

Circuit Court for Montgomery County  
Case No. 422472-V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1782

September Term, 2017

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LADISLAV CONKA

v.

RANGER SECURITY SERVICES, INC., ET  
AL.,

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Kehoe,  
Leahy,  
Reed,

JJ.

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Opinion by Reed, J.

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Filed: March 29, 2021

\*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.

On June 20, 2016, Ladislav Conka (hereinafter “Appellant”) filed an action against Ranger Security Services, Inc. and Patrick George Freeman for unpaid overtime wages, statutory liquidated damages, and attorneys’ fees and costs pursuant to the Maryland Wage and Hour Law (“MWHL”) and the Maryland Wage Payment and Collection Law (“MWPCL”). A little bit more than a year later, the Circuit Court for Montgomery County entered judgment in favor of Appellant on his MWHL claim, awarding him \$3,549 plus an equal amount in statutory liquidated damages and awarded him zero dollars in attorneys’ fees under that claim. This was the full amount of Appellant’s claim under the MWHL. However, the circuit court ruled in favor of Ranger Security Services, Inc. and Patrick George Foreman on Appellant’s MWPCL claim.

Subsequently, Appellant filed post-trial motions asking the circuit court to amend its judgment and award for attorneys’ fees. The circuit court denied Appellant’s post-trial motions. It is from these denials that Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review:<sup>1</sup>

- I. Did the circuit court err in denying Appellant’s request for reasonable attorneys’ fees and other costs associated with his successful MWHL claim?

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<sup>1</sup> Appellant presents the following questions:

1. Did the circuit court err by denying Appellant attorneys’ fees and cost after he prevailed at trial on his MWHL claim?
2. Did the circuit abuse its discretion by declining to allow Appellant to present evidence of his attorneys’ fees and costs after he prevailed at trial on his MWHL wage claim?
3. Did the circuit court commit legal error by finding that Appellant was precluded from recovering under the MWPCL because he did not present evidence that he demanded payment of his wages?

- II. Did the circuit court abuse its discretion when it denied Appellant’s Post-Trial Motions for attorneys’ fees and other costs after failing to notify the parties of the proper time to present evidence of attorneys’ fees?
- III. Did the circuit court err in denying Appellant’s MWPCL claim based on the lack of evidence that Appellant demanded payment of his mandated overtime wages?

We hold that the circuit court (1) abused its discretion in denying Appellant’s Post-Trial Motion for attorneys’ fees and other costs, and (2) the circuit court erred in denying Appellant’s MWPCL claim. Accordingly, we reverse the circuit court’s denial of Appellant’s Post-Trial Motions, vacate the circuit court’s denial of Appellant’s MWPCL claim, and remand this case in accordance with this opinion.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Patrick George Freeman owns all shares of Ranger Security Services, Inc. (“Ranger Security”). Ranger Security is a company that provides security to construction sites and buildings. Appellant was employed by Ranger Security as a security officer from June 2015 through April 2016. Appellant was hired to work 36 hours per week. During Appellant’s employment at Ranger Security, he worked 591 hours of overtime for which he did not receive any compensation. On June 20, 2016, Appellant filed a complaint against Mr. Freeman and Ranger Security (collectively “Appellees”) seeking damages for unpaid overtime pursuant to the Maryland Wage and Hour Law (“MWHL”)<sup>2</sup> and the Maryland

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<sup>2</sup> MD. CODE, LABOR & EMPLOY., § 3-401, *et seq.*

Wage Payment and Collection Law (“MWPCL”)<sup>3</sup> Appellant requested attorneys’ fees in both counts of his complaint.

On September 23, 2016, Appellant filed a Notice to Court Regarding Attorneys’ Fees and the circuit court held a scheduling hearing. Subsequently, the circuit court entered a Scheduling Order, which did not mention the time for presentation of attorneys’ fees evidence. Further, no subsequent order of the court addressed when, be it before or after trial, evidence of attorneys’ fees should be presented. On April 13, 2017, the parties filed a Joint Pretrial Statement. In the Joint Pretrial Statement, Appellant asserted he was seeking attorneys’ fees pursuant to the MWHL and the MWPCL “to be determined by the Court pursuant to the *Lodestar* method after [Appellant] files a post-trial petition for such an award.” At trial, Appellant testified to matters relating to his attorneys’ fees:

Q. Do you have lawyer [sic] in this case?

[Appellant]: Yes, over here.

