2016 IL App (1st) 151851-U

SECOND DIVISION
August 31, 2016
Modified upon denial of rehearing on October 11, 2016

No. 1-15-1851

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel*. ILLINOIS DEPARTMENT OF LABOR,	)	Appeal from the Circuit Court of Cook County, Illinois.
Plaintiff-Appellee,	)	
v.	)	No. 11 L 10128
BROOKE MANAGEMENT CORPORATION and VIVIAN SILVA,	)	Honorable Patrick J. Sherlock, Judge Presiding.
Defendants-Appellants,	)	
and	)	
PAMELA FERNANDES,	)	
Defendant.	)	

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence in the record supports the trial court's finding that defendants were claimant's employers. Trial court did not abuse its discretion in denying defendants' request to extend discovery and continue trial where parties were

afforded ample opportunity to conduct discovery and counsel did not affirmatively identify what additional discovery was needed.

¶ 2 Following a bench trial, the trial court entered judgment against defendants Brooke Management Corporation and Vivian Ritter (collectively defendants) in the amount of $66,208 finding that both Brooke Management and Ritter were claimant Vishal Mehta's "employer" under sections 2 and 13 of the Illinois Wage Payment and Collection Act (Act) (820 ILCS 115/2, 115/13 (West 2008)). Defendants appeal, claiming that the trial court erred in finding that they were Mehta's employers when, instead, defendant Pamela Fernandes[1] was his employer. Defendants also claim that the trial court abused its discretion in denying their motion to extend discovery and continue trial. Finding no merit to either contention, we affirm.

¶ 3 BACKGROUND

¶ 4 After Mehta's demands for payment of his compensation were not met, he filed a "Wage Claim Application" with the Illinois Department of Labor (Department) listing Brooke Management as his employer and Fernandes as his supervisor. Mehta requested $21,085, consisting of outstanding wages totaling $20,735 and $350 in attorney fees and costs relating to his compensation that was unpaid from July 7, 2009, to November 6, 2009. The Department mailed notices addressed to Brooke Management, Ritter and Fernandes and received no response resulting in the issuance of a demand letter to the parties. Although other notices sent by the Department listed incorrect addresses, the demand letter was addressed to Ritter at her home address. Again, the Department received no response. The Department then transferred the matter to the Office of the Attorney General, who mailed a letter to four separate addresses associated with defendants (one of which was, again, Ritter's home address) and requested

[1] The trial court dismissed the litigation against Fernandes for want of prosecution. Fernandes is not a party to this appeal.

payment personally from Ritter as president of Brooke Management. As before, there was no response to the letter.

¶ 5 On September 28, 2011, the State filed a verified complaint in the trial court against Brooke Management asserting that Brooke Management was Mehta's employer under section 2 of the Act and against Ritter and Fernandes asserting that they were deemed Mehta's employers under section 13 of the Act. The State sought relief totaling $21,885 for Mehta's past due compensation and $46,387 in penalties. Ritter was served; Fernandes was not.

¶ 6 The parties continued to litigate the matter and on July 8, 2014, the trial court entered an order closing discovery on October 6, 2014, and setting the case for a bench trial on November 24, 2014. The State filed a motion for extension of time to complete discovery citing defense counsel's inability to present Ritter for deposition due to counsel's medical emergency and his expected inability to complete necessary treatment prior to the scheduled trial date of November 24, 2014. Defense counsel did not object to an extension of time to complete discovery or to continue trial.

¶ 7 The trial court entered an order rescheduling trial to December 1, 2014, but apparently denied the motion to extend. Sadly, defense counsel was diagnosed with terminal cancer 10 days before the discovery cutoff, and his son substituted as defense counsel. On November 19, 2014, substitute counsel filed a motion to reconsider requesting the trial court extend both the discovery deadline and trial date. Defense counsel also requested the court bar the State from relying on the documents it produced, claiming the documents were untimely filed because the envelope was postmarked October 7 when the discovery cutoff was October 6. During the hearing on defendants' motion, the trial court asked what discovery was still open and counsel responded his father "probably" would have taken Mehta's deposition and "reacted" to the State's

production of documents. The trial court denied defendants' motion, but the trial date was ultimately rescheduled to May 26, 2015.

