[Cite as *Harraman v. Howlett,* 2004-Ohio-5566.]

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRENT M. HARRAMAN

Plaintiff-Appellee

-vs-

CRAIG F. HOWLETT, ET AL.

Defendant-Appellants

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Julie A. Edwards, J.

Case No. 03CA0023

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Morrow County Court of Common Pleas, Case No. 23,280
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	10/8/2004
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellants
JEFFREY D. BOYD Robert D. Erney 5655 North High Street, Ste. 202 Worthington, Ohio 43085	DANIEL E. SHIFFLET 4947 Prospect Upper Sandusky Road Prospect, Ohio 43342 C. MICHAEL PIACENTINO 198 East Center Street Marion, Ohio 43302 STEVEN E. CHAFFIN

P.O. Box 203
Marion, Ohio 43302

Hoffman, P.J.

{¶1} Defendants-appellants Craig and Deborah Howlett, Daniel Shifflet and the Estate of Dean Washburn appeal the November 6, 2003 Judgment Entry of the Morrow County Court of Common Pleas, granting judgment in favor of plaintiff-appellee Brent Harraman.

STATEMENT OF THE FACTS AND THE CASE

{¶2} Appellants Craig and Deborah Howlett hired appellee Attorney Brent Harraman to represent them in a personal injury proceeding, and signed a written contingency fee based contract. Harraman successfully obtained a settlement offer on behalf of the Howletts with a "present value" of $305,000.00.

{¶3} The Howletts then hired appellants Daniel Shifflet and Dean Washburn, in order to obtain a second opinion about the settlement offer. According to Harraman, Shifflet and Washburn represented to the Howletts they could obtain a better and higher settlement for the Howletts, and prepared a letter for the Howletts to sign discharging Harraman. It is undisputed, Shifflet and Washburn did not inform the Howletts of their possible liability to appellee for the value of the services he rendered.

{¶4} Shifflet then ordered the Howletts' medical bills and records, which were delivered from Harraman's office. The parties dispute the adequacy and completeness of the file turned over from Harraman's office.

{¶5} Shifflet worked on the case for about a year and settled for a lump sum payment of $305,000.00, plus the resolution the underlying defendant pay some subrogated medical bills.

{¶6} Harraman then filed suit against the Howletts for the legal fees he incurred in obtaining a settlement offer on their behalf. Shifflet originally defended the Howletts in the action; however, Harraman amended his complaint, adding a claim for the creation of a constructive trust against Shifflet and Washburn, and moved the trial court to remove Shifflet as the Howletts counsel in the litigation. The motion was granted.

{¶7} On February 24, 2000, appellants Shifflet and Washburn filed their motion for summary judgment against Harraman on the constructive trust allegations. On April 26, 2000, the Howletts filed their motion for summary judgment.

{¶8} On June 15, 2000, Harraman filed his dismissal of all claims for breach of contract and quantum meruit against Shifflet and Washburn, but the claim for constructive trust remained. All claims against the Howletts remained.

{¶9} At the conclusion of Harraman's case in chief, appellants' counsel moved the trial court to dismiss the constructive trust remedy. The trial court took the motion under advisement.

{¶10} On July 1, 2002, the trial court filed its entry denying all of the appellants' summary judgment motions. On July 22, 2002, Harraman dismissed his breach of contract claim against the Howletts.

{¶11} During the course of trial, Washburn passed away, and a suggestion of death was filed and granted substituting his Executrix as a party defendant.

{¶12} On November 6, 2003, via Judgment Entry, the trial court found in favor of Harraman and awarded him half of the attorney fees distributed to Attorney Shifflet, to be paid, in the first instance by Shifflet.

{¶13} It is from this Judgment Entry appellants appeal raising the following assignments of error:

{¶14} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ATTORNEYS SHIFFLET AND WASHBURN IN DENYING THEIR MOTION FOR SUMMARY JUDGMENT FOR THE REASONS THAT YOU MUST HAVE A CAUSE OF ACTION OR SOME SHOWING OF WRONG DOING BEFORE YOU CAN HAVE A CONSTRUCTIVE TRUST REMEDY.

{¶15} "II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ATTORNEYS SHIFFLET AND WASHBURN IN FAILING TO GRANT APPELLANT ATTORNEYS SHIFFLET AND WASHBURN'S MOTION TO DISMISS APPELLEE'S CONSTRUCTIVE TRUST REMEDY AFTER APPELLEE RESTED HIS CASE IN CHIEF.

{¶16} "III. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ATTORNEYS SHIFFLET AND WASHBURN IN FINDING THAT A CONSTRUCTIVE TRUST EXISTS IN THIS CASE.

{¶17} "IV. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ESTATE OF WASHBURN BY FINDING THAT A CONSTRUCTIVE TRUST EXISTED AS TO APPELLANT ESTATE OF WASHBURN.

{¶18} "V. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ESTATE OF WASHBURN BY FAILING TO DISMISS THIS APPELLANT ON THE BASIS THAT A PROPER CLAIM PURSUANT TO R.C. 2117.06 WAS NOT MADE.

{¶19} "VI. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ATTORNEYS SHIFFLET AND WASHBURN IN GRANTING APPELLEE'S MOTION FOR THE PLEADINGS TO CONFORM TO THE EVIDENCE IN ALL RESPECTS CONSISTENT

WITH THE TRIAL COURT'S 'JOURNAL ENTRY OF JUDGMENT (DECISION ON THE MERITS)' FILED NOVEMBER 6, 2003.

{¶20} "VII. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT ATTORNEYS SHIFFLET AND WASHBURN, AND THE APPELLANTS HOWLETT IN FINDING THAT APPELLEE'S FAILURE TO TURN OVER THE PERSONAL INJURY FILE OF APPELLANTS HOWLETT TO APPELLANT ATTORNEYS SHIFFLET AND WASHBURN WHEN DISCHARGED, AND APPELLEE'S FAILURE TO WITHDRAW FROM THE CASE WHEN DISCHARGED, WAS NOT A FACTOR IN DETERMINING QUANTUM MERUIT FEES.

{¶21} "VIII. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS IN FINDING THAT APPELLEE HAD PROVEN HE WAS ENTITLED TO RECOVER $44,665.90 FROM APPELLANTS FOR LEGAL SERVICES RENDERED."

I

{¶22} In the first assignment of error, appellants argue the trial court erred in denying their motion for summary judgment as to Harraman's allegations concerning a constructive trust. They argue there are no allegations in the amended complaint alleging misconduct or wrongdoing of any kind by the attorneys, and the imposition of the constructive trust must be based upon conduct giving rise to the exercise of equitable jurisdiction.

{¶23} The trial court found there were material questions of fact and appellants were not entitled to judgment as a matter of law. The Ohio Supreme Court has held any error by a trial court in denying a motion for summary judgment is rendered moot or harmless if a subsequent trial on the same issues raised in the motion demonstrates that there were

genuine issues of material fact supporting a judgment in favor of the party against whom the motion was made. *Continental Ins. Co. v. Whittington* (1994), 71 Ohio St.3d 150.

Upon review, the subsequent trial demonstrated the trial court did not err in denying the motion for summary judgment.

{¶24} The first assignment of error is overruled.

II

{¶25} In the second assignment of error, appellants maintain the trial court erred in failing to grant their motion to dismiss.

{¶26} Civ. R. 41 governs motions to dismiss in non-jury trials:

{¶27} "*(2) Dismissal; non-jury action.* After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ. R. 52 if requested to do so by any party." (Emphasis added.)

{¶28} The rule states the trier *may* rule on the motion or may decline to render any judgment until the close of all of the evidence. In this case, the trial court exercised its discretion in delaying its ruling until the close of evidence, and ruled on the motion in its November 6, 2003 Judgment Entry at which time there was relevant, competent and

credible evidence for the trier to base its judgment. The trial court did not err in denying the motion to dismiss.

{¶29} The second assignment of error is overruled.

III, IV

{¶30} The third and fourth assignments of error raise common and interrelated issues; accordingly, the assignments will be addressed together.

{¶31} Appellants argue the trial court erred in finding a constructive trust exists in this case. Appellants maintain a constructive trust is not a cause of action, but a remedial device for the prevention of fraud and unjust enrichment, and appellee must allege a set of circumstances entitling him to a constructive trust.

{¶32} In *Reid , Johnson, Downes, Andrachik & Webster v. Lans* (1994), 68 Ohio St.3d 570, the Ohio Supreme Court addressed a similar issue. In *Reid*, a discharged law firm brought an action against a former client based upon a contingency fee agreement. The Court held:

{¶33} "As an initial matter, we join those jurisdictions which have held that when an attorney representing a client pursuant to a contingent-fee agreement is discharged, the attorney's cause of action for a fee recovery on the basis of *quantum meruit* arises upon the successful occurrence of the contingency.