Q. Do you pay him money? Did you pay him a fee?

[Appellant]: No.

Q. You didn’t pay him a fee?

[Appellant]: No.

....

Q. Do you know how your lawyer’s getting paid for representing you?

[Appellant]: I don’t know

Q. You don’t know?

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<sup>3</sup> MD. CODE, LABOR & EMPLOY., §3-501, *et seq.*

[Appellant]: I don't know. I have not [sic] idea. I hire a lawyer of, of, of course for my overtime hours, but I have not [sic] idea if I have asked him for fee, or, or, all I was asked to get my overtime hour to pay that's all.

Q. Okay. Do you know if your attorney's [sic] agreed to receive a percentage of any recovery here?

[Appellant]: No. By my understanding, every lawyer gets some, of course, recovery in percentage for by my knowledge, my intelligent, of course, a lawyer get paid, of course, get paid for fee or something like that, but I never ask him, or, or whatever your question was.

Q. Okay. Is your attorney charging any hourly rate for their work that there [sic] are doing for you?

[Appellant]: No. Zero. Not yet, nothing.

Q. So, do you have any idea about the amount of attorney's fees that have incurred to date?

[Appellant]: Yes, I have idea about. He told me his fee, yeah, after the court, let's say decided, so if, if I, if I have a case that I need to pay the attorney, then they ask me to pay him the fee, yeah.

Q. But you have no idea what that fee is?

[Appellant]: No.

....

Q. You think it's a contingency fee basis?

[Appellant]: I'm sorry?

Q. You think they're going to receive a percentage of your recovery?

[Appellant]: Yeah. Something like that, yeah.

In addressing Appellant's MWHL claim, the circuit court found that Appellees initially hired Appellant to work 36 hours per week. Further, the circuit court found that

Appellant had worked 591 hours of overtime, for which he did not receive the overtime rate of pay mandated under § 3-415 of the MWHL. On July 19, 2017, the circuit court entered judgment in favor of Appellant on his MWHL claim, awarding him \$3,549 in compensatory damages and \$3,549 in liquidated damages. Appellant's request for attorneys' fees for his MWHL claim was denied. At the conclusion of trial, Judge Boynton issued an oral ruling from the bench. In Judge Boynton's oral ruling he addressed the issue of Appellant's attorneys' fees:

Under the same section, the plaintiff is entitled to sue for reasonable attorney's fees. And so, in this case, the evidence on that is that there's no evidence [sic] been presented that there are any attorney's fees. The plaintiff indicated that he was not seeking attorney's fees, he did not ask his lawyer to seek attorney's fees, he wasn't aware of any agreement, he's never received an attorney's fees bill, and there's no evidence presented on that.

So, under the statute, the Court shall award attorney's fees, which I'll do, but I'll award the amount of zero dollars because there's no evidence presented that it exists.

In addressing Appellant's MWPCCL claim, the circuit court found that Appellant did not present any evidence to establish that his wages were "withheld" within the meaning of the MWPCCL. Accordingly, the circuit court rejected Appellant's MWPCCL claim. In rejecting Appellant's MWPCCL claim, the circuit court provided, in part:

In dealing with the claim under the Maryland Wage Payment and Collection Act, at this point, based upon the testimony I've heard, there's a requirement that there be some showing that the employer withheld money after the termination, whether voluntary or not, of the employee.

And there is no evidence that's been submitted that any money was withheld, and to me that term implies that there was a request or a demand made by the employee for the payment of monies that he was owed that he had not been paid. . .

....

And I understand that under both of these, reaching an agreement to work for less than is required by Maryland law is not a valid defense. However, there also needs to be some proof that the [Appellant], who in his testimony indicated that he said he was aware of the fact that he was entitled to time and a half for overtime hours, never made a demand for that money while employed, and there's no evidence that he ever made a demand for that after he left employment, and, therefore, employer violated the Maryland Wage Payment and Collection Law by withholding money that was owed, and for which demand was made. So, I'll enter a judgment on behalf of [Appellee] on the claim regarding the Maryland Wage Payment and Collection Law.

On July 26, 2017, Appellant filed a Motion to Amend Judgment and a Motion to Award Statutory Attorneys' Fees and Costs (collectively "Post-trial Motions"). Subsequently, Appellees filed an Opposition to Appellant's Post-trial Motions, and on August 18, 2017, Appellant filed a Reply to Appellees' Opposition to Appellant's Post-Trial Motions. On September 22, 2017, the court denied Appellant's Post-Trial Motions. Appellant timely appealed the circuit court's (1) denial of Appellant's attorneys' fees and other costs relating to the MWHL claim; (2) refusal to permit evidence of Appellant's attorneys' fees and other costs, submitted as a Post-Trial Motion, following his successful MWHL claim; and (3) Denial of Appellant's MWPCCL claim.

## DISCUSSION

### *I. Denial of Attorneys' Fees and Costs Following Successful MWHL Claim and Post-Trial Motions*

#### **A. Parties' Contentions**

As an initial matter, Appellant argues that the circuit court erred by declining to award attorneys' fees to Appellant after he prevailed on his MWHL claim. Appellant relies

on MD. CODE, LABOR & EMPLOY., § 3-427(d)(1) stating that “an employee who prevails on a claim under the MWHL is entitled to an award of reasonable attorneys’ fees.” Essentially, Appellant contends that the circuit court’s award of zero dollars is tantamount to a denial of mandatory attorneys’ fees following a successful MWHL claim. Thus, Appellant contends that given “the MWHL’s clear mandate that reasonable attorneys’ fees ‘shall’ be awarded to a prevailing employee, the circuit court” erred by denying Appellant attorneys’ fees after he prevailed on his MWHL claim.

Appellees contend that the circuit court appropriately exercised its discretion in awarding Appellant zero dollars in attorneys’ fees for his MWHL claim. Specifically, Appellees assert that the circuit court complied with MD. CODE, LABOR & EMPLOY., § 3-427(d)(1) “when it affirmatively awarded [] Appellant Attorney Fees [sic] in the amount of zero dollars (\$0).” Finally, Appellees argue that the circuit court followed the proper guidelines in awarding a party statutory attorneys’ fees pursuant to the requirements set forth in Maryland Rule 2-703(f)(3).

Appellant further contends that the circuit court abused its discretion by refusing to consider evidence of Appellant’s attorneys’ fees following trial. Appellant asserts that when “a party to an action in a circuit court asserts a claim for attorneys’ fees in a statutory fee-shifting case, the circuit court is required to establish a schedule for the presentation of attorney-fee [sic] evidence.” Appellant maintains that he unambiguously asserted a claim for attorneys’ fees pursuant to his MWHL claim, which placed the circuit court on notice that he was seeking attorneys’ fees. Specifically, Appellant contends that he requested attorneys’ fees in his complaint; in subsequent statement advising the circuit court and

Appellees about the basis of his claim for attorneys’ fees; and in the parties’ Joint Pretrial Statement Appellant, in which he argued that “an award of attorneys’ fees and costs [should] be determined by the [circuit court] pursuant to the *Lodestar* method after [Appellant] files a post-trial petition for such an award.” Appellant further argues that despite the circuit court being put on notice about Appellant’s claim for attorneys’ fees, the circuit court failed to meet its obligation to establish a schedule for the presentation of attorneys’ fee evidence. Appellant maintains that the factors to be considered by the circuit court includes “the results obtained” and “the time and labor required.” Appellant asserts that “neither the results obtained nor the time and labor required can be definitively determined until after trial.”

