[Cite as *Caryn Groedel & Assoc. Co., L.P.A. v.Crosby*, 2010-Ohio-3314.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93619

CARYN GROEDEL & ASSOCIATES CO., LPA

PLAINTIFF-APPELLANT

vs.

WILLIAM M. CROSBY, ESQ., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-667457

BEFORE: Kilbane, P.J., McMonagle, J., Cooney, J.

RELEASED: July 15, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Caryn Groedel & Associates Co., LPA ("Groedel"), filed a complaint against William M. Crosby ("Crosby") and The Crosby Law Offices ("Crosby Law") alleging that Crosby and Crosby Law owed her contingency fees from his representation of one of Groedel's former clients. The trial court granted judgment in favor of Crosby and Crosby Law. After a review of the record and the pertinent law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} On March 16, 2006, Groedel agreed to represent John Doe with respect to a potential sexual abuse claim from incidents that occurred when he was a minor.[1] The parties entered into a written fee agreement whereby Groedel would receive 40 percent of any recovery she obtained on behalf of John Doe. Sometime during the course of the representation, Groedel allegedly negotiated a $45,000 settlement on behalf of John Doe. However, a settlement agreement was never executed by the parties. If the settlement agreement for $45,000 had been executed, Groedel would have been entitled to a 40 percent contingency fee in the amount of $18,000.

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[1]John Doe was never named during the pendency of the instant action. The parties determined that his identification was not necessary to resolve their dispute, and John Doe asked that his identity be protected. Further, the exact nature of John Doe's underlying claims was never developed in the record.

{¶ 4} On December 6, 2006, John Doe sent Groedel a letter terminating her services, alleging that she committed malpractice. John Doe also stated that he had hired Crosby and authorized him to send Groedel a check in the amount of $2,500 from the settlement Crosby negotiated on his behalf, with the condition that Groedel cease pursuing additional fees from Crosby. Crosby obtained a settlement in the amount of $150,000 on John Doe's behalf. On December 19, 2006, Crosby sent Groedel a check in the amount of $2,500 as authorized by John Doe.

{¶ 5} On August 8, 2008, Groedel filed suit against Crosby and Crosby Law, alleging that she was entitled to a portion of the contingency fee Crosby and Crosby Law obtained as a result of their representation of John Doe based on the legal theories of unjust enrichment and quantum meruit.[2]

{¶ 6} On October 20, 2008, Groedel filed a motion for default judgment against Crosby.

{¶ 7} On November 6, 2008, Crosby filed a motion for leave to plead.

{¶ 8} On November 10, 2008, the trial court granted the unopposed motion for default judgment against Crosby, set a damages hearing for December 5, 2008, and scheduled a pretrial for the same date with respect to the pending claims against Crosby Law.

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[2]Although Groedel initially asserted she was entitled to recover from Crosby and Crosby Law based upon both quantum meruit and unjust enrichment, she ultimately pursued only the unjust enrichment claim.

{¶ 9} On November 21, 2008, Groedel filed a motion for default judgment against Crosby Law.

{¶ 10} On November 25, 2008, the trial court vacated its November 10, 2008 journal entry and issued a clarifying entry substantively the same as the November 10, 2008 journal entry, which again granted default judgment against Crosby.

{¶ 11} On December 3, 2008, Crosby filed a motion to dismiss alleging that the complaint failed to state a claim upon which relief could be granted, because any claim Groedel may have had for contingency fees was against John Doe, not Crosby.