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{¶34} "As a further related matter, also consistent with the policies underlying the result in *Fox,* we find that the *quantum meruit* recovery of a discharged attorney should be limited to the amount provided for in the disavowed contingent fee agreement. In *Rosenberg, supra,* 409 So.2d at 1020, the court explained the reason behind adopting such

a rule: "This limitation is believed necessary to provide client freedom to substitute attorneys without economic penalty. Without such a limitation, a client's right to discharge an attorney may be illusory and the client may in effect be penalized for exercising a right." See, *Brickman, Setting the Fee When the Client Discharges a Contingent Fee Attorney* (1992), 41 Emory L.J. 367, 369 (contending that the contingent fee amount should be the maximum recovery for a discharged attorney).

{¶35} "A trial court called upon to determine the reasonable value of a discharged contingent-fee attorney's services in *quantum meruit* should consider the totality of the circumstances involved in the situation. The number of hours worked by the attorney before the discharge is only one factor to be considered. Additional relevant considerations include the recovery sought, the skill demanded, the results obtained, and the attorney-client relationship itself. See, *Rosenberg, supra,* 409 So.2d at 1022. Other factors to be considered will vary, depending on the facts of each case. As *Fox,* 44 Ohio St.3d at 71, 541 N.E.2d at 449-450, mentioned, the Code of Professional Responsibility, DR 2-106, gives guidelines for determining the reasonableness of attorney fees. Because the factors to be considered are based on the equities of the situation, those factors, as well as the ultimate amount of *quantum meruit* recovery by a discharged attorney, are matters to be resolved by the trial court within the exercise of its discretion." Id.

{¶36} In this case, the contingency was the settlement. Pursuant to *Reid*, Harraman then became entitled to recover on the basis of quantum meruit. See also, *Fox & Assoc. v. Purdon* (1989), 44 Ohio St.3d 69. A quantum meruit is an equitable remedy, as is the concept of a constructive trust. In *Ferguson v. Owens* (1984), 9 Ohio St.3d 223, the Ohio Supreme Court defined a constructive trust:

{¶37} "Since this discussion will be dealing with whether a constructive trust may reasonably be impressed under the facts of the instant case, at the outset we should define the subject. A constructive trust is defined in 76 American Jurisprudence 2d (1975) 446, Trusts, Section 221, as:

{¶38} " * * * [A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice. * * * " Id. (Emphasis Added.)

{¶39} Pursuant to the above, a constructive trust may be invoked even in the absence of fraud, where there exists a legal principle which can serve as a basis for equitable relief. The constructive trust doctrine is an equitable remedy permitting a court to order a person who owns the legal title to property to hold or use the property for the benefit of another or to convey the property to another to avoid an unjust enrichment.

{¶40} "It is well established that where unjust enrichment is found, it may serve as a basis for the operation of a constructive trust." *Concepcion v. Concepcion* (1999), 131 Ohio App.3d 271.

{¶41} The November 6, 2003 Judgment Entry states:

{¶42} "With respect to the claim for a constructive trust by the Plaintiff against the Attorney fees received by Defendants Shifflet and Washburn, Ohio has not specifically dealt with this type of situation in its Code of Professional Responsibility. It is clear and

obvious to this Court that an inherent injustice would result if the Howletts are required to pay the additional $44,665.90 in attorney fees, especially if they were not fully informed by the new Attorneys, Shifflet and Washburn, that they would have that obligation, dependent upon the amount determined by a Court on a quantum meruit basis, if they could not agree otherwise. In this case, not only does it appear that the Howletts were not informed of the potential obligation that they would have to also pay the Plaintiff, but they were informed by Attorney Shifflet that he would take care of the obligation to the Plaintiff. Therefore, the Court overrules the motion to dismiss the constructive trust and in fact finds by clear and convincing evidence that a constructive trust exists in this situation as a necessary remedy for the reasons set forth above since the Defendants Shifflet and Estate of Washburn hold the legal right to property which they ought not, in equity and good conscience, to hold and enjoy fully since it is against the principles of equity that the property be retained by the Defendants Shifflet and Estate of Washburn, even though the property was acquired without fraud. Therefore, it is the decision of this Court that the judgment rendered in favor of the Plaintiff against the Defendants Howletts shall also include the Defendants Shifflet and Estate of Washburn as judgment debtors with joint and several liability to all the amount of $44,665.90." (Emphasis added).

{¶43} Upon review, the trial court did not err in imposing the constructive trust, as the trial court specifically found appellants wrongly held title to property despite the absence of fraud. As discussed above, the imposition of the constructive trust was proper.

{¶44} Appellants further argue the trial court erred in finding a constructive existed as to appellant Washburn.

{¶45} Appellant Washburn received $41,985.95 of the legal fees generated in the underlying case. Therefore, there was relevant, competent and credible evidence to support the judgment. Further, we note appellants failed to raise the issue at trial, and issues not raised in the lower court and not there tried and which are completely inconsistent with and contrary to the theory upon which appellants proceeded below cannot be raised for the first time on review. *Republic Steel Corp. v. Cuyahoga Cty. Bd. Of Revision* (1963), 175 Ohio St. 179.

