

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TCF NATIONAL BANK FBO	:	JUDGES:
AEON FINANCIAL, LLC,	:	
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellant	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009CA00211
NANCY JO OLIVER, ET AL.	:	
	:	
	:	
Defendants-Appellees	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No. 2008CV04910

JUDGMENT: REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY: March 29, 2010

APPEARANCES:

For Plaintiff-Appellant:

MARK A. SCHWARTZ
DAVID T. BRADY
KIRK W. LIEDERBACH
Schwartz & Associates, LLP
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For Defendants-Appellees:

No Appearance

Delaney, J.

{¶1} Plaintiff-Appellant TCF National Bank FBO Aeon Financial, LLC appeals the July 29, 2009, Judgment Entry entered by the Stark County Court of Common Pleas, awarding it attorney fees in an amount less than sought.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant purchased a tax lien certificate from the Stark County Treasurer on a property located in Stark County, Ohio. Subsequently, Appellant filed a Complaint for Foreclosure, pursuant to R.C. 5721.30 to 5721.46. Appellant's counsel filed a motion for private attorney's fees with a supporting Affidavit attached. The motion for fees requested \$2,500.00 in attorney fees, to be taxed as a cost of the private foreclosure action, and requested a hearing.

{¶3} The motion for attorney fees was unopposed. Thereafter, the trial court issued an Order and Decree of Foreclosure awarding attorney fees in the amount of \$500 and listed the statutory factors it considered. The trial court did not recite its reason(s) or offer its analysis to explain its award in the entry.

{¶4} It is from this Judgment Entry Appellant appeals, raising as its sole assignment of error:

{¶5} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ARBITRARILY AWARDED AEON \$500 IN ATTORNEY FEES BY A JUDGMENT ENTERED WITHOUT SPECIFIC ANALYTICAL FINDINGS, WHEN THE UNDISPUTED EVIDENCE IN AEON'S UNOPPOSED MOTION FOR ATTORNEY FEES CLEARLY SHOWED ITS COUNSEL HAD EARNED, AND BEEN PAID, \$2,500.00, AND THE

FEEES AWARDED REPRESENTED ONLY 20% OF THE AMOUNT SOUGHT AND EARNED.”

{¶6} Generally, the starting point in determining the amount of attorney fees to award is the computation of the lodestar figure. *Blum v. Stenson* (1984), 465 U.S. 886, 888, 104 S.Ct. 1541, 1543-1544, 79 L.Ed.2d 891, 895-896; *Hensley v. Eckerhart* (1983), 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40. The lodestar is the number of hours expended multiplied by a reasonable hourly rate. *City of Burlington v. Dague* (1992), 505 U.S. 557, 559-561, 112 S.Ct. 2638, 2640, 120 L.Ed.2d 449, 454-456; *Blum*, 465 U.S. at 888; *Hensley*, 461 U.S. at 433. If the court deviates from the lodestar, it must provide a clear explanation. *Hensley*, 461 U.S. at 437.

{¶7} Once the trial court calculates the lodestar figure, the court may modify that calculation by application of the factors listed in DR 2-106(B), now, Ohio Rules of Professional Conduct 1.5. *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 145, 569 N.E.2d 464. These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the

discretion to determine which factors to apply, and in what manner that application will affect the initial calculation. *Id.*

{¶8} Moreover, a determination of the amount of such fees lies within the sound discretion of the trial court. Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court shall not interfere. *Bittner, supra* at 146. (Citation omitted). Nonetheless, when making a fee award, the trial court must state the basis for the fee determination; absent such a statement, it is not possible for an appellate court to conduct a meaningful review. *Bittner v. Tri-County Toyota, Inc. supra*, at 146.

{¶9} We are unable to determine from the Judgment Entry how the trial court arrived at the dollar amount awarded. The trial court failed to state the specific basis for its reduction of the lodestar amount. Absent such a statement, it is not possible for this Court to conduct a meaningful review and to determine what factors the court considered or the weight, if any, it placed on those factors. “[T]he trial court must state the basis for the fee determination.” *Bittner, supra*, at 146.

{¶10} Accordingly, we reverse the attorney fee award and remand the matter to the trial court for redetermination consistent with the Supreme Court's instructions in *Bittner v. Tri-County Toyota, Inc., supra*.

{¶11} Appellant's sole assignment of error is sustained.

By: Delaney, J.

Wise, P.J. and

Edwards, J. concur

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

[Cite as *TCF Natl. Bank v. Oliver*, 2010-Ohio-1458.]

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

TCF NATIONAL BANK FBO	:	
ACON FINANCIAL, LLC,	:	
Plaintiff-Appellant	:	
	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
NANCY JO OLIVER, ET AL.	:	
.	:	
Defendant-Appellees	:	Case No. 2009CA00211
	:	

For the reason set forth in our accompanying Opinion, the judgment of the Stark County Court of Common Pleas is reversed and the case remanded to that court for further proceedings in accordance with our Opinion and the law. Costs waived.

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS