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IN THE
COURT OF APPEALS OF INDIANA

BETTYE ALVIS,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 84A04-1004-PL-253
	)	
PROFESSIONAL ACCOUNT SERVICE, INC.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0810-PL-11843

October 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Bettye Alvis appeals the trial court's order awarding her $500 in attorney fees and no costs following a summary judgment ruling in her favor on her wage payment claim against Professional Account Service, Inc. ("PAS"). She raises three issues on appeal, which we consolidate and restate as two: whether the trial court abused its discretion when it awarded $500 in attorney fees and no costs, and whether the trial court failed to apply the proper formula for calculating reasonable attorney fees and costs pursuant to Indiana Code section 22-2-5-2. Concluding, as a matter of law, the trial court abused its discretion and should have awarded $6,460 in attorney fees and $364.17 in costs, and it is unnecessary to articulate a formula to calculate reasonable attorney fees and costs, we reverse and remand.

Facts and Procedural History

PAS did not pay Alvis for her work as an employee during a two-week period in November 2007. During settlement discussions after Alvis hired an attorney, PAS gave Alvis a check for the amount of wages she sought, $504, with the following statement typed on it: "Deposit of this check is deemed full and final satisfaction of any and all claims related thereto." Appendix of Appellant at 17. Because Alvis also sought liquidated damages and attorney fees and costs, she did not deposit the check.

In October 2008, Alvis brought suit against PAS for her unpaid wages, liquidated damages, and attorney fees and costs. Until at least as late as February 2009, counsel for PAS neglected to serve its pleadings upon Alvis' attorney, and as a result, Alvis' attorney spent costly time seeking them. The trial court granted Alvis' motion to compel copies of

PAS' pleadings and ordered PAS to pay $360 in attorney fees. Also in the course of the litigation, Alvis moved for summary judgment. PAS then moved for judgment on the pleadings, and Alvis moved to stay PAS' motion because the trial court had not yet ruled on Alvis' motion for summary judgment.

In January 2010, the trial court entered summary judgment in favor of Alvis, and awarded $504 in compensatory damages for unpaid wages and $1,008 in liquidated damages pursuant to Indiana Code section 22-2-5-2. Pursuant to the same statute, but separate from her attorney fees award following the earlier motion to compel, Alvis also sought $6,460 in attorney fees and $364.17 in costs. Without a hearing[1] or entering findings of fact,[2] the trial court awarded Alvis $500 in attorney fees and no costs. Alvis now appeals.

Discussion and Decision

I. Standard of Review

An award of attorney fees is committed to a trial court's sound discretion, and will be reversed only for an abuse of discretion. Valadez v. R.T. Enters., Inc., 647 N.E.2d 331, 333 (Ind. Ct. App. 1995). "An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law." Id.

[1] Alvis waived her right to a hearing on this issue at her attorney's advice to avoid incurring additional attorney fees.

[2] The trial court was not required to enter findings of fact. See Ind. Trial Rule 52(A).

II. Alvis' Attorney Fees and Costs

Indiana Code section 22-2-5-2 provides that where an employer fails to pay an employee wages, that employer must pay liquidated damages and "in any suit so brought . . . the court shall tax and assess as costs in said case a reasonable fee for the plaintiff's attorney or attorneys."

Because the trial court did not hold a hearing – where it might have weighed evidence or judged the credibility of witnesses – we are in the same position as the trial court to decide whether the amounts requested are reasonable. See, e.g., Breining v. Harkness, 872 N.E.2d 155, 160-61 (Ind. Ct. App. 2007), trans. denied. As we have stated, "[a] trial court cannot ignore competent, uncontroverted evidence" or "uncontradicted facts." Dahnke v. Dahnke, 535 N.E.2d 172, 175 (Ind. Ct. App. 1989) (holding the trial court abused its discretion by ignoring "uncontradicted facts" admitted into evidence). The parties' motions and attorneys' affidavits are helpful to determine whether the trial court abused its discretion. See Bowen v. Bowen, 422 N.E.2d 423, 428 (Ind. Ct. App. 1981) (evaluating attorneys' affidavits and detailed time records as bases to conclude a trial court's award of attorney fees was not an abuse of discretion).

Alvis' appellate appendix includes Alvis' and PAS' motions regarding attorney fees and costs, which contain her attorney's detailed time records and explanation of the circumstances – largely created by PAS – that led to unusually high fees and costs. For example, Alvis' attorney's preparation of a motion to stay PAS' motion for judgment on the

pleadings usually would be unnecessary but PAS' motion made it necessary because Alvis' motion for summary judgment was pending.

In addition, PAS does not refute Alvis' attorney's billing rate or the reasonableness of any specific charge. If a party disputing payment of attorney fees does not challenge the reasonableness of the attorney's billing rate or provide a "cogent argument" as to the excessiveness of specific charges, appellate review of those arguments is waived. Barker v. City of W. Lafayette, 894 N.E.2d 1004, 1011-12 (Ind. Ct. App. 2008), trans. denied (stating appellee "failed to present cogent argument" that trial court erroneously awarded attorney fees for secretarial work, and thereby waived such argument). Therefore, it would have been an abuse of discretion for the trial court to deem Alvis' attorney fees or costs not reasonable because of her attorney's billing rate or a specific charge.

PAS rests its case on the argument that attorney fees must bear a relationship to the amount of damages. In support of this argument, it cites Zebrowski and Assocs., Inc. v. City of Indianapolis, 457 N.E.2d 259, 264 (Ind. Ct. App. 1983), which states that courts should consider the amount involved when determining what is a reasonable amount in a given case. However, "[a]lthough the trial court is entitled to consider the amount involved in the lawsuit in determining the reasonableness of the requested fees, . . . the trial court abuses its discretion if it reduces an otherwise reasonable fee request based on the amount of the judgment." Benaugh v. Garner, 876 N.E.2d 344, 348 (Ind. Ct. App. 2007), trans. denied; see Hanson v. Valma M. Hanson Revocable Trust, 855 N.E.2d 655, 667 (Ind. Ct. App. 2006) (stating "the amount of the recovery should have no impact on the amount

of attorney fees to which the Appellants are entitled"). While a direct relationship between an award of attorney fees and the amount of damages may be the standard in cases involving punitive damages, it is not the standard for attorney fees.

Indeed, our supreme court has stated "[t]he right to [attorney fees] should not depend upon the result of the litigation but rather upon the reasonable necessity for such litigation." Zaring v. Zaring, 219 Ind. 514, 523, 39 N.E.2d 734, 737 (1942). Litigation of a claim is not reasonable if, "based on a totality of the circumstances, including the law and facts known at the time of the filing, no reasonable attorney would consider that the claim or defense was worthy of litigation or justified." Harco, Inc. of Indianapolis v. Plainfield Interstate Family Dining Assocs., 758 N.E.2d 931, 941 (Ind. Ct. App. 2001). The plain language of the law, Indiana Code section 22-2-5-2, and facts known at the time Alvis filed suit, i.e. that PAS did not pay Alvis for her work, clearly provided a case worthy of litigation. PAS does not argue proceeding with litigation was not reasonable, and prior to litigation offered less than what the trial court awarded Alvis upon summary judgment. PAS offered only compensatory damages. The trial court's summary judgment in favor of Alvis confirms litigation was reasonable.

PAS does not dispute or address these facts. Although the trial court did not hold a hearing or enter findings of fact, it is nevertheless abundantly clear the trial court ignored some or all of the uncontradicted facts above to conclude Alvis' attorney's rate or specific charges were not reasonable, or that proceeding with litigation itself was not reasonable. As

a result, the trial court's order is clearly against the logic and effect of the facts and circumstances before it.

We therefore hold, based on the uncontradicted facts above and as a matter of law, $6,460 in attorney fees and $364.17 in costs as requested by Alvis are reasonable.

III. Calculating Attorney Fees and Costs

Alvis also raises a question regarding the proper formula for calculating reasonable attorney fees and costs under Indiana Code section 22-2-5-2. Because we have determined the attorney fees and costs sought in this matter are reasonable, we need not declare a reasonableness formula.

Conclusion

The trial court abused its discretion by ignoring the uncontroverted facts before it. We therefore reverse the trial court's award of $500 in attorney fees and no costs, remand with instructions to award Alvis $6,460 in attorney fees and $364.17 in costs, and conclude it is unnecessary to articulate a formula to calculate reasonable attorney fees and costs.

Reversed and remanded.

MAY, J., and VAIDIK, J., concur.