STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1767

Deanna M. Kortan,
Appellant,

vs.

St. Louis Park Hockey Boosters,
also known as St. Louis Park Hockey Association,
Respondent.

Filed June 30, 2025
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CV-21-2636

Stephen C. Fiebiger, Stephen C. Fiebiger Law Office, Chartered, Burnsville, Minnesota (for appellant)

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Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal following remand, appellant Deanna M. Kortan challenges the district court's (1) decision to not award damages on her claim under the Minnesota whistleblower

act (MWA), Minn. Stat. §§ 181.931-.935 (2024); (2) decision not to award her attorney fees; and (3) order for prejudgment interest. We affirm.

FACTS

We begin with a brief procedural history. Kortan brought suit against her former employer, respondent St. Louis Park Hockey Boosters, also known as St. Louis Park Hockey Association (the association), alleging (1) fraudulent inducement, (2) a violation of the MWA, and (3) promissory estoppel. After the association failed to comply with discovery orders, the district court granted Kortan's motion for a default judgment and set the matter for an evidentiary hearing to determine damages. Following the hearing, the district court filed an order awarding damages in the amount of $10,033.44. Kortan appealed. In an order opinion, we affirmed in part, reversed in part, and remanded for the district court to make findings about whether Kortan sustained damages because of the MWA violation and to award prejudgment interest. *Kortan v. St. Louis Park Hockey Boosters*, No. A23-0603, slip op. at 4, 7 (Minn. App. Jan. 26, 2024), *rev. denied* (Minn. Apr. 16, 2024). On remand, the district court filed its order amending the judgment and addressing the issues that we remanded. In its order, the district court left the damages award the same and awarded prejudgment interest. We now address Kortan's appeal of that order.

Kortan's Employment History

The following facts are taken from the district court's factual findings and the evidentiary hearing. Kortan was employed by the association from January 2017 through February 2019 as a pull-tab salesperson at a bar in northeast Minneapolis. Before working

for the association, Kortan was employed part-time as a bartender at a different bar in St. Louis Park where the association had a pull-tab operation. According to Kortan, she was told by the association's staff that she would have many opportunities to earn money selling pull tabs. Kortan was also told by the association's staff that if she took the job selling pull tabs at the association's new northeast Minneapolis location, she would be treated as the most senior staff member at that location and, as a result, would be the first person offered fill-in or permanent shifts selling pull tabs at the association's St. Louis Park location. This was important to Kortan because she knew that she would not make as much money at the northeast Minneapolis location as she would at the St. Louis Park location, which was bigger and had "a lot of very wealthy regulars" who tipped well.

Shortly after starting with the association, Kortan noticed that she had not been asked to fill in at the St. Louis Park location as often as she believed she should have been based on the association's promises about filling shifts according to seniority.

In July 2018, about a year and a half after starting with the association, Kortan met with the gambling manager of the association to discuss her concerns that she was not receiving the schedule and income that the association had promised her. Kortan provided the gambling manager with a letter detailing her concerns and referencing certain statutes that she believed that the association was violating, including Minnesota Statutes section 181.64 (2024), which prohibits using false statements to induce a person into entering employment.

Shortly after that meeting, the gambling manager spoke with Kortan while she was working and "gave [Kortan] the choice to remove the statutory language and send a new

letter, or he would turn [the letter] over to the attorneys." When Kortan did not immediately comply, the gambling manager "threatened to shut the booth down and was intimidating to her." After that confrontation, Kortan took the letter back and removed the statutory language "in order to keep her job and avoid [the gambling manager's] threats and intimidation."

Kortan then continued to work for the association. Her concerns were not addressed, and no changes occurred until October 2018 when, Kortan asserts, her supervisor "changed the schedule . . . in an attempt to schedule [Kortan] for shifts that [her supervisor] knew [Kortan] was unable to work."

At the end of February 2019, the association discontinued its pull-tab sales at Kortan's location in northeast Minneapolis, and another organization took over. Kortan received a letter from the association, which terminated her employment at the end of February. According to Kortan, she "was the only [employee] terminated by [the association]" when the transfer to the new organization occurred. After receiving that notice, Kortan continued working at the northeast Minneapolis location as a pull-tab salesperson for the new organization until July 2022.

