

ORIGINAL

IN THE SUPREME COURT OF OHIO

13-1891

RACHEL A. LEAGUE (fka COLLINS)
315 RENWOOD PL
SPRINGBORO OH 45066-1067

Case No. _____

Plaintiff/Appellee

Butler County Court of Appeals,
Twelfth Appellate District,
case no. CA2013-03-041

vs.

ROBERT M. COLLINS
6075 HAVENWOOD CT
HAMILTON OH 45011-7836

Butler County Common Pleas
Court, case no. DR2003-07-0827

Defendant/Appellant

DEFENDANT/APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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Judgment Entry and Opinion filed 09/03/2013

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II. TABLE OF AUTHORITIES

Statutes and Rules

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Ohio R. Evid. 703

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Ohio R. Civ. P. 11

Ohio R. Prof. Cond. 3.7

Cases

Bagnola v. Bagnola, 2004-Ohio-7286 (5th District)

Braglin v. Crock, 2005-Ohio-6935 (7th District)

Bray v. Bray, 2011-Ohio-861 (4th District)

Climaco, Seminatore, Delligatti & Hollenbaugh v. Carter, 100 Ohio App.3d 313, 653 N.E.2d 1245 (1995) (10th District)

DeHoff v. Veterinary Hosp. Operations of Cent. Ohio, 2003-Ohio-3334 (10th District)

Enyart v. Columbus Metro. Area Community Action Org., 115 Ohio App.3d 348, 685 N.E.2d 550 (1996) (10th District)

Falk v. Falk, 2009-Ohio-4973 (10th District)

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Hall v. Nazario, 2007-Ohio-6401 (9th District)

Hikmet v. Turkoglu, 2009-Ohio-6477 (10th District)

Hubbard v. Hubbard, 2009-Ohio-2194 (3rd District)

Jacobs v. Holston, 70 Ohio App.2d 55, 434 N.E.2d 738 (1980) (6th District)

Leopold v. Leopold, 2005-Ohio-214 (4th District)

Miller v. Lint, 62 Ohio St.2d 209, 404 N.E.2d 752 (1980)

Miller v. Miller, 2010-Ohio-1251 (9th District)

Rapp v. Pride, 2010-Ohio-3138 (12th District)

State v. Glenn, 2009-Ohio-6549 (12th District)

In re Verbeck's Estate, 173 Ohio St. 557, 184 N.E.2d 384 (1962)

III. THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

The Ohio Supreme Court has supreme rulemaking authority in the State of Ohio pursuant to Section 5(B), Article IV of the Ohio Constitution. Pursuant to that authority, the Ohio Supreme Court enacted the Ohio Rules of Evidence in 07/1980, modified periodically since then. Among those rules are Ohio R. Evid. 801, which defines "hearsay", Ohio R. Evid. 802, which prohibits the introduction of hearsay evidence except as otherwise provided by the Ohio Rules of Evidence, and Ohio R. Evid. 803(6), which allows for the admission of hearsay in the form of a properly-authenticated "business record". Also among those rules is Ohio R. Evid. 703, which requires that any expert testimony be based on the personal observation of the expert herself or upon consideration of facts already admitted into evidence.

As a result of the decision of the Twelfth District Court of Appeals in this action, Ohio R. Evid. 802 no longer prohibits the admission of "business records" – they are now admissible without the foundation required by Ohio R. Evid. 803(6), making Ohio R. Evid. 803(6) a nullity. This is now controlling authority in the eight (8) counties and twenty-some courts in those counties. This disparity between the treatment of the citizens residing in Ohio's other eighty (80) counties and those in the Twelfth District raises Due Process and Equal Protection concerns – concerns that the uniform and consistent application of this Court's rules in all courts in Ohio is intended to prevent.

IV. STATEMENT OF FACTS

Plaintiff/Appellee Rachel A. League (fka Collins) and Defendant/Appellant Robert M. Collins (hereinafter "Matt") were divorced through the Butler County Domestic Relations Court in 06/2005. They have two minor children.

Pursuant to the parties' last parenting order, Matt had the right to exercise parenting time with one son on his birthday in 02/2012. Pursuant to the last order of the trial court regarding claiming the children as dependents for tax purposes, Matt was entitled to claim the other son as a dependent for tax year 2011.

V. STATEMENT OF PROCEEDINGS

On 05/25/2012, Matt filed a contempt motion against Rachel for denying Matt parenting time with one son on his birthday, and for claiming the other son on her taxes for 2011 denying Matt the ability do so himself. On 06/18/2012, Rachel filed a motion to dismiss Matt's motion because the parties had previously agreed to mediate all disputes before returning to court, which Matt did not do before filing his contempt motion. Those motions came before the trial court's magistrate for hearing on 07/30/2012, and by Decision and Judgment filed on 07/31/2013 the magistrate dismissed Matt's motion. Thereafter, Matt filed an objection to that decision; the trial court judge eventually denied that objection and adopted the magistrate's decision.

As part of her motion to dismiss, Rachel also requested an award of attorney's fees. That issue came before the trial court magistrate for hearing on 09/19/2012. At that hearing, Rachel presented her own testimony that she had hired attorney Renee Crist to represent her in this proceeding, and that attorney Crist had given Rachel a bill for \$965.00. Rachel also

presented the expert testimony of attorney Kyra Ramey that attorney Crist's bill was reasonable for the work performed and in line with the charges of other attorneys in the community. Attorney Crist did not testify herself that the work she performed was reasonable and necessary to advance Rachel's claims, or that the bill she submitted was a record kept in the normal course of business that accurately reflected the work she performed.

When Rachel rested her case, Matt asked the magistrate to deny Rachel's motion. Matt argued that there was no properly admissible bill before the trial court on which to base an award of fees, and that there was no testimony from attorney Crist that she actually performed the work, all of which was reasonable and necessary for the advancement of Rachel's claims. The magistrate denied Matt's request, and by Decision and Judgment dated 10/22/2012 she awarded Rachel attorney's fees in the amount of \$965.00

On 11/05/2012, Matt filed an objection to the magistrate's Decision and Judgment. By Decision and Order filed 02/13/2013, the trial court judge denied Matt's objection and adopted the magistrate's decision.

Matt filed a timely appeal to the Twelfth District Court of Appeals. By Opinion and Judgment Entry filed 09/03/2013, the appellate court rejected Matt's appeal, despite finding that the fee bill was, in fact, not admissible under Ohio R. Evid. 803(6). The appellate court found that there was sufficient evidence, from Rachel's own testimony and that of the expert witness, to support the fee award. In his Motion for Reconsideration filed 09/13/2013, Matt noted that, under Ohio R. Evid 703, the expert witness's testimony must be based on facts that she herself personally observed or facts properly admitted into evidence, and that if the fee bill was not properly admissible, then the expert's testimony was also not admissible. Matt also noted that there were important discrepancies between two fee bills submitted by Rachel's

counsel – discrepancies that were important to the determination of the accuracy of the fee bill itself and the billing practices of Rachel's attorney, and that would have been the subject of cross-examination if Rachel's attorney had testified as required to lay the foundation for the admissibility of the fee bill under Ohio R. Evid. 803(6). Despite Matt's arguments, the appellate court denied Matt's Motion for Reconsideration by Entry filed 10/16/2013.

It is from this decision that Matt appeals.

VI. PROPOSITIONS OF LAW

PROPOSITION OF LAW 1: A trial court cannot admit into evidence an attorney's fee bill without the proper foundation under Ohio R. Evid. 803(6).

Ohio R. Evid. 801 defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ohio R. Evid. 802 prohibits the admission of hearsay. Ohio R. Evid. 803(6) permits the admission of hearsay in the form of "records of regularly conducted activity" – specifically "[a]... record... of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the... record..., all as shown by the testimony of the custodian or other qualified witness...."

