**[Cite as *Hawkins v. Miller,* 2011-Ohio-6005.]**

**IN THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**LAKE COUNTY, OHIO**

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| JUDSON J. HAWKINS, | : | **O P I N I O N** |
| Plaintiff-Appellee, | : | **CASE NO. 2011-L-036** |
| - vs - | : | |
| DANIEL MILLER, | : | |
| Defendant-Appellant. | : | |

Civil Appeal from the Willoughby Municipal Court, Case No. 10CVF00622.

Judgment: Affirmed.

*John W. Hawkins*, Center Plaza South, 35353 Curtis Boulevard, Suite 441, Eastlake, OH 44095 (For Plaintiff-Appellee).

*Joseph P. Szeman*, Baker, Hackenberg & Hennig Co., L.P.A., 100 Society National Bank Building, 77 North St. Clair Street, Painesville, OH 44077 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

**{¶1}** Appellant, Daniel Miller, appeals from the March 1, 2011 judgment of the Willoughby Municipal Court, granting judgment in favor of appellee, Judson J. Hawkins, for attorney fees in the amount of $7,322.60.

**{¶2}** Hawkins filed a complaint against Miller for breach of contract regarding unpaid attorney fees in the amount of $8,897.60. In his complaint, Hawkins alleged the following: he was retained to represent Miller and Suede Nightclub, LLC ("Suede") in

cases out of Cuyahoga and Lake Counties; Miller had incorporated Suede and later dissolved it; Miller never informed Hawkins of the dissolution of Suede but continued to instruct him to represent the nightclub; Hawkins performed pursuant to their agreement and until his services were later terminated by Miller; and Hawkins maintained an account with Miller and had billed him for his services but Miller refused to pay. Miller subsequently filed an answer.

**{¶3}** Thereafter, the parties each filed motions for summary judgment. The trial court denied both motions and the matter proceeded to a bench trial.

**{¶4}** Preliminarily, we note that Miller filed a partial transcript of the bench trial proceedings which only includes the testimony of Hawkins and his expert witness, David A. McGee ("McGee"). Generally, when an appellant seeks to argue on appeal that a judgment is not supported by sufficient evidence or is against the manifest weight of the evidence, the entire transcript of the trial court's proceedings should be provided to the appellate court. *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 10-11. In some instances, however, it may be proper to submit a partial transcript provided all relevant evidence is contained therein. *Magdych v. Bush* (Dec. 7, 2001), 11th Dist. Nos. 2000-T-0129 and 2000-T-0130, 2001 Ohio App. LEXIS 5446, at *4. However, if an appellant cannot demonstrate the claimed error from the record presented on appeal, we must presume the regularity of the trial court proceedings. *Hineman v. Brown*, 11th Dist. No. 2002-T-0006, 2003-Ohio-926, at ¶6.

**{¶5}** The record before us reveals that Miller also had an expert testify on his behalf. However, Miller did not provide this court with a transcript of his expert's testimony. Pursuant to the trial court's appealed judgment entry, Miller's expert witness

testified that he had "no opinion" regarding the "reasonableness and necessity" of Hawkins' fees, whereas Hawkins' expert opined that Hawkins' fees were reasonable and necessary. Thus, because all relevant evidence is contained in the submitted partial transcript which includes the testimony of Hawkins and his expert, we will consider Miller's sufficiency and manifest weight arguments on appeal.

**{¶6}** McGee, an attorney since 1982, testified on behalf of Hawkins. After providing his professional background, McGee stated that he had been previously qualified as an expert witness on two prior occasions. With respect to the instant case, McGee independently reviewed documents, pleadings, and bills, as well as the dockets from the cases in Cuyahoga and Lake Counties in preparation for his testimony. McGee stated that Hawkins' billing rate of $125 per hour was customary and usual for similar attorney services in the community. McGee said the amount of time Hawkins spent on the cases against and on behalf of Miller personally and his business were reasonably related to the work Hawkins performed. McGee testified that the activities to which Hawkins devoted his time were reasonably identified in the bills he gave to Miller. McGee said that Hawkins assured him that he did the work reflected in the bills. McGee opined that four hours of trial preparation was reasonable for the services Hawkins provided.

**{¶7}** On cross-examination, McGee testified that he reviewed several of the invoice statements. McGee was asked what work Hawkins exactly performed in reference to an October 10, 2008 invoice for four hours of trial preparation. McGee responded, "I have no idea." He was then asked what Hawkins did regarding an October 11, 2008 invoice for one hour of trial preparation. McGee stated he would have

the same answer for each question. However, he said that the amount of time Hawkins spent was in line with what others would charge for similar functions performed. He opined that the charges were reasonable and that Hawkins' rates were below the standard in the area. McGee went over Hawkins' bills with him. McGee said that Hawkins represented to him that the statements and hours of time he spent on Miller's case reflected the work he performed. McGee did not question Hawkins any further. He said that he reviewed the docket, discussed it with Hawkins, and received Hawkins' assurance that he did the work reflected in the statements.

**{¶8}** On re-direct examination, McGee stated that based upon his knowledge of billing practices, Hawkins' trial preparation description was more than reasonable and adequate.

