[Cite as *Pack v. Hilock Auto Sales*, 2012-Ohio-4076.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Morgan Pack,	:	
Plaintiff-Appellant,	:	
		No. 12AP-48
v.	:	(C.P.C. No. 10CVH-12-17988)
Hilock Auto Sales,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 6, 2012

The Romano Law Firm, and *Joseph M. Romano*, for appellant.

Richard Cline & Co., LLC, and *Richard A. Cline*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Morgan Pack, appeals a judgment of the Franklin County Court of Common Pleas that entered judgment against defendant-appellee, Hilock Auto Sales ("Hilock"), and awarded Pack $4,817.25 in damages and $2,250.00 in attorney fees. For the following reasons, we affirm.

{¶ 2} Pack purchased a used 1976 Chevrolet Nova from Hilock. Shortly after taking possession of the vehicle, Pack experienced serious problems with it. Pack could not shift the vehicle into reverse gear, and the vehicle backfired and stalled. Pack took the vehicle to a repair shop, where he learned that it was unsafe to drive and beyond repair.

{¶ 3} On December 8, 2010, Pack filed suit against Hilock for damages arising out of the purchase of the Nova. Pack asserted nine claims for violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq., and he claimed that Hilock knowingly committed the unfair, deceptive, and unconscionable acts alleged in the complaint. When Hilock did

not answer the complaint, Pack moved for default judgment. The trial court granted Pack's motion, and it referred the matter to a magistrate for a damages hearing.

{¶ 4} At the hearing, James R. Blevins, Jr., appeared on behalf of Hilock. Blevins explained to the magistrate that he owns Hilock and operates it as a sole proprietorship. Both Pack and Blevins presented evidence to the magistrate. After considering that evidence, the magistrate issued a report and recommendation advising the trial court to grant Pack: (1) a declaratory judgment that Hilock's actions were unfair, deceptive, and unconscionable; (2) a permanent injunction precluding Hilock from engaging in such actions; and (3) $4,817.25 in damages.

{¶ 5} Pack then filed a motion requesting that the trial court also award him attorney fees pursuant to R.C. 1345.09(F). Pack attached to his motion an itemized billing statement, which showed that Pack's attorney charged him $7,137 in attorney fees to litigate his case. Hilock did not respond to Pack's motion, and it filed no objections to the magistrate's decision.

{¶ 6} On December 12, 2011, the trial court issued a decision granting Pack an award of attorney fees, but limiting that award to $2,250. The trial court reduced the amount of attorney fees because it found that neither the number of hours worked nor the hourly rate charged were reasonable. On the same day that the trial court issued its attorney fees decision, it also entered judgment adopting the magistrate's report and recommendation. Pack now appeals from the December 12, 2011 judgment.

{¶ 7} Before addressing the merits of this appeal, we must consider Hilock's motion to dismiss for lack of jurisdiction. In its motion, Hilock argues that the trial court lacked jurisdiction over a proper defendant because Pack only achieved service upon a fictitious name, and not the owner of the business operating under the fictitious name. According to Hilock, because the trial court did not have personal jurisdiction, the December 12, 2011 judgment is void. Hilock contends that this court lacks jurisdiction to hear appeals from void judgments.

{¶ 8} Ohio Constitution, Article IV, Section 3(B)(2) establishes that courts of appeals "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." Pursuant to R.C. 2505.03(A), appellate courts may review final orders, judgments, and decrees. *Flynn v. Fairview Village Retirement Community, Ltd.*,

132 Ohio St.3d 199, 2012-Ohio-2582, ¶ 5. To qualify as a final, appealable order that an appellate court may review, affirm, modify, or reverse, an order, judgment, or decree must satisfy the criteria of R.C. 2505.02. *Id.*

{¶ 9} Under R.C. 2505.02(B)(1), an order, judgment, or decree is a final, appealable order if it "affects a substantial right in an action that in effect determines the action and prevents a judgment." An order "affects a substantial right" if the failure to immediately appeal the order would foreclose appropriate relief in the future. *Southside Community Dev. Corp. v. Levin*, 116 Ohio St.3d 1209, 2007-Ohio-6665, ¶ 7. An order " 'determine[s] the action and prevent[s] a judgment' " for the party appealing if it " 'dispose[s] of the whole merits of the cause or some separate and distinct branch thereof and leave[s] nothing for the determination of the court.' " *Miller v. First Internatl. Fidelity & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, ¶ 6, quoting *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153 (1989).

{¶ 10} Here, the December 12, 2011 judgment disposed of the whole merits of Pack's complaint and left nothing for the trial court to further determine. Moreover, any appeal of the December 12, 2011 judgment must be pursued now and cannot be postponed to a later date. Accordingly, we conclude that the December 12, 2011 judgment is a final, appealable order over which we have jurisdiction.

{¶ 11} In Hilock's only argument to the contrary, it contends that courts of appeals lack jurisdiction over void judgments. However, the case that Hilock cites in support of this proposition does not even discuss appellate jurisdiction, much less exclude void judgments from this court's purview. We thus reject Hilock's argument and deny its motion to dismiss.

{¶ 12} Having ruled on Hilock's motion, we next must address a glaring deficiency in Pack's appellate brief. Pursuant to App.R. 16(A)(3), an appellant's brief must include "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected." Pack's appellate brief does not contain any assignments of error.

