[Cite as *Ohio State Univ. v. Alexander*, 2007-Ohio-264.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87983

THE OHIO STATE UNIVERSITY

PLAINTIFF-APPELLANT

vs.

DWIGHT E. ALEXANDER

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Euclid Municipal Court
Case No. 05-CVF-00809

BEFORE: Celebrezze, A.J., Rocco, J., and Dyke, J.

RELEASED: January 25, 2007

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., A.J.:

{¶ 1} Appellant, The Ohio State University, appeals the trial court's decision, which denied its request for attorney's fees resulting from a legal action against appellee, Dwight Alexander. After a thorough review of the arguments and for the reasons set forth below, we affirm.

{¶ 2} On April 8, 2005, The Ohio State University ("OSU") filed a complaint in the Euclid Municipal Court alleging that Alexander had defaulted on student loan payments owed to the university in the amount of $1,438.68. OSU also argued that Alexander owed an additional $959.12 in attorney's fees and collection costs incurred as a result of the litigation.

{¶ 3} The student loans at issue were accrued between the years of 1975 and 1978 when Alexander was a student at OSU. In consideration of the student loans he received, Alexander executed four separate promissory notes in which he agreed

to repay the loans advanced to him. OSU's complaint argued that when Alexander executed the promissory notes, he was bound by the language of the notes, which required that he pay attorney's fees and related costs in the event of a default action.

{¶ 4} On May 13, 2005, Alexander filed an answer to the complaint alleging that OSU had accepted $2,200 as payment in full of the debt in 1999. On December 16, 2005, the matter proceeded before a magistrate. After each party had an opportunity to present evidence, the magistrate issued a decision in favor of OSU, awarding it a total of $1,178.68 for the debt owed by Alexander. It did not award attorney's fees or costs, finding that OSU failed to provide proof of how the costs and fees were incurred.

{¶ 5} OSU appeals and asserts one assignment of error for our review:

{¶ 6} "I. The trial court erred by denying the appellant's request for attorney's fees and collection."

{¶ 7} Appellant argues that the trial court abused its discretion when it denied its request for attorney's fees. More specifically, it asserts that the promissory note signed by appellee mandated that attorney's fees and additional costs be awarded in the event of a default action, thus the trial court's decision was in error.

{¶ 8} To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 50 OBR 481, 450 N.E.2d 1140.

{¶ 9} "The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations." *State v Jenkins* (1984), 15 Ohio St.3d 164, 222, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385. In order to have an abuse of that choice, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias. Id.

{¶ 10} We do not agree that the trial court abused its discretion in failing to award attorney's fees and costs. Although appellant argued that the language of the promissory notes entitled it to attorney's fees, it failed to provide any proof of how those fees were accrued. With respect to the issue of attorney's fees, the magistrate's decision held:

{¶ 11} "Mr. McNutt of The Ohio State University testified as to the account history, profile and balance. He did not, however, testify as to how the agency and in-house fees were calculated. The language of the promissory note signed by defendant indicated that he promises to pay all attorney's fees and other costs and charges for the collection of any amount not paid when due according to the terms of the account.

{¶ 12} "No evidence was presented to this Court as to attorney's fees and costs of collection. This court was merely presented one piece of paper listing an

agency fee and an in-house fee. Thus, Plaintiff has failed to sustain its burden of proof with regard to any claim for attorney's fees and collections costs."

{¶ 13} In order to succeed on a claim for attorney's fees, the movant must show how the requested fees were incurred. This burden of proof must be met regardless of an agreement to pay attorney's fees and other costs. This court has previously held, in *Brandon/Wiant Co. v. Teamor* (1999), 135 Ohio App.3d 417, 422, that "as a general rule, the reasonableness of the value of attorney's fees ordinarily must be proven by competent, credible evidence and is not a proper matter for judicial notice."

{¶ 14} The facts of this case clearly indicate that appellant did not provide competent, credible evidence supporting its claim for attorney's fees. At trial appellant merely provided the amount of attorney's fees and costs, yet failed to present any evidence of how those fees were calculated. Because the trial court was not provided with sufficient proof, it had no choice but to deny appellant's claim on the basis that it did not meet its burden.

{¶ 15} The trial court's actions were not unreasonable, arbitrary, or unconscionable when it denied appellant's claim for attorney's fees. Accordingly, the trial court did not abuse its discretion, and appellant's assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
ANN DYKE, J., CONCUR

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