Legal Proceedings

In September 2020, Kortan commenced her lawsuit against the association. The district court granted default judgment in her favor in September 2022 based on the association's violations of discovery orders. The evidentiary hearing to determine Kortan's damages was held in December 2022. Kortan was the only witness called, and she testified

about her employment history, including her time working for the association, as detailed above.

In February 2023, the district court filed its order and entered judgment. It determined that, although Kortan's claims would have failed on the merits, she was entitled to recover reasonable damages based on the association's default. The district court granted Kortan damages for six months of lost wages based on the difference in income between Kortan's job as a bartender and her first six months as a pull-tab salesperson. It stated, "[G]iving [Kortan] a generous six months to find additional employment, the court concludes that [the association] is, at most, liable only for six months of [Kortan's] decreased income and awards her $10,033.44 in lost wages." The district court also awarded $899.50 in costs.

Kortan appealed, challenging the district court's judgment and arguing that the district court erred when it (1) awarded only $10,033.44 in damages, (2) considered the merits of her claims when determining damages despite having granted default judgment, (3) denied attorney fees under the MWA despite granting default judgment on her claim under the MWA, and (4) failed to award prejudgment interest.

In an order opinion, we determined that the district court erred by not making any findings as to damages for the MWA violation and by failing to award prejudgment interest. *Kortan*, No. A23-0603, slip op. at 4, 6-7. We reversed in part and remanded the matter to the district court "for further findings regarding whether Kortan sustained damages related to the association's MWA violation" and for "the court administrator [to]

compute prejudgment interest authorized pursuant to Minnesota Statutes section 549.09, subdivision 1(c)(1)-(2)." *Id.* at 4, 7.

On remand, the district court determined that Kortan was not entitled to any additional damages for her MWA claim and that she was entitled to recover prejudgment interest on her original award of damages of $10,033.44 at an annual rate of four percent for the years 2020 and 2021 and at an annual rate of five percent for the years 2022 and 2023.

Kortan appeals.

DECISION

Kortan challenges the district court's decision to not award damages for the MWA violation, its decision to not award attorney fees, and its order for prejudgment interest. We address each issue in turn.

I. The district court did not abuse its discretion by not awarding damages for Kortan's MWA claim.

Kortan argues that the district court abused its discretion when it did not award damages for Kortan's MWA claim. We are not persuaded.

The MWA provides the district court with discretion to determine damages, stating:

> If the district court determines that a violation of section 181.932 occurred, the court *may* order any appropriate relief, including but not limited to reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct.

Minn. Stat. § 181.935(c) (emphasis added). Even when damages are determined after a default judgment, the district court generally retains discretion to determine appropriate damages. *See* Minn. R. Civ. P. 55.01(b) ("[T]he [district] court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor."). Accordingly, we review a district court's determination of damages under the MWA for an abuse of discretion.

"A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

On remand, the district court found, and Kortan does not dispute, that the report underlying the MWA violation occurred when Kortan gave her letter—asserting that the association had violated certain laws—to the gambling manager in July 2018. *See* Minn. Stat. § 181.932, subd. 1(1) (prohibiting retaliation by an employer after an employee makes a good-faith report of a suspected violation of law). The district court then analyzed whether Kortan suffered damages as a result of retaliation against her for making that report.

The district court first addressed lost wages. It determined that, while "[t]he nature of the retaliation is somewhat unclear," there was no evidence of lost wages, stating as follows:

> If the retaliation occurred when [Kortan] was terminated, there is no basis for awarding compensatory damages for lost earnings because [Kortan] continued to work

> in essentially the same role and earned essentially the same total income in 2019 ($20,097.07) as she did in 2018 ($21,002.99). If the retaliation occurred in 2018 when [Kortan] sent the letter, there is no basis for awarding compensatory damages for lost earnings because, according to [Kortan's] own allegations, her schedule and shifts did not change after the meeting where she gave [the gambling manager] the letter.

(Footnote omitted.)

The district court then addressed Kortan's claim for emotional-distress damages. It determined that Kortan's claim was "based on her testimony that (1) she often cried and had insomnia because of scheduling uncertainty or unpleasant communications from her immediate supervisor and (2) the lack of trust resulting from her employment with [the association] negatively impacted [Kortan's] relationship with her romantic partner." The district court noted that "the emotional distress cited by [Kortan] does not 'flow naturally' from any MWA violation because the distress relates to her grievances over scheduling and antedates the MWA violation."

The district court concluded its damages analysis by stating:

> [O]n the issue of damages for the presumed MWA violation, the MWA allows the courts to exercise discretion when determining damages by providing that the court "may" (not "shall") award various categories of damages. While the MWA does not have any public policy requirement, the court is disinclined to award any damages where (1) the whistleblower is acting out of self-interest and not to protect any third parties and (2) liability under the MWA arises from default and not any determination on the merits. Given the lack of evidence of any lost wages, the lack of any evidence of emotional distress "flowing naturally" from the presumed MWA violation, the lack of any public interest underlying the MWA claim, and [Kortan's] recovery of damages for the presumed violation of Minn. Stat. § 181.64 that was the subject of her whistleblower

> report, the "appropriate" relief for the presumed MWA violation is no recovery.

(Footnote omitted.)

Kortan argues that the district court abused its discretion when it (1) determined that there was a lack of evidence of lost wages, (2) determined that there was a lack of evidence of emotional distress, (3) considered the lack of public interest in the claim, and (4) considered the fact that any damages were a result of default judgment and not a determination on the merits. We address each argument in turn.

A. Lost Wages

Kortan contends that the district court abused its discretion by not awarding Kortan over $400,000 in lost past and future earnings.

As a preliminary matter, Kortan argues that any calculation of lost wages must be made in comparison to Kortan's 2016 income as a bartender for her previous employer, which was $42,104.72. But Kortan made the report underlying her MWA claim in July 2018, after having worked for the association for a year and a half. Kortan provides no persuasive argument why the district court should have calculated lost wages for the MWA violation based on wages she earned from a different employer over a year and a half before the event underlying the MWA claim. The district court did not abuse its discretion by calculating whether there were lost wages by comparing Kortan's income as a pull-tab salesperson after the report to her income as a pull-tab salesperson for the association before the report.

Turning to that comparison, we see no abuse of discretion in the district court's determination that there was a lack of evidence that Kortan experienced reduced wages because of her report. In her complaint, Kortan stated that "nothing had been done or changed since the meeting" with the gambling manager in July 2018 and that, as of September 20, 2018, schedules still had not been changed. Kortan claimed that her schedule was changed in October 2018 "in an attempt to schedule [her] for shifts that [Kortan's supervisor] knew [Kortan] was unable to work." But Kortan only produced evidence of her annual income and failed to provide any evidence showing that her wages decreased after the change in October 2018.

Kortan also claimed that she was the only employee terminated in February 2019 and argues that the district court ignored that "[h]er income potential decreased dramatically after her termination and she no longer had the opportunity to work lucrative shifts at" the St. Louis Park location. But the record shows that Kortan's total income was not significantly affected by her termination. In 2017, which was the first full year that Kortan worked for the association selling pull-tabs, Kortan made a total of $21,861.78. In 2018, Kortan made $21,002.99. And in 2019, Kortan made a total of $20,097.07. Between 2017 and 2019, Kortan's total income decreased by $1,764.71.

On this record, the district court did not abuse its discretion by finding that Kortan did not suffer lost wages as a result of the MWA violation.[1]

[1] As part of her lost-wages argument, Kortan contends that the district court was improperly influenced by conflating Kortan's claim in her letter to the gambling manager, which asserted a violation under section 181.64, with her MWA claim. But Kortan does not explain what improper influence this alleged conflation had on the district court's analysis

B. Emotional Distress

Kortan argues that the district court abused its discretion when it determined that the record did not establish emotional-distress damages as a result of the MWA violation. Kortan notes that she sought $50,000 in past and $50,000 in future emotional-distress damages.

Kortan argues that the district court abused its discretion by determining that there was a "lack of any evidence of emotional distress 'flowing naturally' from the presumed MWA violation." The argument is unconvincing. While Kortan testified generally about crying often and experiencing insomnia due to issues with her supervisor, she mentioned that these issues had started occurring in 2017. And, immediately after discussing her issues with management in 2017, Kortan described how she felt that she could not trust her supervisor or the gambling manager. Kortan claimed that her lack of trust in management impacted her relationship with her romantic partner, but she did so in general terms without providing dates when the problem manifested itself. Given Kortan's testimony, the district court did not abuse its discretion by determining that the alleged emotional distress predated the events underlying the MWA claim and therefore was not clearly the result of the MWA violation.

