883 (Minn. App. 1987). From our earliest jurisprudence, the concept of "retention" is inseparable from "without objection"; retention may be proven by showing a person did not object to an account statement. *See Lockwood v. Thorne*, 18 N.Y. 285, 288 (1858) ("[I]f the account should be . . . transmitted to the other party by mail, and the latter should omit to communicate objections . . . within a reasonable time, an inference might be drawn that he was satisfied with it. Such omission to object would therefore be legitimate evidence in proving an account stated."), *cited with approval in Wharton v. Anderson*, 9 N.W. 860, 862 (Minn. 1881). Our supreme court later affirmed that a claimant proves retention by the absence of an objection. *See Meagher*, 88 N.W.2d at 881 (citing *Hall-Vesole Co. v. Durkee-Atwood Co.*, 35 N.W.2d 601, 604 (Minn. 1949)); *Hall-Vesole Co.*, 35 N.W.2d at 604-05 (discussing *Wharton* and *Lockwood*). We see no legal error by the district court in assessing the issue of assent with reference to Washington's retention—without objection—of the account statements.

Nor do we see abuse of discretion in the district court's conclusion that Washington retained the account statements for an unreasonable period of time. The evidence shows that Credit One employed an automated system to keep track of undeliverable statements—if they had not been delivered, the account would have been placed in escrow and its status noted on the next statement. It is also uncontroverted that none of the statements presented at trial contained any notations to this effect. And it is undisputed that Washington did not object to the account statements that were sent to her home for many years. The district

court's conclusion that Washington received and retained the account statements is neither contrary to the facts in the record nor against logic.

Because the district court's findings that Washington is "Joionda Wilks" and LVNV owns the account are not clearly erroneous, and because the district court did not abuse its discretion by concluding that Washington retained the statements without objection for an unreasonable time, LVNV is entitled to judgment on its account-stated claim.

Affirmed.