
IN THE YMCA MODEL SUPREME COURT OF THE STATE OF MONTANA
No. 2010-02

JOEY MOWER

Petitioner, Appellant

v.

RICHARD "DICK" DOLLARMAN

Defendant, Appellee

BRIEF OF RESPONDENT

On appeal from the District Court of
Twenty-Sixth Judicial District of the State of Montana

ORAL ARGUMENT REQUESTED

APPEARANCES:

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ATTORNEYS FOR DEFENDANT AND APPELLEE

TABLE OF CONTENTS

| | |
|------------------------------|---|
| TABLE OF AUTHORITIES | 1 |
| STATEMENT OF THE ISSUES..... | 1 |
| STATEMENT OF THE FACTS | 1 |
| ARGUMENT | 5 |
| CONCLUSION..... | 8 |

TABLE OF AUTHORITIES

Statutes

§ 39-3-402 M.C.A
§ 39-3-404 M.C.A
§ 28-1-1402 M.C.A
§28-1-1403 M.C.A

Cases

Beltnick v. Matosich, Department of Labor and Industry Hearings Bureau Case no. 1076-2007.

Adkins v. Mid-America Growers, Inc. 167 F.3d 355 (7 Cir. 1998)

STATEMENT OF THE ISSUES

1. Was Joey Mower entitle to AT LEAST minimum wage plus overtime compensation, or was his employment exempt from minimum wage and overtime laws? The following two sub-issues are legally relevant:
 - a. Was Joey Mower an agricultural worker “primarily engaged in” cultivating soil or in producing a horticultural commodity?
 - b. Was Joey Mower performing only menial labor?
2. Did an employment contract or agreement exist between Joey Mower and Dick Dollarman wherein Dollarman was to pay Joey \$8.00 an hour?

STATEMENT OF THE FACTS

Shortly after Memorial Day, Dick Dollarman was acquainted with Joey Mower, a high school graduate looking for a temporary summer job. In need of assistance with his estate, Dollarman was delighted to hire Mr. Mower to the job. As a former client of Lookgreat Landscaping, Dollarman took the company’s favorable reference of Mr. Mower as a sign of a hard-working and diligent youth. Meeting with Mr. Mower, Dollarman listed the responsibilities that would be given to the youth:

“We need you to mow all the lawns, trim the trees and shrubs. Spray the wees and trim around the planters. I’ve got a tractor and mower and all the other equipment you need right in the shed. You also need to help with my wife’s garden and flowerbed stuff and whatever else I need you to do.”

After detailing the work Mr. Mower was to do, the discussion moved towards the pay of Mr. Mower's employment. Unfamiliar with the current prices given to teens, Dollarman agreed to pay Mr. Mower what he "is worth." When pressed for an amount, however, Dollarman responded with an estimated sum of "Ok, whatever, eight bucks an hour" but quickly adding "I'll pay you something." Mr. Mower misinterpreted Dollarman's initial estimate as a finalized offer and shook on the deal.

During the first day, Mr. Mower showed up promptly at 7:00 am and was given the task of feeding the horses. Unskilled, Mr. Mower gave the two hungry horses each only a flake of hay – far from an adequate amount – before wandering around the premises admiring the landscape and taking pictures. When Dollarman came out of the house, he admonished Mr. Mower for not working before giving him a list of chores to complete. These included mowing the lawn and tending the bedding plants.

Through the course of the three months, Mr. Mower continued to perform agricultural tasks including feeding the horses, mowing the lawn, and tending the flower plants. In addition to this, Mr. Mower designed two new flower planters, adding in elaborate patterns to both.

When it came time for Mr. Mower's June paycheck, Dollarman had researched the wages, coming to a total of \$635 for an agricultural worker a month. Dollarman presented the check to Mr. Mower, who initially accepted the money, despite remarks that he had been underpaid. Dollarman responded that it was what Mr. Mower's employment was worth and that Mr. Mower was to "take it or leave it." For Mr. Mower's July paycheck, Dollarman added in the amount of work Mr. Mower had done in preparation for the Parade of Homes Best Landscaping Award, increasing Mr. Mower's paycheck to a sum of \$1200. Once again, Mr. Mower protested that he was being underpaid. Despite this, he cashed the second check and returned to work on the Dollarman estate for a third month during August.

