

[Cite as *Scrofano v. Bedford*, 2015-Ohio-1465.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SAL G. SCROFANO,	:	APPEAL NO. C-140388
	:	TRIAL NO. 14CV-00523
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
RICHARD BEDFORD,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: April 17, 2017

Pamela S. Petas, for Plaintiff-Appellee,

Richard Bedford, pro se.

Please note: this case has been removed from the accelerated calendar.

SYLVIA SIEVE HENDON, Presiding Judge.

{¶1} Defendant-appellant Richard Bedford appeals the trial court’s entry of summary judgment in favor of plaintiff-appellee Sal G. Scrofano on Scrofano’s claim for unpaid legal fees. Because questions of material fact remain to be litigated, we reverse the judgment.

Background

{¶2} Scrofano’s complaint alleged that Bedford owed him \$13,472.50 for legal services rendered in connection with a domestic-relations matter. Bedford responded with an answer and a counterclaim. In his counterclaim, he alleged that he had fully compensated Scrofano for his services, and that, as a result of Scrofano’s attempts to collect the monies, he had suffered physical and emotional distress.

{¶3} Scrofano filed two summary-judgment motions. In the first one filed on May 8, 2014, he alleged that he had been retained by Bedford at an hourly rate of \$200 per hour. He filed an amended motion on May 23, 2014, alleging that he had been retained at a rate of \$175 per hour.

{¶4} On May 31, 2014, Bedford filed a response to the amended summary-judgment motion. In his supporting affidavit, Bedford stated that he and Scrofano had agreed to a \$150 hourly rate.

{¶5} On June 2, 2014, the trial court placed of record its entry of summary judgment in favor of Scrofano. The entry had been signed by the trial judge on May 30, 2014, a day before Bedford’s response to the motion had been filed. The entry noted that Bedford had filed “nothing with this Court with the exception of an

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Answer and Counterclaim and no other pleadings * * *. Defendant has submitted no facts, or other evidence to back up his claims.”

{¶6} Bedford presents three assignments of error, which we address out of order. In his third assignment of error, he argues that the trial court failed to adjudicate or otherwise consider his counterclaim. In essence, Bedford challenges the finality of the trial court’s order, and, therefore, this court’s jurisdiction.

Final, Appealable Order

{¶7} This court’s appellate jurisdiction is limited to the review of final orders of lower courts. Ohio Constitution, Article IV, Section 3(B)(2). If a trial court’s order is not final, then this court cannot exercise jurisdiction over an appeal of that order. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶8} An order of a lower court is a final, appealable order if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101, ¶ 5. Under R.C. 2505.02(B)(1), a final order is one that affects a substantial right and that effectively determines the action and prevents a judgment. A trial court can enter final judgment on some, but not all, of the claims in an action, if it determines that “there is no just reason for delay.” Civ.R. 54(B).

{¶9} But sometimes the Civ.R. 54(B) no-reason-for-delay language is not necessary to make a judgment final and appealable. Even if a trial court does not expressly adjudicate all the claims in an action, if the effect of its judgment as to some of the claims is to render moot the remaining claims, then the judgment is final

even without the statutory language. *See State ex rel. A & D Ltd. Partnership v. Keefe*, 77 Ohio St.3d 50, 57, 671 N.E.2d 13 (1996), citing *Gen. Acc. Ins. Co.* at 21.

{¶10} In this case, Scrofano’s summary-judgment motion had specifically requested judgment in his favor as to all claims alleged in the action, and the trial court’s entry reflected its determination that Bedford had failed to support “his claims.” Even if the entry did not set forth a distinct adjudication of Bedford’s counterclaim, it was nevertheless a final appealable order. Summary judgment in favor of Scrofano on his claim for unpaid legal fees constituted a disposition of Bedford’s counterclaim that those fees had been paid. *See Bradley v. Farmers New World Life Ins. Co.*, 112 Ohio App.3d 696, 698, 679 N.E.2d 1178 (1st Dist.1996); *Wells Fargo Bank, N.A., v. Jarvis*, 7th Dist. Columbiana No. 08 CO 30, 2009-Ohio-3055, ¶ 27. Accordingly, we overrule the third assignment of error.

Premature Adjudication of a Summary-Judgment Motion

{¶11} In his first assignment of error, Bedford argues that the trial court erred by rendering summary judgment without considering his timely filed response. Scrofano concedes the trial court’s error, but contends that the error was harmless because Bedford’s response did not raise a genuine issue of fact as to the parties’ agreement.

