

STATE OF MINNESOTA	FILED DISTRICT COURT
COUNTY OF HENNEPIN	2011 AUG 22 FOURTH JUDICIAL DISTRICT

BY \_\_\_\_\_ DEPUTY  
HENN CO. DISTRICT  
COURT ADMINISTRATOR

Jerry L. Moore,

Plaintiff,

**ORDER**

vs.

Ct. File No. 27-CV-09-17778

John Hoff a/k/a Johnny Northside,

Defendant.

The above-entitled matter came on for hearing before the Honorable Denise D. Reilly, Judge of District Court on May 31, 2011 on Defendant's motion for judgment as a matter of law or in the alternative for a new trial. Counsel noted their appearances on the record. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

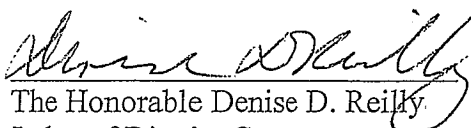
**ORDER**

1. Defendant's motion for judgment as a matter of law or in the alternative for a new trial is denied in its entirety.
2. Any other relief not specifically ordered herein is denied.
3. The Court's Memorandum, filed herewith, is incorporated herein.

**IT IS SO ORDERED.**

Dated this 22<sup>nd</sup> day of August, 2011.

BY THE COURT:

  
The Honorable Denise D. Reilly  
Judge of District Court

## MEMORANDUM

### **I. Factual and Procedural Background**

The above-entitled case came before the Court on Plaintiff Jerry L. Moore's ("Plaintiff") claims for defamation, interference with contractual relationships, and interference with prospective advantage against Defendant John Hoff ("Defendant"). A jury trial was held in this matter from March 7, 2011 to March 11, 2011, during which time the Court heard testimony from several witnesses, including the parties, and received numerous exhibits into evidence. On March 11, 2011, the jury returned a unanimous special verdict. The jury returned a verdict in favor of Defendant on Plaintiff's defamation claim, and in favor of Plaintiff on the remaining two claims. Specifically, the jury found Defendant intentionally interfered with Plaintiff's employment contract and interfered with Plaintiff's prospective employment advantage. Judgment was entered in favor of Plaintiff and against Defendant on April 13, 2011. On April 1, 2011, Defendant filed a notice of motion and motion for judgment as a matter of law or for a new trial. Plaintiff submitted a memorandum in opposition to the motion on May 24, 2011. Defendant filed a reply brief in further support of his motion on May 26, 2011. The parties appeared before the Court on May 31, 2011 on Defendant's contested motion for relief.

### **II. Defendant's Motion is Denied**

#### **a. Standard of Review**

When considering a motion for judgment as a matter of law, the district court must take into account all of the evidence in the case, view that evidence in a light most favorable to the jury verdict, and not weigh the evidence or judge the credibility of the witnesses. *Lamb v.*

*Jordan*, 333 N.W.2d 852, 855 (Minn. 1983).<sup>1</sup> The standard that applies to such a motion is “that the evidence must be ‘so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.’” *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006) (quoting *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004)); *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998) (providing motions should be granted when, “viewing the evidence in the light most favorable to the nonmoving party, the verdict is manifestly against the entire evidence or when, despite the jury's findings of fact, the moving party is entitled to judgment as a matter of law”). A jury’s answer to special verdict questions shall not be disturbed if it can be sustained on any reasonable theory of the evidence. *Pouliot*, 582 N.W.2d at 224. The Court should defer to a jury’s reasonable inferences from the evidence presented. *See Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (recognizing that a reviewing Court is to “give great deference to the jury’s verdict” and uphold it if it “can be reconciled with the evidence in the record and the fair inferences from that evidence”). Thus, judgment as a matter of law under Rule 50 may only be granted “when a jury verdict has no reasonable support in fact or is contrary to law.” *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007). If a jury verdict has any reasonable evidentiary support, both the district court and the appellate court must accept it as final. *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 683 (Minn. Ct. App. 1987), *review denied* (Minn. Jan. 28, 1988).