¶ 8 During the three-day trial, Ritter testified as an adverse witness and on her own behalf. During her testimony, Ritter provided information regarding her background in the healthcare industry, and the creation and operation of Brooke Management.

¶ 9 Ritter created Brooke Management–a healthcare consulting business–to provide medical staffing assistance and care to senior homes, senior living, independent living and assisted living facilities. Ritter intended Brooke Management to be a home healthcare agency. All home healthcare agencies must employ a licensed Director of Nursing, be governmentally licensed and have a Medicare identification number to bill and receive Medicare payments.

¶ 10 On February 10, 2009, Ritter incorporated Brooke Management. That same day, Ritter held a board of directors meeting for Brooke Management and appointed herself president, vice president, secretary and treasurer.

¶ 11 Although Ritter planned that Brooke Management would operate as a home healthcare agency, it did not have the necessary Medicare identification number to bill Medicare for services provided. But Fernandes was a part owner of Institute of Medical Professionals, d/b/a Care Options at Home (COAH), which had the required Medicare identification number and was already involved with the Medicare system. Thus, Ritter and Fernandes decided to go into business together. According to their arrangement, Brooke Management would provide home healthcare services and bill Medicare using COAH's Medicare identification number. To memorialize their agreement, on May 8, 2009, Ritter and Fernandes executed stock purchase agreements where Ritter as the sole owner of record of all of Brooke Management's outstanding shares sold and transferred 50% of the shares and assets to Fernandes and Fernandes, purportedly

as the sole owner of record of all of COAH's outstanding shares, sold and transferred 50% of the shares and assets to Ritter. Ritter acknowledged that she and Fernandes did, in fact, go into business together as planned.

¶ 12 Fernandes and Ritter executed an application to assume a corporate name (form BCA-4.15/4.2), which was filed on May 8, 2009. Brooke Management adopted the assumed name of "Brooke Health Services Inc." to transact business. Ritter signed the form as president and Fernandes signed the form as vice president, though Ritter could not "recall" whether the form included both signatures when it was filed.

¶ 13 After Ritter and Fernandes executed the stock purchase agreements, Ritter discovered that Fernandes was not "the sole owner" of record of COAH, but shared ownership equally with two other individuals. Litigation between Fernandes and the other owners ensued and the parties reached an agreement whereby COAH's other shareholders' combined ownership interest would be purchased from the funds Brooke Management received using COAH's Medicare identification number. The parties appointed an escrow agent to oversee the management and disbursement of the funds. Brooke Management's accountant and the escrow agent provided Ritter with information regarding accounting of the transferred funds. Because Brooke Management used more than half of the revenue it received to pay COAH's other shareholders, it encountered difficulty paying nurses their wages and Ritter used her private funds to pay those wages.

¶ 14 Fernandes served as Brooke Management's Director of Nursing and agency supervisor from May 2009 until she was terminated in October 2009. But apparently Fernandes was never present and Brooke Management hired another nurse, whom Fernandes recommended, in her place.

¶ 15 Although Ritter initially disputed that Fernandes had signatory power on bank accounts, she later conceded that Fernandes was an authorized signer on one bank account in Brooke Management's name. But after discovering that Fernandes did not own 100% of COAH, Ritter stopped using that bank account and opened another bank account that Brooke Management used to pay all employees.

¶ 16 From May to October 2009, Ritter's and Fernandes' relationship unraveled, particularly after Ritter discovered that Fernandes did not own 100% of COAH. The deterioration of their relationship escalated in October 2009 when Ritter called the police to escort Fernandes from Brooke Management's office after Fernandes caused a disruption, demanding the accountant and biller provide her with the password for billing so that she could obtain the Medicare identification number.

