

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 7, 2012**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2011AP123**

**Cir. Ct. No. 2007CV462**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**HOWARD C. NELSON AND HYRAD CORPORATION,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**NANCY FURRER, REMOTE CONTROL SHOCKS, INC., DIGITAL  
SUSPENSION, INC. AND PACIFIC RIM SOURCES, INC.,**

**DEFENDANTS,**

**FREDERICK J. FURRER A/K/A FREDERICK JAMES FURRER A/K/A  
FRED FURRER,**

**DEFENDANT-THIRD-PARTY  
PLAINTIFF-APPELLANT,**

**LEADER CORPORATION,**

**DEFENDANT-THIRD-PARTY PLAINTIFF,**

**V.**

**INGMAR NELSON AND NELSON MARKETING, INC.,**

**THIRD-PARTY DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Columbia County:  
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Fred Furrer, pro se, appeals a judgment that awarded damages, costs and fees to HYRAD Corporation; transferred Furrer’s solely-owned companies to HYRAD; and liquidated HYRAD. Furrer contends that five of the circuit court’s findings of fact were clearly erroneous.<sup>1</sup> We disagree, and affirm.

*Background*

¶2 Howard Nelson and HYRAD filed this action against Furrer, Leader Corporation, Remote Control Shocks, Inc. (RCSI), Digital Suspension, Inc. (DSI), and Pacific Rim Sources, Inc. (PRSI). The claims included minority shareholder oppression; shareholder derivative claims of theft, usurpation of corporate opportunities, and breach of fiduciary duties; and wrongfully converting HYRAD funds. Nelson and HYRAD contended that Furrer, as president and majority shareholder of HYRAD, had taken unauthorized compensation from HYRAD,

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<sup>1</sup> Furrer also includes, under the “Argument” heading in his brief, a section summarizing the eight claims in the complaint. However, Furrer does not develop any claim of circuit court error in this section. Accordingly, we do not include Furrer’s summary of the eight claims in our analysis of Furrer’s arguments.

either through direct payment or through payment to his management company, Leader. They contended that during Furrer's time as president, despite HYRAD's generating significant income, HYRAD had never paid any dividends to its shareholders. They also contended that Furrer had compensated himself for services to HYRAD while he was actually focusing his efforts on his other solely-owned companies, RCSI, DSI, and PRSI, which he used to exploit business opportunities that rightfully belonged to HYRAD.

¶3 Furrer defended on grounds that he had acted appropriately and in HYRAD's best interest, and that any financial losses were the result of the normal risks of business investment. Furrer argued that he and Nelson had reached an agreement that Furrer was entitled to an annual salary of up to \$200,000 and that Furrer was reasonably compensated for his services to HYRAD. Furrer also asserted that HYRAD's business expenses were paid from money he transferred from HYRAD to Leader. He argued that he created RCSI, DSI, and PRSI to complement HYRAD rather than to compete with it.

¶4 After trial to the court, the circuit court awarded compensatory and exemplary damages, as well as costs and attorney fees, to HYRAD, totaling \$886,640.78. Furrer appeals.

#### *Standard of Review*

¶5 The issue in this appeal is whether the circuit court's factual findings are clearly erroneous. A circuit court's factual findings are clearly erroneous if they are not supported by the record. *Schreiber v. Physicians Ins. Co. of Wis.*, 223 Wis. 2d 417, 426, 588 N.W.2d 26 (1999). Additionally, the circuit court is the ultimate arbiter of the credibility of the witnesses. *State v. Angiolo*, 186 Wis. 2d 488, 495, 520 N.W.2d 923 (Ct. App. 1994).

*Discussion*

¶6 Furrer contends that five of the circuit court's factual findings are clearly erroneous, requiring reversal. We address each challenged circuit court finding in turn.

*Finding #1: Furrer did not provide any financial records to establish that money transferred from HYRAD to Leader was used to pay HYRAD business expenses*

¶7 Furrer argues that the circuit court erred by adopting Nelson and HYRAD's false assertion that Furrer did not have documentation to prove his defense that funds transferred from HYRAD to Leader were used to pay HYRAD expenses. He asserts that the court should have required Nelson and HYRAD to conduct a forensic audit to prove their claims, and that Nelson and HYRAD were given full access to Furrer's records, including seventeen boxes full of documents. Furrer then points out that the court erroneously found that Furrer had not provided any credit card statements, and in support points to numerous credit card statements in the record.

¶8 Furrer has not shown that the circuit court's finding was clearly erroneous. The court's specific finding was that Furrer had not provided financial documents to establish that money transferred from HYRAD to Leader was used to pay HYRAD business expenses. Furrer disputes this finding by contending that the plaintiffs had access to documents and should have conducted an audit, and that there are credit card receipts in the record. However, Furrer does not point to any evidence in the record that establishes that payments made by Leader were for HYRAD business expenses. That is, the credit card statements Furrer identifies show payments for various items, but there is no indication that those payments

were for HYRAD's benefit. Accordingly, we have no basis to disturb the circuit court's finding.

*Finding #2: Furrer knowingly took compensation from HYRAD beyond authorized amounts*

¶9 Furrer contends that Nelson admitted at trial that he knew Furrer was taking \$200,000 a year in compensation from HYRAD. Thus, Furrer argues, the court erred by finding that Furrer knowingly took more compensation than he was authorized to take, because there was evidence that Nelson knew Furrer was taking that amount and Nelson did not object. However, the question is not whether Nelson knew how much money Furrer was taking from HYRAD. The question is whether Furrer took that amount knowing he did not have authorization to do so. Nelson testified that he had many discussions with Furrer about the amount of compensation Furrer would like to receive, but that there was never an agreement reached that Furrer could take that amount, and emails entered into evidence supported that testimony. Because this evidence supports the court's finding, that finding is not clearly erroneous.

*Finding #3: Furrer took more than a reasonable amount of compensation from HYRAD*

¶10 Furrer contends that the court erred in calculating the amount of Furrer's reasonable compensation and the amount he actually received. Thus, Furrer contends, the court's calculation of the amount of overpayment was flawed. We disagree.

¶11 First, Furrer faults the circuit court for basing its determination of Furrer's reasonable compensation on the testimony of the plaintiffs' expert, rather

than on Furrer's expert's testimony or other evidence in the record. However, Furrer does not explain why he believes the court could not rely on the plaintiffs' expert's testimony. Accordingly, we have no basis to disturb the court's determination of Furrer's reasonable compensation.

¶12 Furrer also argues that the court made a mathematical error in adding the reasonable compensation for 2001-2009 in its memorandum decision, which the court issued August 30, 2010. However, Furrer brought this error to the circuit court's attention in a motion for reconsideration, and the court acknowledged the mathematical error on the record at a hearing. The court then redid its calculations after correcting the mathematical error, and used the revised numbers in its final judgment. Thus, this issue has already been addressed and remedied by the circuit court.

¶13 Next, Furrer contends that the circuit court erred in calculating the amount of compensation Furrer actually received during the relevant time period. He argues that the court originally used a flawed equation that double-counted his W-2 income. He then contends that the court ultimately erred by calculating Furrer's total compensation using a different flawed formula proposed by the plaintiffs after Furrer moved for reconsideration. Furrer points out that, after he identified that the court had under-calculated his reasonable compensation, the court used a formula which resulted in a total higher over-compensation. Furrer disputes the logic of this process.

¶14 We conclude that Furrer has not established the circuit court erred in calculating the amount that Furrer was overcompensated. After Furrer moved for reconsideration, the plaintiffs urged the circuit court to review its calculation of Furrer's total compensation. The plaintiffs argued that Furrer was wrong that the

court had double-counted the W-2 income. The plaintiffs also argued that modifying the amount of Furrer's reasonable compensation to correct the court's mathematical error but leaving all other numbers in place would result in the court's finding that 97.8% of expenses that HYRAD paid to Leader were for legitimate HYRAD business expenses, when the court had found that only 60% of the expenses Furrer claimed Leader paid for HYRAD were legitimate.<sup>2</sup> Thus, the plaintiffs proposed the following calculation to determine Furrer's over-compensation: Total amount paid from HYRAD to Leader and Furrer (\$1,770,811) minus reasonable compensation to Furrer (\$1,103,000), leaving \$667,811, minus 60% of that amount as legitimate HYRAD business expenses, resulting in over-compensation of \$267,124.40. The court adopted the plaintiffs' proposed calculation. While Furrer expresses his dissatisfaction with this result, he has not established that the court's calculation was flawed.

*Finding #4: HYRAD funds were used to pay expenses of RCSI, DSI, and PRSI*

¶15 Furrer contends that the circuit court erred by finding that HYRAD money was given to Furrer's solely-owned companies, contending that the money was loaned from HYRAD to those companies. Furrer points to a HYRAD tax return indicating that \$56,746 was loaned to shareholders. Similarly, Furrer contends that his personal expenses were highlighted as loans to shareholders, and thus were not additional compensation. Furrer argues that the circuit court erred in relying on testimony by the plaintiffs' expert, because the expert in turn relied on Quickbooks data rather than the corrected data used by HYRAD's accountants.

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<sup>2</sup> The court estimated 60% of the HYRAD funds transferred to Leader were for HYRAD expenses despite the lack of documentation because it acknowledged HYRAD would have some expenses.

However, all of this information was before the circuit court, and it was the role of the circuit court to determine the credibility of the witnesses and to assess the evidence. Furrer has not established that the circuit court's finding was clearly erroneous.

*Finding #5: Furrer acted with intentional disregard for the rights of HYRAD and Nelson*

¶16 Finally, Furrer contends that there was no evidence that he acted with disregard of the rights of HYRAD and Nelson. He asserts that Nelson was compensated for his services to HYRAD, and that Furrer was always acting in HYRAD's best interest. However, as highlighted above, there was conflicting evidence presented at trial. The circuit court was entitled to make findings based on its credibility determinations and to choose between competing inferences from the evidence. Because there was evidence to support the court's finding that Furrer knowingly took compensation beyond what he was authorized to take and channeled money from HYRAD to his wholly-owned companies, there was sufficient evidence to support the court's finding that Furrer acted with intentional disregard of the rights of HYRAD and Nelson.

¶17 In sum, Furrer has not established that the circuit court's underlying findings of fact were clearly erroneous. Accordingly, we affirm.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.