{¶12} Summary judgment should not be granted unless all the parties have had a fair opportunity to be heard. *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 2003-Ohio-4829, 795 N.E.2d 648, ¶ 34. Generally, local court rules may set forth the time for a nonmoving party to provide a response. *Id.* at ¶ 33.

{¶13} In this case, the local court rules allowed a response to be filed within 14 days after the date of service of the motion. *See* Loc.R. V(4) of the Hamilton

County Municipal Court. The trial court granted the motion within seven days of its filing, and one day before Bedford filed his response. We hold that the trial court's premature entry of summary judgment in favor of Scrofano denied Bedford a fair opportunity to respond. *See Bank of Am. v. Litteral*, 191 Ohio App.3d 303, 2010-Ohio-5884, 945 N.E.2d 1114 (2d Dist.); *Watershed Mgt., L.L.C. v. Neff*, 4th Dist. Pickaway No. 10CA42, 2012-Ohio-1020, ¶ 67; *PHH Mtge. Corp. v. Galvin*, 9th Dist. Summit No. 25917, 2011-Ohio-6787, ¶ 7; *TimePayment Corp. v. Rite Stop, Inc.*, 8th Dist. Cuyahoga No. 95334, 2010-Ohio-5852, ¶ 14. And, as we explain under the second assignment of error, the trial court's error was not harmless. Consequently, we sustain Bedford's first assignment of error.

Summary Judgment

{¶14} In his second assignment of error, Bedford argues that the trial court erred by entering summary judgment in favor of Scrofano. We review a trial court's entry of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996).

{¶15} A trial court may enter summary judgment if it determines that (1) no genuine issue of fact remains; (2) the moving party is entitled to judgment as a matter of law; and (3) when viewing the evidence most strongly in favor of the non-moving party, reasonable minds can only come to a conclusion favorable to the moving party. Civ.R. 56(C); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

{¶16} In this case, Scrofano supported his summary-judgment motion with his affidavit, wherein he asserted that Bedford had retained him at a rate of \$175 per hour. He attached to his affidavit monthly billing statements addressed to Bedford

that mistakenly reflected an hourly fee of \$200. Scrofano explained that neither he nor Bedford had noticed the bookkeeping error.

{¶17} Scrofano also attached to his affidavit several pieces of correspondence addressed to Bedford that purportedly informed him of the \$175 per hour rate. One of these was an October 23, 2001 “Engagement Letter” that set forth the terms of Scrofano’s representation for the domestic-relations matter. In the letter, Scrofano stated that he would charge Bedford “at the rate of \$175 per hour,” and, further, “[i]f you are in agreement with the terms of my engagement, please sign where your name appears below.” Bedford’s signature does not appear on the engagement letter.

{¶18} In response, Bedford put forth his own affidavit, averring that he had retained Scrofano at an hourly rate of \$150. Bedford attached copies of the same three pieces of correspondence that Scrofano’s summary-judgment motion had included. In addition, Bedford provided an October 23, 2001 “Engagement Letter,” addressed to two people surnamed Klein, that set forth the terms of Scrofano’s representation of them in an estate-planning matter. In the letter, Scrofano stated that he would charge the Kleins “at the rate of \$150 per hour,” and, further, “[i]f you are in agreement with the terms of my engagement, please sign where your name [sic] appears below.” Bedford’s signature appears on one of the signature lines on the Klein engagement letter. Bedford also attached the affidavit from Scrofano’s first summary-judgment motion, wherein Scrofano had asserted a \$200 hourly rate.

{¶19} Scrofano contends that Bedford’s claim of a \$150 hourly rate was contradicted by the engagement letter addressed to Bedford containing an hourly rate of \$175. But Scrofano failed to produce an engagement letter or other writing signed by Bedford to reflect his agreement to the higher hourly rate.

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{¶20} Because Bedford's response set forth specific facts showing that a genuine issue of material fact remained with respect to the parties' agreement on an hourly rate, we hold that the trial court erred by entering summary judgment. *See Friebel v. Visiting Nurses Assn. of Mid-Ohio*, ___ Ohio St.3d ___, 2014-Ohio-4531, ___ N.E.3d ___, citing *Jackson v. Kings Island*, 58 Ohio St.2d 357, 360, 390 N.E.2d 810 (1979) (summary judgment is inappropriate where a reasonable factual dispute remains for trial). Consequently, we sustain the second assignment of error, reverse the trial court's judgment, and remand this cause for proceedings in accordance with law and this opinion.

Judgment accordingly.

CUNNINGHAM and MOCK, JJ., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.