SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-006835 12/18/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

COMBS COLLINS PERMEAU PC MARVIN J SCHENK

v.

MICHAEL SHOTEY ALAN L LIEBOWITZ

REMAND DESK CV-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal from the Scottsdale Justice Court pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement and this Court has considered and reviewed the record of the proceedings from the Scottsdale Justice Court, the exhibits made of record, the oral argument of counsel, and the excellent Memoranda submitted.

Plaintiffs/Appellee Combs, Collins & Premeau, P.C., filed this case in the Scottsdale Justice Court to collect outstanding legal fees of $1,000.00 billed to Defendant/Appellant, Michael Shotey, for legal services rendered by Christopher A. Combs in reviewing, discussing and explaining a proposed construction contract that was admitted at trial as exhibit #2. Shotey disputed the charges, claimed they were not earned and not reasonable. At the conclusion of the trial, the trial judge entered judgment in favor of Plaintiffs/Appellee in the amount of $1,000.00 and an additional $2,010.00 for attorneys fees and $163.40 for costs. Defendant/Appellant has filed a timely Notice of Appeal in this case.

The first issue raised by Defendant/Appellant is that the trial judge erred in admitting the testimony of Michelle Goldsmith and the construction contract, admitted as exhibit #2. Appellant contends that the trial court's admission of this evidence violates Rule 26, Arizona Rules of Civil Procedure, in that Plaintiffs/Appellee had failed to disclose Ms. Goldsmith as a witness and failed to disclose the contract as an exhibit.

It appears that the first issue regarding Ms. Goldsmith is a factual issue. Appellee strenuously argues that they did disclose Ms. Goldsmith in their Rule 26.1 Disclosure Statement provided to Defendants/Appellant. That disclosure statement indicates: "Christopher Combs (or other representative of the Plaintiff to be designated prior to trial at the Defendant's request)." Additionally, the disclosure statement explained fully and completely the proposed testimony from Mr. Combs or a substitute from his office:

> Plaintiff's witness will be asked to testify as to the account, as to all collection efforts which have been made under the agreement, as to the context of the collection efforts which have been made, and as to the current balance due and owing on this debt.[1]

Clearly, Ms. Goldsmith was called as a representative of Plaintiff/Appellees law firm to testify as to its business records, its accounts, and records maintained by the business. Appellant can claim no surprise or prejudice from her testimony. This Court finds no error.

Appellant also argues that the trial court erred in admitting Exhibit #2, which was a proposed construction contract tendered by Appellant to Appellee with a request for his advice. This document was not disclosed as a potential exhibit within Plaintiff/Appellees Rule 26.1 Disclosure Statement. However, the document itself has little factual relevance to the case. It was merely the document presented by Appellant to Appellee at the commencement of their attorney/client relationship. The document has no relevance to the attorney/client relationship itself, contains no work product from Plaintiff/Appellee, and sheds little light on whether monies are due and owing from Appellant to Appellee. The admission of Exhibit #2 was error.

Finding error, this Court's analysis is not complete without considering the harmless error doctrine. That is, this Court must determine whether the error affected the substance of the parties' rights to a fair trial, and the existence and extent of any prejudice to the parties as a result of the error. A previously stated, the error in this case concerned a document of minimal, if any, relevance to the issue whether Appellant owed Appellee attorney fees for consultation on the construction contract at issue. The most important and relevant document was Exhibit #1, which consisted of the letter from Appellant requesting Appellee to review the construction contract, contained Appellant's statement of his understanding of the fee involved ($1,000.00) and inquiring when Appellee would be available to consult with Appellant. Most importantly, Appellant cites no prejudice from the admission of Exhibit #2. This Court finds no prejudice resulted to either party by the admission of Exhibit #2, and that the error committed by the trial judge was harmless.

[1] Plaintiff/Appellees Rule 26.1 Disclosure Statement, also included as Attachment 3 to Appellant's Opening Brief.

The next issues raised by Appellant concern the alleged failure of Appellee make a *prima fecie* case before the close of its evidence, and that the decision of the justice court in favor of Appellee is not supported by the evidence or the law. This Court will consider these claims as a challenge to the sufficiency of the evidence to warrant the trial judge's ruling. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[2] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[3] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[4] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[5] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[6] The Arizona Supreme Court has explained in *State v. Tison*[7] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[8]

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of the Scottsdale Justice Court.

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[2] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).
[3] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[4] *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[5] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[6] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[7] SUPRA.
[8] Id. At 553, 633 P.2d at 362.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further and future proceedings in this case, with the exception of the issue of attorneys fees and costs on appeal.

Counsel for Appellee having requested attorney's fees and costs on appeal, and good cause appearing on that request,

IT IS ORDERED that counsel for Appellee shall submit and lodge with this court an Application for Attorney's Fees and Costs on appeal and a proposed Order, on or before January 17, 2003.