**{¶9}** On re-cross examination, McGee said that he relied upon his review of documents and the representation of what Hawkins had told him. McGee stated that trial preparation could be "anything."

**{¶10}** Hawkins testified that he has been an attorney since 1977. He provided his professional background and stated that he had never been disciplined for any reason. Hawkins first met Miller in August or September of 2007, and agreed to represent him. Hawkins reduced his hourly fee to $125 an hour, which Miller accepted. The parties never entered into a written fee agreement. The attorney-client relationship deteriorated over time. In a December 2008 letter, Miller informed Hawkins of his discharge. Thereafter, Hawkins forwarded a statement for outstanding fees. Miller responded to Hawkins in a letter contesting the charges and demanding a return of a $5,500 retainer. Hawkins refused.

**{¶11}** Hawkins testified that he spent the time he billed on Miller's case. Hawkins specifically identified 26 separate exhibits, primarily consisting of the pleadings from the two cases at issue and copies of his billing statements. Hawkins testified that he recorded all of his time on individual sheets, which he printed out and gave to his secretary and that his secretary transmitted the time sheets into an accounting computer program and bills were sent out accordingly.

**{¶12}** The trial court held Miller personally liable for attorney fees in the amount of $8,897.60, less $1,575 because Hawkins failed to file a motion for extension in a timely manner. The court determined that the amounts set forth and charged by Hawkins for his services were "reasonable and necessary." Thus, the court granted judgment to Hawkins and against Miller in the amount of $7,322.60, which was stayed by the trial court pending appeal. It is from that judgment that Miller filed a timely appeal asserting the following assignment of error:

**{¶13}** "The evidence presented at trial by plaintiff-appellee was insufficient to support the trial court's verdict."

**{¶14}** In his sole assignment of error, Miller argues that the trial court's verdict was not supported by sufficient evidence that Hawkins' claimed legal fees were reasonable and necessary. Miller alleges that Hawkins' expert witness had nothing to support his conclusion that the fees were reasonable and necessary.

**{¶15}** Although Miller specifically states a sufficiency of the evidence argument, we note that his sole assignment of error also involves a manifest weight argument as well.

**{¶16}** Sufficiency is a legal term of art describing the legal standard which is applied to determine whether the evidence is legally sufficient to support the judgment as a matter of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. We will not reverse a civil judgment as against the manifest weight of the evidence if it is supported by any competent, credible evidence that goes to each element of the case. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. See, also, *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

**{¶17}** As an appellate court, we evaluate the findings of the trial court under a presumption that those findings are correct. *Seasons Coal,* supra, at 80. This is because the trier of fact is in the best position "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Id. As a reviewing court, we are unwilling to second guess the trial court's determination where there is competent, credible evidence to support it, nor are we willing to weigh the credibility of the witnesses. *Karnofel v. Girard Police Dept.,* 11th Dist. No. 2004-T-0145, 2005-Ohio-6154, at ¶19.

**{¶18}** With respect to attorney services, compensation is generally fixed by contract prior to employment and the formation of the fiduciary relationship between the attorney and client. *Jacobs v. Holston* (1980), 70 Ohio App.2d 55, 59. After the fiduciary relationship is established, the attorney bears the burden of establishing the fairness and reasonableness of his fees. Id.

**{¶19}** The Disciplinary Rules provide mandatory guidelines by which all attorneys must comply. Under DR 2-106, the following factors are to be considered in determining the reasonableness of a fee: (1) time and labor involved in the matter,

novelty of issues raised, and necessary skill to pursue a case; (2) customary fees in the locality for similar legal services; (3) results obtained, and; (4) experience, reputation and ability of counsel. See *Day, Ketterer, Raley, Wright and Rybolt, Ltd. v. Hamrick*, 5th Dist. No. 2002CA0043, 2002-Ohio-5433, at ¶23.

**{¶20}** In our case, Miller cites to the following cases in his appellate brief in support of his argument that a reversal is appropriate: *Joseph G. Stafford & Assoc. v. Skinner* (Oct. 31, 1996), 8th Dist. No. 68597, 1996 Ohio App. LEXIS 4803; *Bertrand v. Lax*, 11th Dist. No. 2004-P-0035, 2005-Ohio-3261; *Kohrman, Jackson & Krantz, P.L.L. v. Harris* (Sept. 14, 2000), 8th Dist. No. 76873, 2000 Ohio App. LEXIS 4176; *Heller v. McLaughlin* (Sept. 26, 1996), 8th Dist. No. 70072, 1996 Ohio App. LEXIS 4179; *Roux v. Lonardo* (Aug. 30, 1991), 11th Dist. No. 89-T-4302, 1991 Ohio App. LEXIS 4125; *Climaco, Seminatore, Delligatti & Hollenbaugh v. Carter* (1995), 100 Ohio App.3d 313. We note that *Stafford* and *Roux* were appeals from directed verdicts and *Bertrand, Kohrman, Heller,* and *Climaco* were appeals from summary judgment cases.

**{¶21}** Appellate courts review entries of a directed verdict independently and without deference to the trial court's determination. *Keeton v. Telemedia Co. of S. Ohio* (1994), 98 Ohio App.3d 405, 409. Also, appellate courts review de novo a trial court's order granting summary judgment. *Hudspath v. Cafaro Co.*, 11th Dist. No. 2004-A-0073, 2005-Ohio-6911, at ¶8, citing *Hapgood v. Conrad*, 11th Dist. No. 2000-T-0058, 2002-Ohio-3363, at ¶13. Our case, however, involves a different standard of review. Again, we will not reverse the trial court's judgment if it is supported by any competent, credible evidence. See *C.E. Morris Co.*, supra, syllabus; *Seasons Coal Co.*, supra, at 80.

**{¶22}** Also, Miller specifically maintains that the trial court's judgment was not supported by sufficient evidence because Hawkins' expert had no evidence to base his conclusion that the fees were reasonable and necessary. In support, Miller cites to *Brooks v. Houston* (Sept. 14, 1995), 10th Dist. No. 95APG02-180, 1995 Ohio App. LEXIS 3961, and *Reminger & Reminger Co., L.P.A. v. Fred Siegel Co., L.P.A.* (Mar. 1, 2001), 8th Dist. No. 77712, 2001 Ohio App. LEXIS 760, for the proposition that merely submitting records of services expended is insufficient and that expert testimony is also required. With regard to the instant matter, Miller's reliance on *Brooks* and *Reminger* is misplaced.

**{¶23}** The attorneys that sought to recover their fees in the foregoing cases introduced either no evidence or inadequate evidence that the fees were reasonable and necessary to the work performed. In *Brooks*, the appellant only submitted records of services expended in representing the appellee. *Brooks*, supra, at *3. The Tenth District held that the appellant failed to provide the trial court with the necessary evidence to support a judgment in his favor because the record contained no evidence that the hours and fees were reasonable and necessary. Id. Likewise, in *Reminger*, the appellant did not provide an adequate record and could not demonstrate that the trial court did not consider the proper factors in determining the reasonableness of the disputed fees. *Reminger*, supra, at *20.

**{¶24}** In our case, on the other hand, the trial court determined that the fee amounts set forth and charged by Hawkins for his services were reasonable and necessary. The trial court stated the following in its March 1, 2011 judgment entry:

**{¶25}** "The final issue to be decided is whether the amounts set forth and charged by [Hawkins] for his services were 'reasonable and necessary.'

**{¶26}** "Both of the parties presented well-known and highly respected local attorneys as experts to testify regarding this issue. The court finds that both individuals have practiced for many years and have extensive knowledge and understanding of the practice of law and procedures that must be followed as well as the appropriate and fair range of fees that are usual, necessary and accepted [in] this local area. Each had reviewed the available files, records and documents extensively as well as the statements for fees sent by [Hawkins]. Both discussed some of the matters that they reviewed. *** When ultimately requested for their opinion regarding the 'reasonableness and necessity' of [Hawkins'] fees, the expert testifying on behalf of [Miller] stated that he 'has no opinion.' The expert testifying on behalf of [Hawkins] stated that, 'in his opinion, the rates and fees charged were customary and usual and were reasonable.'

**{¶27}** "Based upon all of the above, the testimony and the evidence presented in this case and in consideration of the opinion of the expert who did present an opinion, this Court finds that the fee amounts set forth and charged by [Hawkins] for his services were 'reasonable and necessary.'"

**{¶28}** Again, Miller filed a partial transcript of the bench trial proceedings which only includes the testimony of Hawkins and his expert witness, McGee. McGee testified that the time Hawkins spent was fairly and properly used, the amount of hours devoted was reasonable, and the fees were equal to the actual value of the necessary services performed. McGee repeatedly opined that Hawkins' services were reasonably related

and necessary to the prosecution and defense regarding the cases against and on behalf of Miller personally and his business. McGee further stated that Hawkins' descriptions of the services were reasonably identified on the invoices. Thus, Hawkins provided expert testimony which established that his fees were reasonably related and necessary to the cases he prosecuted and defended.

**{¶29}** In addition, Hawkins himself testified with respect to the amount of time he spent on Miller's case. Again, Hawkins specifically identified all 26 exhibits, including pleadings from the two cases at issue and copies of his billing statements. Hawkins showed that he recorded all of his time on individual sheets, which he printed out and gave to his secretary. Hawkins' secretary transmitted the time sheets into an accounting computer program and bills were sent out accordingly. Thus, the record is supported by the sufficient testimony of Hawkins, which substantiates that of his expert, that Hawkins performed the work on Miller's case and that his fees were reasonable and necessary in relation to the time he spent on the matter.

**{¶30}** Based on the foregoing, there exists relevant, competent and credible evidence upon which the trial court could have based its judgment that the amounts set forth and charged by Hawkins for his services were reasonable and necessary. We determine that there is nothing to suggest that any of the evidence is legally insufficient to support the trial court's judgment or that the trial court's judgment is based on an irrational view of the evidence. The trial court evaluated competent and credible testimony and documents from both sides and drew a conclusion. As such, we sustain its judgment.

**{¶31}** For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Willoughby Municipal Court is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

DIANE V. GRENDELL, J., concurs in judgment only.