Appellees respond that the circuit court considered “all evidence including Appellant’s testimony that Appellant was not aware of whether his counsel was charging a contingency fee or hourly fee.” Appellees contend that Appellant testified that he “has not paid his attorney and that he has no knowledge of the legal fees incurred through the time of the trial [sic].” Moreover, Appellees assert that the circuit court complied with the requirements set forth in Maryland Rule 2-703(f)(3). Appellees further argue that “after being placed on notice that Appellant was seeking an attorney fee [sic] award, the [circuit court] complied with its duty to establish a schedule for presentation of attorney fee [sic] evidence.” Appellees note that Appellant never requested that the circuit court schedule this matter for a post-trial hearing to address his attorneys’ fees claim. However, Appellee concedes that under the parties’ Joint Pretrial Statement, Appellant asserted that he planned to file a post-trial petition for attorneys’ fees. Nevertheless, Appellee maintains that

Appellant’s request under the parties’ Joint Pretrial Statement “does not change the fact that Appellant never requested that the Court schedule the matter to address Attorneys’ fees after the trial.”

### **B. Standard of Review**

We “review the circuit court’s decision regarding whether to award attorneys’ fees pursuant to the WPCL for an abuse of discretion.” *Barufaldi v. Ocean City, Chamber of Commerce, Inc.*, 206 Md. App. 282, 295 (2012). However, where a statute mandates that attorneys’ fees be granted following a successful claim, as does the MWHL,<sup>4</sup> a trial court is not at liberty to refuse such an award. *See Resnick v. Board of Elections*, 244 Md. 55, 62 (1966) (“The use of the word ‘shall’ in the statutory provisions indicates that these provisions are mandatory and that no discretion was intended to be conferred . . .”); *Cf. Friolo v. Frankel*, 373 Md. 501, 515 (2003) (Noting that under the counsel fee provisions of both the MWPCCL and former version of MWHL, the use of “may” indicated that the legislature intended counsel fees to be awarded at the trial judge’s discretion.). Moreover, even when a decision to award attorneys’ fees is discretionary – i.e. under the MWPCCL – trial judges are encouraged to exercise that discretion liberally in favor of awarding a reasonable fee. *See Ocean City, Md., Chamber of Commerce, Inc. v. Barufaldi*, 434 Md. 381, 393-94 (2013) (“when the factfinder concludes that there was no ‘bona fide dispute’ as to the employer’s liability, ‘courts should exercise their discretion liberally in favor of

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<sup>4</sup> In 2014, the legislature amended the MWHL § 3-427, which *inter alia*, amended attorneys’ fees provision by replacing the word “may” with the word “shall.” Thus, following 2014, an award of reasonable attorneys’ fees became mandatory following a successful MWHL claim.

awarding a reasonable fee, unless the circumstances of the particular case indicate some good reason why a fee award is inappropriate in that case.’ ”) (quoting *Friolo*, 373 Md. at 518).

“In general, the denial of a motion to alter or amend judgment or for reconsideration is reviewed by appellate courts for abuse of discretion.” *NRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638,673 (2010). “A court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is brought to its attention in a timely manner, abuses its discretion.” *Morton v. Schlotzhauer*, 449 Md. 217, 232 (2016).

### C. Analysis

As we will explain, we hold that the circuit court abused its discretion by denying Appellant’s Post-Trial Motions. Consequently, we decline to reach a holding on Appellant’s first issue raised in his appeal: the circuit court’s award of zero dollars in attorneys’ fees. However, we briefly address the parties’ contentions relating to the circuit court’s award of zero dollars in attorneys’ fees.

#### *Attorneys’ Fees Award of Zero Dollars*

First, we note that Appellee’s reliance on *Campusano v. Lusitano Construction LLC*<sup>5</sup> is unavailing. In *Campusano*, we acknowledged that “[a]ttorney’s fees and costs must be awarded **under FLSA § 216(b)**, but the ‘award’ may be zero in certain circumstances.” 208 Md. App. at 42 (emphasis added) (citing *Sahyers v. Prugh, Holliday & Karatinos*,

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<sup>5</sup> 208 Md. App. 29 (2012)

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*P.L.*, 560 F.3d 1241, 1245–46 (11th Cir. 2009)). The present case does not involve a claim under the FLSA.<sup>6</sup> While the FLSA includes similar provisions to the MWPCCL; caselaw arising from FLSA claims clearly do not establish precedent for claims under the MWHL or MWPCCL, unless and until expressly adopted and applied to the MWHL or MWPCCL by Maryland courts. Moreover, even if we were to apply the *Sahyers* standard to the present claim, Appellees claim would fair no better. The “certain circumstances,” under which a zero-dollar award was reached in *Sahyers*, referred to the trial judge’s finding of attorney misconduct on behalf of the part of the party requesting an attorneys’ fee award in that case. No such misconduct has been alleged or found in this case.

Thus, we turn to address Appellant’s contention that he is entitled to attorneys’ fees because the MWHL mandates that reasonable attorneys’ fees *shall* be awarded to a prevailing employee.

Maryland’s Labor and Employment Code (“the Code”) prescribes the action an employee can take against his/her employer if the employee receives inadequate compensation. The code also provides that if an employee prevails under the Code, the employee is entitled to attorneys’ fees pursuant to the MWHL. It provides, as relevant:

- (a) If an employer pays an employee less than the wage required under this subtitle, the employee may bring an action against the employer to recover:
  - (1) the difference between the wage paid to the employee and the wage required under this subtitle;
  - (2) an additional amount equal to the difference between the wage paid to the employee and the wage required under this subtitle as liquidated damages; and
  - (3) counsel fees and other costs.

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<sup>6</sup> Referring to The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.*

...

(d)(1) If a court determines that an employee is entitled to recovery in an action under this section, the court *shall* award to the employee:

- (i) the difference between the wage paid to the employee and the wage required under this subtitle;
- (ii) except as provided in paragraph (2) of this subsection, an additional amount equal to the difference between the wage paid to the employee and the wage required under this subtitle as liquidated damages; and
- (iii) reasonable counsel fees and other costs.

MD. CODE, LABOR & EMPLOY., § 3-427(a); MD. CODE, LABOR & EMPLOY., § 3-427(d)

(Emphasis added).

Maryland Rule 2-703 prescribes the framework that courts must use when awarding statutory attorneys' fees. It provides, as relevant:

**(f) Determination of Award.**

(2) *If Award Permitted or Required.* If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys' fees, the court shall determine whether an award should be made. If the court determines that a permitted award should be made or **that under applicable law an award is required**, the court shall apply the standards set forth in subsection (f)(3) of this Rule and determine the amount of the award.

(3) *Factors to Be Considered.*

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client; and
- (L) awards in similar cases.

Maryland Rule 2-703.

Even relying solely on Appellant’s testimony for attorneys’ fee evidence, Appellant provided sufficient facts for the circuit court to determine that such fees would need to be calculated and awarded. Appellant testified that he did not receive a retainer agreement and he did not receive a bill for attorneys’ fees. However, when asked how his attorneys would be paid Appellant responded “[my attorney] told me his fee, yeah, after the court, let’s say decided . . . I have a case that I need to pay the attorney, then they ask me to pay him the fee.” This appears to have been Appellant’s general understanding that his attorneys would be paid in connection with the court’s decision in his case, as is contemplated by the mandatory fee requirement of the MWHL. Notably, a fee arrangement, whether fixed or contingent, is only one factor for the court to consider under Maryland Rule 2-703. Yet, the court seemed to rest its entire decision regarding attorneys’ fees on the lack of clear evidence relating to that factor. The circuit court did so despite Appellant’s multiple requests for attorneys’ fees prior to, and following, scheduling of the hearing.

As we will explain, the circuit court’s claim that there was no evidence of such fees was attributable to the court’s failure to notify Appellant – via scheduling order or otherwise – that such evidence would be required before a judgment was rendered. Thus, the more concerning issue relating to the circuit court’s handling of the attorneys’ fees in this case was the decision to resolve the issue before receiving adequate evidence of the amount of such fees. We turn to address that issue.

