2018 IL App (1st) 163325-U

FIFTH DIVISION
March 2, 2018

No. 1-16-3325

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELIZABETH HUBBARD LAW FIRM, LLC, Plaintiff-Appellee, v. HENRY BEVERLY and MARTINA BEVERLY, Defendants-Appellants.	Appeal from the Circuit Court of Cook County
	No. 15 M1 111755
HENRY BEVERLY and MARTINA BEVERLY, Counterplaintiffs-Appellants, v. ELIZABETH LOUISE HUBBARD and ELIZABETH HUBBARD LAW FIRM, LLC, Counterdefendants-Appellees.	Honorable Patricia S. Spratt, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County ordering the plaintiff

> to transfer a certain sum from its client trust account to its general operating account to cover legal fees due from the defendants, dismissing the defendants' counterclaim, and ordering the defendants to pay court costs.

¶ 2 Elizabeth Hubbard Law Firm, LLC (Firm) initiated this action when it filed a complaint in the small claims division of the circuit court of Cook County to settle a dispute regarding legal fees incurred by defendants, Henry Beverly (Henry) and Martina Beverly (Martina) (collectively the Beverlys). In response, the Beverlys filed a *pro se* counterclaim alleging the Firm and Elizabeth Hubbard (Elizabeth) individually did not credit certain sums to their accounts and made numerous billing errors. After a four-day bench trial, the trial court ruled in the Firm's favor and dismissed the counterclaim with prejudice. On appeal, the Beverlys challenge the trial court's ruling on the Firm's complaint, arguing (1) the lawsuit was frivolous, (2) the trial court should have relaxed the rules of evidence because they were proceeding *pro se*, and (3) certain evidence was improperly admitted. Defendants further contest the trial court's dismissal of their counterclaim where they were improperly restricted on the amount of evidence and argument they were permitted to present during the trial regarding their damages. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The Firm filed a breach of contract complaint alleging that the Beverlys collectively owed $4407.94 in fees associated with its representation of them in a federal employment discrimination case. Attached to the complaint were two attorney-client agreements signed by Elizabeth on behalf of the Firm and the Beverlys. The complaint also included monthly invoices which were provided to Henry and Martina individually indicating the outstanding balance on their accounts.

¶ 5 In response, the Beverlys filed a counterclaim against the Firm and Elizabeth

individually, which was amended twice prior to trial. The operative second amended complaint alleged that the Beverlys provided the Firm and Elizabeth with a check in the amount of $1380, which was cashed on May 14, 2014, and thus this amount should have been credited to their account, but it was not. The Beverlys further maintained that the invoices did not indicate whether there was a refund or credit of the $3500 charged for a mediation in which they had participated. The Beverlys also alleged that Henry was initially overcharged by $100 per hour and, while his invoice was subsequently corrected, the Firm refused to credit him for certain charges accrued in April 2014. The Beverlys further asserted the legal fees charged were unreasonable and excessive, specifically contending they were billed in one-hundredth hour increments and not in one-tenth hour increments as was provided in their agreements. In addition, the Beverlys alleged that the Firm and Elizabeth failed to provide them with proof of the $3500 refund from the mediation. Just prior to trial, the Firm conceded that it had received the $1380 check and reduced the amount of damages it was seeking to $3027.94 plus costs.

¶ 6 A four-day bench trial established the following facts.[1] Prior to retaining the Firm, the Beverlys had initiated a cause of action in federal court against Abbott Laboratories, Inc. (Abbott), where they had both had been employed. In April 2014, the Beverlys decided to hire new counsel. They met with Elizabeth and subsequently signed separate attorney-client agreements with the Firm. Henry's attorney-client agreement provided that he retained the Firm to represent him in regard to an appeal in the Seventh Circuit Court of Appeals in the Abbott litigation. Henry agreed to pay a refundable retainer fee of $20,000 upon execution of the agreement. The agreement further indicated that the Firm would bill time in one-tenth hour

[1] We observe that there is no record of proceedings for the first day of trial when the Firm presented an expert witness to testify regarding the reasonableness of the Firm's fees and Elizabeth's direct examination was conducted.

increments at a rate of $250 per hour for Elizabeth's time and $75 per hour for paralegal time. Martina's retainer agreement was essentially identical in its terms, but indicated she hired the firm to represent her in regard to the Northern District litigation against Abbott. Henry signed his attorney-client agreement on April 23, 2014, while Martina signed her agreement on April 29, 2014. Thereafter, the Firm deposited a check of $20,000 into its client trust account for the benefit of the Beverlys, which was split evenly between them and credited to their accounts. Elizabeth and her paralegal then prepared and filed the notice of appeal on Henry's behalf.

¶ 7 On May 5, 2014, an invoice was generated regarding services rendered to Henry. While it included the work Elizabeth and her paralegal spent on the appeal, it also indicated that there would be no charge for that work. The invoice totaled $1380. Upon receipt of the invoice, the Beverlys paid the Firm with a check that was subsequently deposited.

¶ 8 The Firm provided monthly invoices to both of the Beverlys, which detailed the fees incurred and the remaining balance of the client trust account after those fees were deducted. The May, June, and July invoices, however, billed Henry at the hourly rate of $350, not the $250 upon which they had agreed. This error was subsequently corrected as a credit to Henry in the amount of $316 as provided in a July 29, 2014, invoice. Thereafter, both Beverlys were billed at the agreed upon rate.

¶ 9 As it turned out, the notice of appeal was premature and Henry's appeal was dismissed. This was due to the fact that although Henry's federal court claim did not survive summary judgment, Martina's did, hence all of the claims were not disposed of, so there was no final and appealable judgment. The federal district court judge, however, recommended that the matter proceed to mediation. The parties agreed and the Firm, in advance of the mediation, forwarded $3500 from the client trust account to the mediator, Michael Leech (Leech), which was deducted

from the Beverlys' balance. A 14-hour mediation was conducted in July 2014, which the Beverlys and Elizabeth attended. At the conclusion of the mediation, Abbott indicated it would pay for the mediation, thus the Beverlys' $3500 would be refunded.

¶ 10 Shortly thereafter the Firm filed a motion to withdraw from the federal court matter which was granted, thereby ending its representation of the Beverlys.

¶ 11 After the Firm withdrew, it continued sending the Beverlys invoices indicating there was a balance due and owing as the Firm had exhausted the $20,000 retainer. Henry owed $683.53 while Martina owed $3724.41 for a total of $4407.94. This amount did not reflect the $1380 payment made by the Beverlys in May 2014. In September 2014, the Beverlys forwarded written correspondence to the Firm disputing the amount owed.

¶ 12 In January 2015, the Firm received the $3500 mediation refund and it was deposited into the client trust account. As the amount of legal fees due and owing remained in dispute, the $3500 was not credited to their account pursuant to Illinois Rule of Professional Conduct 1.15(e) (eff. Sept. 1, 2011).[2] The Firm forwarded the letter it received from Leech to the Beverlys. The letter also indicated Leech had carbon copied the Beverlys' new counsel.

¶ 13 In regards to the damages for their counterclaim, Henry testified that he and Martina sought compensation in the amount of $23,372.68. During the trial, Henry also sought late fees in the amount of $725 relating to the 29 months the Firm had in its possession the $1380 check, as well as a similar late fee in the amount of $625 for the $3500 mediation refund check, which had cleared 22 months prior. Henry further sought a refund of the $550 filing fee for his appeal, $3000.79 for certified mailing fees charged by the Firm, and a refund of a post office parking fee

[2] Illinois Rule of Professional Conduct 1.15(e) (eff. Sept. 1, 2011) provides in pertinent part, "When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved."

of 50 cents. Henry also argued that the lawsuit caused them economic losses from which they would never recover; it prevented them from obtaining accounting work, and caused great emotional distress.

¶ 14 After hearing the testimonies of Elizabeth, her legal fee expert John O'Connor (O'Connor), and the Beverlys, the trial court concluded that the Firm had established by a preponderance of the evidence that it was owed $3027.94 plus costs. In rendering this determination, the trial court expressly found 1) Elizabeth did attorney work for them prior to the execution of the attorney-client agreements at a billing rate of $350 per hour, 2) the Beverlys both participated in the mediation, 3) the Firm did provide the Beverlys with a credit upon discovering they charged them $350 per hour instead of $250 per hour, 4) the Firm charged the Beverlys for actual time spent on their case and that it would be "splitting hairs" to round the time on the bills up or down to one-tenth of an hour, and 5) the legal fee expert's testimony was unrebutted as to the bills being reasonable and necessary for the work the Firm performed on behalf of the Beverlys. The trial court further dismissed the Beverlys' counterclaim and specifically found they failed to provide sufficient evidence to pierce the corporate veil.

¶ 15 The trial court ordered that the $3027.94 be transferred from the Firm's client trust account to its general operating account and that the remaining balance of the client trust account, $472.06 be distributed to the Beverlys. A judgment was also entered against the Beverlys in the amount of $327 for court costs.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, the Beverlys contest the trial court's ruling in favor of the Firm for its legal fees and the dismissal of their counterclaim with prejudice. Regarding the trial court's ruling in

favor of the Firm on its complaint, the Beverlys argue (1) the lawsuit was frivolous in falsely alleging that legal fees were unpaid, (2) the trial court should have relaxed the rules of evidence to allow them to introduce numerous documents they believe were relevant, and (3) certain evidence was improperly admitted. The Beverlys further contest the trial court's dismissal of their counterclaim with prejudice where they were restricted in the amount of evidence and argument they were permitted to present during the trial regarding their damages. We address each claim in turn.

¶ 19 Prior to addressing the merits of this appeal, we acknowledge the Beverlys' contention that because they are "proceeding as *Pro Se* litigants, the court and the Trial Court must hold them to a less stringent standard than it would parties who are actively represented by counsel." The Beverlys are mistaken. *Pro se* litigants are not entitled to more lenient treatment than attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. In fact, in Illinois, a *pro se* litigant is "held to the same standard as a licensed attorney and must comply with the same rules." *Ammar v. Schiller, DuCanto and Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 16. Illinois courts have strictly adhered to this principle and in accordance thereby will not apply a more lenient standard to a *pro se* litigant. *People v. Fowler*, 222 Ill. App. 3d 157, 163 (1991). To that end, we note that a significant portion of the brief filed by the Beverlys is not adequately supported by citations to legal authority in violation of Illinois Supreme Court Rule 341 (eff. July 1, 2017). While the Beverlys are appealing *pro se*, such litigants are "presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). "An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived." *In re*

Detention of Lieberman, 379 Ill. App. 3d 585, 610 (2007). Thus, to the extent where they are unsupported or undeveloped, the Beverlys' arguments will be forfeited.

¶ 20 Moreover, the Beverlys have not provided this court with a complete record of proceedings, or acceptable substitute report of proceedings, pursuant to Illinois Supreme Court Rule 323 (eff. July 1, 2017). It is the duty of the appellant to present this court with a sufficiently complete record of the circuit court proceedings to support any claim of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). Therefore, when the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* We now turn to address the Beverlys' decipherable claims.

¶ 21 Ordinarily, when we are faced with a challenge to the trial court's judgment following a bench trial, we will reverse that judgment only if it is against the manifest weight of the evidence. *Kalata v. Anheuser-Busch Companies, Inc.*, 144 Ill. 2d 425, 433 (1991). A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding was unreasonable, arbitrary, and not based on the evidence. *Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27. It is not our role to reinterpret the evidence, but to determine whether the trial court's judgment is supported by the evidence. *Id.* Moreover, it is the trial court's duty to judge the credibility of the witnesses, to determine the weight to be accorded their testimony, and to resolve inconsistencies and conflicts. *Resurgence Capital, LLC v. Kuznar*, 2017 IL App (1st) 161853, ¶ 35.

¶ 22 The Beverlys first contend that the complaint was frivolous in that it "falsely alleged unpaid legal fees." The Beverlys maintain that their May 2014 payment of $1380 was never

credited to their account and that they were never notified that the $3500 mediation fee had been refunded. According to the Beverlys, the total monetary amount of these transactions ($4880) was more than sufficient to cover the deficit complained of in the lawsuit ($4407.94) and in fact the trial court ultimately awarded $472.06 to them. The Beverlys further assert that the Firm failed to establish that they refused to pay the amount due. The Beverlys maintain that their September letter was intended to explain the errors in the invoices.