In *State v. Glenn*, 2009-Ohio-6549 (12th District), this appellate court held:

In order to properly authenticate business records, a witness must "testify as to the regularity and reliability of the business activity involved in the creation of the record." *Hirtzinger* at 49. Firsthand knowledge of the transaction is not required by the witness providing the foundation; however "it must be demonstrated that the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation, maintenance and retrieval, that he can reasonably testify on the basis of this knowledge that the record is what it purports to be, and that it was made in the ordinary course of business consistent with the elements of Rule 803(6)." *State v. Vrona* (1988), 47 Ohio.App.3d 145, 148, quoting 1 Weissenberger's Ohio Evidence (1985) 75-76 Section 803.79. See, also, *Moore* at ¶18.

Glenn at ¶19.

At the fee hearing, Rachel did not present the testimony of either attorney Crist or any other representative of attorney Crist's firm attesting to the fact that the fee bill was a record of acts made at or near the time of those acts by a person with knowledge, kept in the course of regularly conducted business activity. As a result, attorney Crist's fee bill was inadmissible as evidence, and the trial court erred as a matter of law in admitting it over Matt's objection. (This

is a critical issue, because attorney Crist did not herself testify that she had done \$965.00 worth of work; in the absence of this document, then, there would have been no evidence before the trial court that precisely \$965.00 worth of legal work was done.)

This Court has held that the only reasonable alternative to the uniform and consistent application of the rules is to abandon them. *Miller v. Lint*, 62 Ohio St.2d 209, 404 N.E.2d 752 (1980). The lower court's holding sets the precedent that Ohio R. Evid. 802 and 803(6) may or may not continue to apply in that district, and creates confusion for parties and counsel practicing in that district: Do lawyers ever need to testify in support of their fee requests? If they do, then what is the triggering condition that makes that testimony necessary? If they do not, then what becomes of the respondent's Due Process right to question the movant and her attorney about the fee request – is the burden of proof shifted from the movant to prove the fee request to the respondent somehow to disprove the fee request? And what is the purpose of Ohio R. Prof. Cond. 3.7, allowing lawyers to testify in cases in which they are counsel of record, without being subject to disqualification, when the issue is their fee? Can a movant who relies on this decision and proceeds without the testimony of counsel subsequently appeal a decision denying a fee request based on the movant's failure to have her counsel testify? And what about other cases involving business records – can trial courts require a foundation under Ohio R. Evid. 803(6) at random in some cases and not in others?

PROPOSITION OF LAW 2: A trial court cannot award attorney's fees in the absence of testimony from the attorney who performed the work that the work was reasonable and necessary to advance the client's claims.

In making its decision to award attorney's fees from Matt to Rachel, the trial court cited its own local rule for the handling of fee requests, which provides, in pertinent part, that when

the non-moving party objects to a fee request, then the matter will be set for hearing at which the moving party must substantiate her request. The trial court also cited R.C. §3105.73(B) as a basis for awarding fees, which was appropriate.

The trial court also cited the decision in *Rapp v. Pride*, 2010-Ohio-3138 (12th District), in which the court quoted *Hall v. Nazario*, 2007-Ohio-6401 (9th District): ""What is reasonable for purposes of calculating attorney fees, is a question of fact and the trial court must have evidence before it probative of that issue in order to make the finding." 2007-Ohio-6401 at ¶17, quoted in 2010-Ohio-3138 at ¶32. This citation was curious because, in both cases, the moving party did not submit evidence of the reasonableness and necessity of the attorney's fees, so in both cases the trial courts' decision to award fees was reversed.

Beyond those cases, it is well established that a fee-requesting party has the obligation to show the reasonableness and necessity of the fees requested. *Leopold v. Leopold*, 2005-Ohio-214 (4th District); *Groza-Vance v. Vance*, 2005-Ohio-3815 (10th District); *Falk v. Falk*, 2009-Ohio-4973 (10th District); *Bagnola v. Bagnola*, 2004-Ohio-7286 (5th District); *Miller v. Miller*, 2010-Ohio-1251 (9th District); *Hubbard v. Hubbard*, 2009-Ohio-2194 (3rd District); *DeHoff v. Veterinary Hosp. Operations of Cent. Ohio*, 2003-Ohio-3334 (10th District); *Hikmet v. Turkoglu*, 2009-Ohio-6477 (10th District); *Braglin v. Crock*, 2005-Ohio-6935 (7th District); *Bray v. Bray*, 2011-Ohio-861 (4th District).

Further, the burden is on the attorney making a fee request to substantiate and to justify her fee. *In re Verbeck's Estate* (1962), 173 Ohio St. 557, 184 N.E.2d 384; *Jacobs v. Holston* (1980), 70 Ohio App.2d 55, 434 N.E.2d 738 (6th District); *Climaco, Seminatore, Delligatti & Hollenbaugh v. Carter* (1995), 100 Ohio App.3d 313, 653 N.E.2d 1245 (10th District); *Enyart v. Columbus Metro. Area Community Action Org.* (1996), 115 Ohio App.3d 348, 685 N.E.2d 550

(10th District) (“the burden of demonstrating that the time was fairly and properly used and the reasonableness of the work hours devoted to the case rests upon the [movants]’ attorney”).

Here, Rachel testified that she received a bill from attorney Crist, and attorney Ramey testified that the charges reflected by attorney Crist’s bill were reasonable and customary for the community, but attorney Crist herself did not testify that the bill was a true and accurate record of the time she spent on the case and the work that she did for Rachel, or that the work she did was reasonable and necessary to advance Rachel’s claims. If the trial court took attorney Crist’s pre-hearing affidavit as sufficient evidence, then it was ignoring the age-old trial-practice truth that ‘one cannot cross-examine an affidavit’. This was a particularly important issue because the bill attorney Crist attached to her affidavit had discrepancies with a prior bill, purportedly for the same work, that she had provided to Matt and his counsel. (The second bill, submitted to the trial court at the fee hearing, had different rates for some time-entries than did the first bill, and the second bill had additional charges entered for work purportedly done for Rachel, raising questions about the accuracy of the bill itself, whether time entries were made contemporaneously with work being performed, and whether the billing system keeps accurate records and accurate charges.) Clearly, it would have been appropriate cross-examination to question attorney Crist about those discrepancies, if she had actually testified at the fee hearing.

The trial court then made reference to Ohio R. Civ. P. 11, presumably for the proposition that, since all pleadings must be executed in good faith, there was reason to believe that attorney Crist’s fee motion and/or her affidavit were trustworthy. However, that presumption ignores the requirements of Ohio R. Evid. 802 and 803(6), and the fact that Matt could not cross-examine attorney Crist’s affidavit or bill.

The appellate court held that, because there was testimony from Rachel that she was charged \$965.00, and from Rachel's expert witness that \$965.00 was a reasonable fee for the work purportedly done, there was sufficient evidence upon which the trial court could base its decision to award fees in the amount of \$965.00. As Matt noted in his Motion for Reconsideration, though, Ohio R. Evid. 703 requires that expert testimony be based on facts that were personally observed by the expert witness, or facts that have properly been admitted into evidence in the case; since attorney Crist's fee bill was not properly admissible under Ohio R. Evid. 802 and 803(6), then the expert's testimony was not admissible under Ohio R. Evid. 703.

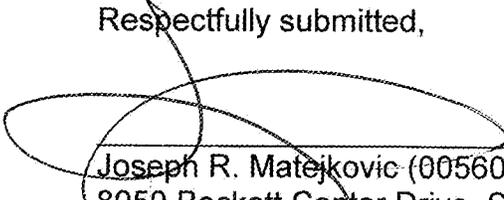
The lower court's holding creates a "blank check" for parties seeking a fee award in that district: because the attorney doing the work is apparently no longer required to testify and be cross-examined about the work she performed and the bill she generated, but rather can simply rely on the client's testimony that the bill was paid and an expert's testimony that the bill was in a reasonable amount, the attorney can try to get \$10,000 for \$7,000 worth of work, or \$5,000 for \$3,000 worth of work, or \$965 for \$400 worth of work.

Because attorney Crist's bill was not admissible under Evidence Rules 802 and 803(6), and attorney Crist did not testify herself about the reasonableness and necessity of the work she claimed to have performed for Rachel, the trial court erred as a matter of law in granting Rachel's request for attorney's fees and in ordering Matt to pay \$965.00.

VII. CONCLUSION

For the foregoing reasons, Defendant/Appellant Robert M. Collins respectfully urges this Court to accept this case for review and decision.

Respectfully submitted,



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Counsel for Defendant/Appellant

VIII. CERTIFICATE OF SERVICE

The above signature certifies that a true and accurate copy of the foregoing was served upon Rachel A. League, Plaintiff/Appellee, by regular U.S. Mail, postage prepaid, to 315 Renwood Place, Springboro OH 45066-1067 on 11/27/2013

IX. APPENDIX

Judgment Entry and Opinion filed 09/03/2013

Entry Denying Application for Reconsideration filed 10/16/2013

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

RACHEL A. LEAGUE (f.k.a. Collins),

Plaintiff-Appellee,

- vs -

ROBERT M. COLLINS,

Defendant-Appellant.

CASE NO. CA2013-03-041

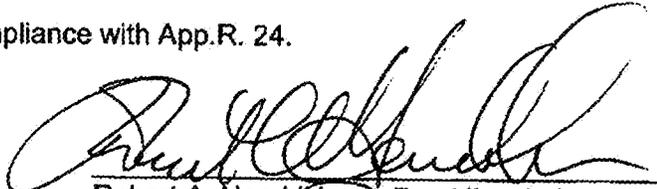
JUDGMENT ENTRY

FILED BUTLER CO.
COURT OF APPEALS
SEP 03 2013
MARY L. SWAIN
CLERK OF COURTS

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas, Domestic Relations Division, for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

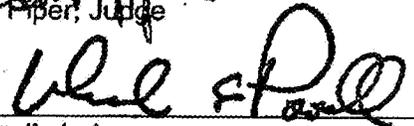
Costs to be taxed in compliance with App.R. 24.



Robert A. Hendrickson, Presiding Judge



Robin N. Piper, Judge



Mike Powell, Judge

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

RACHEL A. LEAGUE (f.k.a. Collins), :
Plaintiff-Appellee, : CASE NO. CA2013-03-041
- vs - : OPINION
: 9/3/2013
ROBERT M. COLLINS, :
Defendant-Appellant. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR03070827

- ✓ Rachel A. League, 315 Renwood Lane, Springboro, Ohio 45066, plaintiff-appellee, pro se
- ✓ Joseph R. Matejkovic, 8050 Beckett Center Drive, Suite 214, West Chester, Ohio 45069-5018, for defendant-appellant

PIPER, J.

{¶ 1} Defendant-appellant, Robert Collins, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, granting attorney fees in favor of plaintiff-appellee, Rachel League (f.k.a. Collins).

{¶ 2} Collins and League were married, and later divorced through the Butler County Domestic Relations Court in 2005. The couple had two children born issue of the marriage,

and agreed that issues regarding the parenting of the children would be mediated rather than returning to court each time the parties had a dispute. In May 2012, Collins filed a contempt motion in the trial court, claiming that League had denied him parenting time and had also wrongly claimed one of the children for tax purposes. League moved to dismiss, arguing that any disputes between the parties were to have been mediated. A magistrate dismissed Collins' motions, and the trial court adopted the trial court's decision.