***Denial of Appellant’s Post-Trial Motion for Attorneys’ Fees***

Maryland Rule 2-703 provides the steps a circuit court must take when statutorily mandated attorneys' fees are requested via petition:

**(c) Scheduling Conference and Order.** Unless the court orders otherwise, if a claim for attorneys' fees is made pursuant to this Rule, the court shall conduct a scheduling conference and, as part of a scheduling order entered pursuant to Rule 2-504 shall:

- (1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section (d) of this Rule;
- (2) determine whether evidence regarding the party's entitlement to attorneys' fees or the amount thereof may practicably be submitted during the parties' cases-in-chief with respect to the underlying cause of action or should await a verdict by the jury or finding by the court with respect to that underlying cause of action; and
- (3) in light of the determination made under subsection (c)(2), determine whether, pursuant to section (f) of this Rule, any award of attorneys' fees will be included in the judgment entered on the underlying cause of action or as a separate judgment.

In *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016), the circuit court was put on notice that Lockett requested attorneys' fees. However, the circuit court did not hold a scheduling conference to address the presentation of evidence on Lockett's attorneys' fees claim. The Court of Appeals found that "as a result, counsel for Ms. Lockett was understandably confused whether to submit evidence regarding attorneys' fees during the trial on the merits or after the court announced its decision." *Lockett*, 446 Md. at 427. The Court of Appeals also interpreted Maryland Rule 2-703(c) stating the following:

Under Rule 2-703(c), unless the Circuit Court ordered otherwise, it was to conduct a scheduling conference and enter a scheduling order that, among other things, "determine[d] whether evidence regarding the party's entitlement to attorneys' fees or the amount thereof may practicably be submitted during the parties' cases-in-chief with respect to the underlying cause of action or should await a verdict by the jury or finding by the court with respect to that underlying cause of action." Maryland Rule 2-703(c)(2). Thus, if a circuit court does not hold a scheduling conference to deal with the question of attorneys' fees, the rule requires it to come up with an alternative

mechanism and “order otherwise.”

*Id.* at 427.

In this case, the record shows that Appellant put the court on notice, on three separate occasions, that he had a claim for attorneys’ fees. On September 23, 2016, the circuit court held a Scheduling Conference. The circuit court did not specifically address the presentation of Appellant’s claim for attorneys’ fees. However, the circuit court did issue a Scheduling Order which scheduled a Settlement Conference/Pre-Trial Hearing for April 6, 2017. When the case did not settle at the Settlement Conference/Pre-Trial Hearing, both parties agreed to a one day bench trial.

Appellees argue that at no time did Appellant request that the circuit court schedule any post-trial hearings “to address Appellant’s request for attorneys’ fees should Appellant prevail.” However, the rule does not require a party to request that the court schedule the presentation of evidence for a party’s attorneys’ fee claim. The rule only requires that a party assert that there is a claim for attorneys’ fees and that the circuit court schedule a time when the party may present that evidence. Here, the circuit court failed to follow the requirements set forth in Maryland Rule 2-703(c). The record indicates that the circuit court did not hold a scheduling conference to address the presentation of evidence for attorneys’ fees nor did it come up with an alternative mechanism. In the absence of a clearly designated time to present attorneys’ fee evidence, in the parties’ Joint Pre-trial Statement, Appellant requested that “an award of attorneys’ fees and costs [should] be determined by the [circuit court] pursuant to the *Lodestar* method after [Appellant] files a post-trial petition for such an award.” There is no indication that the court, or Appellee, objected to

this request. Instead, the circuit court ostensibly disregarded Appellant’s request, and summarily awarded a nugatory fee.

It is unclear whether the circuit court was, in fact, aware of Appellant’s Pre-trial request at the time of the award. It is clear, however, that the circuit court should have been aware. Regardless, the circuit court had an opportunity to rectify this oversight upon Appellant’s filing of his Post-Trial Motions. The circuit court’s failure to correct and amend its attorneys’ fee award constituted a reversible abuse of discretion.