¶ 23 Our review of the record reveals that the trial court's judgment ordering the distribution of the funds from the client trust account and awarding costs was not against the manifest weight of the evidence. First, while the complaint did not initially account for the Beverlys' $1380 check, the pleadings were essentially amended prior to trial to indicate that the Firm was paid those funds. Thus, when the matter went to trial, it was for the amount of $3027.94 not the $4407.94 as originally alleged in the complaint. Second, the evidence established that a dispute did arise in September 2014 regarding the amount due and owing to the Firm. So, when the $3500 was returned to the client trust account, a dispute already existed over how the money would be distributed regardless of whether or not the Beverlys were notified of the refund. It should be noted that as an attorney, Elizabeth is bound by the Rules of Professional Conduct. Rule 8.4(a) directs, "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." Ill. R. Prof'l Conduct R. 8.4(a) (eff. Jan. 1, 2010). Rule 1.15(e) provides in pertinent part, "When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved." Ill. R. Prof'l Conduct R. 1.15(e) (eff. Sept. 1, 2011). Consequently, Elizabeth and the Firm were bound by our state's ethics rules

to keep the $3500 separate until the dispute was resolved. As this issue did not get resolved between the parties, the complaint was properly filed so as to obtain a resolution of the distribution of those funds.

¶ 24 The Beverlys next assert that the trial court erred when it failed to relax the rules of evidence to allow them to introduce numerous documents pursuant to Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992). The Beverlys maintain that the trial court did not account for the fact that the matter was in small claims court and that they were proceeding as *pro se* litigants.

¶ 25 Initially, we again observe the well-established tenant that *pro se* litigants are held to the same standards as attorneys. *Ammar*, 2017 IL App (1st) 162931, ¶ 16. We acknowledge, however, that the rules of small claims court may differ from those in a typical trial. This is because the principle underlying small claims court is that "litigants with a minimum of legal expertise should be allowed to present their grievances to the trial court [citation] and that they should be provided with an expeditious, simplified and inexpensive procedure for the resolution of disputes involving small amounts." *Tannenbaum v. Fleming*, 234 Ill. App. 3d 1041, 1043 (1992). Rule 286(b), which allows for the dispute to be adjudicated at an informal hearing in the trial court's discretion, provides as follows:

> "In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court shall render judgment and explain the reasons therefor

to all parties." Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992).

¶ 26 Here, neither the parties nor the court moved to adjudicate the dispute at an informal hearing, thus the trial court was not required to relax the rules of evidence. See *id.* Moreover, the trial court, in its discretion, repeatedly recognized that the matter was to be treated like a typical trial due to the vast number of proposed documents the litigants sought to admit into evidence and the length of the trial, which was conducted over four days. Consequently, based on the trial court's determination to conduct a trial as opposed to an informal hearing, we decline to address whether the documents listed by the Beverlys in their brief should have been considered by the trial court under Rule 286(b).

¶ 27 The Beverlys also contest the trial court's determination to admit into evidence the letters from Leech as proof that they were informed of the $3500 refund.

¶ 28 We review a trial court's decision concerning the admission of evidence under an abuse of discretion standard. *Resurgence Capital, LLC*, 2017 IL App (1st) 161853, ¶ 33. The threshold for finding an abuse of discretion is a high one and will not be overcome unless it can be said that the trial court's ruling was "arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court." *Sharbono v. Hilborn*, 2014 IL App (3d) 120597, ¶ 29. If a trial court commits an abuse of discretion in the admission of evidence, a new trial should be ordered only if the trial court's ruling appears to have caused substantial prejudice affecting the outcome of the trial. *Id.* Moreover, there is a strong presumption in a bench trial that the trier of fact relied only upon proper evidence in reaching its decision on the merits. *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 381 (2010).

¶ 29 The Beverlys maintain that these letters were hearsay. We agree. "[A] letter is hearsay as to the truth of its contents and is inadmissible unless within one of the numerous exceptions to

the hearsay rule." *Erickson v. Ottawa Travel Center, Inc.*, 69 Ill. App. 3d 108, 111 (1979). The trial court, however, indicated, after numerous objections from the Beverlys at various times during the trial, that it had allowed these letters to be admitted into evidence under the business record exception to the hearsay rule. "In order for the business records exception to be applicable, it must be shown that the record was made in the regular course of business and that it was a regular business practice to create such a record." *Evans and Associates, Inc. v. Dyer*, 246 Ill. App. 3d 231, 238-39 (1993). In this case, however, we have no way of determining whether the proper foundation was laid because the record is missing the first day of trial testimony and no bystander's report was provided to this court. In the absence of a proper record, we must presume that the missing transcript supports the trial court's evidentiary ruling and resolves any doubts against the Beverlys. See *Resurgence Capital, LLC*, 2017 IL App (1st) 161853, ¶ 33.

¶ 30 Assuming *arguendo* that the letters did not fall within the business record exception, such an error would not rise to the level of reversible error. See *Sharbono*, 2014 IL App (3d) 120597, ¶ 29. Whether or not the Beverlys were notified of the refund does not change the fact that the bill was in dispute prior to the refund being deposited in the client trust account in January 2015. Also, regardless of whether the Beverlys were notified of the refund, the Firm was required by the Rules of Professional Conduct to hold those funds in the client trust account until the dispute was resolved. See Ill. R. Prof'l Conduct 1.15(e) (eff. Sept. 1, 2011).

¶ 31 In this same vein, the Beverlys dispute the trial court's ruling allowing the Firm's legal fee expert, O'Connor, to testify regarding the "Laffey Matrix." As this testimony also occurred on the first day of trial, and the transcript is not included in the record on appeal, we must presume that the missing record supports the trial court's ruling thereby resolving any doubts

against the Beverlys. See *Resurgence Capital, LLC*, 2017 IL App (1st) 161853, ¶ 33.

¶ 32 In regards to their counterclaim, the Beverlys argue that the trial court erred in dismissing their counterclaim where they proved the three elements of "duty, dereliction of duty, and damages" that were attributed to Elizabeth and the Firm. The Beverlys additionally maintain that the trial court erred when it "never allow[ed them] proper time to discuss damages in detail."

¶ 33 At the outset, we observe that the Beverlys' *pro se* counterclaim is not organized into enumerated counts and lacks coherency regarding their specific legal claims. What we can decipher is that the Beverlys alleged that pursuant to some breach of duty by Elizabeth the invoices they received from the Firm were inaccurate and they were due a refund from the Firm in the amount of $8789.28. At trial, however, the Beverlys requested $23,372.68 in damages which they maintained covered "late fees," charges they disputed, and their damaged reputation and emotional distress.

¶ 34 As plaintiffs in their counterclaim action, the Beverlys had the burden "not only to establish that they sustained damages but also to establish a reasonable basis for computation of those damages." *Lanterman v. Edwards*, 294 Ill. App. 3d 351, 354 (1998). While the trial court did not render an express finding regarding the damages, we may affirm the trial court on any basis that appears in the record. See *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009).

¶ 35 In this case, our review of the record reveals that the Beverlys did not establish by competent evidence a reasonable basis for the computation of the damages they allegedly sustained. See *Lanterman*, 294 Ill. App. 3d at 354. Furthermore, their claim that they were not allowed an adequate amount of time to discuss their damages is belied by the record, which demonstrates that the trial court provided the Beverlys with ample time and opportunity to

present their case-in-chief. Accordingly, we cannot say the trial court erred in dismissing the counterclaim. See *id.*[3]

¶ 36 Lastly, the Beverlys maintain, based on all the errors alleged above, the trial court's dismissal of their counterclaim was against the manifest weight of the evidence. The Beverlys question how the Firm can file a lawsuit against them when it was already in receipt of enough funds to cover the remainder of their invoices. They are insistent that they did not refuse to pay their legal fees.

¶ 37 This court recognizes that the Beverlys provided the Firm with a $20,000 retrainer, which the Firm then drew upon to pay the Beverlys' monthly invoices. At the time the Firm withdrew as counsel of the Beverlys the retainer had been exhausted and amounts remained due and owing. The evidence demonstrated that thereafter the Beverlys actively disputed the amount due; and rightfully so, as the Firm had failed to credit them $1380. Thus, in January 2015, when the mediation refund check was deposited, the parties' ongoing dispute regarding the amount of legal fees due required the Firm to place the refund check into its client trust account. See Ill. R. Prof'l Conduct R. 1.15(e) (eff. Sept. 1, 2011) (requiring funds to remain in a client trust account until the dispute is resolved). The invoices presented at trial demonstrated that a balance of $3027.94 remained on the Beverly's accounts. This was the amount the trial court ordered to be withdrawn from the client trust account and placed into the Firm's general operating fund. Based on all of the evidence presented in the record, we cannot say the judgment of the trial court on the complaint and counterclaim were against the manifest weight of the evidence. See *Kalata*, 144 Ill. 2d at 433.

[3] We note that the Beverlys further argue on appeal that the trial court erred when it determined they did not present sufficient evidence to pierce the corporate veil in order to hold Elizabeth individually liable. As we have determined that the Beverlys failed to meet their burden of proof regarding damages, this argument is moot.

¶ 38 CONCLUSION

¶ 39 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.