{¶ 3} As part of her motion to dismiss, League also requested attorney fees. League filed an affidavit from her attorney, along with the invoice she was issued for services rendered to defend against the contempt motion. By local rule of court, Collins objected to the affidavit and invoice, and the matter was set for judicial determination of the reasonableness of the fees.

{¶ 4} A magistrate held a hearing on League's request for attorney fees. During the hearing, League testified that she hired an attorney to represent her when defending Collins' contempt motion. League also presented the testimony of another attorney in the area, who testified that the invoice League received for her attorney's services was reasonable and consistent with the charges other attorneys in the area would charge for similar work. Although League's counsel did not testify, she offered on multiple occasions to take the stand.

{¶ 5} Collins argued to the magistrate that the invoice League received, as well as the affidavit from League's counsel regarding the fees, was inadmissible hearsay and could not form the basis for any fee award. The magistrate, however, granted attorney fees in favor of League in the amount of \$965, which was commensurate with the invoice League offered during the hearing. Collins filed an objection to the magistrate's decision, arguing that the invoice and affidavit were inadmissible hearsay, and that the magistrate's award of attorney fees was improper. The trial court overruled Collins' objections and adopted the

magistrate's decision in full. Collins now appeals the trial court's decision overruling his objections to the magistrate's decision, raising the following assignment of error.

{¶ 6} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT/APPELLANT WHEN IT ORDERED HIM TO PAY PLAINTIFF/APPELLEE'S ATTORNEY'S FEES.

{¶ 7} Collins argues in his sole assignment of error that the trial court erred in adopting the magistrate's decision where the affidavit and invoice were inadmissible hearsay.

{¶ 8} The admission or exclusion of relevant evidence rests within the discretion of the trial court. *Ohmer v. Renn-Ohmer*, 12th Dist. Butler No. CA2012-02-020, 2013-Ohio-330. An appellate court will not disturb a decision of the trial court to admit or exclude evidence absent a clear and prejudicial abuse of discretion. *Cottrell v. Cottrell*, 12th Dist. Warren No. CA2012-10-105, 2013-Ohio-2397, ¶ 80. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 9} According to Evid.R. 802, hearsay is inadmissible. Evid.R. 801 defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

{¶ 10} Our review of the trial transcript reveals that League's attorney did, in fact, use the affidavit and invoice to prove, in part, the truth of matters asserted within it; that League incurred \$965 in attorney fees in defense of the contempt motion. Such evidence is normally excluded by Evid.R. 802 unless it falls within a recognized exception to the hearsay rule. The invoice may possibly have fallen within the business record exception of Evid.R. 803(6), which permits the document's admissibility if it is "kept in the course of a regularly conducted business activity." However, this rule has an authentication requirement that must be met before the rule applies. Here, there was no authentication of the affidavit or invoice made by

League's attorney so that the business records exception is not applicable. While the affidavit and invoice may have been hearsay, we find no reason to disturb the trial court's grant of attorney fees in this matter.

{¶ 11} Instead, the record indicates that even absent the invoice and affidavit, the trial court had evidence of the fees that League incurred. The transcript indicates that League testified to receiving the invoice and that she incurred the charges because of the contempt motions being filed against her. During her testimony, League confirmed that the amount she incurred to defend the contempt motions was \$965. League testified to the amount of fees she incurred so that the trial court had evidence before it upon which it could base its award. See *Shroyer v. Shroyer*, 5th Dist. Coshocton No. 01-CA-011, 2001 WL 1548749, *6 (Dec. 5, 2001) (noting that an award of attorney fees is proper when the "amount of time and work spent on a case by the attorney is evident," and the trial court is able to use its own "knowledge in reviewing the record to determine the reasonableness of attorney fees").

