

2012 IL App (2d) 110626-U
No. 2-11-0626
Order filed April 16, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CAROL MORSE,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-SR-1802
)	
BROIDA AND ASSOCIATES, LTD.,)	Honorable
)	Paul M. Fullerton,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court's judgment for defendant on plaintiff's complaint for breach of contract was not against the manifest weight of the evidence: the evidence showed that defendant did not double-bill plaintiff or bill for work that had not been performed. We affirmed the judgment of the trial court.

¶ 1 Plaintiff, Carol Morse, filed a *pro se* small-claims complaint against defendant, Broida and Associates, Ltd., seeking \$6,500 for breach of contract. Plaintiff alleged that she hired defendant to file a legal malpractice action against Ryan Harrington, whom she had hired to represent her in a legal action against her realtor. According to plaintiff, she and defendant entered into a representation agreement, and she provided defendant with a \$6,500 retainer. She claimed that

defendant breached the contract by failing to file the legal malpractice suit, by billing for nonexisting work, and by failing to perform work to pursue the legal malpractice suit.

¶ 2 Following a bench trial, at which plaintiff and Ronald J. Broida each testified, the trial court found in favor of defendant. The court found that “there was no evidence that the defendant billed for work that was not performed or excessively overbilled for services provided.”

¶ 3 The trial court denied plaintiff’s motion for reconsideration, and plaintiff timely appealed.

¶ 4 Before reaching the merits, we address defendant’s request to strike plaintiff’s brief, or alternatively, the statement of facts, for plaintiff’s failure to comply with Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008). Specifically, Defendant claims that plaintiff’s fact section contains impermissible argument and that the facts are unsupported by citations to the record. Rule 341(h)(6) provides that the facts section “shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal.” Our review of plaintiff’s fact section reflects only two citations to the record, with the remaining facts either containing impermissible argument or unreferenced statements. Notwithstanding plaintiff’s failure to comply with Rule 341(h)(6), it is within our discretion to consider an appellate brief. See *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 228 (2008). Upon review, plaintiff’s violations in one section are not so egregious that they hinder our review of the issues raised on appeal. Therefore, we decline to strike the entire brief. See *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008). However, we grant defendant’s request to strike plaintiff’s statement of facts.

¶ 5 We review a trial court’s decision following a bench trial to determine whether the judgment was against the manifest weight of the evidence. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill.

App. 3d 21, 51 (2009). “A judgment is not against the manifest weight of the evidence unless the opposite conclusion is clearly evident.” *Gambino*, 398 Ill. App. 3d at 51. “For a judgment to be against the manifest weight of the evidence, the appellant must present evidence that is so strong and convincing as to overcome, completely, the evidence and presumptions, if any, existing in the appellee’s favor.” *Raclaw v. Fay, Conmy & Co.*, 282 Ill. App. 3d 764, 767 (1996).

¶ 6 Plaintiff raises three issues concerning defendant’s billing. We will address each in turn. First, plaintiff argues that she received two invoices—one dated April 1, 2010, and one dated May 3, 2010—and that the bills contained duplicate charges for the following dates: February 26, 2010, March 3, 2010, March 22, 2010, and March 30, 2010. A review of the invoices cited by plaintiff shows that plaintiff was not double-billed. Rather, the May invoice merely restated the existing charges and added two additional charges. The invoices both show the same existing retainer balance and there is nothing to indicate that plaintiff was double-billed. See *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 890 (2010) (stating that a trial court’s findings of fact will not be disturbed unless they are against the manifest weight of the evidence).

¶ 7 Second, plaintiff argues that defendant billed her for work done on a letter that she sent to the Attorney Registration and Disciplinary Commission (ARDC) concerning Harrington. According to plaintiff, defendant could not have done any work on the letter because plaintiff had written and mailed the letter prior to engaging defendant. In support of her allegation, plaintiff cites to two billing entries on a July 2009 invoice. Entry one is dated April 28, 2009, and reads: “Reviewing ARDC Response. Analyzing response by Ryan Harrington regarding ARDC Complaint and Complaint filed with ARDC.” Entry two is dated April 30, 2009, and reads: “Reviewing Reply to Harrington’s Response. Legal research regarding attorney’s lien’s [*sic*].” It is clear that defendant

was not claiming to have drafted the letter; rather he spent time reviewing the correspondence as it related to his representation of plaintiff. See *Southwest Bank of St. Louis*, 401 Ill. App. 3d at 890.

¶ 8 Last, plaintiff claims that defendant billed her for work that was “worthless” and for time spent researching issues with which defendant should have already been familiar. These allegations are conclusory and unsupported by the record. The trial court found that there was no evidence that defendant “excessively overbilled,” and plaintiff has not cited any evidence in the record to establish that the court’s finding was against the manifest weight of the evidence. See *Id.*

¶ 9 In light of the foregoing, we find that plaintiff has failed to establish that the court’s ruling was against the manifest weight of the evidence, and we affirm.

¶ 10 Affirmed.