

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 18, 2016 Session

**HARDIN, PARKES, KELLEY & CARTER, PLLC v. WILLIAM RICK
HOLT**

**Appeal from the Circuit Court for Maury County
No. 15367, SI14-CV-1431 Stella L. Hargrove, Judge**

No. M2015-02010-COA-R3-CV – Filed August 26, 2016

A law firm sued a former client for unpaid attorney's fees. The trial court awarded the firm a judgment. The former client appealed but provided no transcript or statement of the evidence. Consequently, we must affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

William R. Holt, Trussville, Alabama, Pro Se.

Kori Bledsoe, Columbia, Tennessee, for the appellee, Hardin, Parkes, Kelley & Carter, PLLC.

OPINION

The facts of this case are very sparse. As there is no transcript or statement of the evidence regarding the trial court's proceedings, we rely on the pleadings and exhibits to reconstruct what happened. On February 2, 2012, William Rick Holt hired attorney Barton E. Kelley to represent him in a divorce action in Maury County Chancery Court. The matter apparently concluded when the judge entered an agreed parenting order on July 19, 2013.

Mr. Kelley's firm, Hardin, Parkes, Kelley & Carter, PLLC ("Hardin Parkes"), sued Mr. Holt in Maury County General Sessions Court on December 15, 2014, for unpaid attorney's fees and costs. On March 12, 2015, Mr. Holt countersued for "malpractice, attorney's fees, improper billing, and court costs, any fees, res judicata." Hardin Parkes filed

a motion to dismiss the counter suit based on the one-year statute of limitations running from July 19, 2013. The general sessions judge granted the motion to dismiss the counter suit based on the statute of limitations and awarded Hardin Parkes \$6,962.50 plus statutory interest.

Mr. Holt appealed the general session court's decision to circuit court. Again, Hardin Parkes filed a Motion to Dismiss based on the running of the statute of limitations. The record contains no reply by Mr. Holt. There was also a motion to strike Mr. Holt's motion for summary judgment. Mr. Holt's motion is not in the record. The trial court granted Hardin Parkes's motion to dismiss and denied Mr. Holt's motion for summary judgment as improperly filed or supported. The trial court awarded Hardin Parkes \$6,962.50 plus statutory interest at a rate of 5.25%, finding "that the Plaintiff established that it was owed said amount by virtue of the services rendered to the Defendant for attorney's fees and expenses rendered in representation of the Defendant and that the Defendant refused and failed to pay said attorney's fees without cause." Mr. Holt appealed.

Mr. Holt is not a lawyer. As this court has said many times,

Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.

Hessmer v. Hessmer, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003) (citations omitted).

The Court of Appeals, being an appellate court, operates with the record created by the litigants in the trial court. When there is no transcript or statement of the evidence, we cannot know what the testimony in the trial court was. Thus, generally, when the appellant¹ does not file a transcript or statement of the evidence, the appellate court presumes that the trial court's decision is supported by sufficient evidence. *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007). Mr. Holt made a number of factual assertions in oral argument, but just as arguments by attorneys are not evidence, *Elliott v. Cobb*, 320 S.W.3d 246, 252 (Tenn. 2010) (Koch, J. concurring), neither are arguments or unsworn

¹ "An appellant is responsible for preparing the record and providing to the appellate court a 'fair, accurate and complete account' of what transpired at the trial level." *Jennings v. Sewell-Allen Piggly Wiggly*, 173 S.W.3d 710, 713 (Tenn. 2005) (quoting *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993)).

statements by persons representing themselves. In this case, there is no evidence of what was said at trial. Consequently, we cannot evaluate the trial court's findings and must affirm.

Costs of appeal are assessed against Mr. Holt, the appellant, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE