

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Michael Fincher

Court of Appeals No. L-10-1330

Appellant

Trial Court No. CI0201004071

v.

Jerome Phillips, Esq.

DECISION AND JUDGMENT

Appellee

Decided: March 4, 2011

* * * * *

Michael Fincher, for appellant, pro se.

James E. Brazeau and Jason M. Van Dam, for appellee.

* * * * *

OSOWIK, P.J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which granted summary judgment to appellee in appellant's lawsuit for legal malpractice. For the reasons set forth below, we affirm the judgment of the trial court.

{¶2} Appellant, Michael Fincher, sets forth the following assignment of error:

{¶3} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN GRANTING SUMMARY JUDGMENT FOR THE APPELLEE WHEN IT FAILED TO RULE ON THE ISSUE OF EXCESSIVE LEGAL FEES WHICH IN TURN DEMONSTRATED A GENUINE ISSUE OF MATERIAL FACT WHICH DISPUTE SHOULD HAVE BEEN BROUGHT TO A JURY."

{¶4} The following undisputed facts are relevant to the issue raised on appeal. On March 16, 2009, appellant sold one quarter of a pound of marijuana during a controlled buy of illegal drugs in Bowling Green, Ohio. Accordingly, the following day a search warrant was executed on appellant's house. The police recovered an enormous quantity of drugs during the search. They discovered 940 pounds of marijuana in appellant's garage. Appellant was subsequently indicted on complicity to trafficking in marijuana, a fifth-degree felony, trafficking in marijuana, a second-degree felony, possession of marijuana, a second-degree felony, and engaging in a pattern of corrupt activity, a first-degree felony.

{¶5} On April 4, 2009, appellant met with appellee to discuss the charges against him and to seek his representation in his defense. Appellee, an established and experienced criminal defense lawyer, informed appellant that a \$15,000 retainer would be required to be able to fully and properly defend him. Appellant agreed and paid the retainer.

{¶6} Following appellant's not guilty plea to all charges, appellee conducted his own investigation of the facts in the case, researched appellant's available defenses,

responded to and sought discovery, successfully moved to reschedule the trial date, and successfully moved to have appellant's personal property released. Appellee also negotiated a plea agreement with the state in which appellant would plead to a lesser offense in exchange for appellant's providing information about others involved in the drug trafficking. Appellant refused this deal.

{¶7} Appellee then negotiated an alternate plea agreement whereby appellant would plead guilty to complicity to trafficking in marijuana and possession of marijuana. In exchange, the remaining charges against appellant would be dismissed. Appellant voluntarily agreed to this deal.

{¶8} On July 28, 2009, appellee withdrew his not guilty plea and entered a guilty plea per the negotiated plea agreement. Appellant was sentenced to a total term of incarceration of eight years.

{¶9} On May 20, 2010, appellant filed a legal malpractice claim against appellee claiming negligent representation in his criminal suit. In support, appellant unilaterally alleged that he had been charged an excessive fee for appellee's representation. Appellee responded to appellant's complaint by filing a motion for summary judgment. In an affidavit in support of the motion, appellee provided an expert opinion that his representation had not breached the standard of care, and that the \$15,000 retainer was a reasonable fee that was based on his specialized knowledge, professional skill and judgment. Appellant filed a brief in opposition to the motion, but failed to furnish any

contrary expert testimony or other relevant evidence in support of his claim of improper fees.

{¶10} On October 6, 2010, the trial court granted appellee's motion for summary judgment. In its opinion, the court noted that allegations of the appellant were outside the ordinary knowledge of a lay person and required expert testimony. The court further noted appellee's expert testimony and appellant's failure to refute it.

{¶11} When reviewing a grant of summary judgment, this court will conduct its review de novo. *Doe v. Schaffer*, 90 Ohio St.3d 388, 390. Summary judgment will be granted where "there is no issue of material fact and * * * the moving party is entitled to judgment as a matter of law." Civ.R. 56(C); see, also, *State v. Tompkins* (1996), 75 Ohio St.3d 447, 448.

{¶12} In the present case, appellant asserts that appellee committed malpractice by charging him excessive legal fees. Generally expert testimony is required to establish a claim of legal malpractice unless the alleged breach "is within the ordinary knowledge and experience of laymen." *Bloom v. Dieckmann* (1984), 11 Ohio App.3d 202, 203. The determination of legal fees involves several factors including the time and labor required, the difficulty of the issues involved, and the requisite skill needed to provide the legal service. Prof.Cond.R. 1.5. This is not within the ordinary knowledge of laymen. Establishing malpractice for charging excessive fees clearly necessitates expert testimony.

{¶13} In his motion for summary judgment, appellee provided expert testimony that the \$15,000 retainer was reasonable. Appellant's brief in opposition provided no expert testimony or other evidence refuting this claim. Unopposed expert testimony is sufficient to determine that there is no genuine issue of material fact. See *Hoffman v. Davidson* (1987), 31 Ohio St.3d 60, 62. Accordingly, appellant failed to establish any legal grounds for his claim of legal malpractice. No genuine issue of material fact remained in dispute. As such, summary judgment was proper. Appellant's assignment of error is found not well-taken.

{¶14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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