

2011 IL App (2d) 101014-U
No. 2-10-1014
Order filed September 20, 2011

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

K.O. JOHNSON,)	Appeal from the Circuit Court
)	of De Kalb County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-SC-417
)	
PAMELA S. WOOD,)	Honorable
)	James Donnelly,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: By failing to develop it or cite relevant authority, plaintiff forfeited his argument, which in any event seemed to mischaracterize the trial court's judgment.

¶ 1 K.O. Johnson sued Pamela S. Wood for attorney fees and contractual finance charges that he claimed she owed him under a "Paternity Hourly Fee Agreement." The court awarded him only part of what he sought. In particular, it rejected his claim for finance charges. On appeal, Johnson asserts that the court improperly "modified the contract" and "reduced the judgment." Johnson has failed to show that the court committed any error, and we therefore affirm.

¶ 2 I. BACKGROUND

¶ 3 On March 4, 2010, Johnson filed a small-claims complaint against Wood. He alleged that she owed him \$4,612.30 under the “Paternity Hourly Fee Agreement”—a retainer agreement for Johnson to represent Wood in a paternity action. The parties executed the agreement in August 2003. The agreement, an exhibit to the complaint, provided that Johnson would bill monthly for any expenses or fees that exceeded the \$1,000 retainer. It further provided that Johnson would add a finance charge of 1.5% a month on any balance unpaid more than 30 days after “the date of the conclusion of client’s case.” A statement of account, also an exhibit, showed that Johnson’s last regular representation of Woods occurred on July 2, 2004. On September 8, 2004, Johnson billed for time spent preparing a motion to withdraw as Wood’s counsel. A court appearance—presumably on the motion to withdraw—took place on October 4, 2004. Thereafter, all the entries on the statement are finance charges, which compounded. The first such charge, on November 5, 2004, was for \$25.90. The last charge on the statement, on April 5, 2010, was \$68.16.

¶ 4 A trial took place on July 14, 2010. The court awarded Johnson \$1,864.11 in fees, but disallowed all finance charges. It asked Johnson if he had proof that he had sent Wood regular bills. Johnson said that his practice was to bill “approximately every month.” He replied that he did not keep copies of the bills. Wood denied having received any statements. The court said that its specific practice was to disallow interest unless there was proof that bills had been sent:

“I’ve talked this situation, this very same question with the other judges, and there’s absolutely no question they wouldn’t do the same thing that I do.

Unless you can establish that you sent out some bills, you’re not going to get the interest that you’re claiming on this from the time that you should have. I think that it’s despicable to have a client in here that now there’s no proof that you ever billed her and at least there was no activity on this for at least six years.

I think you're entitled to what you charged up to the time that you should have done something, and when you started adding on all the interest I'm not going to give you any of that but what you did up to that point you're entitled to. You've got a contract for that."

The court ruled that Johnson was entitled to everything for which he had billed through January 5, 2005. This included all hourly charges, including those relating to the motion to withdraw, and two months' finance charges. The full award to Johnson was \$1,864.11 in fees and \$110.21 in costs.

¶ 5 Johnson filed a timely motion to reconsider in which he asserted that he had located evidence that he had sent at least *some* bills to Wood. He did not have proof of every bill, but he did have four envelopes that he claimed had contained bills, the oldest dated December 5, 2007, that the post office had returned to him as undeliverable at the address Wood had given him. The court denied Johnson's motion, and he timely appealed.

¶ 6

II. ANALYSIS

¶ 7 On appeal, Johnson implies that the court erred by reforming the contract to exclude the finance charges. Johnson outlines the elements of a cause of action for reformation of a contract; beyond that, the whole of his argument¹ is found in the following lines:

"If the trial court were to reform the contract, by announcing a requirement of statements to be able to collect contact [*sic*] interest, it did so on its own, *sua sponte*. It is appropriate for the counsel to include those costs in the billing, and it is common practice. The trial court disallowing the contract interest based on documented statements, and

¹We omit any discussion of portions of Johnson's brief that appear to be inadvertent and irrelevant copying from a brief in another appeal before this court.

refusing to allow same on the *Motion for Reconsideration* ***, must be an abuse of discretion and as appellant K.O. Johnson urges this Honorable court to find so.”

¶ 8 This argument is insufficient. Its obvious flaw is that it is nothing but bare assertions. An appellant forfeits a claim of error if he or she fails to develop it with argument or to cite relevant authority. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). Johnson provides no support for his claim that finance charges are “appropriate” and “common practice” and has thus forfeited the claim.

¶ 9 The argument’s deeper flaw is that it assumes without explanation that the court must have *reformed* the contract, when nothing in what the court said suggested that it was doing so and when other bases for excluding the finance charges are more in line with the court’s statements.

¶ 10 The contract included a provision requiring Johnson to send monthly statements. The idea that the right to collect finance charges might, as a matter of contract interpretation, be tied to the duty to send monthly statements has some obvious appeal, yet Johnson does not address it.

¶ 11 Moreover, in a suit for attorney fees due under a retainer agreement, the contract terms are not fully controlling, as there exists an independent requirement that the fees sought be reasonable by the standards of legal ethics. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 600 (2000). “Unlike findings in a fee petition case, which rest in the sound discretion of the trial judge, the reasonableness of attorney fees in a common law breach of contract action presents a question to be resolved by the trier of fact.” *Wildman*, 317 Ill. App. 3d at 597. An attorney-plaintiff has the burden to show “by a preponderance of the evidence,*** that the amount of fees sought is fair, just and reasonable.” *Wildman*, 317 Ill. App. 3d at 598. In his brief, Johnson does not so much as acknowledge his burden to show reasonableness.

¶ 12 In sum, Johnson grossly oversimplifies the matter by implying that the court *must* have reformed the contract; his argument is therefore misdirected. However, by failing to support his specific claim, that the court improperly reformed the contract, with argument or citation to authority he has forfeited even it.

¶ 13

III. CONCLUSION

¶ 14 For the reasons stated, we affirm the trial court's award of a lesser amount than Johnson sought.

¶ 15 Affirmed.