¶ 17 Ritter claimed that she met Mehta for the first time during this incident. Ritter recalled that the argument related not only to Fernandes' attempt to take files and records, but also to Mehta's employment status. Ritter claimed that Fernandes wanted her to hire Mehta, but that she refused. Ritter saw no reason to sponsor someone for a work visa who did not work for Brooke Management and whom Ritter did not know. Ritter especially did not want to hire Mehta because she thought Fernandes "wanted to plant someone in there" to gain access to billing information. Ritter had no recollection of Mehta as an employee; instead, she thought he was Fernandes' personal assistant. Ritter also claimed to lack knowledge of any contract between Interim Healthcare and Brooke Management and only learned during this dispute that Fernandes was doing work at Interim.

¶ 18 Ritter purportedly first learned of Mehta's wage claims in 2013 after she was served with the complaint. Ritter denied receiving any of the notices regarding Mehta's wage claims. By the

time the complaint was filed, Brooke Management had no assets and had been dissolved in 2011 by the Secretary of State for failure to file an annual report and pay the annual franchise tax.

¶ 19 Mehta's testimony regarding his interaction with Ritter differed markedly from Ritter's testimony. Mehta learned about Brooke Management from his uncle, who suggested that he meet with the individuals at Brooke Management to discuss employment opportunities. In April 2009, Mehta met with Ritter, her then husband and Fernandes at Brooke Management's client's office in either Oak Park or Oakbrook. Mehta was new to the area and could not recall the exact location. The group had a proposal for Mehta's uncle, but that proposal was not discussed during this meeting. The group also represented to Mehta that they were in business together. At the time, Mehta was finishing his masters in industrial and systems engineering at Northern Illinois University and would be graduating the following month. During the meeting, Mehta presented his graduate project on how process improvements were being implemented to improve efficiencies and how those improvements could benefit the health care industry. The meeting ended on a positive note, and the participants told Mehta that if he was interested, they would get in touch.

¶ 20 Mehta sent a follow-up email around the third week of April expressing his interest in pursuing a position with Brooke Management. Fernandes replied and informed Mehta that there was a project at Brooke Management's client, Interim HealthCare, and a position available for him. Mehta executed the employment contract that was in the form of a letter and gave it to Fernandes. The letter was in Brooke Management's name and hired Mehta as an independent contractor at a specified compensation of $210 a day. Fernandes was Mehta's supervisor, but he claimed that at no time was he Fernandes' personal assistant. Mehta understood Fernandes to be representing Brooke Management, but he never thought that Fernandes was the only person

involved with Brooke Management. Instead, Mehta understood Fernandes to have business partners.

¶ 21 Mehta worked exclusively at Interim at its location in Rockford. Mehta saw Fernandes at Interim daily. Mehta also saw Ritter visit Fernandes at Interim one time, but he did not talk to her.

¶ 22 About a month after Mehta began working for Brooke Management, Fernandes gave him a cashier's check for his wages. Later checks, which were typically drawn from Fernandes' personal account, routinely bounced. Mehta discussed payment for his services with Fernandes who said the money was held up, but gave him "hope."

¶ 23 Around October 2009, Mehta retained an attorney to assist him in applying for a work visa, which was to be sponsored by Brooke Management. Ritter was copied on a series of emails exchanged between Mehta and his attorney, including one in which Mehta advised his attorney that "Vivian" would supply information necessary for the application.

¶ 24 Also in October 2009, Mehta went to Brooke Management's office with Fernandes and they tried to access Brooke Management's computer, but it was locked. Ritter and her then husband arrived and a dispute started between them and Fernandes. Mehta wanted no part of the dispute so he left. In either October or November, Mehta accepted a position working directly for Interim.