Kortan also argues that the district court abused its discretion by not recognizing that, after Kortan had given the gambling manager the letter in July 2018, the gambling

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or how it resulted in an abuse of discretion, and so, we decline to consider this argument. *See State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue).

manager confronted Kortan at work and threatened her job if she did not take out the references to various laws in her letter. But, while Kortan did testify about this incident and mentioned that she "was scared that [she] would lose [her] job or lose that shift," she did not further describe emotional distress resulting from that incident. And although Kortan is correct that emotional-distress damages can be awarded based on subjective testimony, *see Kohn v. City of Minneapolis Fire Department*, 583 N.W.2d 7, 14-15 (Minn. App. 1998) (describing basis to award mental-anguish damages under the Minnesota Human Rights Act), *rev. denied* (Minn. Oct. 20, 1998), Kortan failed to provide sufficient subjective testimony from which the district court could calculate emotional-distress damages resulting from the MWA violation.

Accordingly, the district court did not abuse its discretion when it determined that the record did not present sufficient evidence of emotional-distress damages resulting from the MWA violation.

C. Third-Party Interest

Kortan argues that the district court abused its discretion because it misapplied the law when it stated that it was "disinclined to award any damages where . . . the whistleblower is acting out of self-interest and not to protect any third parties." Kortan contends that the district court's analysis is contrary to *Anderson-Johanningmeier v. Mid-Minnesota Women's Center, Inc.*, in which the supreme court stated, "[W]e reject the importation of a public policy requirement into the whistleblower statute and hold that the protections of section 181.932, subd. 1(a), are not limited to reports that implicate public policy." 637 N.W.2d 270, 277 (Minn. 2002).

Assuming without deciding that the district court misapplied the law by considering whether Kortan's claim would protect any third-party interest, we nevertheless conclude that any error was harmless. The district court's decision to deny damages is adequately supported by its findings that there was a lack of evidence of lost wages and emotional distress. As a result, its consideration of third-party interests does not require reversal. *See* Minn. R. Civ. P. 61 (requiring courts to disregard errors that do not affect a party's substantial rights).

D. Default Judgment

Finally, Kortan argues that the district court abused its discretion because it misapplied the law when it stated that it was "disinclined to award any damages where . . . liability under the MWA arises from default and not any determination on the merits." Kortan further asserts that, because this was a default judgment, the district court should have accepted Kortan's allegation in her complaint that the MWA violation resulted in her sustaining damages "in excess of $50,000" and that not awarding damages in a default judgment is contrary to public policy because it incentivizes employers to default to avoid damages.

Kortan correctly asserts that "the MWA makes no distinction for awarding damages by virtue of default judgment or on the merits"; there is nothing in the act that makes such a distinction. *See* Minn. Stat. §§ 181.931-.935. But Kortan is incorrect in her assertion that, because this was a default judgment, the district court should have accepted the amount of damages alleged in Kortan's complaint. To support her argument, Kortan relies on *Parr v. Gonzalez*, which states, "The entry of a default judgment is equivalent to an admission by

the defaulting party to properly pleaded claims and allegations." 669 N.W.2d 401, 405 (Minn. App. 2003). But that holding relates to facts underlying the merits of the claim and does not apply to the district court's determination of the appropriate amount of damages. *See id.* The award of damages in a default judgment is governed by Minnesota Rule of Civil Procedure 55.01(b), which states that "the [district] court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor." The district court did not abuse its discretion by holding an evidentiary hearing and determining damages based on the evidence presented in that hearing.

II. The district court did not abuse its discretion by not awarding attorney fees on remand.

Kortan argues that our remand for further findings as to damages caused by the association's MWA violation also required the district court to consider attorney fees and that the district court erred by not awarding attorney fees. The association counters that our remand instruction did not direct the district court to address attorney fees; that, to the extent Kortan is seeking her attorney fees for her first appeal, that claim is forfeited because she failed to bring a timely motion under Minnesota Rules of Civil Appellate Procedure 127 and 139.05; and that an award of attorney fees under the MWA is discretionary and the district court did not abuse its discretion when it implicitly declined to award any attorney fees on remand.

A reviewing court "will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007).