## ***II. MWPCCL Claim***

### **A. Parties’ Contentions**

Appellant argues that the circuit court erred when it ruled that he could not recover under the MWPCCL because he did not present any evidence that showed “he demanded payment of wages.” As such, Appellant asserts that “the circuit court did not make a finding as to whether Appellees withheld Appellant’s wages due to a ‘bona fide dispute’, as that term is used in the MWPCCL.” Appellant argues that a bona fide dispute is “one where the employer advances an objectively reasonable defense to a MWPCCL claim” and that the circuit court was required to make this finding before denying Appellant compensatory and liquidated damages.

In response, Appellees argue that the circuit court did not err when it denied Appellant’s MWPCCL claim. Appellees argue that pursuant to Appellant’s MWPCCL claim “the [circuit court] noted that [] Appellant failed to establish that [] Appellees ‘withheld’ the overtime wages as [] Appellant never requested or demanded that such wages be paid.”

### **B. Standard of Review**

We review a circuit court’s decisions based on statutory interpretation *de novo*. See *Damon v. Robles*, 245 Md. App. 233 (2020) (Stating that issues of statutory interpretation are purely legal issues which we review *de novo*). Under that standard, “the lower court’s interpretations of law ‘enjoy no presumption of correctness on review: the appellate court must apply the law as it understands it to be.’” *Cunningham v. Feinberg*, 441 Md. 310 (2015) (quoting *Rohrbaugh v. Estate of Stern*, 305 Md. 443, 447 n. 2 (1986)).

The circuit court’s denial of Appellant’s claim in this case turned on its interpretation of the word “withheld” as it is used under the MWPCCL §3-507.2 (b). Accordingly, we review the circuit court’s decision relating to Appellant’s MWPCCL claim to determine if the court was legally correct.

### **C. Analysis**

Maryland law prescribes the framework for when an employee should be awarded damages pursuant to the Maryland Wage Payment and Collection Law (“MWPCCL”). The Code states the following:

(b) 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.

MD. CODE, LABOR & EMPLOY., §3-507.2 (b).

During the court’s oral ruling, the court stated the following regarding Appellant’s MWPL claim:

In dealing with the claim under the Maryland Wage Payment and Collection Act, at this point, based upon the testimony I’ve heard, there’s a requirement that there be some showing that the employer withheld money after the

termination, whether voluntary or not, of the employee.

And there's no evidence that's been submitted that any money was withheld, and to me that term implies that there was a request or a demand made by the employee for the payment of monies that he was owed that he had not been paid. And there's been no evidence that, at any time during the employment that the plaintiff made any statements indicating that he was not paid what he was owed. In fact, the evidence is to the contrary that [sic].

When he was hired, he was hired to work three shifts of 12 to 13 hours being a part-time employee as all the employees were part-time, and, thereby working 36 to 39 hours per week. And, then, almost immediately, he began to ask the owner of the company and the office manager for more work hours, because he wanted to earn more money.

And, when he was advised of the fact that the contract with the construction company did not pay overtime rates for overtime hours, that he would only be paid the regular rate, that he indicated that was fine, he wanted the hours, he wanted the money, so that's what he did.

And I understand that under both of these, reaching an agreement to work for less than is required by Maryland law is not a valid defense. However, there also needs to be some proof that the plaintiff, who in his testimony indicated that he said he was aware of the fact that he was entitled to time and a half for overtime hours, never made a demand for that money while employed, and there's no evidence that he ever made a demand for that after he left employment, and therefore, I'll find that there's been no evidence presented that the employer violated the Maryland Wage Payment and Collection Law by withholding money that was owed, and for which demand was made.

In reaching its conclusion, the circuit court inverted the intended meaning of “withheld” under § 3-507.2 (b) and fashioned a “demand requirement” which runs contrary to the intent of the statute. Namely, the MWPCCL places an unequivocal requirement on the *employer* to pay all wages due under the act upon termination of the employee. *See* § 3-505(a) (“[E]ach employer **shall pay** an employee or the authorized representative of an employee **all wages due** for work that the employee performed before the termination of employment . . .”) (emphasis added). It is well established that “a court may neither add

nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute.” See *Stickley v. State Farm Fire and Cas. Co.*, 431 Md. 347, 365 (2013). No demand language is present in the statute, and we are convinced that no demand requirement was intended.

