

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Friday the 20th day of March, 2015.*

Shannon Guy McDaniel, Administrator of the  
Estate of Larry L. McDaniel, Deceased, Appellant,

against Record No. 140997  
Circuit Court No. CL06000671-00

Bruce W. Nester, et al., Appellees.

Upon an appeal from a  
judgment rendered by the Circuit  
Court of Montgomery County.

Upon consideration of the record, briefs, and argument  
of counsel, the Court is of the opinion that the circuit court did  
not err when it denied appellant's request for attorney's fees  
under Code § 18.2-500. Therefore, we will affirm the judgment.

In 2006, Larry L. McDaniel ("McDaniel") filed a complaint in  
the Circuit Court of Montgomery County alleging three separate  
torts against Bruce W. Nester and other parties ("Nester").\* The  
complaint alleged that Nester had sought to prosecute McDaniel for  
trespassing on land where McDaniel was performing paving work under  
contract with the owner, despite a prior judgment establishing that  
Nester held no right to use or possess the property. The complaint  
asserted four counts: (1) a claim for three-fold damages under the  
Virginia business conspiracy statutes, Code §§ 18.2-499 and 18.2-  
500(A); (2) tortious interference with contract; (3) malicious

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\* McDaniel died during the pendency of the action. Shannon Guy  
McDaniel, the Administrator of his estate, was substituted as a  
party complainant pursuant to Rule 3:17.

prosecution; and (4) a claim for injunctive relief under Code §§ 18.2-499 and 18.2-500(B). All four counts sought costs of suit, including attorney's fees.

After Nester failed to respond to requests for admissions propounded by McDaniel, the circuit court deemed the admissions established and granted summary judgment on the issue of liability ("August 2007 Order"). In the same order, the circuit court awarded McDaniel injunctive relief, plus "the costs of suit and a reasonable fee to Complainant's counsel," but ordered a trial on the issue of damages and directed McDaniel to "submit a statement of costs of suit and attorney's fee which shall be subject to the approval of the Court."

Before the trial to determine damages, Nester sought to reopen the issue of liability to file a plea in bar asserting that McDaniel's contract with the landowner was illegal. Nester argued that McDaniel, a Class C contractor, was not properly licensed to undertake the contract because the value of the contract exceeded the statutory limit for Class C licenses set forth in Code § 54.1-1100. The circuit court reopened the case, sustained the plea in bar, and dismissed the case with prejudice while reserving the sole question of whether to award McDaniel attorney's fees ("March 2011 Order"). Subsequently, the circuit court denied McDaniel's request for attorney's fees ("May 2011 Order").

This Court granted McDaniel an appeal. McDaniel argued that he was acting as a subcontractor for the landowner who allegedly held a Class A contractor's license, and therefore the contract was lawful. He requested that the Court "enter final judgment in the amount of \$135,000.00, plus \$18,075.00 for attorney's fees, and

attorney's fees and costs for the appeal, on the grounds, and for the reasons, herein set forth." Brief of Appellant at 28, McDaniel v. Nester, Record No. 111088 (March 23, 2012). He did not ask the Court to revive the injunction, which had been dissolved by the circuit court's March 2011 Order, or argue that the Court could award attorney's fees on the basis of the injunctive relief granted by the circuit court's August 2007 Order. Id.

The Court ruled that the circuit court did not err when it reopened the case. McDaniel v. Nester, Record No. 111088, slip op. at 2 (March 23, 2012). The Court also affirmed with respect to the claim for tortious interference with contract because McDaniel failed to preserve his argument that he was acting as a subcontractor for the landowner and, moreover, failed to assign error to the specific factual findings made by the circuit court. Id. at 3. However, the Court found that the conspiracy and malicious prosecution claims were "not dependent upon the existence of a specific valid contract." Id. Consequently, the Court remanded the case "for a trial limited to a determination of damages" on those claims. Id. at 4.

After a jury trial, the jury awarded damages under the malicious prosecution claim in the amount of \$6,500.00. The jury awarded no damages under the business conspiracy claim. The circuit court concluded that its August 2007 Order left the amount of any award open and "subject to the approval" of the court and, considering the jury verdict, awarded no attorney's fees or costs.

On appeal, McDaniel contends that the circuit court's August 2007 Order awarded him the costs of suit and attorney's fees on the basis of the injunctive relief he obtained pursuant to Code

§§ 18.2-499 and 18.2-500(B). He also contends that this Court's order reversing the circuit court's March 2011 Order with respect to the conspiracy and malicious prosecution claims mandates an award of attorney's fees.

As an initial matter, McDaniel failed to preserve his first argument when the matter came before the Court in 2012. Nester asserted his plea in bar against all four counts of the complaint. The circuit court's March 2011 Order dismissed McDaniel's complaint in toto, reserving only the issue of attorney's fees. After the May 2011 Order denied McDaniel's request for attorney's fees, he failed to clearly state an objection that identified the basis for his argument. See Rule 5:25. Moreover, he then acknowledged on brief that the March 2011 Order dissolved the injunction. Brief of Appellant at 27-28, McDaniel v. Nester, Record No. 111088 (March 23, 2012). Nonetheless, he did not ask the Court to revive the injunction or present argument on the issue. Id. at 28. As a result, the injunction was not before the Court during the first appeal; the injunction was not before the circuit court on remand; and McDaniel cannot obtain attorney's fees pursuant to his claim for injunctive relief under Code § 18.2-500(B).

Likewise, McDaniel cannot obtain attorney's fees pursuant to his claim for damages under Code § 18.2-500(A). Code § 18.2-500(A) provides that "[a]ny person who shall be injured in his reputation, trade, business or profession . . . may sue therefor and recover three-fold damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel." In Syed v. Zh Technologies, Inc., we stated that "Code § 18.2-500 requires a finding of some compensatory damages as an element of determining

liability under the statute." 280 Va. 58, 73, 694 S.E.2d 625, 633 (2010). If a jury verdict awards no compensatory damages, then no "injury" has been "sustained" by the plaintiff. Id. Because McDaniel failed to prove damages on remand, and therefore failed to prove an injury was sustained, he cannot recover attorney's fees pursuant to Code § 18.2-500(A).

For these reasons, we affirm the judgment of the Circuit Court of Montgomery County. The appellant shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to said circuit court.

A Copy,

Teste:

*Pat L Hamilton*

Clerk