¶ 25 The escrow agent also testified at trial and stated that Brooke Management was involved in running the day-to-day operations of COAH and Ritter ran the day-to-day operations of Brooke Management. The escrow agent knew both Ritter and Fernandes, but received direction only from Ritter. As far as he knew, Brooke Management's operating account received funds from May to November of 2009. Fernandes was not part of the day-to-day operations of Brooke

Management and had other business interests that she was pursuing outside of her joint venture with Brooke Management.

¶ 26 At the close of evidence, the trial court entered judgment against defendants in the amount of $66,208, consisting of $20,690 in base wages and $41,380 in penalties to Mehta and $4,138 in penalties to the Department. The trial court also dismissed the count against Fernandes for want of prosecution.[2]

¶ 27 ANALYSIS

¶ 28 Defendants first claim that the trial court erred in finding that Brooke Management was Mehta's employer as defined under section 2 of the Act and that Ritter was Mehta's employer as defined under section 13 of the Act by virtue of her position as an officer and owner of Brooke Management and that she knowingly permitted Brooke Management to violate the Act by failing to pay Mehta's compensation. Defendants contend that Fernandes, and not Brooke Management, employed Mehta. Based on the record before us, we disagree.

¶ 29 The Act defines "employer" in two different sections. First, section 2 of the Act defines employer as "any individual, partnership, association, corporation, business trust * * * or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed." 820 ILCS 115/2 (West 2010). Section 13 of the Act provides that, in addition to an individual deemed an employer under section 2 of the Act, "any officer of a corporation or agents of an employer who knowingly

[2] The State initially challenged this court's jurisdiction claiming the trial court's order was not a final and appealable order because the disposition did not terminate the litigation against Fernandes, who was dismissed for want of prosecution. In an order dated July 12, 2016, we entered a ruling finding that this court had jurisdiction given that more than a year had passed since the dismissal for want of prosecution and the State had not sought to reinstate the claim against Fernandes, thus rendering the order final. Consequently, defendants' appeal, although premature, was timely.

permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation." 820 ILCS 115/13 (West 2010).

¶ 30 Based on the evidence offered at trial, the trial court made the factual determinations that defendants were Mehta's employer as defined under the Act. The parties agree that because we are reviewing the factual determination of whether Brooke Management was Mehta's employer under section 2 of the Act following a bench trial, the manifest-weight of the evidence standard of review applies. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. But the parties disagree on the applicable standard of review relating to the trial court's finding that Ritter was an employer under section 13 of the Act with defendants urging a clearly erroneous standard and the State urging a manifest weight of the evidence standard.

¶ 31 Defendants have not sufficiently explained why we should employ a different standard of review to the trial court's determination that both Brooke Management and Ritter were Mehta's employer where the trial court made both findings following a bench trial. Importantly, the manifest weight of the evidence standard applies following a bench trial because "[t]he trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive." *Bazydlo v. Volant*, 164 Ill. 2d 207, 214-15 (1995). The trial court reached its determination that Ritter was an employer based in large part on its assessment of the testifying witnesses' credibility given that Ritter's account of her interactions with Mehta differed significantly from Mehta's. Consequently, we must afford deference to the trial court and will apply a manifest weight of the evidence standard to both of the trial court's findings. See *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 119 (2005) (Kilbride, J., concurring and dissenting) (asserting the majority failed to afford the deference due to the trial court under the manifest weight of the

evidence standard when deciding the issue of whether an owner of a corporation was an employer under section 13 of the Act.)

¶ 32 A trial court's judgment is against the manifest weight of the evidence "only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Id*. A trial court's finding of fact and judgment will not be disturbed if there is any evidence in the record to support the court's findings. *Staes & Scallan, P.C.,* 2012 IL App (1st) 112974, ¶ 35. Stated differently, we will uphold a trial court's judgment following a bench trial if there is *any* evidence supporting it. *Southwest Bank of St. Louis v. Poulokefalos,* 401 Ill. App. 3d 884, 890 (2010).