{¶46} The third and fourth assignments of error are overruled.

V

{¶47} In the fifth assignment of error, appellants argue the trial court erred to the prejudice of appellant Washburn in failing to dismiss the appellant on the basis a proper claim pursuant to R.C. 2117.06 was not made.

{¶48} Subsequent to appellant Washburn's death, his attorney filed a Notice of Suggestion of Death with the trial court. Appellee then filed a Motion to Substitute Party, seeking to substitute The Estate of Dean Washburn, by Susan Washburn, Executrix of the Estate of Dean Washburn, as a party defendant. The motion was served upon counsel of record for Dean Washburn and upon Susan Washburn. The trial court granted the motion, and the order and entry granting the motion indicates a copy was sent to both counsel for Washburn and the Executrix, Susan Washburn.

{¶49} R.C. 2117.06 states:

{¶50} "(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due,

secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

{¶51} "(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

{¶52} "(a) To the executor or administrator in a writing;"

{¶53} Upon review, we find appellants presentation of the motion to substitute party and the Executrix's notice of the trial court's judgment granting the same, sufficiently complied with the requirements of R.C. 2117.06. See, *Burwell v. Maynard* (1970) 21 Ohio St.2d 108; *Caldwell v. Brown* (1996), 109 Ohio App.3d 609. The trial was pending at the time of death, and both counsel and the Executrix had notice of the claim.

{¶54} The fifth assignment of error is overruled.

VI

{¶55} In the sixth assignment of error, appellants assert the trial court erred to the prejudice of appellants in granting appellee's motion for the pleadings to conform to the evidence in all respects consistent with the trial court's November 6, 2003 Judgment Entry.

During trial, at the conclusion of appellee's case, counsel for appellee moved the court to conform the pleadings to the evidence pursuant to Civ. R. 15(B). The trial court took the motion under advisement, and later granted the motion in its November 6, 2003 Judgment Entry.

{¶56} We note the standard of review for the amendment of the pleadings at trial is whether the trial court committed a "gross abuse" by allowing the amendment. *Flynn v. Sharon Steel Corp.* (1943), 142 Ohio St.145.

{¶57} Civ. R. 15 states:

{¶58} **“(B) Amendments to conform to the evidence**

{¶59} “When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.”

{¶60} The Staff Notes to the rule indicate amendment under Rule 15 is treated on a broad functional basis rather than on a narrow conceptual basis. Further, the Ohio Supreme Court has held:

{¶61} “The rule expresses a liberal policy toward the allowance of amendments. *Burton v. Middletown* (1982), 4 Ohio App.3d 114, 120, 446 N.E.2d 793. See, also, *Deakyne v. Commrs. of Lewes* (C.A.3, 1969), 416 F.2d 290, 298; *Robbins v. Jordan* (C.A.D.C.1950), 181 F.2d 793, 794, interpreting Fed.R.Civ.P. 15(b). [FN1] As one court has noted, "Rule 15 was promulgated to provide the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties." *Hardin v. Manitowoc-Forsythe Corp.* (C.A.10, 1982), 691 F.2d 449, 456.” *Hall v. Bunn* (1984), 11 Ohio St.3d 118.

{¶62} The claims were tried by implied consent of the parties, and appellants have not demonstrated a gross abuse or prejudice resulting from the trial court's granting the motion. Therefore, we find the trial court did not abuse its discretion in granting appellee's Civ. R. 15 motion, and the assignment of error is overruled.

VII

{¶63} In the seventh assignment of error, appellants argue the trial court erred in finding appellee's failure to turn over the personal injury file of the Howletts to appellants when discharged and appellee's failure to withdraw from the case when discharged were not factors in determining quantum meruit fees.

{¶64} Appellants maintain the failure to turn over the file caused unnecessary duplication and made appellee's efforts in the underlying case valueless to appellants. Further, they claim, when the file was turned over, it was of no use due to the delay. Appellants argue this should have been taken into account in assessing appellee's claim.

{¶65} The trial court did not make a specific finding appellee failed to timely withdraw or turn over the file. However, the trial court did find:

{¶66} "8. On March 13, 1995, the Plaintiff met with Attorney Shifflet and provided Attorney Shifflet with copies of the pleadings, offered to provide him with the accident report and photographs and further updated Attorney Shifflet on the status of settlement negotiations. On March 16, 1995, a letter (signed by Craig Howlett) was sent to the Plaintiff authorizing the Plaintiff to release the entire case file to Attorney Shifflet. Thereafter, on April 10, 1995, the Plaintiff's secretary, Jan Carlisle, delivered a package to Attorney Shifflet's office which purportedly included copies of all medical/hospital records, bills, photographs and reports according to the Plaintiff and Jan Carlisle..."

{¶67} Accordingly, we must assume the trial court considered the events as factors. All of the evidence cited by appellants was before the trial court, and there was competent, credible evidence upon which the trial court based its judgment. There was ample evidence Harraman did turn over the file, Shifflet re-ordered all the documents in issue, and Harraman's withdrawal from the case did not prejudice the Howletts.

{¶68} Accordingly, the assignment of error is overruled.

VIII

{¶69} Appellant's eighth assignment of error maintains the trial court erred in finding appellee proved he was entitled to recover $44,665.90 for legal fees rendered.

{¶70} As noted in *Reid,* supra:

{¶71} "A trial court called upon to determine the reasonable value of a discharged contingent-fee attorney's services in *quantum meruit* should consider the totality of the circumstances involved in the situation. The number of hours worked by the attorney before the discharge is only one factor to be considered. Additional relevant considerations include the recovery sought, the skill demanded, the results obtained, and the attorney-client relationship itself. See *Rosenberg, supra,* 409 So.2d at 1022. Other factors to be considered will vary, depending on the facts of each case. As *Fox,* 44 Ohio St.3d at 71, 541 N.E.2d at 449-450, mentioned, the Code of Professional Responsibility, DR 2-106, gives guidelines for determining the reasonableness of attorney fees. Because the factors to be considered are based on the equities of the situation, those factors, as well as the ultimate amount of *quantum meruit* recovery by a discharged attorney, are matters to be resolved by the trial court within the exercise of its discretion."

{¶72} Further DR 2-106 provides:

{¶73} "(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

{¶74} "(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

{¶75} "(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

{¶76} "(3) The fee customarily charged in the locality for similar legal services.

{¶77} "(4) The amount involved and the results obtained.

{¶78} "(5) The time limitations imposed by the client or by the circumstances.

{¶79} "(6) The nature and length of the professional relationship with the client.

{¶80} "(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

{¶81} "(8) Whether the fee is fixed or contingent."

{¶82} The trial court's November 6, 2003 Judgment Entry specifically finds:

{¶83} "3. Attorney Brent Harraman did perform legal services for the Howletts in an attempt to settle the claims of the Howletts, which services consisted of gathering damages information, evaluating the case and negotiating with Melvin Hissong's insurance company through its representative... The Plaintiff was successful in obtaining settlement proposals which were set forth in a letter dated January 24, 1995 from Norman J. Egnor as follows: (1) $153,283.15 cash at the time of settlement, plus $1,000 per month for ten years certain and for life thereafter. The total cost to the insurance company was to be

$305,000; and (2) $205,000 at the time of settlement, plus $659.12 per month for 10 years certain and for life thereafter. The total cost to the insurance company was also to be $305,000...

{¶84} "4. In order to preserve the claim of the Howletts, the Plaintiff filed a lawsuit on their behalf on October 18, 1994, but continued to negotiate with the insurance company representatives as indicated above into February of 1995.

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{¶85} "8. On March 13, 1995, the Plaintiff met with Attorney Shifflet and provided Attorney Shifflet with copies of the pleadings, offered to provide him with the accident report and photographs and further updated Attorney Shifflet on the status of settlement negotiations. On March 16, 1995, a letter (signed by Craig Howlett) was sent to the Plaintiff authorizing the Plaintiff to release the entire case file to Attorney Shifflet. Thereafter, on April 10, 1995, the Plaintiff's secretary, Jan Carlisle, delivered a package to Attorney Shifflet's office which purportedly included copies of all medical/hospital records, bills, photographs and reports according to the Plaintiff and Jan Carlisle..."

{¶86} In addition to the above, appellee testified at trial he estimated his time working all of the cases at 88 hours and he had a $90 hourly rate.

{¶87} We find the trial court had ample evidence to justify the award of damages to appellee. There was competent, relevant and credible evidence upon which the trial court could base its award.

{¶88} The assignment of error is overruled.

{¶89} The November 6, 2003 Judgment Entry of the Morrow County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

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JUDGES

IN THE COURT OF APPEALS FOR MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRENT M. HARRAMAN	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
CRAIG F. HOWLETT, ET AL.	:	
Defendant-Appellants	:	Case No. 03CA0023

For the reasons stated in our accompanying Memorandum-Opinion, the November 6, 2003 Judgment Entry of the Morrow County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES