

[Cite as *Frick, Preston & Assoc. v. Martin*, 2011-Ohio-4428.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Frick, Preston & Associates et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 10AP-1208
Ron A. Martin,	:	(M.C. No. 2010CVH-5293)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 1, 2011

Ron A. Martin, pro se.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Defendant-appellant, Ron A. Martin ("appellant"), appeals the judgment of the Franklin County Municipal Court, which granted judgment in favor of plaintiffs-appellees, Frick, Preston & Associates and Bradley N. Frick ("appellees"), on appellees' claim that appellant breached a contract for legal services by failing to pay invoices for fees appellees incurred while representing him. For the following reasons, we affirm.

{¶2} Appellees filed a complaint against appellant, contending that appellant had failed to pay \$8,024.25 in legal fees. Appellant answered, denying the claim.

{¶3} The trial court conducted a trial in November 2010 and thereafter issued an entry that included findings of fact and conclusions of law. The court found that appellant retained appellees to represent him in a divorce action. In January 2006, appellant and appellees entered into a fee agreement, and appellant paid a retainer in the amount of \$8,000. Appellant paid another \$4,000 in September 2006 and another \$2,000 in January 2007.

{¶4} Appellant contended that, when he made the January 2007 payment, he told appellees that he did not want any more work done on his behalf after that amount was exhausted. Nevertheless, appellees continued to work on behalf of appellant, incurring additional fees. Appellees sent him invoices for the additional work. Appellant did not review the invoices and, therefore, did not realize that appellees had incurred fees beyond the retainer until several months had passed.

{¶5} Finding that the fee agreement obligated appellant to pay all fees incurred on his behalf, the trial court granted judgment in favor of appellees in the amount of \$6,015.50, which equals the amount of unpaid fees incurred up until August 16, 2007, when appellant was advised that appellees would no longer represent him due to his non-payment.

{¶6} Appellant filed a timely appeal, and he raises the following assignments of error:

ASSIGNMENTS OF ERROR I

TRIAL COURT FAILED TO CONSIDER [APPELLANT'S] TESTIMONY OF THE FACT THAT [APPELLEES] HAD INSTRUCTED HIM TO NOT PAY ATTENTION TO THE FORMS THEY HAD SENT HIM. [APPELLEES] VERBALLY

COMMUNICATED TO THE [APPELLANT], WHEN IT WAS TIME TO PAY MORE MONEY AND THIS HAPPENED FROM THE VERY START OF SERVICES, THUS DRAWING ATTENTION AWAY FROM THE ORIGINAL FEE AGREEMENT. [APPELLEES] ADAMANTLY TOLD THE [APPELLANT] THAT THEY WOULD NOT DO ANY WORK WITHOUT PREPAYMENT. THEY DID NOT NOTIFY THE [APPELLANT] THAT THEY WERE CHANGING THINGS AND WERE GOING TO IGNORE HIS INSTRUCTIONS TO STOP WORK WHEN THE FINAL \$2,000.00 RETAINER WAS OUT, BY CONTINUING TO WORK WITHOUT THE [APPELLANT'S] KNOWLEDGE.

ASSIGNMENTS OF ERROR II

TRIAL COURT FAILED TO HAVE [APPELLEES] PRODUCE ALL INVOICES PERTAINING TO THEIR CHARGED SERVICES, ONLY ONE INVOICE WAS PRESENTED. [APPELLANT] STATED THAT HE DID NOT RECEIVE ALL INVOICES AND ESPECIALLY NOT ONE, AFTER HE INSTRUCTED [APPELLEES] TO STOP WORK.

ASSIGNMENTS OF ERROR III

TRIAL COURT OVERLOOKED THE STATEMENT OF [APPELLEES] AS TO THE QUESTIONING OF THE FEES. [APPELLEES] STATED THAT [APPELLANT] NEVER QUESTIONED HOW THE FEES WERE BEING USED UP, WHICH IS AN UNTRUE STATEMENT. [APPELLANT] WASN'T GIVEN THE OPPORTUNITY TO [REBUT] THIS STATEMENT.

{¶7} In his first assignment of error, appellant contends that the trial court failed to consider his testimony that appellees assured him they would do no work on his behalf without advance payment and that they continued to work on his case after he instructed them to stop. Unfortunately, two factors hamper our review of this assignment. First, appellees have not appeared or filed a brief in this matter. The only arguments before us are those of appellant, who appeared pro se.

{¶8} Second, although the trial court conducted a trial and heard testimony from the parties, we do not have a transcript of that proceeding. The duty to provide a transcript for appellate review falls upon the appellant because the appellant bears the burden of showing error by referring to matters in the record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. When portions of the transcript necessary for resolution of assigned errors are omitted from the record, we have nothing to pass upon; as to those errors, we have no choice but to presume the validity of the lower court's proceedings and affirm. *Id.* In the absence of a transcript, or any alternative form of the record permitted by App.R. 9, we are unable to meaningfully review a claim that the trial court's judgment was against the manifest weight of the evidence. See *In re Guardianship of Guzay*, 10th Dist. No. 02AP-745, 2003-Ohio-5036; *Collier v. Stubbins*, 10th Dist. No. 03AP-553, 2004-Ohio-2819.

{¶9} We do, however, have the trial court's detailed findings of fact. Without a transcript of the trial, we have no basis on which to question the validity of those findings, and we presume their validity. Critical here is the court's finding that appellant "testified, without contradiction, that when he paid the \$2,000 advance in January 2007 he informed [appellees] that he 'didn't want any more work done' after the retainer was exhausted. [Appellees] did not abide by [appellant's] wishes." Nevertheless, "despite his clear directive to stop work on his case," the court concluded that the fee agreement between the parties obligated appellant to pay for fees incurred beyond the January 2007 payment.

{¶10} We agree that, by entering into the agreement with appellees, appellant agreed to retain appellees to represent him in his divorce action and to pay their fees to do so. The agreement encouraged appellant "to discuss any billing questions with Counsel at any time." It also provided that "Client agrees and understands that if he or she does not contest a billing entry within 30 days of the date appearing on the bill containing the entry in question, that entry is deemed acceptable to Client."

{¶11} We also must acknowledge, however, that appellant maintained the right to terminate his relationship with appellees at any time. The Supreme Court of Ohio has recognized that "[t]he overriding consideration in the attorney-client relationship is trust and confidence between the client and his or her attorney. The right to discharge one's attorney would be of little value if the client were liable for the full contract price. To force such an agreement into the conventional status of commercial contracts ignores the unique, fiduciary relationship created by an attorney's representation of a client." *Fox & Assoc. Co., L.P.A. v. Purdon* (1989), 44 Ohio St.3d 69, 71 (holding that a discharged attorney may recover the reasonable value of services rendered prior to discharge on the basis of quantum meruit).

{¶12} This court has also recognized that a client has a right to discharge an attorney. *Roberts v. Hutton*, 152 Ohio App.3d 412, 2003-Ohio-1650, ¶36, citing *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 573-74, 1994-Ohio-512; *Gross v. Lamb* (1980), 1 Ohio App.3d 1, 3. If a client does so, he must pay for services the attorney rendered prior to the discharge and, in some circumstances, may be responsible for other costs that result from the termination. See

Columbus Bar Assn. v. Klos, 81 Ohio St.3d 486, 498, 1998-Ohio-610, and *Moraine v. Lewis*, 151 Ohio App.3d 526, 2003-Ohio-460, ¶33 (both courts recognizing that, in certain limited circumstances, an attorney might be able to recover costs exceeding the legal services already rendered); *Gross* ("A client has the right to terminate an attorney-client relationship, subject to being responsible for damages for breach of the contract"). See also Prof.Con.R. 1.16, Comment 4 ("A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services").

{¶13} The trial court specifically found that, although appellant discharged appellees from representing him, he failed to review invoices sent to him. In effect, by failing to object to appellees' continuing efforts, as the fee agreement required, appellant acquiesced in those efforts. We have no transcript to shed light on this acquiescence or on any factors that might undermine the trial court's factual finding that appellees had earned fees totaling more than \$6,000, in addition to the \$2,000 appellant had already paid, between January and August.

{¶14} Because we must presume the validity of the trial court's factual findings and the regularity of the proceedings below, we have no basis on which to conclude that the trial court overlooked or did not properly consider appellant's testimony about his discussions with appellees. Therefore, we overrule appellant's first assignment of error.

{¶15} In his second assignment of error, appellant contends that the trial court erred by not requiring appellees to produce all invoices pertaining to the charges.

Without a transcript, we cannot confirm or reject appellant's contentions about what evidence was before the trial court, whether submitted by testimony or exhibits.

{¶16} In its decision, the trial court noted appellees' contention that they sent periodic invoices to appellant. Appellant did not remember reviewing the invoices because he did not open the correspondence. The trial court stated that the only invoice submitted into evidence was the August 2007 invoice for \$6,015.50, and it based its judgment on that invoice. Our record does not contain the August 2007 invoice. Therefore, we have no basis on which to question the court's judgment in that respect. We overrule appellant's second assignment of error.

{¶17} In his third assignment of error, appellant contends that he did not have an opportunity to rebut appellees' statement that he did not question their fees. Again, without a transcript, we have no basis on which to accept or reject appellant's contention. Therefore, we overrule his third assignment of error.

{¶18} In summary, we overrule appellant's first, second, and third assignments of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BRYANT, P.J., and BROWN, J., concur.