¶ 33 Here, there was ample evidence presented at trial supporting the trial court's finding that defendants were Mehta's employer. Turning first to the trial court's finding that Brooke Management was Mehta's employer, Ritter stated that she and Fernandes agreed to go into business together and memorialized their intent in the stock purchase agreements. Importantly, Brooke Management and COAH did, in fact, transact business where Brooke Management provided home healthcare services and used COAH's Medicare identification number for billing purposes. Moreover, both the escrow agent and Mehta understood Ritter and Fernandes to be in business together.

¶ 34 Although Ritter initially contested the extent of Fernandes' authority within Brooke Management, Ritter conceded that Fernandes acted as Brooke Management's Director of Nursing from May to October of 2009, until she was terminated. Fernandes also served as Brooke Management's agency supervisor. Ritter, albeit not initially, also eventually acknowledged that Fernandes had been listed as Brooke Management's vice president on a corporate filing and that Fernandes was a signatory on a bank account that also listed her as an owner of Brooke

Management. Consequently, the record indisputably supports a finding that Brooke Management (Ritter) and COAH (Fernandes) transacted business together and Fernandes had authority to act on Brooke Management's behalf.

¶ 35 Regarding Mehta's employment, Fernandes sent an offer of employment to Mehta on behalf of Brooke Management and indicated that he would be working on a project for Brooke Management's client, Interim, beginning on May 29, 2009. Fernandes made this offer of employment after Mehta met with Ritter, her then husband and Fernandes in April 2009 to discuss the possible services that he could provide to Brooke Management. The letter both welcomed Mehta to Brooke Management and stated that it was "a pleasure to have you join Brooke Management and to be working with you at Interim Healthcare of Rockford." Mehta purportedly signed the letter offering employment the week of June 15, 2009 and returned the signed copy to Fernandes, who was his supervisor. Mehta submitted weekly timesheets to Fernandes for her review, received job instructions from her and saw her daily at Interim. Nothing in the record contradicts the trial court's finding that Mehta was Brooke Management's employee and that Fernandes had the authority to offer employment to Mehta.

¶ 36 Defendants challenge the sufficiency of the evidence by asserting that only Mehta executed the purported employment contract, the draft employment contract contained numerous factual inaccuracies and the State failed to produce a document establishing a relationship between Brooke Management and Interim. But defendants' contentions require this court to reweigh the evidence, a task that we cannot do on appeal. *Kalata v. Anheuser-Busch Co.*, 144 Ill. 2d 425, 433 (1991).

¶ 37 Next, we must consider whether Ritter was Mehta's employer under section 13 of the Act exposing her to personal liability for his unpaid wages due to her role as an officer of Brooke

Management. Ritter asserts that she cannot be held personally liable for Mehta's compensation because she did not "knowingly" permit a violation of the Act, especially because she had no knowledge of Mehta's employment or any unpaid wages. We again disagree.

¶ 38 Ritter's basis for reversal on this issue rests in large part on her assertion that prior to the October 2009 dispute when Mehta accompanied Fernandes to Brooke Management's office, she was not aware that Fernandes had hired Mehta to work for Brooke Management. But the trial court credited Mehta's testimony regarding his meeting with Ritter, Ritter's then husband and Fernandes in April 2009 to discuss employment opportunities, and that Fernandes subsequently offered Mehta a job at Brooke Management. Mehta also stated that he saw Ritter on one occasion at Interim's office, which also discredits Ritter's claim that she had no knowledge of the relationship between Brooke Management and Interim.

