

NOTICE

Decision filed 06/18/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140184-U

NO. 5-14-0184

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

SUSAN WARREN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 13-SC-948
)	
NORMA MINER,)	Honorable
)	Carolyn B. Smoot,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates and Justice Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in finding there was a breach of contract and erred in awarding plaintiff \$500 in damages and \$99 in costs.
- ¶ 2 Defendant, Norma Miner, appeals from a judgment of the circuit court of Williamson County entered in favor of plaintiff, Susan Warren, in the amount of \$500, plus \$99 in costs, for what the trial court termed a breach of contract. The issue on appeal is whether the trial court erred in finding there was a breach of contract and in awarding plaintiff \$599. We reverse.

¶ 3

BACKGROUND

¶ 4 In April 2011, plaintiff retained defendant to represent her in postdissolution proceedings against her ex-husband and paid defendant a total of \$2,000. Plaintiff was unhappy with the services provided by defendant. On November 19, 2013, plaintiff filed a small claims complaint against defendant, seeking \$2,000, plus costs, and alleging, "I retained [defendant] on 4-22-2011 to get my child support increased from 20% to 28% since I have 2 children. She missed court dates and as of July 2013 she had done nothing. I had to retain a new lawyer."

¶ 5 On February 3, 2014, the trial court conducted a bench trial, after which it entered the following order in a docket entry:

"1. Plaintiff retained Defendant to represent her in dissolution of marriage post-judgment proceedings.

2. Plaintiff paid \$1,500 retainer and an additional \$500 for a total amt. of \$2,000.

3. Defendant negotiated a settlement of the issues pending; however the Order was not entered after matter settled 3/16/12 until Plaintiff hired Atty Schafer in July [] 2013.

4. [Defendant] is entitled to *quantum meruit* for legal work completed, in the sum [of] \$2000. This amount is computed at hourly rate testified by [Defendant] of \$150 multiplied by 13 1/3 hrs.

5. Plaintiff expended further funds with Atty Schafer to represent her in getting matter concluded and Order entered. Ct. finds reasonable amount is \$500

expended by Plaintiff. Ct. finds \$500 to be damages from breach of contract."

The trial court then entered judgment for plaintiff and against defendant in the amount of \$500, plus \$99 for costs, for a total of \$599.

¶ 6 Defendant filed a motion to reconsider, which the trial court denied. Defendant filed a timely notice of appeal and later filed a bystander report. Plaintiff did not file a bystander report or a brief in this matter.

¶ 7 ANALYSIS

¶ 8 The issue on appeal is whether the trial court erred in finding there was a breach of contract and in awarding plaintiff \$599. Defendant contends there was no breach of contract because she resolved the issues she was retained to handle and abided by plaintiff's direction in rejecting a proposed order. Defendant further argues plaintiff did not adequately prove her damages, and the trial court's decision to award \$500 is not supported by the evidence. We agree.

¶ 9 The elements of a breach of contract claim are (1) a valid and enforceable contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) a resulting injury to the plaintiff. *Van Der Molen v. Washington Mutual Finance, Inc.*, 359 Ill. App. 3d 813, 823, 835 N.E.2d 61, 69 (2005). The standard of review applied to a challenge following a bench trial is whether the trial court's judgment is contrary to the manifest weight of the evidence. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 277 (1995); *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1071, 872 N.E.2d 91, 98 (2007). A judgment following a bench trial is against the manifest weight of the evidence when an opposite conclusion is apparent or when the judgment is

unreasonable, arbitrary, or not based upon the evidence. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006).

¶ 10 Our review of the record shows that defendant did not breach her contract with plaintiff to provide legal services. Plaintiff paid defendant a retainer of \$2,000 to assist her in postdissolution proceedings after plaintiff was contacted by her ex-husband's attorney regarding obtaining her signature on a quitclaim deed. The record reflects, contrary to plaintiff's assertion in her complaint, that defendant was hired to do more than get child support increased from 20 to 28%. As evidence, we point to the petition to enforce judgment of dissolution of marriage prepared by defendant and served on plaintiff's ex-husband in June 2011. This was a two-count complaint, asking the court to enforce the judgment and alleging that plaintiff's ex-husband failed to refinance the marital residence, failed to pay an IRS debt with money from insurance proceeds, failed to pay child support, and failed to provide plaintiff with information regarding the children's health insurance. The record shows that the matter was set, discovery ensued, and the attorneys exchanged numerous pieces of correspondence attempting to resolve remaining postdissolution issues.

¶ 11 The record further shows that unbeknownst to defendant, plaintiff was already working with an assistant attorney general to get her child support increased when plaintiff signed and allowed defendant to file the petition to enforce judgment. Less than one month after filing the petition to enforce judgment, and without defendant's knowledge, an agreed uniform order for support was entered, which was signed by plaintiff. It set monthly child support at \$507.44 and established an arrearage as of April

30, 2011, at \$2,057.65. In later correspondence, plaintiff's ex-husband's attorney goes so far as to say, "My guess is that [plaintiff] didn't bother telling you that she had child support enforcement on the case." Nevertheless, defendant soldiered on, attempting to get an increase in child support for plaintiff to 28%.

¶ 12 Ultimately, plaintiff's ex-husband provided a copy of a pay stub, but it failed to disclose whether he was paid bimonthly or every two weeks. To further complicate matters, plaintiff insisted that her ex-husband had additional income from a side business. Defendant made numerous requests to see the ex-husband's 2011 tax return, but it was not provided. A docket entry from Johnson County shows that defendant and the ex-husband's attorney resolved all issues on March 16, 2012, and that an order was to be submitted within 30 days. The ex-husband's attorney prepared a proposed order dated May 30, 2012, and he and defendant continued to correspond.

¶ 13 On July 24, 2012, defendant sent plaintiff's ex-husband's attorney a letter in which she *inter alia* stated she received his proposed order, again requested the ex-husband's 2011 tax return, calculated a minimum of \$885.88 in child support, and again requested more pay stubs to determine if he was being paid twice per month or every two weeks. Defendant advised the other attorney that plaintiff had an appointment for the following Tuesday and asked that he provide her with the information she requested prior to that because "I believe we can then finalize everything."

¶ 14 On December 11, 2012, defendant sent plaintiff's ex-husband's attorney a letter in which she stated the correct child support amount should be \$841.51 per month based upon the pay stubs provided. She also stated the amount of retroactive child support

should be \$2,238.49, an amount different from the previous proposed orders prepared by the ex-husband's attorney.

¶ 15 On July 3, 2013, plaintiff retained Michelle Schafer to represent her. On July 24, 2013, Attorney Schafer sent the ex-husband's attorney a letter which stated in pertinent part, "This will confirm our conversation on today's date wherein you advised me that I had authority to submit your May 30, 2012, proposed Order to Judge Williamson for entry. I have now done so." Because the case was ultimately resolved by a proposed order plaintiff refused to agree to a year earlier, but was clearly negotiated by defendant, we fail to see how defendant breached her contract with plaintiff.

¶ 16 The record does not support plaintiff's claim that as of July 2013, defendant had done nothing with regard to her case. Instead, the record shows plaintiff hired defendant to do more than just get an increase in child support, and through defendant's diligence those other matters were resolved. Furthermore, the child support matter was ultimately resolved pursuant to an order defendant negotiated on plaintiff's behalf a year prior to the time it was finally entered. Nothing in the record suggests that plaintiff told defendant to agree to the proposed order. Instead the record shows that plaintiff failed to advise defendant that she wanted to agree to the proposed order and instead sought the services of another attorney to do a job already done by defendant.

¶ 17 Finally, the trial court's order does not explain how it calculated \$500 in damages. An assessment of damages made without the necessary level of certainty is considered against the manifest weight of the evidence and should be overturned on appeal. *Shaw v. Bridges-Gallagher, Inc.*, 174 Ill. App. 3d 680, 684, 528 N.E.2d 1349, 1353 (1988). The

only finding made by the trial court was that there was a breach of contract, a conclusion which we find to be against the manifest weight of the evidence. Under these circumstances, we find that the trial court erred in finding defendant breached her contract with plaintiff and erred in awarding damages.

¶ 18 For the foregoing reasons, we hereby reverse the judgment of the circuit court of Williamson County.

¶ 19 Reversed.