[Cite as *Koblentz & Koblentz v. Summers*, 2011-Ohio-1064.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94806

KOBLENTZ & KOBLENTZ

PLAINTIFF-APPELLEE

vs.

WILLIAM SUMMERS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-664324

BEFORE: Blackmon, P.J., Stewart, J., and Cooney, J.

RELEASED AND JOURNALIZED: March 10, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant William Summers appeals the trial court's decision that he owed appellee Koblentz & Koblentz $3,231.73 for legal services rendered. He assigns the following two errors for our review:

> **"I. The trial court's finding for the plaintiff was in error. There was not sufficient evidence to support such a finding and this finding was against the manifest weight of the evidence, as there was no evidence concerning over $10,000 of the plaintiff's billable hours, and thus there could be no finding that the number of hours spent representing the defendant was reasonable, as the law requires."**
>
> **"II. The trial court erred in denying the defendant's motion to join Summers & Vargas Co., L.P.A. as a defendant pursuant to Civ.R. 20(A) and 21, given that all payments made to the plaintiff were made by Summers & Vargas Co., L.P.A., and while it could not have been represented in a disciplinary proceeding by the plaintiff, [it] clearly had an interest in maintaining the defendant's license to practice law."**

{¶ 2} Having reviewed the record and relevant law, we affirm the trial court's decision. The apposite facts follow.

Facts

{¶ 3} Summers retained Koblentz & Koblentz to defend him regarding several separate grievances that were filed against him from 2001 to 2004.[1] Koblentz & Koblentz represented Summers on an hourly basis; invoices were regularly sent to Summers and were periodically paid. As of January 2006, Summers ceased making payments. On June 12, 2008, Koblentz & Koblentz filed a complaint for the amount due of $9,350.05, plus interest.

{¶ 4} A bench trial was conducted on the matter, and invoices from Koblentz & Koblentz dating back to June 1, 2001, were admitted into evidence. Most of the invoices did not have an attached itemization of the work performed. As Richard Koblentz explained, itemizations were done, but it was not the practice of the firm to include the itemizations with the invoices until 2004. He stated that Summers never complained about the amount of the bills and, if Summers had done so, Koblentz would have discussed the work performed with him then. Summers admitted that he never objected

[1]Koblentz & Koblentz contends this representation was an extension of its representation of Summers in the 1990s; however, we are only concerned with the charges incurred from 2001 to 2004.

to the amount set forth in the invoices, but felt they were inflated because his own firm did most of the work.

{¶ 5} Lori Brown, Chief Assistant to the Disciplinary Counsel, testified to the various grievances filed against Summers from 2001 to 2004. She recalled interacting with Richard Koblentz on the matters and stated that his involvement was extensive on the cases. For various reasons, none of the grievances resulted in a formal complaint being filed.

{¶ 6} Based on the evidence, the trial court concluded Summers owed Koblentz & Koblentz $3,231.73. The court concluded the itemized statements totaled $9,524.91 and that the unitemized work, based on the evidence presented, amounted to $4,391.32. Thus, the court concluded the total amount due for services rendered totaled $13,916.23, of which the evidence indicated Summers paid $10,684.50, leaving a balance of $3,231.73.

Insufficient Evidence and Manifest Weight of the Evidence

{¶ 7} In his first assigned error, Summers contends the evidence did not support the trial court's conclusion that he owed Koblentz & Koblentz $3,231.73 because there was no evidence the hours expended were reasonable.

{¶ 8} The instant case was not a summary judgment case; thus, our standard of review is different from cases relied upon by Summers regarding his argument that the evidence did not support the trial court's conclusion that $3,231.73 is owed by Summers.

In *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578, the Ohio Supreme Court stated that "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." When reviewing the sufficiency of the evidence in civil cases, the question is whether, after viewing the evidence in a light most favorable to the prevailing party, the judgment is supported by competent, credible evidence. *Ruffo v. Shaddix* (June 10, 1999), Cuyahoga App. No. 74344. Put more simply, the standard is "whether the verdict [is] one which could be reasonably reached from the evidence." Id., citing *Hartford Cas. Ins. Co. v. Easley* (1993), 90 Ohio App.3d 525, 630 N.E.2d 6. When engaging in this analysis, an appellate court must remember that the weight and credibility of the evidence are better determined by the trier of fact. Id.

{¶ 9} A trial court must determine whether attorney fees are reasonable based upon the actual value of the necessary services performed by the attorney, and evidence must exist in support of the court's determination. *In re Hinko* (1992), 84 Ohio App.3d 89, 95, 616 N.E.2d 515. In making that determination, some of the factors to be considered include "1) time and labor, novelty of issues raised, and necessary skill to pursue the course of action; 2) customary fees in the locality for similar legal services; 3) result obtained; and 4) experience, reputation and ability of counsel." *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 35, 463 N.E.2d 98; see, also, *Papadelis v. Charter One Bank*,

F.S.B., Cuyahoga App. No. 84581, 2005-Ohio-288. A court should then calculate the number of hours reasonably expended and multiply that sum by a reasonable hourly fee. See *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 569 N.E.2d 464.

{¶ 10} The evidence in the instant case showed that the total of the itemized invoices amounted to $9,524.91; based on the documents and testimony presented, the court found the fees not itemized totaled $4,391.42. Thus, the court concluded that $13,916.23 was reasonably charged to Summers for legal services performed. There was sufficient evidence presented supporting the court's conclusion.