¶ 39 Importantly, the trial court's finding that Ritter knowingly permitted Brooke Management's violation of the Act was based on the trial court's assessment of the witnesses' credibility, which is a factual determination. Specifically, the trial court found "Ritter's testimony to be highly unreliable" and it "discredit[ed] the testimony of Ms. Ritter in large part." In contrast, the court found Mehta's testimony credible both that he had a meeting with Ritter in April 2009 and that he was hired to do work on behalf of Brooke Management at Interim. Based on our review of the trial transcript, the trial court's decision to disregard Ritter's testimony in large part is entirely reasonable. Ritter's denial that she received any of the several notices directed to Brooke Management regarding Mehta's claim for unpaid wages is not worthy of belief given that certain of those notices were sent to her home address. Further, the trial court was entitled to credit Mehta's testimony regarding his pre-employment meeting with Ritter over Ritter's claim that she had no idea that Mehta was working for Brooke Management until she

was served with the Department's complaint in 2013. Although Ritter urges us to do so, we simply will not substitute our judgment for that of the trial court's on issues of witness credibility. *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006).

¶ 40 Ritter's claim that she was unaware of Mehta's employment is further refuted by emails in the record that were also cited by the trial court. First, Mehta copied Ritter on an email dated October 7, 2009, to an attorney assisting Mehta with his work visa application. Mehta wrote: "Vivian is CCed on this email. You can get in touch with her if necessary." The next day the attorney responded to Mehta's email also copying Ritter and wrote that he was still waiting for FEIN documents. In another email to his attorney, Mehta wrote "As per my conversation with Vivian she shall send you the documents in some time, today." Collectively, these emails establish Ritter's knowledge of Mehta and that she knew or should have known that Mehta worked for Brooke Management. Even assuming that Ritter had no knowledge of Mehta before October 2009, Ritter acknowledged that as of October she knew of him and that he was claiming to be an employee by virtue of his request that Brooke Management sponsor his work visa. Importantly, the testimony adduced at trial indicated that Brooke Management still had a revenue stream in October when Ritter purports to have first met Mehta, but his wages from July 2009 remained unpaid.

¶ 41 The evidence also showed that when Brooke Management's revenues were insufficient to cover its payroll, Ritter personally provided funds to pay employees. Because the evidence shows that Ritter was aware of Mehta's employment status, her failure to likewise ensure the payment of his wages renders her liable as an employer under the Act. The evidence adduced at trial amply supports the trial court's finding that Ritter knowingly permitted a violation of the Act when she allowed Brooke Management to fail to pay Mehta's wages.

¶ 42 Ritter claims that under *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101 (2005), she cannot be held liable for Mehta's wages because she did not knowingly withhold his compensation. In *Andrews*, our supreme court addressed the same issue here–who should be considered an "employer" under sections 2 and 13 of the Act. *Id*. at 106-07. After statutorily interpreting those sections, *Andrews* held that section 2 imposes liability on an employer for its own and its agent's violations of the Act. *Id*. at 109. In contrast, section 13 imposes personal liability on any officer or agent who knowingly permits a violation of the Act. *Id*. In *Andrews*, the court refused to impose personal liability on the sole officer and 100% owner of the claimant's employer for unpaid severance and vacation time because the evidence showed that the alleged violations of the Act did not occur until *after* the owner lost control of the business. *Id*. at 112. The court found that after the company's lender seized the company's assets, the bank, and not the owner, "called the shots." *Id*. at 113. On that basis, the court held that the owner did not knowingly permit a violation of the Act. *Id*.

¶ 43 Ritter relies on *Andrews* asserting that she did not learn of Mehta or his wage claims until after Brooke Management was dissolved and lacked assets. Because Brooke Management no longer had assets and she had no knowledge of Mehta, Ritter asserts that under the rationale of *Andrews*, she should not be personally liable for Mehta's wages because she did not knowingly and willfully withhold Mehta's wages. But as discussed, Ritter knew of Mehta before Brooke Management's dissolution and loss of revenue stream. Indeed, as of October 2009, Brooke Management was still providing services and receiving a portion of the payment for those services. Moreover, as noted above, Ritter testified that to the extent that nurses were not paid and there were no funds in Brooke Management to pay the wages, she personally paid for those wages. Yet, Mehta's wages went unpaid. The record clearly establishes that Ritter controlled

Brooke Management's day-to-day operations. Thus, unlike the owner in *Andrews* who lost control of the business to the bank, Ritter remained in control of Brooke Management and arguably had the resources to pay Mehta before his employment with Brooke Management ceased. For this reason, Ritter's reliance on *Andrews* is misplaced.