{¶ 12} League was subjected to cross-examination and Collins had the opportunity to challenge her claim that she incurred attorney fees because of the contempt motions. League was, in fact, cross-examined in detail regarding the fees, and the magistrate was able to use its own knowledge of the case to determine if the fees were reasonable. The evidence establishes that League's counsel charged \$250 per hour. League's expert testified that \$250 per hour was reasonable and that the total amount charged was necessary. In fact, the expert testified that the charge League incurred was less than that which she, herself, would have charged a client for similar work. Collins did not object to the expert's testimony, nor did he move to strike the expert's testimony regarding the fees at any point. Therefore, the trial court had an evidentiary basis for its award.

{¶ 13} We find that the trial court did not abuse its discretion granting attorney fees as it did under the circumstances. Having found as much, Collins' assignment of error is

overruled.

{¶ 14} Judgment affirmed.

HENDRICKSON, P.J., and M. POWELL, J., concur.

Mattejkovic

IN THE COURT OF APPEALS FOR BUTLER COUNTY, OHIO

RACHEL A. LEAGUE fka Collins, : CASE NO. CA2013-03-041

Appellee,

vs.

ROBERT M. COLLINS,

Appellant.

FILED BUTLER CO.
COURT OF APPEALS

OCT 16 2013

MARY L. SWAIN
CLERK OF COURTS

ENTRY DENYING APPLICATION FOR RECONSIDERATION

The above cause is before the court pursuant to an application for reconsideration filed by counsel for appellant, Robert M. Collins, on September 13, 2013.

When reviewing an application for reconsideration, an appellate court determines whether the application calls the attention of the court to an obvious error in its decision, or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been. *Grabill v. Worthington Industries, Inc.*, 91 Ohio App.3d 469 (10th Dist.1993).

The parties were divorced by decree entered in the Butler County Court of Common Pleas, Domestic Relations Division, in 2005. They had two children born as issue of the marriage, and agreed that issues regarding parenting of the children would be mediated rather than presented to the court. In May 2012, appellant filed a contempt motion in the trial court, claiming that appellee, Rachel A. League fna Collins, denied him parenting time and wrongly claimed one of the children for tax purposes. Appellee moved to dismiss, arguing that disputes between the parties were to be mediated. A magistrate dismissed appellant's motions, and the trial court adopted the magistrate's decision.

As part of her motion to dismiss, appellee requested attorney fees. After a hearing, the magistrate granted attorney fees in favor of appellee in the amount of \$965 which was commensurate with an invoice and supporting affidavit presented

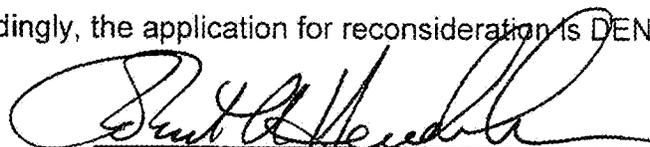
during the hearing. Appellee also presented the testimony of another attorney in the area that the amount charged by her attorney was reasonable and consistent with charges by other attorneys in the area for similar work. The trial court overruled appellant's objections and adopted the magistrate's decision.

On appeal, appellant argued that the trial court erred by awarding attorney fees because the affidavit was hearsay and no other evidence existed to establish appellee's attorney fees. This court disagreed, finding that appellee testified about the amount of attorney fees she incurred.

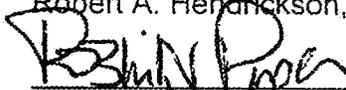
On reconsideration, appellant argues that this court's decision that there was other evidence supporting the award of attorney fees is erroneously as a matter of law. Appellant argues that this testimony did not establish that appellee's attorney actually performed \$965 worth of work because she may have billed appellee for work that only "took \$400 worth of time to perform." Appellant also argues that the only way to establish that the work was actually done was through cross-examination of appellee's attorney.

However, appellant is simply rearguing the merits of the case rather than calling the attention of the court to an obvious error in its decision, or raising an issue for consideration that was either no considered at all or not fully considered by this court when it should have been. Accordingly, the application for reconsideration is DENIED.

IT IS SO ORDERED.



Robert A. Hendrickson, Presiding Judge



Robin N. Piper, Judge



Mike Powell, Judge