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this Memorandum Decision shall not be
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establishing the defense of res judicata,
collateral estoppel, or the law of the case.**

APPELLANT PRO SE:

MARK BAKER
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BAKER MACHINERY, INC.,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 32A01-0701-CV-48
)	
WILLIAM O. HARRINGTON,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0610-SC-1406

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

William O. Harrington, P.C., sued Baker Machinery, Inc., in small claims court for unpaid attorney fees. Baker Machinery counter-sued for repayment of attorney fees it had already paid. Baker Machinery, by Mark Baker, its designated representative, appeals the trial court's judgment against it in the amount of \$1,205.58 plus costs and interest, contending that judgment should not have been entered for Harrington, P.C., but rather for Baker Machinery on its counterclaim.¹ We affirm the trial court's judgment.

Facts and Procedural History

William O. Harrington ("Harrington") is owner and president of Harrington, P.C., which is also the corporation through which Harrington practices law. Harrington was approached by Mark Baker, Baker Machinery's main shareholder, and Robert Baker, Mark's father and one of Baker Machinery's directors, about representing Baker Machinery and the Bakers in a lawsuit for legal malpractice against the law firm of Harrison & Moberly. After conversing with the Bakers and reviewing some documents that they provided him, Harrington agreed to undertake the representation.

In return for Harrington's representation, Baker Machinery entered into a fee agreement with Harrington, P.C. The fee agreement provided that Baker Machinery would pay Harrington an hourly rate of \$175.00 for his legal services and give him a \$2,500.00

¹ We note that Baker Machinery's brief fails to comply in virtually every respect with our Appellate Rules regarding the form, arrangement and contents of a brief. See Ind. Appellate Rule 46. Although Mark Baker, as the designated representative for Baker Machinery, is proceeding *pro se*, *pro se* litigants are held to the same standard regarding rule compliance as are attorneys duly admitted to the practice of law. Smith v. State, 822 N.E.2d 193, 203 (Ind. Ct. App. 2005). Where an appellant makes no substantial effort to comply with our rules, we may dismiss the appeal. Gentry v. State, 586 N.E.2d 860, 860 (Ind. Ct. App. 1992). However, given our preference to resolve cases that come before us on their merits where possible, we

retainer fee. Mark signed the agreement in his representative capacity and returned it to Harrington; Harrington never received the retainer fee, however. Nevertheless, Harrington proceeded to represent Baker Machinery. Harrington represented Baker Machinery until April of 2006, when he withdrew because of a difference of opinion with the Bakers regarding the suit against Harrison & Moberly.

Subsequently, Harrington and the Bakers had a dispute concerning the fees to which Harrington was entitled. In early August of 2005, Baker Machinery had paid one bill in the amount of \$903.35, but it refused to pay the balance due for legal services that Harrington provided. As a result, Harrington, on behalf of Harrington, P.C., filed a notice of claim against Baker Machinery in the Hendricks County Small Claims Court to recover unpaid fees in the amount of \$1,205.58 and court costs that totaled \$70. Baker Machinery counterclaimed against Harrington demanding reimbursement of the \$903.35 that it initially paid Harrington.

On December 18, 2006, a bench trial was held, and the trial court entered judgment in favor of Harrington, P.C., determining that Baker Machinery breached its fee agreement with Harrington, P.C., and Baker Machinery was liable to Harrington, P.C., in the amount of \$1,205.58 plus court costs. The trial court also denied Baker Machinery's counterclaim against Harrington. Baker Machinery now appeals.

Discussion and Decision

Baker Machinery first argues that the trial court erred in entering judgment in favor of Harrington, P.C., for breach of the fee agreement. Baker Machinery also argues that the trial

proceed to decide this appeal on the merits. Foley v. Mannor, 844 N.E.2d 494, 496 n.1 (Ind. Ct. App. 2006).

court erred in denying its counterclaim against Harrington for reimbursement of fees that it paid Harrington.

I. Standard of Review

We first note that Harrington did not file an appellee's brief in this appeal, thereby altering our standard of review. "Where no appellee's brief has been filed, the judgment may be reversed if the appellant's brief presents a prima facie case of error. In this context, prima facie error is error at first sight, on first appearance, or on the face of it." Van Wieren v. Van Wieren, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006). We do not undertake the burden of developing arguments for the appellee. Paternity of Davis v. Trensey, 862 N.E.2d 308, 311 (Ind. Ct. App. 2007).

II. Breach of Fee Agreement

Baker Machinery first argues that the trial court erred in entering judgment in favor of Harrington, P.C., for breach of the fee agreement. Baker Machinery specifically argues that Harrington's billing was improper because he charged for "case strategy," which involved communications between Harrington and the Bakers that mostly included disagreements concerning the suit against Harrison & Moberly.

The trial court concluded that Baker Machinery in fact agreed to pay Harrington for the time it spent communicating with Harrington. The Legal Services Agreement that Baker Machinery and Harrington, P.C., signed provides as follows:

Billable time shall include, but is not limited to, the following: interviews with Client and other necessary persons, all telephone conversations (billed at a minimum of 0.20 of an hour), reading e-mails (billed at a minimum of 0.10 of an hour), preparation of documents, summarizing and/or organizing documents, filing of documents, general case work, trial or hearing

preparation, research, travel time, trial work, correspondence to and on behalf of Client, and all other work on Client's case.