Here, assuming the district court could have, consistent with our instruction, considered attorney fees on remand, the district court implicitly rejected awarding attorney fees when it stated that the appropriate relief for the MWA violation was "no recovery." We discern no abuse of discretion in that decision. The MWA provides that a district court "may order any appropriate relief" for violations of the act. Minn. Stat. § 181.935(c). The word "may" is permissive. Minn. Stat. § 645.44, subd. 15 (2024). Thus, the district court had the discretion to award attorney fees if it determined that an award constituted appropriate relief for the association's MWA violation. Considering that the district court determined that Kortan had failed to present evidence of any damages resulting from the violation, we conclude that the district court did not abuse its discretion when it implicitly declined to award Kortan attorney fees.

III. The district court did not err in its award of prejudgment interest.

Lastly, Kortan asserts that the district court erred in its award of prejudgment interest. She argues that the district court erred by (1) not calculating the actual dollar amount of prejudgment interest or instructing the court administrator to do so and (2) not granting prejudgment interest through the date of the amended judgment in 2024. Both of Kortan's arguments involve interpreting or applying the requirements for prejudgment interest under Minnesota Statutes section 549.09, subdivision 1 (2024), and, therefore, are questions of law, which we review de novo. *See, e.g.*, *In re Minnwest Bank Litig. Concerning Real Prop.*, 873 N.W.2d 135, 148 (Minn. App. 2015).

Minnesota Statutes section 549.09, subdivision 1(a), states: "When a judgment or award is for the recovery of money, . . . interest from the time of the verdict, award, or

report until judgment is finally entered shall be computed by the court administrator or arbitrator . . . and added to the judgment or award." As we have explained, "[p]rejudgment interest is intended to compensate a prevailing plaintiff for the loss of the use of a money judgment, to encourage settlement, and to encourage prompt payment of judgments." *Miller v. Soo Line R.R. Co.*, 925 N.W.2d 642, 657 (Minn. App. 2019) (quotation omitted).

The original judgment in this matter was entered on February 27, 2023. In the order amending judgment, the district court ordered "prejudgment interest on the damages award of $10,033.44 from January 17, 2020, at the annual rate of 4 percent for the years 2020 and 2021 and at the annual rate of 5 percent for the years 2022 and 2023."

Kortan first argues that the district court erred by failing to calculate the actual dollar amount of prejudgment interest or to direct the district court administrator to do so. But Kortan cites no authority stating that the district court needs to calculate the award or instruct the court administrator to do so, and such a requirement is unnecessary in light of the statutory language that any interest on the award "*shall* be computed by the court administrator . . . and added to the judgment or award." Minn. Stat. § 549.09, subd. 1(a) (emphasis added). We also note that Kortan filed her appeal to this court without first requesting that the court administrator calculate the amount of prejudgment interest, so the court administrator never had the opportunity to comply with such a request. For these reasons, the district court did not err when it provided the percentages of prejudgment interest that should apply without an explicit instruction that the court administrator calculate the amount of interest.

Second, Kortan argues that the prejudgment interest should have been calculated through the date of the amended judgment in 2024. In support of her argument, Kortan cites Minnesota Statutes section 549.09, subdivision 1(c)(1)(i), and *Wildlife Research Center, Inc. v. Robinson Outdoors, Inc.*, 409 F.Supp.2d 1131, 1138 (D. Minn. 2005). But, while the statute and *Wildlife Research Center* provide information on how to calculate interest under section 549.09, they do not discuss how an amended judgment might affect the calculation.

The association argues that Kortan is entitled to prejudgment interest only up to the date of entry of the original judgment at the rates identified by the district court for the years 2020 through 2023. We agree. Because the amended judgment in 2024 did not change the original monetary judgment, the district court did not err by providing for prejudgment interest only up to the date of the original judgment. *See id.* ("*When a judgment or award is for the recovery of money*, . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be computed . . . and added to the judgment or award." (emphasis added)). And, as the association acknowledged during oral argument, Kortan is still entitled to recover interest after the date of the original judgment, because the association is obligated to pay postjudgment interest from the date of the original judgment until the date the award of damages is paid, which, for a judgment below $50,000, is at the same rate as the applicable prejudgment interest rate. *See* Minn. Stat. § 549.09, subd. 2 (2024). As a result, the district court did not err in its award of prejudgment interest.

Affirmed.