{¶ 12} On December 5, 2008, the damages hearing commenced with respect to the default judgment against Crosby. On December 24, 2008, at 9:00 a.m., the damages hearing resumed with all parties present. At 11:10 a.m., the trial court took a brief recess and told the parties to return by 12:10 p.m. At 12:27 p.m., Crosby had not returned and could not be reached at the phone numbers he had previously provided to the trial court. The trial court then heard additional evidence from Groedel and entered judgment in her favor in the amount of $17,548.84, plus interest at 8 percent per annum until paid in full.[3]

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[3]At the time of the December 24, 2008 damages hearing, Crosby had not disclosed the amount of the settlement he procured on behalf of John Doe. Therefore, Groedel argued that the amount of her recovery should be based upon

{¶ 13} On December 30, 2008, the trial court issued a journal entry vacating its December 24, 2008 journal entry. The trial court noted that Crosby returned with additional documents later in the afternoon on December 24, 2008, shortly after the trial court had already rendered judgment. The trial court stated it was vacating its previous judgment in the "interests of justice," and further stated:

> **"The judgment is questionable in light of the Court's continuing skepticism whether Plaintiff can recover of Defendant on an unjust enrichment theory. Using a better analysis, the Court concludes that entry of a default judgment against a defendant followed by a damages hearing as here does not automatically entitle the plaintiff to a money judgment against such defendant. A plaintiff in its damages hearing must establish its damages as a result of the conduct or circumstances made pertinent by the plaintiff's cause of action."**

{¶ 14} On March 23, 2008, the trial court resumed its hearing, this time with respect to both the claims against Crosby and Crosby Law.

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what she believes Crosby may have settled John Doe's case for. Estimating the settlement to be $50,000, the 40 percent contingency fee would have been $20,000, minus the $2,500 Groedel had received from Crosby and adding $48.84 in expenses, for a total of $17,548.84.

{¶ 15} On April 6, 2009, Groedel filed her closing arguments. On April 9, 2009, Crosby filed his closing arguments.

{¶ 16} On June 26, 2009, the trial court filed its opinion, granting judgment in favor of both Crosby and Crosby Law.

{¶ 17} Groedel asserts four assignments of error for our review.

{¶ 18} ASSIGNMENT OF ERROR NUMBER ONE

"THE TRIAL COURT ERRONEOUSLY CONVERTED THE DEFAULT HEARING AGAINST THE INDIVIDUAL DEFENDANT, WILLIAM CROSBY, INTO A TRIAL AGAINST DEFENDANT-APPELLEE CROSBY AND THEN INTO A TRIAL AGAINST DEFENDANTS-APPELLEES CROSBY AND CROSBY LAW OFFICES, LLC."

{¶ 19} ASSIGNMENT OF ERROR NUMBER TWO

"THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO ENTER A DEFAULT JUDGMENT AGAINST DEFENDANTS-APPELLEES."

{¶ 20} ASSIGNMENT OF ERROR NUMBER THREE

"THE TRIAL COURT LACKED AUTHORITY TO RENDER JUDGMENT FOR DEFENDANTS-APPELLEES AND AGAINST PLAINTIFF-APPELLANT ON THE QUESTION OF LIABILITY WHEN DEFENDANTS-APPELLEES HAD NOT FORMALLY ANSWERED PLAINTIFF-APPELLANT'S COMPLAINT AND THE MATTER HAD BEEN SET FOR DEFAULT HEARING."

{¶ 21} ASSIGNMENT OF ERROR NUMBER FOUR

"PLAINTIFF-APPELLANT MET ITS BURDEN WITH RESPECT TO ITS UNJUST ENRICHMENT CLAIM & THEREFORE THE COURT'S JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 22} As each of Groedel's assignments of error deal with the ultimate judgment in favor of Crosby and Crosby Law, we will address them together.

{¶ 23} Essentially, Groedel argues that the trial court should have rendered default judgment against both Crosby and Crosby Law in the amount of $15,548.84.[4] After a review of the record and the applicable law, we disagree.

{¶ 24} This court reviews a trial court's decision on a motion for default judgment for an abuse of discretion. *Goodyear v. Waco Holdings, Inc.*, 8th Dist. No. 91432, 2009-Ohio-619, citing *Jones v. Dillard*, 8th Dist. No. 87733, 2006-Ohio-6417. The term abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

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[4]Groedel reaches this exact figure in her closing brief, which she filed on April 6, 2009. Groedel argued that pursuant to her fee agreement with John Doe, she was entitled to receive 40 percent of the $45,000 settlement she allegedly negotiated on his behalf, for a total of $18,000. Groedel subtracted the $2,500 check she had already received from Crosby Law, and also added expenses she incurred in the amount of $48.84.

{¶ 25} While Groedel maintains that the trial court abused its discretion in ultimately failing to grant default judgment against both defendants, Civ.R. 55 provides trial courts with considerable discretion when ruling on motions for default judgment. Specifically, Civ.R. 55 provides the following:

> **"If, in order to enable the court to enter judgment, or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper * * *."**

{¶ 26} Although the trial court initially entered default judgment against Crosby, the judgment was not final because the trial court had not dealt with the claims against Crosby Law; therefore, the trial court was permitted to revisit its decision. On December 30, 2008, the trial court specifically stated it was vacating its previous decision "in the interests of justice." The trial court then went on to explain its rationale for believing that Groedel did not have a cause of action. Further, the trial court ultimately held another hearing on March 23, 2009, giving Groedel an additional opportunity to be heard and present evidence.

{¶ 27} The trial court did not abuse its discretion in conducting this hearing as Civ.R. 55 specifically provides that a trial court may conduct any hearings it deems necessary in order to rule on a motion for default judgment. A trial court may require a party to substantiate their claims with evidence

before entering default judgment. *Mercury Fin. Co., LLC v. Smith*, 8th Dist. No. 87562, 2006-Ohio-5730, citing *X-Technology v. M.J. Technologies*, 8th Dist. No. 80126, 2002-Ohio-2259.

{¶ 28} Although when a defendant fails to answer, the averments in a plaintiff's complaint may be taken as true, the trial court is not automatically required to enter default judgment. *Mancino v. Third Fed. Sav. & Loan* (Oct. 28, 1999), 8th Dist. No. 75063. Civ.R. 55 requires a plaintiff to establish their claim for relief to the satisfaction of the trial court.

{¶ 29} Groedel failed to present evidence demonstrating that she was entitled to judgment in her favor. As evidence of her unjust enrichment claim, Groedel admitted into evidence her résumé evidencing her legal experience, copies of correspondence with Crosby, the fee agreement between Groedel and John Doe, the unexecuted settlement agreement Groedel purportedly reached on behalf of John Doe, and a letter from John Doe to Groedel terminating her services.

{¶ 30} These documents are irrelevant to Groedel's unjust enrichment claim. In order to establish a claim for unjust enrichment, a plaintiff must demonstrate that the plaintiff conferred a benefit to the defendant. *Rogers v. Natl. City Corp.*, 8th Dist. No. 91103, 2009-Ohio-2708. None of the documents Groedel admitted into evidence establish the nature of the benefit Groedel conferred on Crosby. In order for Groedel to prevail on her claim for

unjust enrichment, she would need to demonstrate that she performed work on the case and that Crosby benefitted by not having to perform the identical work.

{¶ 31} Groedel presented no evidence as to the precise nature of the work she performed on John Doe's case, nor did she provide any evidence to demonstrate that Crosby benefitted by not having to perform that same work again. Further, Groedel has not presented any case law on point to support a claim against Crosby or Crosby Law with respect recovering contingency fees from subsequent counsel, rather than the client himself.

{¶ 32} We conclude that, pursuant to Civ.R. 55, the trial court was permitted to hold hearings to determine the merit of Groedel's claims before granting default judgment. As Groedel presented no evidence to support an unjust enrichment claim, and no factually analogous case law, the trial court did not abuse its discretion in granting judgment in favor of Crosby and Crosby Law. Therefore, Groedel's assignments of error are overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., and
COLLEEN CONWAY COONEY, J., CONCUR