¶ 44 Ritter also points to the checks that Fernandes provided to Mehta as a basis to reverse the trial court's finding arguing that the payments and attempted payments to Mehta were from Fernandes' personal accounts and not Brooke Management's accounts. Likewise, Ritter claims that Fernandes supervised Mehta, interacted with him on a daily basis and Ritter did not oversee Mehta's day-to-day work. For these reasons, Ritter maintains that Mehta was Fernandes' employee and not Brooke Management's. But Ritter is again improperly requesting this court to reweigh the evidence.

¶ 45 Based on the record before us, we cannot conclude that the trial court's findings appear unreasonable, arbitrary or not based on the evidence. Likewise, even if we agree with Ritter that the clearly erroneous standard of review applies, we are not " 'left with the definite and firm conviction that a mistake has been committed' " based, again, on the record before us. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001), quoting *United States v. United States Gypsum Co.*, 68 S. Ct. 525, 542 (1948). Thus, the trial court's findings that Brooke Management was Mehta's employer under section 2 of the Act and that under section 13 of the Act Ritter knowingly permitted Brooke Management's violation of the Act by failing to pay Mehta his wages exposing her to personal liability for the unpaid wages were not against the manifest weight of the evidence, nor were the findings clearly erroneous under defendants' proposed standard of review.

¶ 46 Finally, defendants assert that the trial court erred in denying substitute counsel's request to extend discovery and continue the trial. The parties agree that the applicable standard of review is abuse of discretion. A court abuses its discretion where no reasonable person would agree with its decision. *Lake Environment, Inc., v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 47 We are deeply sympathetic to the sudden terminal illness that defendants' first counsel faced during the trial court proceedings. We are also mindful of the challenges that substitute counsel faced to bring himself up to speed prior to trial and the close proximity of the discovery deadline to first counsel's diagnosis. The trial court likewise displayed understanding regarding counsel's diagnosis. But this is not the only relevant consideration in determining whether the trial court abused its discretion in refusing to allow additional discovery.

¶ 48 By the time counsel requested additional discovery, the case had been pending for over three years. As substitute counsel represented to the court, the onset of his father's illness was sudden and unexpected. No excuse was offered for defense counsel's failure to seek Mehta's deposition or other discovery in the preceding three years. Likewise, substitute counsel's assertions that his father "probably would have taken a deposition" of Mehta and might have noticed additional discovery based on the State's last document production, which included the email exchanges between Mehta and his attorney regarding the work visa application, were not a decisive representation that the defense intended to depose Mehta. See *In re Nancy A.*, 344 Ill. App. 3d 540, 550 (2003) (A decisive factor in determining whether the trial court abused its discretion in ruling on a motion to continue is whether the party seeking a continuance has acted with due diligence). Under these circumstances, it was not an abuse of discretion for the trial court to refuse to further extend discovery and that ruling did not result in a palpable injustice to defendants.

¶ 49 Defendants also assert that that the State's document production was untimely because even though the letter included with the documents was dated October 6 (the discovery deadline date), the envelope was postmarked October 7. Because the State's discovery was allegedly late, substitute counsel sought to bar the State's use of the documents. The trial court rejected this argument, and we find doing so was not an abuse of discretion particularly since there was no apparent prejudice to defendants as a result of the one-day delay.

¶ 50 CONCLUSION

¶ 51 The record contains sufficient evidence supporting the trial court's finding that Brooke Management employed Mehta and that Ritter, as officer of Brooke Management, knowingly permitted Brooke Management to violate the Act exposing Ritter to personal liability for Mehta's unpaid wages. We therefore affirm the judgment of the circuit court of Cook County.

¶ 52 Affirmed.