

IN THE YMCA MODEL SUPREME COURT OF THE STATE OF MONTANA

No. 2010-002

JOEY MOWER,

Petitioner and Appellant

v.

RICHARD "DICK" DOLLARMAN,

Respondent and Appellee

BRIEF OF APPELLANT

On appeal from the District Court of YMCA

ORAL ARGUMENT REQUESTED

APPEARANCES:

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STATEMENT OF THE ISSUES

1. Did the District Court err in finding Joey Mower as an agricultural worker under 39-3-402, MCA and as a menial worker under 39-3-406, MCA?
2. Did the District Court err by replacing an oral, expressed contract with an implied one, as defined in 28-2-103, MCA?

STATEMENT OF THE FACTS

Joey Mower was a trained landscapist when he came under the employment of Mr. Dick Dollarman. Joey had previously worked at Lookgreat Landscaping, where he attained his training in landscaping on weekends while finishing his senior year of high school. Unfortunately, Joey was laid off just as summer was starting due to the economy, but was informed of previous Lookgreat Landscaping client, Mr. Dollarman, who was looking for looking for an employee. Joey then met with Mr. Dollarman and agreed upon a pay schedule, a pay rate, a work schedule, and Joey's required duties, many of which relied heavily on his former training as a landscapist. Joey began work the next day.

As the days continued, Mr. Dollarman continued to add to the duties expected of Joey, and often expected more to get done than was possible in the 9 hour work day they had agreed on, forcing hard working Joey to stay late and cut his lunch break short. This was manner of the entire summer, and Joey decided early on to keep written track of his records, just in the off chance a dispute would occur.

When June came to a close, Joey turned in a copy of his hours to Mr. Dollarman and was informed that payroll took two weeks. When Joey received his paycheck, 3 days late, it was for \$635, significantly less than Joey was owed. When he inquired, he was told that taxes had been taken out, and that Joey had not earned the numerous overtime hours he was owed because Mr. Dollarman "didn't see [him] working overtime". Joey soon realized however that he had not received a pay stub and had never filled out a W-4 and, with the aid of pay stubs from Lookgreat Landscaping, estimated that even with taxes taken out he was grossly underpaid.

July ended with a similar scenario, Joey's paycheck was late and less than rightly owed. Later that month the local paper ran a story about Mr. Dollarman's estate winning the "Parade of Homes" Best Landscaping Award. Mr. Dollarman claimed to have done everything on the home himself.

After Joey left for college and after much hassle received his last paycheck, which was again much less than owed. Joey's mom spoke to her friend about the matter, who suggested Joey file a wage and hour complaint, which he did in a timely matter. Mr. Dollarman came back by claiming that Joey was a farm hand, they had never agreed upon a wage, had agreed to the wages by signing and cashing the checks, and that Joey had "sat on his behind all the time" and did not deserve overtime anyway. Joey argued by producing time records and by bringing up the oral agreement.

The case investigator sided with Joey, determining the oral contract was valid and that Joey was due \$8.00 an hour plus overtime. She used evidence including before and after pictures of the property and Joey's time records to decide that Joey's work was not just menial labor, and that Mr. Dollarman's primary pursuit was not agriculture. The district court, however, overruled the examiner's decision, stating Joey was an agricultural worker because he attended the horses and that mowing the lawn was like haying. The judge ruled that Joey was only due farm minimum wage, and that his meticulous records were irrelevant, and by cashing the checks had complied with accord and satisfaction definitions.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING JOEY MOWER AS AN AGRICULTURAL AND MENIAL WORKER

A. The appellant was not an agricultural worker

Under MCA § 39-3-402, a farm hand is a person "employed to do a service performed on a farm or ranch", described as, under the same law, as an "endeavor primarily engaged in...raising or harvesting an agricultural or horticultural commodity". It is obvious that Mr. Dollarman's primary interest was not of an agricultural or horticultural nature, but was in the beautification of his estate. The district court stated that mowing the grass was akin to haying, and therefore was agricultural work. However, *Adkins v. Mid-America Growers, Inc.* 167 F.3d 355 (7 Cir. 1998) states if the primary purpose of mowing is to beautify, it cannot be considered an agricultural task, even if a secondary, agricultural benefit exists. Since Mr. Dollarman's estate is not primarily engaged in agriculture, Mr. Mower cannot be considered a farm hand and is therefore not exempt from minimum wage or overtime laws.

