2012 IL App. (1st) 111131-U

FIRST DIVISION
August 6, 2012

No. 1-11-1131

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
FIRST DISTRICT

ADR SYSTEMS OF AMERICA, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 2009 M1 175078
ROY OLSON and LAW OFFICE OF ROY	)	
OLSON,	)	Honorable Eileen O'Neill Burke and
	)	Honorable Sheryl A. Pethers,
Defendants-Appellees and Cross-Appellants.	)	Judges Presiding.

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Circuit court had jurisdiction to award postjudgment attorney fees and costs. The record on appeal was sufficient to review the circuit court's denial of postjudgment attorney fees. The court abused its discretion when it denied the plaintiff's entire request for postjudgment attorney fees.

¶ 2 Plaintiff ADR Systems of America, LLC appeals from an order of the circuit court of Cook County granting its request for costs but denying its request for attorney fees incurred in

collecting its judgment against defendants Roy Olson and the Law Firm of Roy Olson (defendant Olson). On appeal, plaintiff ADR contends that the denial of its request for postjudgment attorney fees was an abuse of discretion. Defendant Olson filed a cross-appeal from that portion of the circuit court's order awarding postjudgment costs. Defendant Olson also filed a motion to strike plaintiff ADR's opening brief. We ordered the motion taken with the case.

¶ 3 Plaintiff ADR entered into an agreement with defendant Olson to provide mediation services in a pending law suit. The contract contained the following fee-shifting provision:

> "In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney fees, incurred by ADR Systems in connection with the collection of any amount due and owing."

¶ 4 Defendant Olson failed to pay the mediation fee, and plaintiff ADR filed a complaint to collect the fee and sought an award of attorney fees and costs. On October 27, 2010, following a bench trial, Circuit Court Judge Sheryl A. Pethers (the trial court) entered a judgment for plaintiff ADR and against defendant Olson in the amount of $7,397.50. That amount represented $1,575 in actual damages, $4,852.50 in attorney fees and $970 in costs to date. Pursuant to section 2-1402 of the Code of Civil Procedure (735 ILCS 5/2-1402 (West 2010) (the Code)), plaintiff ADR served defendant Olson with a citation to discover assets. Defendant Olson filed a posttrial motion and a motion to quash the citation to discover assets. He sought to quash the citation proceeding as premature because plaintiff ADR was aware he intended to file a posttrial motion, and the trial court had acknowledged that there could be some miscalculations in the judgment

amount. On December 3, 2010, the trial court denied defendant Olson's posttrial motion. On March 3, 2011, plaintiff ADR filed a motion for postjudgment attorney fees and costs. In its amended petition, plaintiff ADR sought $9,185.75 in attorney fees and $1,156.78 in costs. Defendant Olson filed an objection and motion to strike and dismiss ADR's motion.

¶ 5 On March 22, 2011, Circuit Court Judge Eileen O'Neill Burke (the circuit court) entered an order granting plaintiff ADR's request for costs in the amount of $1,156.75, "which the Court has determined are reasonable." The court denied the request for attorney fees finding that "the attorney fees requested in ADR's petition are not reasonable in their entirety."

¶ 6 This appeal and cross-appeal followed.

¶ 7 ANALYSIS

¶ 8 I. Motion to Strike Plaintiff ADR's Opening Brief

¶ 9 Defendant Olson maintains that plaintiff ADR's opening brief should be stricken for failing to comply with our supreme court rules governing appeals, in particular Rule 341 governing the preparation of briefs. Ill. S. Ct. R. 341 (eff. July 1, 2008). The motion to strike identifies multiple violations of the specific requirements of the following subsections of Rule 341(h): (2) (nature of the action); (3) (issue presented for review); and (6) statement of facts. Ill. S. Ct. R. 341(h)(2), (3), (6) (eff. July 1, 2008). Defendant Olson asserts that the violations are so flagrant that plaintiff ADR's entire opening brief must be stricken.

¶ 10 Striking an appellate brief is a harsh sanction and is reserved for those situations in which the alleged violations of the appellate procedural rules interfere with or preclude our review. See *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). The violations identified by defendant

Olson do not preclude meaningful review of the merits of this case. Therefore, we deny the motion to strike. However, we remind appellate counsel that our supreme court rules governing appellate practice are not suggestions; "[a] lawyer who ignores them casts doubt on his skills and casts a shadow over the merits of his client's case." *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 52 (2004).