Appellant's Appendix at 47. After reviewing the terms, we agree with the trial court's determination that, although the Bakers and Harrington spent a significant amount of time discussing their disagreement, their meetings and telephone communications were within the realm of "interviews" and "telephone conversations" under the fee agreement. Further, written correspondence between Harrington and the Bakers was billable under "correspondence to and on behalf of Client." We note that Baker Machinery does not dispute the existence of these forms of communication with Harrington. Therefore, the time that Harrington spent on these activities was properly characterized as billable time.

Baker Machinery argues that Harrington lost passion for its case during his representation of Baker Machinery. It contends that Harrington initially told the Bakers that they had a good case and suggested that opposing counsel would be reasonable in negotiations since he knew some of the attorneys. Instead of supplying positive results, Baker Machinery argues, Harrington "conceded to opposing counsel and needlessly wasted time telling us why he now felt our case was not valid." Appellant's Brief at 1.

However, Baker Machinery does not argue nor has it demonstrated that Harrington violated Indiana's rules of professional conduct. Harrington does not appear to have acted incompetently in violation of Indiana Professional Conduct Rule 1.1. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the client's representation. Comment 5 of the Rule provides: "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal

elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”

If it is true that Harrington had a change of mind as to the strength of Baker Machinery’s case against Harrison & Moberly, it may have been as a result of thoroughly considering the facts and legal elements of the case. Harrington testified that, although he believed Harrison & Moberly acted negligently when he started working on the case, one important fact later changed his mind. Harrington testified he became aware that Baker Machinery had two opportunities to settle with Harrison & Moberly for \$7,500, but Baker Machinery refused to settle. Harrington testified that he believed it was in Baker Machinery’s best interest to settle for that amount since refusal to settle would make it difficult to prove damages and proximate cause.

Baker Machinery also has not shown that Harrington violated Indiana Professional Conduct Rule 1.2(a), which provides that a lawyer must abide by a client’s decisions concerning the objectives of representation and consult with the client as to the means by which the objectives are to be pursued. Although Harrington disagreed with the Bakers as to the strength of their claim, he did not refuse to abide by Baker Machinery’s objective to bring the case to trial. Mark actually testified that Harrington requested a jury as soon as Harrington began representing Baker Machinery.

Harrington also does not appear to have charged Baker Machinery “unreasonable” fees in violation of Indiana Professional Conduct Rule 1.5. Although Baker Machinery may be dissatisfied with Harrington’s representation since the Bakers did not obtain the result they wanted, a lawyer is not required to obtain a client’s desired outcome in order to be

entitled to a fee for legal services. See Matter of Schneider, 710 N.E.2d 178, 181 (Ind. 1999). The only requirement a lawyer must meet to be entitled to fees is to take “some logical, tangible, substantive step toward the resolution of the client’s problem.” Id.

Baker Machinery also has neither demonstrated that Harrington acted without reasonable diligence in violation of Indiana Professional Conduct Rule 1.3, nor that Harrington’s failure to inform the Bakers about certain matters was “unreasonable” in violation of Indiana Professional Conduct Rule 1.4(a)(3). Therefore, Baker Machinery has not presented a prima facie case that the trial court erred by entering a judgment in favor of Harrington, P.C., for breach of the fee agreement.

III. Denial of Baker Machinery’s Counterclaim

Baker Machinery next argues that the trial court erred in denying Baker Machinery’s counterclaim against Harrington for reimbursement of fees it paid Harrington, P.C., in the amount of \$903.35. Baker Machinery cites to an Initial Disclosure Statement form that Harrington gave to the Bakers separately from the fee agreement. Baker Machinery considers the Disclosure Statement to be part of the fee agreement. The Disclosure Statement provides under the “Your Billing Rights” section:

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- (a) Your name
- (b) The dollar amount of the suspected error
- (c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not

sure about.

Appellant's App. at 53. The Disclosure Statement also provides: "We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days we must either correct the error or explain why we believe the bill was correct."

Id. Baker Machinery argues that it timely contested the initial bill it paid Harrington in the amount of \$903.35 by sending a letter to Harrington, but Harrington breached his obligation under the fee agreement because he failed to respond to the letter.

Even if we assume, as Baker Machinery argues, that the Initial Disclosure Statement is part of the fee agreement, we conclude that the trial court did not err in denying Baker Machinery's counterclaim against Harrington. The letter that Mark sent to Harrington contesting the fees states:

Early on you told us that if clients have a problem with your invoices that you didn't expect them to pay. We also do not feel the fees you have charged are reasonable given the expectations you once portrayed and led us to believe and now the posture you have taken on this case.

Id. at 35. However, Mark's letter does not identify any specific item on the bill that Baker Machinery believes to be in error. In addition, Harrington testified that he did not respond to the Bakers' billing concerns because they had not demonstrated to him that he had compromised something in his bill. He stated, "I still haven't seen anything from Mark or his dad that suggest[s] to me there's anything on my bill that's out of order." Transcript at 19. Thus, Baker Machinery has not demonstrated a prima facie case that the trial court erred in denying Baker Machinery's counterclaim against Harrington for reimbursement of fees.

Conclusion

The trial court did not err in entering a judgment in favor of Harrington, P.C., for breach of the fee agreement that existed between Harrington, P.C., and Baker Machinery, or in denying Baker Machinery's counterclaim against Harrington for fees it initially paid Harrington. For these reasons, we affirm the trial court's judgment.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.