Under Rule 59, the Court may grant a request for a new trial when the jury’s verdict “is not justified by the evidence.” Minn. R. Civ. P. 59.01(g). In order to grant a motion for new trial on the grounds that the evidence does not justify the verdict, “the verdict [must be] so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the

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<sup>1</sup> The 2006 amendments to the Minnesota Rules of Civil Procedure changed this type of post-trial motion to one for judgment as a matter of law rather than a motion for JNOV. This change did not alter the substantive practice relating to such a motion. *See Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007).

evidence, or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment.” *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quoting *LaValle v. Aqualand Pool Co.*, 257 N.W.2d 324, 328 (Minn. 1977)). A motion for a new trial should be “granted cautiously and used sparingly.” *Patton v. Minneapolis Street Ry. Co.*, 77 N.W.2d 433, 438-39 (Minn. 1956). A decision to grant a new trial rests in the sound discretion of the district court and will be reversed only upon a clear abuse of that discretion. *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 334 (Minn. Ct. App. 2004).

**b. The Jury’s Findings on Plaintiff’s Tortious Interference Claims Had Reasonable Support in the Factual Record**

Defendant attacks the jury’s verdict on the grounds that it was not supported by the evidence. Defendant argues, in essence, that there was no reasonable basis in the evidence presented to the jury to support the jury’s finding of liability on Plaintiff’s tortious interference claims. Upon review of the trial record as a whole, the Court finds Defendant’s argument fails.

Plaintiff’s Complaint alleged that Defendant intentionally interfered with his contractual rights by actively working to get Plaintiff fired from his position at the University of Minnesota by, among other things, contacting individuals at the University of Minnesota, making disparaging remarks about Plaintiff, and encouraging others to do the same. To establish a claim for tortious interference of contract, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of the contract’s breach; (4) absence of justification; and (5) damages caused by the breach. *Bebo v. Delander*, 632 N.W.2d 732, 738 (Minn. Ct. App. 2001). Similarly, a claim for tortious interference with prospective advantage requires a showing that: (1) the defendant intentionally and improperly interfered with the prospective contractual relation, (2) causing pecuniary harm resulting from loss of the

benefits of the relation, and (3) the interference either induced or otherwise caused a third person not to enter into or continue the prospective relation or prevented the continuance of the prospective relation. *United Wild Rice, Inc. v. Nelson*, 313 N.W.2d 628, 633 (Minn. 1982).

Defendant argues that the record before the jury did not contain sufficient evidence regarding Plaintiff's interference claims. On the contrary, the Court heard direct testimony regarding Defendant's active involvement in getting Plaintiff fired by contacting leaders at the University of Minnesota and threatening to launch a negative public relations campaign if Plaintiff remained in their employment. By way of example, Don Allen testified that he sent an email to the University of Minnesota, at Defendant's behest, threatening negative publicity and lobbying to get Plaintiff fired.<sup>2</sup> In addition to Mr. Allen's direct testimony, the jury also heard circumstantial evidence supporting the jury's verdict. The Court heard testimony that Plaintiff was terminated from his position at the University of Minnesota one day after transmission of the email from Mr. Allen. Furthermore, during this same time period, Defendant acknowledged that it was his goal to get Plaintiff fired and that he was working "behind the scenes" to do so. After the fact, Defendant took personal responsibility for Plaintiff's termination and announced his ongoing, active involvement in the University's actions.<sup>3</sup> The direct evidence, combined with the inferences drawn from the circumstantial evidence presented, supports the jury's verdict. *See, e.g., Rochester Wood Specialties, Inc. v. Rions*, 176 N.W.2d 548, 552 (Minn. 1970) (stating that juries are entitled to draw inferences from circumstantial evidence, as long as those inferences are reasonably supported by the available evidence). Plaintiff set forth sufficient

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<sup>2</sup> The Court presents this as just one example of the type of testimony elicited at trial regarding Defendant's interference claims.

<sup>3</sup> Defendant did not object to the introduction of this evidence during trial. *Poppler v. O'Connor*, 235 N.W.2d 617, 619, n. 1 (Minn. 1975) (prohibiting party from enlarging objection for first time on a motion for a new trial where party failed to object to the admission of testimony during trial).

evidence of intentional interference to support the jury's verdict. *See Potthoff v. Jefferson Lines, Inc.*, 363 N.W.2d 771, 777 (Minn. Ct. App. 1985).

Moreover, Defendant failed to show that the evidence was "contradicted by logic and other evidence." *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 335 (Minn. Ct. App. 2004). The jury, in its capacity as fact-finder, was entitled to judge the credibility of the witnesses and determine what weight to give the testimony and exhibits presented during the course of the week-long trial. *See, e.g., Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 329 (Minn. Ct. App. 2007) (holding that "selecting certain evidence over conflicting countervailing evidence," judging believability and reasonableness of evidence, and "giving more weight to some evidence than other evidence" remain the "precise functions reserved to the jury under our system of jurisprudence"); *Lee v. Metropolitan Airport Com'n*, 428 N.W.2d 815, 822 (Minn. Ct. App. 1988). Here, the jury found Plaintiff's witnesses credible with respect to the facts supporting Plaintiff's tortious interference claims. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (stating that factfinder is in the best position to judge credibility of witnesses).

