

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

Kevin J. Kenney & Associates, Ltd.

Court of Appeals No. L-14-1146

Appellee

Trial Court No. CI0201205733

v.

Dennis Smith

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2015

* * * * *

James Bingle and Christopher Hensien, for appellee.

Lorin J. Zaner and Jill M. Varnes-Richardson, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Dennis Smith, appeals the judgment of the Lucas County Court of Common Pleas, granting summary judgment in favor of appellee, Kevin J. Kenney & Associates., Ltd., on its claim against appellant for unpaid legal services. We affirm.

A. Facts and Procedural Background

{¶ 2} On September 30, 2008, Smith hired appellee, a law firm, to represent him in various legal matters. Appellee proceeded to represent Smith from 2008 until 2012. During that time, appellee mailed monthly invoices to Smith, detailing the legal services that were provided and the cost for those services. In response to the invoices, Smith made periodic payments toward the legal fees. However, Smith ceased making such payments in the spring of 2012. At the time of his last payment, Smith's legal fees exceeded \$90,000. Consequently, on October 5, 2012, appellee filed suit in an effort to recover the unpaid legal fees.

{¶ 3} In its complaint, appellee alleged that Smith had previously promised to pay any amounts that were due and owing. Appellee further alleged that the parties entered into a contract in 2008 and that Smith breached the contract by failing to pay his legal fees. Ultimately, appellee asserted that it was entitled to recover unpaid legal fees in the amount of \$92,205.59, plus interest, costs, and attorney's fees. A client ledger report summarizing charges totaling \$92,205.59 was attached to the complaint as exhibit 1. Appellee stated several theories upon which it relied for the recovery of the unpaid legal fees, including breach of contract, account, unjust enrichment, and quantum meruit.

{¶ 4} On January 3, 2014, following extensive motion practice, appellee filed its motion for summary judgment. Along with its motion, appellee attached a report detailing Smith's account history over the course of the representation. In addition,

appellee attached the transcript of Smith's deposition, along with affidavits from appellee's owner, Kevin Kenney, and appellee's office manager, Judy Wenger.

{¶ 5} In its motion for summary judgment, appellee argued that Smith's repeated requests for legal services resulted in the formation of a contract, which was breached upon Smith's failure to remit payment for appellee's services. Regarding its claims for unjust enrichment and quantum meruit, appellee contended that it would be inequitable to allow Smith to receive four years of legal services without requiring Smith to pay for such services. Further, appellee argued that the fees charged were reasonable.

{¶ 6} To support its assertion that the fees were reasonable, appellee cited a prior decision of the court entitled *Smith v. Bauknecht, et al.*, Lucas C.P. No. CI08-7500 (Apr. 1, 2011). In that case, Smith was awarded attorney's fees in the amount of \$41,357. In its decision, the trial court found that "when a reasonable number of hours is multiplied by the reasonable rate the total is \$80,839.40." Notwithstanding its finding with respect to the reasonableness of the hourly rate and the amount of time spent on the matter, the court reduced the award of attorney's fees upon consideration of the factors listed in the Rules of Professional Conduct and the results obtained through the representation, noting that Smith was only partially successful in his claims against the defendants.

{¶ 7} On February 3, 2014, Smith filed his response to appellee's motion for summary judgment. In his memorandum, Smith argued that no contract, whether express or implied, existed between the parties as alleged by appellee. Referring to his deposition

testimony, Smith asserted that there was no meeting of the minds between the parties. Smith also contended that he never agreed on appellee's hourly rate. Instead, Smith argued that the parties understood that appellee would receive payment for services rendered "from the proceeds of the cases in question." As to appellee's claim under quantum meruit, Smith argued that appellee presented insufficient evidence concerning the amount of unpaid legal fees. Notably, in his response to appellee's motion for summary judgment, Smith failed to address the applicability of the trial court's determination of the reasonableness of appellee's legal fees in the prior action.

{¶ 8} On April 30, 2014, the trial court issued its decision on appellee's motion for summary judgment. In its decision, the trial court found that genuine issues of material fact existed regarding the formation of a contract between the parties. Thus, the court denied appellee's motion for summary judgment on its breach of contract and account claims. Turning to the evidence submitted in support of appellee's quantum meruit claim, the trial court found that the affidavits, client ledger, and Smith's deposition transcript established the existence of an attorney-client relationship. However, the court found that appellee failed to submit sufficient evidence to allow it to determine the reasonableness of the fees charged. Notwithstanding appellee's failure to submit such evidence, the trial court found that partial summary judgment in the amount of \$80,839.40 was appropriate since a determination as to the reasonableness of such fees had already been made pursuant to R.C. 1345.09 in *Bauknecht*. Thus, the court awarded

partial summary judgment to appellee and continued the matter for a hearing on the issue of the additional damages sought by appellee.¹ Smith's timely appeal followed.

B. Assignment of Error

{¶ 9} On appeal, Smith raises the following assignment of error:

1. The Appellant states that the trial court granted Summary Judgment to the Plaintiff/Appellee in the amount of \$80,839.40 in error.

II. Analysis

{¶ 10} In his sole assignment of error, Smith argues that the trial court erred in granting appellee's motion for summary judgment regarding its claim under quantum meruit.