¶ 11 II. Discussion

¶ 12 A. *Circuit Court's Jurisdiction to Award Attorney Fees and Costs*

¶ 13 Plaintiff ADR contends that the circuit court abused its discretion when it denied plaintiff ADR's request for attorney fees. Defendant Olson responds Judge Burke lacked jurisdiction to grant plaintiff ADR's motion for postjudgment attorney fees and costs.

¶ 14 In general, a trial court loses jurisdiction to vacate or modify its judgment after the passage of 30 days after the entry of judgment or 30 days after the denial of a timely filed posttrial motion. See *F.H. Prince & Co. v. Towers Finance Corp.*, 266 Ill. App. 3d 977, 988 (1994) (cases collected therein); *Home State Bank/National Association v. Potokar*, 249 Ill. App. 3d 127, 135 (1993). In this case, plaintiff ADR's motion was filed more than 30 days after the denial of defendant Olson's posttrial motion. However, as explained below, we find that Judge Burke had jurisdiction to modify the October 27, 2010, order.

¶ 15 In *F.H. Prince & Co.* the court addressed a similar issue and explained as follows:

> "[T]he filing of a petition for attorney fees and costs pursuant to a breach of contract does not create the claim nor does it vest jurisdiction with the trial court to hear that claim. The claim is created when the complaint for breach of contract, seeking fees and costs as

> an element of damages, is filed. Once the complaint is filed, the trial court has jurisdiction over that claim; and once the court finds a breach and entitlement to attorney fees and costs as a result of that breach, the court retains jurisdiction to determine all amounts owed." *F.H. Prince & Co.,* 266 Ill. App. 3d at 988.

¶ 16 Defendant Olson argues that the October 27, 2010, order was final because plaintiff ADR's complaint requested only its prejudgment costs and attorney fees, which were awarded by the trial court. He further argues that the trial court did not reserve jurisdiction to rule on the postjudgment attorney fees and costs.

¶ 17 Plaintiff ADR's claim for attorney fees and costs was based on the fee-shifting language in the mediation agreement, entitling it to both prejudgment and postjudgment costs, which included attorney fees. The complaint alleged that the mediation agreement provided that "ADR shall be entitled to recover its costs incurred in connection with this matter, including its attorney fees." In its prayer for relief, plaintiff ADR sought judgment in the amount of $1,575 "plus costs, including attorneys' fees and prejudgment interest, and any other relief this Court deems just and appropriate." A copy of the mediation agreement was attached as an exhibit to the complaint.

¶ 18 Contrary to defendant Olson's argument, the complaint stated a claim for both prejudgment and postjudgment costs and attorney fees based on the mediation agreement. This conclusion finds support in the language of the October 27, 2010, judgment order. The judgment order stated that:

> "A judgment is entered after trial in favor of plaintiff ADR Systems of America, LLC and against defendants Roy Olson and the Law Office of Roy Olson in the amount of

$6427.50 plus costs of $970 to date."

The inclusion of "to date," in the order indicates that the claim for attorney fees and costs had not been disposed of in its entirety and remained pending.

¶ 19 We conclude that since the October 27, 2010, order, did not resolve plaintiff ADR's entire claim for attorney fees and costs, it was not a final judgment and was subject to modification prior to the entry of the final judgment. *Home State Bank/National Association*, 249 Ill. App. 3d at 136-37. However, our conclusion raises a potential error as explained below.

¶ 20 Supplementary proceedings require an enforceable judgment. See Ill. S. Ct. Rule 277 (eff. July 1, 1982); 735 ILCS 5/2-1402 (West 2010). For a nonfinal judgment to be enforceable, a finding pursuant to Illinois Supreme Court Rule 304(a) is required. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Since the October 27, 2010, order did not contain a Rule 304(a) finding, the order was not enforceable, thus calling into question the propriety of the supplementary proceedings in this case. See *Home State Bank/National Association*, 249 Ill. App. 3d at 138. Faced with a similar situation, the court in *Home State Bank/National Association* determined that, since no such objection to the supplementary proceedings had been raised at any time, it would not raise the possibility of error *sua sponte*. *Home State Bank/National Association*, 249 Ill. App. 3d at 138. In the present case, no objection to the supplemental proceedings was raised on that basis, and we likewise decline to raise the possibility of error *sua sponte*.

¶ 21 We conclude that, since the October 27, 2010, order was not a final judgment and subject to modification, the circuit court had jurisdiction to award attorney fees and costs incurred in plaintiff ADR's postjudgment collection efforts. We therefore do not need to address defendant

Olson's argument that a court hearing supplemental proceedings has no authority to award postjudgment attorney fees.

¶ 22 B. *Denial of Postjudgment Attorney Fees*

¶ 23 1. Standard of Review

¶ 24 A reviewing court will not reverse the circuit court's ruling on a request for attorney fees unless the court has abused its discretion. *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314 (2007). An abuse of discretion will be found only where no reasonable person would take the view adopted by the circuit court. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 331-32 (2008).

¶ 25 2. Discussion

¶ 26 Plaintiff ADR contends that the circuit court abused its discretion when it denied the motion for postjudgment attorney fees. Defendant Olson responds that in the absence of a transcript or a bystander's report, this court must affirm the circuit court's denial of plaintiff ADR's request for attorney fees. As the appellant, plaintiff ADR bears the burden of presenting a record that is adequate for the determination of the issues. *Compton*, 382 Ill. App. 3d at 330. In the absence of a transcript, the reviewing court has no basis for finding an abuse of discretion and will presume that the circuit court heard sufficient evidence to support its decision, unless the record indicates otherwise. *Compton*, 382 Ill. App. 3d at 330-31.

¶ 27 Plaintiff ADR responds that the parties orally presented the arguments made in their briefs, and the court then ruled. It maintains that since all the evidence considered by the circuit court is before this court, the appellate record is sufficient for determination of this issue.

¶ 28 The March 22, 2011 order, provided that the matter was before the circuit court for ruling on ADR's motion for postjudgment attorney fees and costs, that all parties were present and the court was "fully advised." The matter was before the court for "ruling" on the attorney fees request and not for the presentation of evidence at a hearing. Therefore, the absence of the March 22, 201l, transcript does not require us to summarily affirm the circuit court's denial of the request for postjudgment attorney fees.

¶ 29 When a contract calls for the shifting of attorney fees, the circuit court should award all reasonable fees. *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276, 282 (2001). Where the contract does not include an express provision for the amount of attorney fees, an attorney is entitled to be paid for services rendered as shown by the evidence. *J.B. Esker & Sons, Inc.*, 325 Ill. App. 3d at 282-83. The determination as to reasonableness is a matter for the court's discretion. *J.B. Esker & Sons, Inc.*, 325 Ill. App. 3d at 283. The party seeking the fees has the burden of presenting the court with sufficient evidence from which it can determine the reasonableness of the fee. *J.B. Esker & Sons, Inc.*, 325 Ill. App. 3d at 283.

¶ 30 Plaintiff ADR's amended request for attorney fees was supported by the amended affidavit of plaintiff ADR's attorney, Robert Chapman, and detailed records setting forth the dates of the legal services performed, the attorney who performed them, the hourly charge, and the amount of time expended. The petition also included documentation evidencing the efforts plaintiff ADR's attorneys made in order to collect their client's judgment against defendant Olson. There was no dispute that the work was in fact performed. By denying the attorney fees in their entirety as unreasonable, we must conclude that Judge Burke determined that none of the

attorneys' postjudgment collection work was necessary. Since plaintiff ADR had to expend efforts to collect the judgment from defendant Olson, which caused it to incur fees for the services of its attorneys, no reasonable person would have denied the entire request for attorney fees as unreasonable. That determination is even less understandable given her award of the postjudgment costs because the costs were reasonable.

¶ 31 Pursuant to the fee-shifting provision in the contract, plaintiff ADR was entitled to those attorney fees incurred postjudgment that were necessary to collect the amount of its judgment against defendant Olson. Therefore, the denial of the attorneys fee in their entirety as unreasonable was an abuse of discretion. This case must be remanded for a hearing on plaintiff ADR's request for postjudgment attorney fees.

¶ 32 When the circuit court reduces the amount requested in a fee petition, the court's ruling should include the reasons justifying a particular reduction. *Richardson*, 375 Ill. App. 3d at 315. On remand, should the circuit court deny the request for attorney fees in whole or in part as unreasonable, the court shall state in the order why the attorney fees sought are unreasonable.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm that part of the circuit court's order granting plaintiff ADR's request for postjudgment costs and reverse that part of the judgment denying its request for postjudgment attorney fees. The case is remanded to the circuit court for a hearing on plaintiff ADR's request for postjudgment attorney fees.

¶ 35 Affirmed in part and reversed in part and remanded with directions.