

[Cite as *Barilla v. Keaton*, 2015-Ohio-1244.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JAMES V. BARILLA

Appellant

v.

COURTNEY KEATON

Appellee

C.A. No. 14CA010659

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 14CV182914

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

HENSAL, Presiding Judge.

{¶1} James Barilla appeals a judgment of the Lorain County Court of Common Pleas that awarded him \$2,340 on his breach of contract and defamation claims against Courtney Keaton. For the following reasons, this Court affirms.

I.

{¶2} According to Mr. Barilla, Ms. Keaton hired him to represent her in a divorce action. Although she later discharged him, she did not pay the remainder of his fees. She also posted an unfavorable review about him on an attorney rating website. Mr. Barilla filed a complaint against her, seeking payment of his fees, damages for defamation, and removal of the review. When Ms. Keaton did not file an answer, Mr. Barilla moved for a default judgment, and the trial court entered judgment in his favor. The court awarded him \$2,240 for his unpaid fees and \$100 on his defamation claim. It denied his request for injunctive relief. Mr. Barilla has appealed the trial court’s judgment, assigning two errors.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THE APPELLANT'S DAMAGES AT \$100 IN A DEFAULT HEARING IN WHICH UNCONTROVERTED SWORN EVIDENCE SUPPORTED APPELLANT'S DEMAND FOR \$25,000.

{¶3} Mr. Barilla argues that the trial court incorrectly awarded him only \$100 on his defamation claim. He argues that the trial court should have, at the very least, scheduled a hearing to determine his damages.

{¶4} Civil Rule 8(D) provides that, “[a]verments in a pleading * * * other than those as to the amount of damage, are admitted when not denied in the responsive pleading.” Thus, even though Ms. Keaton did not appear in the action, Mr. Barilla still had to prove the amount of his damages. A trial court has discretion under Civil Rule 55(A) to determine whether a hearing is necessary to determine the amount of damages on a default judgment. *Akron Gen. Med. Ctr. v. Med. Mut. of Ohio*, 9th Dist. Summit No. 24484, 2009-Ohio-2679, ¶ 13. An abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶5} In his motion for default judgment, Mr. Barilla requested \$27,240 in damages. In addition to the \$2,240 that Ms. Keaton owed him for his representation, he sought \$12,500 in compensatory damages and \$12,500 in punitive damages for her defamatory review. He supported his damage request with an affidavit. According to the affidavit, a potential client “refused to make an appointment [with him] due to the defamatory review * * *.” Although he never met the potential client, he estimated that his work on the case would have earned him \$3,000 to \$5,000. He also claimed in the affidavit that he lost up to 60 clients and \$300,000 in revenue because of Ms. Keaton’s review. He calculated those numbers by extrapolating from the

average number of “hits” an attorney’s rating page receives each month. He did not present any information, however, about the number of users who had visited his specific rating page since Ms. Keaton posted her review, let alone how many of those visitors were seeking representation.

{¶6} Even if a defendant has failed to appear, the determination of damages in a tort action “must be supported by evidence.” *Molz v. Gearhart*, 4th Dist. Meigs No. 07CA16, 2009-Ohio-2824, ¶ 11. Upon review of Mr. Barilla’s affidavit, we conclude that his alleged defamation damages were entirely speculative. It, therefore, was appropriate for the trial court to limit his defamation damage award to nominal damages. *See Lacey v. Laird*, 166 Ohio St. 12 (1956), paragraph two of the syllabus (“‘Nominal damages’ are those recoverable where a legal right is to be vindicated against an invasion thereof which has produced no actual loss of any kind, or where, from the nature of the case, some injury has been done, the extent of which the evidence fails to show.”); *Dunn v. Zimmerman*, 69 Ohio St.3d 304, 305 (1994) (characterizing \$100 compensatory damages as nominal).

{¶7} Mr. Barilla admits that his defamation damage claim “may be speculative[.]” He argues that the trial court, therefore, should have scheduled a damages hearing before a jury. He has not indicated, however, what he could have presented at the hearing that would have made his damage estimate any less speculative. We also note that he did not request a damages hearing in his motion for default judgment.

{¶8} We conclude that, in light of the speculative nature of Mr. Barilla’s alleged defamation damages, the trial court did not abuse its discretion when it declined to schedule a damages hearing and awarded him only \$100 on his defamation claim. Mr. Barilla’s first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING APPELLANT INJUNCTIVE RELIEF TO REMOVE THE DEMAFATORY (SIC) REVIEW ON A LEGAL WEBSITE WHEN THE COURT DETERMINED THE REVIEW TO BE DEFAMATORY.

{¶9} Mr. Barilla also argues that the trial court incorrectly denied his request for injunctive relief. As he acknowledges, “[i]t is well settled that an injunction will not issue where there is an adequate remedy at law.” *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 2002-Ohio-2427, ¶ 74. “A permanent injunction is an equitable remedy that will be granted only where there will be immediate and irreparable injury to the complaining party and there is no adequate remedy at law.” *Smead v. Graves*, 9th Dist. Summit No. 23770, 2008-Ohio-115, ¶ 9. “The purpose of an injunction is to prevent a future injury, not to redress past wrongs.” *Id.*, quoting *Lemley v. Stevenson*, 104 Ohio App.3d 126, 136 (6th Dist.1995). “The grant or denial of an injunction is within the trial court’s discretion and will not be disturbed by a reviewing court absent an abuse of that discretion.” *Heron Point Condominium Unit Owner’s Assn. v. E.R. Miller, Ltd.*, 9th Dist. Summit Nos. 25861, 25863, 25998, 2012-Ohio-2171, ¶ 15.

{¶10} Mr. Barilla argues that the defamatory review has a continuous chilling effect on his law practice. The “most logical solution,” therefore, was for the trial court to order Ms. Keaton to remove her statements from the website. We conclude, however, that Mr. Barilla failed to establish that he did not have an adequate remedy at law. Accordingly, the trial court did not abuse its discretion when it denied his request for injunctive relief. Mr. Barilla’s second assignment of error is overruled.

III.

{¶11} The trial court did not abuse its discretion when it did not schedule a hearing on Mr. Barilla's damage and denied his request for injunctive relief. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

JAMES BARILLA, pro se, Appellant.

COURTNEY KEATON, pro se, Appellee.