The wages due to an employee do not arise from employee demands. Rather, they are mandatory minimum wage requirements, including minimum required overtime pay, which an employee is entitled to receive for work completed. See MD. CODE, LABOR & EMPLOY., § 3-507.2 (a) (“[I]f an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this subtitle, after 2 weeks have elapsed **from the date on which the employer is required to have paid the wages**, the employee may bring an action against the employer to recover the unpaid wages.”) (emphasis added); *Cf. Butler v. VisionAIR, Inc.*, 385 F.Supp.2d 549 (D. Md. 2005) (Finding that under Maryland law, an employee’s right to compensation vests when employee does everything that is required to earn wages.); *Provident Bank of Maryland v. McCarthy*, 383 F.Supp.2d 858 (D. Md. 2005) (same); *Hausfeld v. Love Funding Corp.*, 131 F.Supp.3d 443 (D. Md. 2015) (same). Accordingly, an employee “withholds” a wage within the meaning of the MWPCCL when they fail to pay the wage due to an employer within the time specified under the MWPCCL.

In this case, Appellees ultimately conceded that they had not paid Appellant at the mandated overtime rate. This concession, on its own, constituted prima facie evidence that Appellees violated MWPCCL. At that juncture, it was Appellees burden to show that a bona fide dispute existed to preclude an award under the MWPCCL. See *Roley v. National Professional Exchange, Inc.*, 474 F.Supp.3d 708, 725 (D. Md. 2020) (Clarifying that for

the purposes of determining whether treble damages are appropriate under the Maryland Wage Protection and Collection Law (MWPCCL), it is the defendant's burden to produce evidence of whether a bona fide wage withholding dispute exists.). Thus, the circuit court erred by denying Appellant's MWPCCL claim based on lack of "evidence . . . that any money was withheld." Accordingly, we vacate the circuit court's denial of Appellant's MWPCCL claim and remand the case for further proceedings consistent with this opinion. In those proceedings the circuit court will determine whether the overtime wages were withheld due to a bona fide dispute and, thereafter, award judgment on that claim accordingly.

For the purposes of remand, we note that the Court of Appeals, in *Baltimore Harbor Charters, Ltd. v. Ayd*, has clearly explained the consequence of an employer conceding to a violation of the MWPCCL and subsequently alleging the existence of a bona fide dispute:

[T]he "bona fide dispute" provision of § 3-507.1 contains no language which would permit [an employer] to withhold the amounts it conceded it owed . . . . Thus, where an employer alleges the existence of a bona fide dispute as to the total amount of wages owed to an employee . . . yet concedes that a certain amount of wages are due . . . the employer acts at his or her peril in failing to pay the conceded amount. Even where the finder of fact agrees with the employer concerning the total sum owed, the penalty provision of § 3-507.1, which allows for an employee to be awarded up to three times the amount of wages owed, will apply to those amounts which were not in dispute but for which the employer failed to make timely payment upon termination as specified in § 3-505.

365 Md. 366, 397-98 (2001).

### CONCLUSION

For the reasons expressed herein, we hold: (1) that the circuit court abused its discretion by denying Appellant's Post-Trial Motion for attorneys' fees and other costs;

and (2) the circuit court erred in entering judgment in favor of Appellees on Appellant's MWPCCL claim. Accordingly, we reverse the circuit court's denial of Appellant's Post-trial Motions; vacate the circuit court's judgment relating to Appellant's MWPCCL claim; and remand for further proceedings consistent with this opinion. On remand, the circuit court shall (1) award Appellant reasonable attorneys' fees in accordance with Rule 2-703; and (2) determine whether Appellees' withholding of wages was the result of a bona fide dispute, and award judgment on that claim accordingly.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
REVERSED IN PART; VACATED IN  
PART; AND CASE REMANDED IN  
ACCORDANCE WITH THIS OPINION.  
COSTS TO APPELLEES.**