

Circuit Court for Frederick County  
Case No. C-10-CV-20-000259

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 751

September Term, 2021

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ADVANCED PAIN MANAGEMENT, LLC

v.

ALI RAZI

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Wells, C.J.,  
Shaw,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: October 3, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury awarded Ali Razi, appellee, \$58,850.00 in lost wages against appellant, Advanced Pain Management, LLC (“APM”). On appeal, APM makes several arguments addressing the apparent trebling of damages by the jury and the sufficiency of the evidence on which the award was based. APM presents three questions for our review, which we condense into one question:<sup>1</sup> Did the circuit court err by denying APM’s motion for a new trial on damages when the jury did not make a specific finding on whether the wages were withheld as a result of a bona fide dispute? For the following reasons, we reverse and remand for a trial on new damages on the wage claim alone.

### **FACTUAL BACKGROUND**

Dr. Razi is a board-certified anesthesiologist based in Maryland. Between June 27, 2017 and April 19, 2018, Razi worked both as an independent contractor and as an employee at APM. On September 8, 2017, Razi entered into an employment contract with APM. The terms of the contract provided for Razi to be paid an annual base salary of \$320,000. In November 2017, Razi became a Member of APM, requiring a capital

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<sup>1</sup> APM’s verbatim questions presented in its appeal read:

1. Did the jury err by awarding Razi \$58,850.00 in damages on his September 2017 wage claim when no evidence in the record supported such an award and Razi himself had claimed \$6,427.31 in unpaid wages and requested trebled damages totaling \$19,287.62?
2. Did the Circuit Court err by denying APM’s Motion to Revise/Reduce Judgment on Razi’s September 2017 wage claim when no evidence in the record supported such an award and Razi himself had claimed \$6,427.31 in unpaid wages and requested trebled damages totaling \$19,287.62?
3. Did a bona-fide dispute exist regarding Razi’s unpaid wages for the month of September 2017?

contribution. According to APM, after Razi became a Member, he began exhibiting behavioral problems including “yelling at and/or threatening APM’s patients, APM’s staff, and/or APM’s other Board Members.” After placing him on a performance plan, APM ultimately terminated its relationship with Razi on April 19, 2018.

Razi subsequently sued APM to recover, among other things, back pay under the Maryland Wage Payment and Collection Law, alleging that APM withheld his wages from September 8, 2017 to September 30, 2017 (hereinafter “Wage claim”). The parties disputed whether Razi was, at that time, working as an independent contractor, or whether he was an employee under the employment contract. At trial, the jury found in favor of Razi on his Wage claim, and awarded him \$58,500.00 in damages. Following the verdict, APM filed a Motion to Revise/Reduce the Judgment, which also asked alternatively for a new trial on damages, arguing that the evidence did not support an award of that amount. The trial court denied APM’s motion and this appeal followed.

## DISCUSSION

**The Trial Court Erred in Denying the Motion for New Trial because the Question of a Bona Fide Dispute was Never Addressed, and the Jury’s Award was Not Supported by the Evidence.**

### A. Parties’ Contentions<sup>2</sup>

In its brief, APM presents two arguments. *First*, APM contends that a bona fide dispute existed as to Razi’s Wage claim, or in the alternative, that the jury made no finding to support treble damages. APM asserts that, pursuant to the employment contract with

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<sup>2</sup> Razi failed to file a brief in this appeal.

Razi, his employment only began on October 1, 2017, when his malpractice insurance commenced. APM further submits that, assuming that it is for the jury to decide whether a bona fide dispute exists, here, when no question is included in the verdict sheet for the jury to answer, it is for the circuit court to determine.

*Second*, APM argues that the evidence presented at trial was insufficient to support an award of \$58,850.00 in lost wages. In its brief, APM asserts that in closing arguments, Razi’s counsel requested that the jury award Razi \$6,427.31 in lost wages and asked the jury to triple that award to \$19,287.62.<sup>3</sup> In his brief and at oral argument, APM posits that, at most, Razi only presented evidence of \$6,427.31 in lost wages, which could then only be trebled to \$19,281.93.

### **B. Analysis**

The purpose of the Wage Payment and Collection Law is to “provide a vehicle for employees to collect, and an incentive for employers to pay, back wages.” *Cunningham v. Feinberg*, 441 Md. 310, 322–23 (2015) (quoting *Battaglia v. Clinical Perfusionists, Inc.*, 338 Md. 352, 364 (1995)). Section 3-507.2(b) of the Labor and Employment (L&E) Article provides:

(b) *Award and costs.* — (1) If, in an action under subsection (a) of this section, a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

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<sup>3</sup> This claim is inaccurate. In closing, as we reiterate below, Razi’s counsel specifically asked for \$19,287.62 in lost wages to be tripled.

The availability of treble damages was included in the statute for a “remedial purpose—to cure what the Legislature saw as a problem with ‘wage theft,’ and practical difficulties that employees had in bringing lawsuits to recover wages owed.” *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 662 (2014). The Court of Appeals has made clear that the discretionary trebling of damages under § 3-507.2(b) is for the trier of fact to determine. *Admiral Mortg., Inc. v. Cooper*, 357 Md. 533, 543–53 (2000). Important for us, in *Programmers’ Consortium, Inc. v. Clark*, the Court of Appeals stated that “a jury may not award enhanced damages *unless* it finds that the employee’s wages were not withheld as a result of a bona fide dispute[.]” 409 Md. 548, 563 (2009) (emphasis added). A jury would make such a finding by way of a special question on the verdict sheet. *See id.* at 562–63.

In *Peters v. Early Healthcare Giver, Inc.*, the Court of Appeals held that the trial court erred in failing to consider whether overtime pay was withheld as a result of a bona fide dispute. 439 Md. 646, 656 (2014). The Court explained:

In granting the unpaid wages pursuant to the [Wage and Hour Law] and the [Wage Payment and Collection Law], **the trial court was required to make a predicate finding as to whether the wages were withheld pursuant to a bona fide dispute.** In *Programmers’ Consortium, Inc. v. Clark*, this Court recognized that a trier of fact “may not award enhanced damages unless it finds that the employee’s wages were not withheld as a result of a bona fide dispute[.]” 409 Md. 548, 563, 976 A.2d 290, 299 (2009). For this reason, we approved the ruling of the Court of Special Appeals that the trier of fact “will be required to make such an actual threshold determination” regarding a bona fide dispute before proceeding to the question of enhanced damages.

...

[T]here is nothing to suggest that the court decided the question of bona fide dispute, one way or the other, and we will not imply a finding under these

circumstances. Because the court did not make the required predicate finding regarding a bona fide dispute, it erred.

*Id.* (emphasis supplied) (other internal citations omitted). Even though no evidence was presented of a bona fide dispute, and therefore there was “no reason for the trial court to make a factual determination on the issue of bona fide dispute[,]” the Court of Appeals held that a remand was still necessary because “the record [did] not reveal whether the trial court considered the absence of a good faith reason for withholding overtime pay, or gave appropriate consideration to the statutory availability of an enhanced award up to treble damages.” *Id.* at 660.

While the employer in *Peters* presented no evidence of a bona fide dispute, here, the record reflects that APM presented ample evidence demonstrating that they withheld Razi’s wages because of what they insisted was a bona fide dispute over Razi’s employment.<sup>4</sup> Yet, the question of whether APM withheld Razi’s wages as a result of a bona fide dispute went unanswered at trial. As the Court of Appeals in *Peters* held that the trial court erred in failing to address the question, we do the same here. Because the question of bona fide dispute was not addressed, we must conclude that the trial court committed reversible error. At oral argument and in their brief, APM urges us to conclude that because the circuit court denied Razi’s Motion for Attorney’s Fees, the court implicitly found that a bona-fide dispute existed. We disagree for a couple of reasons. *First*, as

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<sup>4</sup> At trial, APM introduced Razi’s employment agreement and elicited testimony from Razi purporting to demonstrate that he was not an employee until October 1, 2017, and APM therefore did not owe him wages from September.

mentioned, it is for the jury, as the trier of fact in this case, to find the existence of a bona fide dispute. *Second*, attorney’s fees awarded under L&E 3-507.2 are “only appropriate . . . if a jury makes a finding that the failure to pay wages was willful.” *Programmers’*, 409 Md. at 555. Although the award of attorney’s fees is for the judge to decide, *Admiral Mortg., Inc.*, 357 Md. at 553, the judge may not award attorney’s fees unless the jury has found that no bona fide dispute existed. *See Programmers’*, 409 Md. at 561; *Barufaldi v. Ocean City, Chamber of Commerce, Inc.*, 196 Md. App. 1, 35-36 (2010). In *Programmers’*, the Court of Appeals stated that *Admiral Mortgage, Inc.*, does *not* hold that “the Circuit Court has the power to award attorney’s fees and costs even if the jury had found in the employer’s favor on the issue” of the existence of a bona fide dispute. *Id.* Because here the jury did not answer that question, the judge’s denial of Razi’s Motion for Attorney’s fees is immaterial to our analysis.

APM argues that the evidence presented at trial is insufficient to sustain an award of \$19,287.62 in lost wages. We disagree. There is sufficient evidence in the record—specifically in Razi’s testimony—contextualized by his counsel’s closing argument, showing that he claimed up to \$19,287.62 in lost wages, not merely \$6,427.00, as APM claimed at oral argument.

At trial, Razi testified that he was owed back wages from September 8, 2017, to October 1, 2017. Razi also testified that his annual salary, pursuant to the employment agreement, was \$320,000. In closing argument, counsel for Razi urged the jury to interpret Razi’s testimony in the following way:

You're going to have a contract, and the contract . . . starts September 8th. Period. And you're getting \$320,000 a year.

Now, if you do the math, and I've done the math, if you simply divide 320,000 by 365, it comes out to \$876.71 per day. So if you multiple [sic] that times the days in September that he was under this contract, the total damages are \$19,287.62 under the contract.<sup>[5]</sup>

...

And again, ladies and gentlemen, the amount that they didn't pay [Razi] is \$19,287.62. And we're going to ask you, because under the statute, it's provided for, and it's provided for so that employers don't do things like this.

It says that he's entitled, you can award him, up to three times the amount that's owed to him, so that's the one amount he's owed, plus two more times. We're going to ask you to award that.

Consequently, we conclude there was sufficient evidence for the jury to arrive at the amount of \$19,287.62 in lost wages.

Next, we address the trebling of damages. The trial court erred in denying APM's motion for a new trial because without a specific jury finding on whether a bona fide dispute existed, a jury may not award enhanced damages. As a result, the award of \$58,850—roughly three times the amount Razi claimed in lost wages—cannot stand. The question on the verdict sheet regarding Razi's Wage claim read:

5. Do you find, by a preponderance of the evidence, that Defendant APM violated the Maryland Wage Payment and Collection Law by not paying Plaintiff wages due and owing to him for work he performed in September 2017?

Yes  No

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<sup>5</sup> This portion of Razi's closing was from the trial transcript and was not included in the Record Extract provided by APM.



If your Answer to Question 5 is “No,” please skip Question 5(A) and proceed to Question 6. If your Answer to Question 5 is “Yes,” please proceed to answer Question[] 5(A).

5(A). What amount of wages do you find, by a preponderance of the evidence, that Defendant APM owes Plaintiff for unpaid work performed in September 2017?

\$ 58,850

The verdict sheet did not include a question asking the jury whether it found that the wages were withheld because of a bona fide dispute, as they are required to do before awarding enhanced damages as the trier of fact. Without such a finding, the lost wages cannot be trebled.

Absent such a finding, we cannot say for certain whether the \$58,850.00 award was a result of the jury tripling the amount of lost wages or was simply the award for lost wages alone. However, we can surmise that the jury tripled the amount of lost wages Razi claimed. If the jury tripled the amount that Razi claimed in lost wages—\$19,287.62—the total damages would be \$57,862.86. The jury awarded \$58,850.00; a number that is unsupported by the evidence presented at trial on lost wages alone. It seems likely the jury tripled the number provided to them in closing, and/or extrapolated through the evidence presented. We cannot determine however, the cause for the discrepancy between the tripled number (\$57,862.86) and the jury’s actual award (\$58,850.00).

However, we need not probe the cause of this discrepancy or whether the jury did in fact treble the damages, because the evidence presented is insufficient to support an award of \$58,850.00 on lost wages alone and, as discussed, the trial court erred by failing to submit the question of bona fide dispute in the first place. For guidance on remand, we

note that the maximum amount available to Razi is three times the amount of lost wages claimed, or \$57,862.86. Of course, the jury is free to award any number up to that amount, upon a finding that there was no bona fide dispute. Consequently, we remand to the circuit court with directions to conduct a new trial on the damages under the Wage Claim Act only.

**THE JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY IS REVERSED AND THE JURY'S AWARD ON THAT CLAIM IS VACATED. CASE REMANDED FOR A NEW TRIAL ON WAGE CLAIM DAMAGES ONLY. APPELLEE TO PAY THE COSTS.**