

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001058-MR

BECKHAM B. BARNES

APPELLANT

v. APPEAL FROM RUSSELL CIRCUIT COURT  
HONORABLE VERNON MINIARD, JR., JUDGE  
ACTION NO. 15-CI-00118

MARK JOSEPH STANZIANO (DECEASED);  
AND BETHANY L. STANZIANO, AS  
ADMINISTRATOR OF THE ESTATE  
OF MARK STANZIANO

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

MAZE, JUDGE: Beckham B. Barnes appeals from a judgment of the Russell Circuit Court in his favor against Bethany L. Stanziano, Administrator of the Estate of Mark Stanziano (the Estate). Barnes argues that the trial court erred by denying his claims for additional damages. Finding no error, we affirm.

For purposes of this appeal, the following facts are not in dispute. In 2004, Barnes was convicted of the 1999 murder of Troy Miller. His conviction was affirmed by the Kentucky Supreme Court on direct appeal. *Barnes v. Commonwealth*, Nos. 2004-SC-000197-MR and 2004-SC-000258-TG, 2006 WL 734006 (Ky. Mar. 23, 2006). Thereafter, attorney Mark Stanziano was hired to assist Barnes's counsel in the preparation of Barnes's motion for relief under RCr<sup>1</sup> 11.42 and for federal *habeas corpus*. Barnes alleges that Stanziano received a total of \$32,000 for this work, but Stanziano failed to adequately prepare the case or file the motions.<sup>2</sup>

Stanziano died on June 27, 2014.<sup>3</sup> At some point, Stanziano's widow, Bethany Stanziano, was appointed as administrator of his Estate. On March 4, 2015, Barnes filed a *pro se* complaint against Stanziano and his Estate alleging legal malpractice. Although Bethany Stanziano received service on the complaint, the Estate did not file an answer. Thereafter, Barnes filed a motion for default

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

<sup>2</sup> In 2007, Barnes filed an RCr 11.42 motion, which was denied without an evidentiary hearing. This Court affirmed the denial on direct appeal. *Barnes v. Commonwealth*, No. 2007-CA-001747-MR, 2008 WL 2468891 (Ky. App. June 20, 2008). A procedural history of his subsequent motions, including the federal *habeas corpus*, are set out in *Barnes v. Commonwealth*, No. 2016-CA-001677-MR, 2018 WL 2754474 (Ky. App. June 8, 2018). In that opinion, this Court affirmed the trial court's denial of Barnes's motions under Kentucky Rules of Civil Procedure (CR) 60.02 and RCr 10.02(1).

<sup>3</sup> Stanziano was shot and killed by Clinton Inabnit, who pleaded guilty but mentally ill to the murder. Stanziano's death was not related to the current matter.

judgment. The trial court granted the motion on September 27, 2017, and directed Barnes to submit a proposed judgment.

On October 26, 2017, the Estate filed a motion to set aside the default judgment. Following a hearing, the trial court found that Bethany Stanziano had been served and the Estate failed to show good cause for its failure to file an answer to the complaint. The court entered a judgment for Barnes in the amount of \$32,000, representing the amount of attorney fees paid to Stanziano. However, the trial court found no basis for Barnes's claims of additional attorney fees in the amount of \$120,000 or for compensatory and punitive damages of more than \$18 million.

Barnes now appeals to this Court, and the Estate failed to file a responsive pleading. The sole issue is whether the trial court erred by failing to enter judgment for Barnes in the amounts set out in his proposed judgment. We find no error.

CR 55.01 permits a trial court to grant a default judgment against a party who has failed to appear or file a responsive pleading in an action after being served. In a default judgment situation, the defaulting party admits only such allegations on the pleadings as are necessary to obtain the particular relief sought by the complaint. *Howard v. Fountain*, 749 S.W.2d 690, 692 (Ky. App. 1988). But even when default judgment is appropriate, CR 55.01 requires a hearing at

which the moving party must prove the amount of damages. *Deskins v. Estep*, 314 S.W.3d 300, 304 (Ky. App. 2010). The trial court must make specific findings required by CR 52.01 prior to rendering a judgment. *Id.* See also *Greathouse v. Am. Nat. Bank & Tr. Co.*, 796 S.W.2d 868, 870 (Ky. App. 1990). We review the trial court's factual findings under the clearly erroneous standard. *Moore v. Asente*, 110 S.W.3d 336, 353-34 (Ky. 2003).

In the current case, Barnes alleged that Stanziano was paid a total of \$32,000 but he failed to provide competent legal services. In the absence of any response to these allegations, they are deemed admitted. However, Barnes presented no evidence, other than the unsupported allegation in his tendered judgment, that he incurred additional attorney fees due to Stanziano's negligence. Likewise, Barnes presented no evidence that his post-conviction motions would have been successful but for Stanziano's negligence. Therefore, the trial court properly rejected the proposed judgment on these claims.

Accordingly, we affirm the judgment of the Russell Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Beckham B. Barnes, *pro se*  
Western Kentucky Correctional  
Complex  
Fredonia, Kentucky