It was not until Mr. Mower had received his third check – one for \$635 – that he filed a Wage and Hour complaint to the Department of Labor. In court, Dollarman argued that he had not agreed to any particular wage. Furthermore, Mr. Mower’s cashing of the first two checks indicated that although he may not been fond of the wages given, he nevertheless agreed to the proposed pay.

The hearings examiner ruled in favor of Mr. Mower, that the oral contract was valid. The examiner stated that while Mr. Mower did feed the horses and tend the gardens, agriculture was not the Dollarman’s primary pursuit. After this decision, Dollarman summarily appealed to the District Court. There, the judge reversed the initial decisions, ruling in favor of Mr. Dollarman. With no evidence of a contract, the judge based the decision on Mr. Mower’s cashing of the paychecks, stating “that’s an accord and satisfaction.”

This appeal followed.

ARGUMENT

1. As an “farm worker,” Mr. Mower is not owed unpaid wages in both minimum wage hours and overtime hours.
 - A. Mr. Mower’s work is “farm work” as defined by §39-3-402. As a result, the petitioner’s due wages are at a minimum of \$635 as defined for farm workers by §39-3-404.

The tasks given to Mr. Mower consisted primarily of feeding horses and maintaining the lawn and garden. All these tasks are engagements in cultivating the soil, or in connection with raising or harvesting an agricultural or horticultural commodity as defined in §39-3-402. Although Mr. Mower had also engaged in non-agricultural tasks, these tasks are exemplified as they are included as part of the farm work done on the Dollarman’s estate. The prior court case of Adkins vs Mid-America Growers set the precedence, showing that

the small percentage of non-agricultural work cannot be separated from the agricultural if the two are related.

- B. Mr. Mower's inability to quantify the amount of non-agricultural work done at the Dollarmans' estate further supports the claim that the non-agricultural work amounted to a small percentage of the total work and could not be separated altogether.

Despite Mr. Mower's records of the hours worked, the petitioner has yet to produce any empirical evidence suggesting that the amount of work done that was not "farm work" is significant enough to warrant further wages. The lack of evidence contradicts *Beltnick vs Matosich*, which upholds a previous court's decision that:

"the employee must produce evidence to "show the extent and amount of work as a matter of just and reasonable inference."

Because Mr. Dollarman had paid Mr. Mower a sum of \$1200 during the month of July for his work on the Parade of Homes, the petitioner's claim of unpaid wages is not supported by facts. Unable to show the exact amount of work that can be attributed to not "farm work," it is improbable for the petitioner to pursue lost wages when Mr. Mower cannot give an exact amount to the amount of wages due to him.

2. The ambiguity in the oral contract between Mr. Mower and Mr. Dollarman questions the validity of Mr. Mower's claim that he was to be paid \$8.00 an hour.

- A. Mr. Dollarman's lack of a definitive answer to Mr. Mower's inquiry about wages leaves the contract open for interpretation.

The oral contract between Mr. Mower and Mr. Dollarman are arguably unknown. In conversation, Mr. Dollarman mentions a wage of \$8.00 an hour, but quickly adds "I'll pay you something, don't worry about it." Having heard the initial \$8.00, Mr. Mower

does not object to the afterthought. The negligence of asking to clarify leaves the finalization of the contract open-ended. Consequently, Mr. Mower is not owed \$8.00 an hour's wages due to the lack of an enforceable contract that specifies as such. The defendant is required pay Mr. Mower any amount that is within the statutes of law but is not required to pay Mr. Mower \$8.00 an hour.

- B. Mr. Mower's acceptance of the checks presented forgoes any prior claim the petitioner may have had to an oral contract of wages being \$8.00 an hour.

Despite his repeated complaints about being underpaid, Mr. Mower accepted not one but three payments from Mr. Dollarman. It was not until Mr. Mower had received his third check that he filed a complaint to the Department of Labor. In accordance to §28-1-1402, Mr. Mower's acceptance of the first two checks indicates a level of satisfaction. This satisfaction in turn extinguishes any obligations the defendant may have had, including the claim of wages to be \$8.00 an hour, defined by §28-1-1403.

CONCLUSION

For the foregoing reasons, the decision of the District Court should be upheld.

Respectively submitted this 15th day of March, 2010

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