{¶ 13} The failure to assert assignments of error is particularly problematic because appellate courts "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16." App.R. 12(A)(1)(b). Without assignments of

error, an appellate court has nothing to review. *Stoyer v. Fogelman*, 10th Dist. No. 11AP-737, 2012-Ohio-1319, ¶ 21; *Williams v. Hill*, 10th Dist. No. 10AP-69, 2010-Ohio-4189, ¶ 4.

{¶ 14} An appellate court may dismiss an appeal for an appellant's failure to follow the Rules of Appellate Procedure. App.R. 3(A); *Gomez v. Kiner*, 10th Dist. No. 11AP-767, 2012-Ohio-1019, ¶ 7; *Williams* at ¶ 5. However, this court prefers to resolve cases on their merits rather than upon procedural default. *Williams* at ¶ 5. Therefore, we will treat the issue that Pack identifies in the "statement of the issues" section of his brief as an assignment of error. By that issue, Pack contends that:

> [T]he Trial Court erred as a matter of law in limiting its award of attorney's fees under ORC § 1345.09(F) to bear a direct relationship to the dollar amount of the award and abused its discretion in limiting the attorney fee award without explanation.

{¶ 15} A trial court may award to a prevailing consumer reasonable attorney fees, limited to the work reasonably performed, if a supplier has knowingly committed an act or practice that violates R.C. Chapter 1345. R.C. 1345.09(F). The amount of an attorney fee award is a matter within the trial court's sound discretion. *Bittner v. Tri-Cty. Toyota, Inc.*, 58 Ohio St.3d 143, 146 (1991). An appellate court will not reverse a determination of attorney fees unless the appellant demonstrates an abuse of discretion and that " 'the amount of fees determined is so high or so low as to shock the conscience.' " *Id.*, quoting *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.*, 23 Ohio App.3d 85, 91 (12th Dist.1985); *see also Luft v. Perry Cty. Lumber & Supply Co.*, 10th Dist. No. 02AP-559, 2003-Ohio-2305, ¶ 30.

{¶ 16} Although the trial court enjoys broad discretion in setting the amount of attorney fees, it must state the basis for the fee determination. *Bittner* at 146. Without such a statement, an appellate court cannot conduct a meaningful review. *Id.*

{¶ 17} When awarding attorney fees, the trial court should first calculate the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Id.* at 145. Once the court has arrived at a "lodestar" amount, it may modify that amount by application of the reasonableness factors listed in Prof.Cond.R. 1.5(a). *Id.* (applying the predecessor to Prof.Cond.R. 1.5(a)); *Miller v. Grimsley*, 197 Ohio App.3d 167, 2011-Ohio-6049, ¶ 13 (10th Dist.). These factors include the time and labor required; the novelty and difficulty of the questions involved; the skill requisite to perform the legal

service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer performing the services; and whether the fee is fixed or contingent. Prof.Cond.R. 1.5(a). The trial court has the discretion to determine which factors to apply and in what manner the factors will affect the amount of fees. *Bittner* at 146.

{¶ 18} Although articulated as a two-step analysis, the steps may overlap, as several of the reasonableness factors are often subsumed within the initial lodestar calculation. *Miller* at ¶ 14. For example, in calculating the lodestar amount, a trial court should exclude any hours that the attorney unreasonably expended. *Id.*; *Mike Castrucci Ford Sales, Inc. v. Hoover*, 12th Dist. No. CA2009-03-016, 2009-Ohio-4823, ¶ 14. Unreasonably expended hours are those that are excessive in relation to the work done, are duplicative or redundant, or simply unnecessary. *Id.* Thus, in determining whether hours are unreasonably expended, a trial court inevitably considers the first three reasonableness factors listed above.

{¶ 19} Here, the trial court focused on the type and extent of the legal work required, as well as its mundane and uncomplicated nature, in determining the amount of the attorney fees to award Pack. The trial court found that Pack's attorney performed more hours of work than necessary to complete relatively simple tasks, such as drafting the complaint and the motion for default judgment. Thus, the trial court concluded that neither the hours expended nor the hourly rate charged was reasonable. The trial court reduced the hours expended from 32.10 to 15, and it reduced the hourly rate from $250 to $150. The trial court arrived at 15 hours by allocating 3 hours each to the preparation of the complaint, the preparation of the motion for default judgment, the damages hearing, the preparation of the motion for attorney fees, and ancillary matters such as meetings and communication with the client. Multiplying the number of hours reasonably expended (15 hours) by the reasonable hourly rate ($150), the trial court determined that $2,250 was a reasonable attorney fee award.

{¶ 20} We conclude that the trial court provided sufficient explanation for the attorney fee award of $2,250. Moreover, we conclude that the trial court did not abuse its

discretion in its attorney fee determination. The amount awarded is neither so high nor so low as to shock the conscience.

{¶ 21} Pack also argues that the trial court inappropriately limited his recovery of attorney fees to make the fees more proportional to the damages award. We disagree. In its decision, the trial court noted that the attorney fees requested exceeded the damages award. However, nothing in the decision indicates that the trial court capped the amount of attorney fees to decrease the disparity between the amount of fees and the amount of damages. The trial court instead focused on the straightforward nature of few legal tasks performed, and lowered the attorney fees to correspond with the low difficulty and number of those tasks.

{¶ 22} For the foregoing reasons, we overrule Pack's sole assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Motion denied;
judgment affirmed.

SADLER and CONNOR, JJ., concur.