

[Cite as *TCF Natl. Bank v. Cunningham*, 2010-Ohio-1032.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TCF NATIONAL BANK FBO AEON
FINANCIAL, LLC

Plaintiff-Appellant

-vs-

YALINDA CUNNINGHAM, et al.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00159

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 2008 CV 04736

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

March 15, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

MARK A. SCHWARTZ
DAVID T. BRADY
KIRK W. KIEDERBACH
SCHWARTZ & ASSOCIATES
27 North Wacker Drive, #503
Chicago, Illinois 60606

Wise, J.

{¶1} Plaintiff-Appellant TCF National Bank FBO Aeon Financial, LLC appeals the May 22, 2009, Judgment Entry entered by the Stark County Court of Common Pleas, awarding it attorney fees in an amount less than sought.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant purchased a tax lien certificate from the Stark County Treasurer on a property located in Stark County, Ohio. Subsequently, Appellant filed a Complaint for Foreclosure, pursuant to R.C. 5721.30 to 5721.46. Appellant's counsel filed a motion for private attorney's fees with a supporting Affidavit attached. The motion requested \$2,500.00 in attorney fees, to be taxed as a cost of the private foreclosure action, and requested a hearing.

{¶3} The motion for attorney fees was unopposed. Thereafter, the trial court issued an Order and Decree of Foreclosure awarding attorney fees, listing the statutory factors it considered. However, the order stated the amount of attorney fees would be determined later. Subsequently, the trial court issued a Judgment Entry awarding attorney fees in an amount less than Appellant had requested. The trial court did not recite its reason(s) or offer its analysis to explain its award in the entry.

{¶4} It is from this Judgment Entry Appellant appeals, raising as its sole assignment of error:

ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ARBITRARILY AWARDED APPELLANT \$1,000 IN ATTORNEY FEES BY A JUDGMENT ENTERED WITHOUT SPECIFIC ANALYTICAL FINDINGS, WHEN THE

UNDISPUTED EVIDENCE IN APPELLANT'S UNOPPOSED MOTION FOR ATTORNEY FEES CLEARLY SHOWED ITS COUNSEL HAD EARNED, AND BEEN PAID, \$2,500.00.”¹

{¶6} Generally, the starting point in determining the amount of attorney fees to award is the computation of the lodestar figure. *Blum v. Stenson* (1984), 465 U.S. 886, 888, 104 S.Ct. 1541, 1543-1544, 79 L.Ed.2d 891, 895-896; *Hensley v. Eckerhart* (1983), 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40. The lodestar is the number of hours expended multiplied by a reasonable hourly rate. *City of Burlington v. Dague* (1992), 505 U.S. 557, 559-561, 112 S.Ct. 2638, 2640, 120 L.Ed.2d 449, 454-456; *Blum*, 465 U.S. at 888; *Hensley*, 461 U.S. at 433. If the court deviates from the lodestar, it must provide a clear explanation. *Hensley*, 461 U.S. at 437.

{¶7} Once the trial court calculates the lodestar figure, the court may modify that calculation by application of the factors listed in DR 2-106(B), now, Ohio Rules of Professional Conduct 1.5. *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 145, 569 N.E.2d 464. These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the

¹ Appellant has presented multiple cases arising from similar circumstances all raising the same assignment of error. Although the exact dollar figures awarded as attorney fees varies from case to case, the exact amount awarded in each case is not necessary for our resolution of the assignment of error.

discretion to determine which factors to apply, and in what manner that application will affect the initial calculation. *Id.*

{¶8} Moreover, a determination of the amount of such fees lies within the sound discretion of the trial court. Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court shall not interfere. *Bittner, supra* at 146. (Citation omitted). Nonetheless, when making a fee award, the trial court must state the basis for the fee determination; absent such a statement, it is not possible for an appellate court to conduct a meaningful review. *Bittner v. Tri-County Toyota, Inc. supra*, at 146.

{¶9} We are unable to determine from the Judgment Entry how the trial court arrived at the dollar amount awarded. The trial court failed to state the basis for its fee determination. Absent such a statement, it is not possible for this Court to conduct a meaningful review and to determine what factors the court considered or the weight, if any, it placed on those factors. “[T]he trial court must state the basis for the fee determination.” *Bittner, supra*, at 146.

{¶10} Accordingly, we reverse the attorney fee award and remand the matter to the trial court for redetermination consistent with the Supreme Court's instructions in *Bittner v. Tri-County Toyota, Inc., supra*.

{¶11} Appellant's sole assignment of error is sustained.

{¶12} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

By: Wise, J.

Farmer, P. J., and

Gwin, J., concur.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ W. SCOTT GWIN_____

JUDGES

JWW/d 225

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TCF NATIONAL BANK FBO	:	
AEON FINANCIAL, LLC	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
YALINDA CUNNINGHAM, et al.	:	
	:	
Defendants-Appellees	:	Case No. 2009 CA 00159

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

Costs waived.

/S/ JOHN W. WISE _____

/S/ SHEILA G. FARMER _____

/S/ W. SCOTT GWIN _____

JUDGES