

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KATZ, GREENBERGER & NORTON : APPEAL NO. C-180087
LLP, TRIAL NO. 16CV-05723

Plaintiff-Appellee, :
 : *JUDGMENT ENTRY.*

vs. :

DOMINICK DONISI, :

Defendant-Appellant. :

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This case involves a suit filed by plaintiff-appellee Katz, Greenberger & Norton LLP (“Katz”) against defendant-appellant Dominick Donisi to collect unpaid legal fees. Donisi hired Ross Evans, an attorney with Katz, to represent him in post-decree matters involving child support and custody disputes with his ex-wife. Because the relationship between Donisi and his ex-wife was contentious, Evans told Donisi that it was classified as a “high-conflict case.” Evans testified that Donisi wanted to litigate everything, but Evans wanted to slow the process down, because he believed that Donisi would not be successful in court. Evans said that there were constant issues between Donisi and his ex-wife. As the case progressed, Evans reviewed the matter and determined that “none of the professionals were supporting his position on what he wanted, and I knew that would spell disaster if it went to trial.”

Three to four months before the relationship was terminated, Evans told Donisi that he would not take the case to trial, and that, if he wanted to go to trial, he needed to hire new counsel. Evans suggested several attorneys who specialized in

litigation, and Donisi chose one of those. And Evans agreed to spend an hour without charge making sure the new attorney understood the case.

In total, Evans represented Donisi for over a year, spending 109.6 hours on the case. Donisi never complained about his billing rate other than one time when he complained about how much it had cost to litigate one particular hearing. As a result, Evans agreed to reduce the bill by \$1000. Evans testified that, based on his experience, 109 hours over 13 months for a highly contentious family-law matter was reasonable. Evans also testified to the amount due on the account. Evans said that while there were times that Donisi did not agree with his recommendations, Evans assured him that his role was to help find reasonable outcomes. Donisi never terminated Evans or asked him to stop working.

Donisi testified that he was frustrated by Evans's slower, less-litigious approach. He believed that Evans should have filed more motions for contempt than he did. He said, "I feel that Mr. Evans, after all this time and all this money that I've spent - - and once again, \$32,000 is what he billed me for. And I've paid Mr. Evans \$22,000, as he's testified, was an outrageous amount of money." Donisi "believed" that he would have been more successful if Evans had more aggressively filed motions for contempt. He also said, "I feel that he overbilled me for things that I should not have been billed for," but was not specific, and he complained that he "was not treated well." On cross-examination, Donisi admitted Evans was qualified, but claimed that it was "the equitable part of the billing and how he handled my case" that he disputed. He admitted that he knew that the case was contentious, that he knew the hourly rates, and that Evans made no guarantees as to the outcome of the case or how much time would be involved. He said that he didn't fire Evans because of the cost to get a new attorney up to speed and because "I felt that I was confident in Mr. Evans because of his past experience." He admitted that he "made a voluntary, thought-out decision to continue with Mr. Evans as [his] attorney." In

closing argument, Donisi only singled out the fact that Evans knew the case was going to go to trial and did not stay to litigate it. The trial court found for the firm.

In his first assignment of error, Donisi claims that the firm failed to meet its burden of proof because the firm failed to present independent testimony to support its claim. But Donisi did not raise this issue below. He did not object to Evans's testimony, he did not object to the admission of the firm's exhibits, and he did not raise the failure of proof in his closing argument. He only argued that Evans had abandoned the case when he had originally agreed to litigate it. "It is axiomatic, however, that issues not presented for consideration below will not be considered by this court on appeal." *Shover v. Cordis Corp.*, 61 Ohio St.3d 213, 220, 574 N.E.2d 457 (1991), *overruled on other grounds*, *Collins v. Sotka*, 81 Ohio St.3d 506, 692 N.E.2d 581 (1998).

As the Second Appellate District stated

An independent expert is not always required to establish the reasonableness of claimed attorney fees. Testimony of the attorney seeking recovery of fees that the case involved complex issues, that the fees were within a reasonable range for that type of case, and that the client never questioned billing statements sent to the client constitutes sufficient evidence to establish the reasonableness of the charged fees, thereby negating the need for independent expert testimony. This is especially true where there is no documentary evidence from the client indicating a dispute concerning the attorney's fees as excessive or unreasonable during the attorney-client relationship; under such circumstances, the court may reasonably discount allegations by the client that he or she expressed dissatisfaction about the fees before the attorney-client relationship ended, and independent expert testimony from another attorney is not required to establish the reasonableness of the fees.

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(Citations omitted.) *Green & Green, Lawyers v. Trimbach*, 2018-Ohio-194, 104 N.E.3d 169, ¶ 14 (2d Dist.). Katz was not required to present expert testimony in this case, and Donisi neither argued below that it was required, nor did he present evidence to contradict Evans’s testimony. We overrule the first assignment of error.

In his second assignment of error, Donisi argues that the firm was not entitled to collect the amount owed because Evans had failed to fulfill his end of the agreement to litigate the matter. In support of this position, he cites *W. Wagner & G. Wagner Co., L.P.A. v. Block*, 107 Ohio App.3d 603, 669 N.E.2d 272 (6th Dist.1995). But in that case, the firm had been specifically hired to defend the clients in litigation involving real estate. Unlike in *Block*, Evans was hired generally to address certain post-decree issues involving Donisi’s daughter. Domestic-relations matters, especially post-decree, are not comparable to more traditional civil litigation in that resolution of a client’s concern need not always involve a trip to the courthouse. The contract did not dictate that Evans would take any of the issues to litigation, Evans’s representation was highlighted expressly by attempting to avoid litigation, and Evans made no guarantees as to the tactics or outcomes that Donisi could expect. We overrule Donisi’s second assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on May 24, 2019

per order of the court _____.

Presiding Judge