{¶ 11} Before addressing the merits of Smith's argument, we must first set forth the appropriate standard of review, as the parties have incorrectly stated that we apply an abuse of discretion standard. Since this matter comes before our court following the trial court's grant of summary judgment, we review the court's decision de novo, applying the same standard as the trial court. *Jensen v. AdChoice, Inc.*, 6th Dist. Lucas No. L-14-1014, 2014-Ohio-5590, ¶ 11, citing *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989); *see also Lillie & Holderman v. Dimora*, 8th Dist. Cuyahoga No. 100989, 2015-Ohio-301, ¶ 9 (applying de novo review to trial court's summary judgment decision finding that law firm's fees were reasonable). Under Civ.R.

¹ Appellee has failed to seek any further damages from Smith.

56(C), summary judgment is appropriate where (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and viewing the evidence in the light most favorable to the non-moving party, that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 12} Here, Smith contends that the trial court erred in granting summary judgment to appellee. Specifically, Smith argues that the trial court failed to engage in the proper analysis under appellee's quantum meruit claim when it merely relied upon its prior findings in *Bauknecht* in order to support its award of attorney's fees in the case sub judice.

{¶ 13} Notably, the trial court was presented with the same evidence in the case sub judice as that provided to the court in *Bauknecht*. Consequently, the trial court in the case at bar relied upon its prior reasonableness determination from *Bauknecht* in arriving at its determination that legal fees in the amount of \$80,839.40 were reasonable. Appellant contends that the analysis involved in *Bauknecht* is different from the relevant analysis in cases such as the one at bar where the court is tasked with determining the reasonableness of unpaid legal fees in an action brought by a discharged attorney under the theory of quantum meruit. Having examined the relevant case law, we find appellant's argument unconvincing.

{¶ 14} We initially note that Smith does not take issue with the trial court’s determination that an attorney-client relationship existed in this case. Moreover, the record clearly reveals that appellee, prior to being discharged, billed Smith for legal services that remain unpaid. In such circumstances, the Supreme Court of Ohio has previously found that the discharged attorney is entitled to recover the reasonable value of the legal services provided to the client prior to discharge on the basis of quantum meruit. *Fox & Assocs. Co., L.P.A. v. Purdon*, 44 Ohio St.3d 69, 541 N.E.2d 448 (1989), syllabus.

{¶ 15} “The doctrine of quantum meruit is an equitable remedy giving ‘rise to obligations imposed by law, irrespective of the intentions of the parties, in order to prevent an injustice when one party retains a benefit from another’s labors.’” *Rust v. Harris Gordon*, 6th Dist. Lucas No. L-03-1091, 2004-Ohio-1636, ¶ 22, quoting *Pawlus v. Bartrug*, 109 Ohio App.3d 796, 800, 673 N.E.2d 188 (9th Dist.1996). When determining the reasonable value of a discharged attorney’s services, the trial court should consider the totality of the circumstances surrounding the situation. *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 629 N.E.2d 431 (1994), paragraph three of the syllabus. In so doing, the court should consider not only the number of hours worked by the attorney before the discharge, but also “the recovery sought, the skill demanded, the results obtained, and the attorney-client agreement itself.” *Id.* Further, the determination of reasonableness as to attorney’s fees in these actions requires consideration of Prof. Cond. R. 1.5(a), which states in relevant part:

The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent. *See Rust* at ¶ 24-32 (referencing the factors contained in DR 2-106(B), the predecessor to Prof. Cond. R. 1.5(a), when examining the reasonableness of attorney's fees).

{¶ 16} Having set forth the standard to be applied when evaluating claims under quantum meruit, we now turn to the relevant analysis used for claims for attorney's fees

to a prevailing party under R.C. 1345.09, as set forth in *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 569 N.E.2d 464 (1991). In *Bittner*, the Supreme Court of Ohio stated: “When awarding reasonable attorney fees pursuant to R.C. 1345.09(F)(2), the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR 2-106(B).” *Id.* at syllabus; *see also Yarber v. Cooper*, 61 Ohio App.3d 609, 615, 573 N.E.2d 713 (6th Dist.1988) (noting that reasonableness should be determined based upon consideration of the factors contained in DR. 2-106(B)); *Unick v. Pro-Cision, Inc.*, 7th Dist. Mahoning No. 09MA171, 2011-Ohio-1342, ¶ 30 (stating: “Once the requesting party has adequately proven an appropriate number of hours worked and the attorney’s reasonable hourly fee, the trial court may modify the baseline calculation by considering the factors listed in former DR 2–106(B), now found in Prof. Cond. R. 1.5 * * *.”).

{¶ 17} Examining the standard employed for claims under quantum meruit in light of the standard utilized for claims under R.C. 1345.09, we note that, under both theories, the trial court is required to consider the number of hours worked by the attorney before the discharge, the rate charged per hour, and the factors embodied in Prof. Cond. R. 1.5. *Rust, supra*, 6th Dist. Lucas No. L-03-1091, 2004-Ohio-1636, at ¶ 24-32. In light of the overlap between these analyses, we conclude that the trial court did not err in utilizing its prior determination of reasonableness in *Bauknecht*.

{¶ 18} Accordingly, appellant’s assignment of error is not well-taken.

III. Conclusion

{¶ 19} The judgment of the Lucas County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs 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

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, 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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