{¶ 11} Koblentz testified to the reasonableness of his fees and, in fact, believed the fees were less than he earned because he never charged Summers for the increase in his rates. He also testified that the bulk of his practice concerned grievances and malpractice; therefore, he was well experienced in this area of law. Koblentz also testified that the hours he expended were reasonable given the amount of documents he had to review in each grievance. Lori Brown, from the Disciplinary Counsel's office, also testified that Koblentz's participation in resolving the grievances was extensive; she also stated that she had worked with Richard Koblentz on many other grievances for other people, supporting his claim of having expertise in this area of law.

{¶ 12} While Summers and his wife testified that they did most of the work on the grievances, we must presume that the findings of the trier of fact are correct, because the trier of fact is best able to observe the witness and uses those observations in weighing

the credibility of witness testimony. See *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81, 461 N.E.2d 1273. The court obviously believed Richard Koblentz's testimony that he worked extensively on the grievances, but must have taken the reasonableness of the fees into account as it only awarded Koblentz & Koblentz $3,231.73 of the $9,350.05 the firm sought to recover.

{¶ 13} Expert testimony was not presented to support the reasonableness of the fees Koblentz charged. However, when, like in the instant case, the client did not make any attempt to contact the attorney during the tenure of the attorney-client relationship to express dissatisfaction with the legal services rendered or the amount being charged for those services, and the attorney kept the client apprised of the status of the client's legal matter, no expert testimony regarding the reasonableness of charged fees is required. See *Hermann, Cahn & Schneider v. Viny* (1987), 42 Ohio App.3d 132, 537 N.E.2d 236; *Reminger & Reminger Co., L.P.A. v. Siegel Co., L.P.A.* (Mar. 1, 2001), Cuyahoga App. No. 77712; *Stafford & Assoc. v. Skinner* (Oct. 31, 1996), Cuyahoga App. No. 68597; *Ross v. Burns* (Mar. 10, 1997), 5th Dist. No. 1996 CA00190. In such cases, the attorney can testify to the reasonableness of his own fees.

{¶ 14} Richard Koblentz testified that Summers never objected to the fees until the filing of the suit. He stated that if Summers had objected to the bills, he would have reviewed the invoices with him, but that asking him at trial to remember everything he did on a case nine years earlier, was difficult to do. We agree, in these circumstances, where

some of the bills originated many years previously, it was difficult to reconstruct what was performed as far as the nonitemized bills. However, the court could rely on the documents produced from that time, along with Koblentz's and Lori Brown's testimony, to determine what was reasonable compensation.

{¶ 15} The court's finding that Koblentz & Koblentz was paid $10,684.50 is also supported by the evidence because this is the total amount of the checks presented at the trial. Thus, subtracting the $10,684.50 from $13,916.23 in fees leaves a balance of $3,231.73. We conclude, construing the evidence in Koblentz & Koblentz's favor as we are required to due, sufficient competent, credible evidence supports the trial court's award.[2] Accordingly, Summer's first assigned error is overruled.

Failure to Join the Law Firm

{¶ 16} In his second assigned error, Summers argues the trial court erred by refusing to add Summers & Vargas as a defendant or to allow the firm to replace him as the proper defendant.

{¶ 17} The decision to add or drop a party is within the discretion of the trial court. *N. Side Bank & Trust Co. v. Performance Home Buyers, L.L.C.*, 181 Ohio App.3d 344, 2009-Ohio-1277, 908 N.E.2d 1044; *Darby v. A-Best Products, Co.*, 102 Ohio St.3d 410,

[2]We note that Koblentz & Koblentz attempts to argue that the $3,231.73 is not reasonable compensation because it was entitled to more. However, Koblentz & Koblentz untimely filed its cross-appeal, which has been dismissed. Therefore, we cannot consider the argument that the fees were not adequate compensation and have dismissed Koblentz's additional assigned error on this point.

2004-Ohio-3720, 811 N.E.2d 1117; *Bill Gates Custom Towing, Inc. v. Branch Motor Express Co.* (1981), 1 Ohio App.3d 149, 150, 440 N.E.2d 61; *Picciuto v. Lucas Cty. Bd. of Commrs.* (1990), 69 Ohio App.3d 789, 797, 591 N.E.2d 1287. "'Abuse of discretion' [has been defined as an] attitude [that] is unreasonable, arbitrary, or unconscionable." *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, 482 N.E.2d 1248, quoting *Steiner v. Custer* (1940), 137 Ohio St. 448, 31 N.E.2d 855, paragraph two of the syllabus. "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Ent., Inc. v. River Place Community Redevelopment* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

{¶ 18} The trial court did not abuse its discretion by refusing to grant Summers's motions. The evidence indicated that Koblentz & Koblentz was acting on behalf of William Summers, individually. All invoices were sent in his name, not the firm's. In fact, William Summers is the one that chose Richard Koblentz to represent him. Thus, the fact the firm paid Summers's bills, does not make it liable for the amount Koblentz & Koblentz is seeking to collect related to the grievances against Summers. Summers's second assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its 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.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

MELODY J. STEWART, J., and
COLLEEN CONWAY COONEY, J., CONCUR