

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jerry Berardi and Betty Berardi v. Jack L. Oliver, CPA, d/b/a Oliver & Associates, Accountants and Consultants

No. No. 12-0827, Supreme Court of Appeals of West Virginia (May 24, 2013)

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court judgment awarding Jack L. Oliver, CPA, \$26,300 plus costs under a quantum meruit theory for professional accounting services provided to Jerry and Betty Berardi. The Court held that the circuit court complied with West Virginia Rule of Civil Procedure 52(a) and that substantial evidence supported its finding that the submitted invoices were fair and reasonable.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	May 24, 2013
DOCKET	No. 12-0827
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed from a circuit-court judgment awarding respondent compensation under quantum meruit after a bench trial.
STANDARD OF REVIEW	The final order and ultimate disposition after a bench trial are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Memorandum decision; precedential status is not expressly stated in the opinion text.
PARTIES	Jerry Berardi, Betty Berardi v. Jack L. Oliver, CPA, d/b/a Oliver & Associates, Accountants and Consultants

TOPICS

[quantum meruit](#)[contracts](#)[civil procedure](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

Contracts

Restitution and quantum meruit

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly awarded compensation under quantum meruit when the record did not specify the exact number of hours Oliver spent performing the services.
2. Whether the circuit court complied with West Virginia Rule of Civil Procedure 52(a) by making sufficient findings of fact and conclusions of law to support its judgment.

HOLDINGS

1. No. The circuit court could award quantum meruit compensation without making a specific finding of the exact number of hours worked because substantial evidence established the extent and difficulty of the services and supported the finding that Oliver's invoices were fair and reasonable.
2. Yes. Rule 52 does not require a specific finding of the number of hours spent on each service when the court's findings adequately identify the factual basis for the award and its conclusions are supported by substantial evidence.

KEY QUOTATIONS

“In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied.” (1)

“Because the circuit court’s findings in this regard were supported by substantial evidence, we find no error.” (2)

FACTUAL BACKGROUND

Oliver, a certified public accountant, provided services to the Berardis under a written agreement concerning assistance with Mr. Berardi's malpractice lawsuit and also prepared delinquent tax returns for the Berardis and their businesses. The circuit court found that the parties had not mutually assented to the method of compensation and therefore had not formed a binding contract. Oliver nevertheless conferred a substantial benefit by performing the services, and the circuit court found his submitted invoices fair and reasonable, awarding him \$26,300 plus costs under quantum meruit.

PROCEDURAL HISTORY

Oliver brought a civil action in the Circuit Court of Marion County seeking compensation for professional services, including preparation of delinquent tax returns and assistance with a malpractice lawsuit. After a bench trial, the circuit court found that the parties had not formed a binding contract because they had not mutually assented to compensation, but awarded Oliver \$26,300 plus costs under quantum meruit. The Berardis appealed, arguing that the services were not proven with reasonable certainty and that the circuit court failed to make adequate findings under Rule 52(a).

DISPOSITION

affirmed

CASES CITED

- Public Citizen, Inc. v. First National Bank in Fairmont, 198 W. Va. 329, 480 S.E.2d 538 (1996)
- Beverly v. Thompson, 229 W. Va. 684, 735 S.E.2d 559 (2012)

OPINION

Jerry And Betty Berardi v. Jack L. Oliver, CPA

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

Jerry Berardi and Betty Berardi, husband and wife, Defendants Below, FILED May 24, 2013
Petitioners RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

vs) No. 12-0827 (Marion County 10-C-327) Jack L. Oliver, CPA, d/b/a Oliver & Associates,
Accountants and Consultants, Plaintiff Below, Respondent

MEMORANDUM DECISION

Petitioners' appeal, by counsel David A. Glance, arises from the Circuit Court of Marion County, wherein the circuit court awarded judgment in respondent's favor in an action for breach of contract by order entered May 30, 2012. Respondent, by counsel Patrick F. Roche, has filed his response, to which petitioners have filed a reply. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. In September of 2010, Respondent Jack Oliver initiated a civil action against Petitioners Jerry and Betty Berardi alleging that petitioners owed him \$2,135 for professional services that respondent rendered in his capacity as a certified public accountant ("CPA"), pursuant to a written contract dated March 2, 2007. Pursuant to the contract, respondent was to provide professional services as a CPA to Mr. Berardi in support of his professional malpractice lawsuit against his former attorney. Additionally, respondent alleged that he was entitled to compensation from both petitioners for the numerous tax returns he prepared for them personally and for various business entities they owned. Respondent sought judgment against petitioners in the amount of \$18,000 in principal and \$6,165 in interest for the preparation of the tax returns, which petitioner did file with the IRS. During the subsequent bench trial, the circuit court found that the parties had formed no binding legal contract, based on testimony establishing

that neither party thereto mutually assented to how respondent was to be compensated. However, the circuit court did find that respondent was entitled to compensation under the theory of quantum meruit because he had provided a substantial benefit to both petitioners by preparing their delinquent tax returns and by 1 preparing for Mr. Berandi's pending lawsuit. As such, the circuit court awarded respondent judgment in the amount of \$26,300, plus costs. On appeal, petitioners allege one assignment of error, arguing that the circuit court erred in granting respondent judgment in quantum meruit because the exact services rendered were not provided with reasonable certainty. Petitioners argue that the circuit court failed to comply with Rule 52(a) of the West Virginia Rules of Civil Procedure because it failed to include the requisite findings of fact in support of its order. According to petitioners, respondent provided no time records related to his work, and the circuit court therefore lacked the information necessary to form a basis for its judgment. We have previously held as follows: "In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a de novo review." Syl. pt. 1, *Public Citizen, Inc. v. First National Bank in Fairmont*, 198 W.Va. 329, 480 S.E.2d 538 (1996). Syl. Pt. 1, *Beverly v. Thompson*, 229 W.Va. 684, 735 S.E.2d 559 (2012). Upon our review, the Court finds no error in regard to the circuit court's final order. The circuit court properly complied with Rule 52 of the West Virginia Rules of Civil Procedure in regard to the requirement that it "find the facts specially and state separately its conclusions of law thereon" Petitioner's argument hinges on the fact that the circuit court's order does not have a specific finding as to how many hours respondent spent preparing for litigation and preparing the subject tax returns, but such a finding is not necessary for purposes of this rule. The record shows that extensive evidence was admitted concerning the amount of work necessary for respondent to complete petitioners' tax returns and lawsuit evaluation, including retrieving old computers out of storage in order to install older software necessary to complete returns that were almost ten years overdue. Additionally, respondent's expert witness provided testimony that preparing delinquent returns is more difficult than preparing current returns, due to application of the laws that existed at the time the returns were due. In fact, this expert testified that respondent's hourly rate was actually unfair and unreasonable to respondent himself, given his opinion that respondent could have charged a higher rate for his work. Based upon this evidence, the circuit court found that the invoices respondent submitted to petitioners were "both fair and reasonable." Because the circuit court's findings in this regard were supported by substantial evidence, we find no error. For the foregoing reasons, the circuit court's order is hereby affirmed. 2 Affirmed. ISSUED: May 24, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3

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