**c. The Jury's Findings on the Special Verdict Form Are Reconcilable**

During the course of the trial, the jury was asked to consider whether a particular statement was true or false for the purposes of assessing Plaintiff's defamation claim.<sup>4</sup> The jury determined that the statement was not false. With his current motion, Defendant argues that the jury's award in favor of Plaintiff on the tortious interference claims were premised solely upon the same statement that formed the basis of Plaintiff's defamation claim. Defendant does not

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<sup>4</sup> The statement is: "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved in a high-profile fraudulent mortgage at 1564 Hillside Ave. N." This is the sole statement undergirding Plaintiff's defamation claim.

present any evidence in support of this argument, nor does the Court find it necessary to invade the province of the jury.

It is not the Court's function to determine on what theory the jury arrived at its verdict. *Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971). Instead, it is the Court's responsibility to interpret the special verdict form "and harmonize the jury's responses where possible." *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 441-442 (Minn. Ct. App. 2001) (citing *Bartosch v. Lewison*, 413 N.W.2d 530, 532 (Minn. Ct. App. 1987)). Thus, the Court must sustain the verdict "on any reasonable theory of evidence." *Shepherd of the Valley Lutheran Church of Hastings*, 626 N.W.2d at 441-442; see also *Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971) (stating that upon review of findings, court "need only examine the record to decide whether the verdicts are consistent on any theory"); *Blatz v. Allina Health System*, 622 N.W.2d 376 (Minn. Ct. App. 2001); *Harman v. Heartland Food Co.*, 614 N.W.2d 236 (Minn. Ct. App. 2000); *Russell v. Johnson*, 608 N.W.2d 895 (Minn. Ct. App. 2000); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997); *Tsudek v. Target Stores, Inc.*, 414 N.W.2d 466, 470 (Minn. Ct. App. 1987), *review denied* (Minn. Dec. 13, 1987) (affirming an appellate court will not disturb a trial court's decision to uphold a verdict where there is a reasonable theory to reconcile the verdict).

The Court may only set aside a jury's findings when it is clear that they "cannot be reconciled." *Nihart*, 190 N.W.2d at 778. By special verdict, the jury found Defendant's statement was not false, but that his conduct, taken as a whole, amounted to an intentional interference with Plaintiff's employment contract and prospective employment advantage. Despite Defendant's argument to the contrary, Plaintiff provided direct and circumstantial evidence in support of his tortious interference claims, independent of and distinct from his

defamation claim. These findings are not “palpably contrary to the evidence,” nor is the evidence “so clear as to leave no room for differences among reasonable people.” *St. Paul Fire and Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 410 (Minn. Ct. App. 2007).

The Court defers to the jury’s reasonable inferences of the evidence presented and views the evidence in the light most favorable to the jury verdict. *See Raze*, 587 N.W.2d at 648 (recognizing that a reviewing Court is to “give great deference to the jury’s verdict” and uphold it if it “can be reconciled with the evidence in the record and the fair inferences from that evidence”); *St. Paul Fire and Marine Ins. Co.*, 738 N.W.2d at 410. The Court finds the direct and circumstantial evidence adduced at trial “supports the findings of the jury and can be reconciled.” *Nihart*, 190 N.W.2d at 779. The evidence supports the jury’s determination of fact issues relating to Defendant’s liability on Plaintiff’s tortious interference claims. Accordingly, Defendant’s motion for judgment as a matter of law under Rule 50.02 or for a new trial under Rule 59 is denied in its entirety.

### **III. Conclusion**

For the reasons set forth above, the Court upholds the jury’s findings. Accordingly, Defendant’s motion for judgment as a matter of law is denied.<sup>5</sup> The Court also denies Defendant’s alternative motion for a new trial. The jury’s verdict of March 11, 2011 is hereby affirmed. Any other relief not specifically ordered herein is denied.

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<sup>5</sup> Defendant’s memorandum further seeks to overturn the jury’s verdict on the grounds that (1) the jury was swayed by emotion, and (2) the Court failed to allow in certain character evidence. Defendant failed to put in any evidence in support of these assertions and there is nothing in the record to support these contentions.