[Cite as *Eichenberger v. Tucker*, 2013-Ohio-805.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Raymond L. Eichenberger,	:	
Plaintiff-Appellee,	:	No. 12AP-515 (M.C. No. 11CVF-22562)
v.	:	(REGULAR CALENDAR)
Antoine Tucker,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 7, 2013

Raymond L. Eichenberger, pro se.

Antoine Tucker, pro se.

APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶ 1} Antoine Tucker, defendant-appellant, appeals from the judgment of the Franklin County Municipal Court, in which the court granted the motion for summary judgment filed by Raymond L. Eichenberger, plaintiff-appellee.

{¶ 2} In January 2010, appellant hired appellee, an attorney, to represent him in an action filed by a car dealer against appellant. In his complaint, appellee alleged that appellant paid him $3,000 in fees but still owed him $3,065 for legal services rendered in the case. On June 17, 2011, appellee filed a complaint against appellant, asserting breach of contract and unjust enrichment. On September 22, 2011, appellee filed a motion for summary judgment, which the court denied on December 15, 2011. On March 15, 2012, appellee filed a motion to reconsider the motion for summary judgment. On May 16, 2012, the trial court decided to grant appellee's motion for summary judgment. Appellant,

pro se, appeals the judgment of the trial court, asserting the following assignment of error:

> The trial court erred by granting a summary judgment to the appellee although there were material genuine issues of fact that should have been litigated at trial.

{¶ 3} Appellant argues in his assignment of error that the trial court erred when it granted summary judgment in favor of appellee. Summary judgment is appropriate when the moving party demonstrates that: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion when viewing the evidence most strongly in favor of the non-moving party, and that conclusion is adverse to the non-moving party. *Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, ¶ 29; *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St.3d 158, 2007-Ohio-5584, ¶ 29. Appellate review of a trial court's ruling on a motion for summary judgment is de novo. *Hudson* at ¶ 29. This means that an appellate court conducts an independent review, without deference to the trial court's determination. *Zurz v. 770 W. Broad AGA, L.L.C.*, 192 Ohio App.3d 521, 2011-Ohio-832, ¶ 5 (10th Dist.); *White v. Westfall*, 183 Ohio App.3d 807, 2009-Ohio-4490, ¶ 6 (10th Dist.).

{¶ 4} When seeking summary judgment on the ground that the non-moving party cannot prove its case, the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the non-moving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party does not discharge this initial burden under Civ.R. 56 by simply making a conclusory allegation that the non-moving party has no evidence to prove its case. *Id*. Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the non-moving party has no evidence to support its claims. *Id*. If the moving party meets its burden, then the non-moving party has a reciprocal burden to set forth specific facts showing that there is a genuine issue for trial. Civ.R. 56(E); *Dresher* at 293. If the non-moving party does not so respond, summary judgment, if appropriate, shall be entered against the non-moving party. *Id*.

{¶ 5} In the present case, appellant presents no argument under his assignment of error. Appellant claims only generically that there are genuine issues of material fact remaining without specifically setting forth any alleged errors made by the trial court in arriving at the contrary conclusion. Therefore, we could simply overrule appellant's assignment of error. *See N. Coast Cookies, Inc. v. Sweet Temptations, Inc.*, 16 Ohio App.3d 342 (8th Dist.1984) (appellant must designate specific rulings that the appellant challenges on appeal); *see also* App.R. 12(A) (the appellant is required to point out alleged errors in the record).

{¶ 6} However, in his brief statement of the case and facts in his brief, appellant generally outlines the nature of his argument. Appellant asserts that there was a verbal agreement between him and appellee that the cost of appellee's legal services would be a flat fee of $2,500, and he paid appellee $3,000 in total fees. Appellant also indicates that appellee performed work after appellant terminated his services, appellee misrepresented the time he claimed to have spent on court filings, and appellee billed him for work not performed. Given these contentions and our de novo review standard, we will briefly address appellant's assignment of error despite the potentially fatal shortcomings in his brief.

{¶ 7} In the trial court, appellee attached to his motion for summary judgment his own affidavit, in which he averred that he performed legal services for appellant pursuant to an oral contract between January 2010 and May 2011; appellant agreed to pay him $150 per hour for legal services; appellant has paid for some legal services billed to him; appellee secured a settlement proposal from the car dealer in appellant's underlying case but appellant refused to enter into the settlement; appellant still owes appellee $3,065 for unpaid legal services; the legal work reflected on the attached itemized bills was necessary and reasonable; and the hourly rate charged was reasonable for an attorney with appellee's experience in Franklin County, Ohio.

{¶ 8} Appellant filed a pro se memorandum contra appellee's motion for summary judgment, in which he asserted appellee did not perform all of the claimed work, appellee did not properly withdraw from the case, and appellee performed unauthorized work. However, appellant failed to file any affidavit or other evidence to support his claims. After the trial court granted leave, appellant's counsel then filed a

memorandum contra appellee's motion for summary judgment, which reiterated appellant's prior contentions and added that he did not agree to the proposed settlement with the car dealer because the settlement was not in his best interest. Appellant attached to this memorandum contra his own affidavit, in which he averred that the work appellee performed went well beyond what was communicated to appellant; appellant frequently requested billing statements but was not provided with such for extended periods; appellant called and emailed appellee stating his intention to terminate appellee as his counsel in the matter; and appellant does not owe the amount being sought and is able to provide supporting documents at trial to demonstrate such. No other pertinent evidence admissible under Civ.R. 56 was submitted by either party.

{¶ 9} However, the evidence necessary to create a genuine issue of material fact must be more than just bare, unsupported assertions. "[I]t is well-established that a 'party's unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact.' " *Hillstreet Fund III, L.P. v. Bloom*, 12th Dist. No. CA2009-07-178, 2010-Ohio-2961, ¶ 10, citing *TJX Cos., Inc. v. Hall*, 183 Ohio App.3d 236, 2009-Ohio-3372, ¶ 30 (8th Dist.); *see also Pinchot v. Mahoning Cty. Sheriff's Dept.*, 164 Ohio App.3d 718, ¶ 24 (7th Dist.) (generally, self-serving affidavits cannot be used by the non-moving party to survive summary judgment). To hold otherwise would " 'necessarily abrogate the utility of the summary judgment exercise' " and allow the non-moving party to avoid summary judgment " 'by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party.' " *Bloom* at ¶ 10, quoting *Pavlik v. Cleveland*, 8th Dist. No. 92176, 2009-Ohio-3073, ¶ 21; *Bell v. Beightler*, 10th Dist. No. 02AP-569, 2003-Ohio-88, ¶ 33.

{¶ 10} As such, appellant's assertions here, standing alone, do not create a genuine issue of material fact as to whether appellee performed unauthorized work or improperly billed him in any manner. Appellant could have presented an affidavit from another lawyer disputing the reasonableness or accuracy of appellee's charges, submitted the alleged email appellant claimed to have sent to appellee terminating the attorney-client relationship at some earlier date, or attached some of the "supporting documents" appellant mentioned in his affidavit to demonstrate he did not owe appellee any further

monies. Therefore, because he did not present sufficient evidence pursuant to Civ.R. 56, appellant has not demonstrated a genuine issue of material fact regarding his defenses to appellee's claim that appellant still owes him monies for legal services rendered. Therefore, appellant's assignment of error is overruled.

{¶ 11} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

KLATT, P.J., and McCORMAC, J., concur.

McCORMAC, J., retired of the Tenth Appellate District, assigned to active duty under authority of Ohio Constitution, Article IV, Section 6(C).