B. Mr. Mower's tasks went beyond the scope of menial labor

1. Mr. Mowers tasks were largely non-menial chores

While it is true that a few of the tasks completed by Mr. Mower may have been menial, such as mowing the lawn, the majority were not. *Adkins v. Mid-America Growers, Inc.* 167 F.3d 355 (7 Cir. 1998) states that a worker who does any nonexempt [from minimum wage and overtime laws] work in a week is entitled to the regular overtime compensation. Mr. Dollarman claims his employee did only menial labor, and that is obviously not true, based on photos taken by Mr. Mower. These photos, along with the time logs, are proof enough because the responsibility of keeping hours lies with the employer, as described in *Garsjo v. Department of Labor and Industry*, 172 Mont. 182, 562 P.2d 473 (1977). This case also states that if the employer keeps no records, the employee's records need not be precise, and that they should be accompanied by "sufficient evidence to show the amount and extent of the work", which are the photos as well as the Best Landscaping Award. Mr. Dollarman cannot prove with time sheets and evidence that Mr. Mower only did menial chores, and Mr. Mower has relieved his part of the burden of

evidence. Therefore, it must be assumed that not all labor done was exempt from overtime and minimum wage laws.

2. Mr. Mower was trained as a landscapist

As described in the case packet, Mr. Mower had been trained as a landscapist, by Lookgreat Landscaping. As a trained worker, his duties on Mr. Dollarman's estate exceeded the standards for a menial laborer, and Mr. Mower used many of his acquired skills to complete the tasks set forth by his employer. Mr. Mower was stated to have "built two gigantic flower planters... and planted yet more flowers, arranged in an elaborate decorative pattern." The before and after photos taken by Mr. Mower can easily exemplify that the tasks set forth for him were not ones that an unskilled laborer could accomplish to the same caliber. MCA § 39-3-405, defines menial chores as tasks such as mowing lawns and cleaning sidewalks. Certainly Joey did many non-menial tasks every week, using his training to aid him. Evidence supporting this can be found in the Best Landscaping award that Mr. Dollarman received from the Parade of Homes. An award of such prestige could not have been attained without a skilled laborer such as Mr. Mower to beautify Mr. Dollarman's estate. To say that the work Mr. Mower did was menial would be an insult to the landscapers everywhere.

II. THE DISTRICT COURT ERRED IN NEGLECTING TO RECOGNIZE AN ORAL CONTRACT BETWEEN THE EMPLOYER AND EMPLOYEE

A. An employment contract did exist between the parties

Under MCA § 28-2-901 MCA § 28-2-903, contracts may be oral for employment. The terms outlined in the case also meet all the terms of consent, under MCA § 28-2-301. Mr. Dollarman would likely have forgotten the exact terms of such an oral contract, as he lost Mr. Mower's work schedules (provided by Mr. Mower) and demonstrates a blatant disinterest in affairs relating Mr. Mower's employment. Furthermore, in appeals from summary judgment, the standard is to review all materials in favor of the appellant, *Bishop v. Hendrickson* 215 Mont. 158 (1985). Since neither side can indeed provide hard proof of the oral contracts and its stipulations, the court should rule in favor of Mr. Mower.

B. Mr. Mower did not satisfy the employment contract by cashing checks

Mr. Mower received 3 checks throughout his employment with Mr. Dollarman, one each month as was promised in their initial agreement. Each check however was substantially less than what was owed. Mr. Mower cashed all the checks; this act does not meet the criteria for accord and satisfaction though MCA § 28-1-1401, MCA § 28-1-1402, since at the time Mr. Mower was not aware of how grossly he was underpaid.

CONCLUSION

For the reasons stated above, the decision of the District Court should be reversed entirely, so as to provide justice and preserve faith in the American legal system.

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