IN THE COURT OF APPEALS

JAHN & JAHN, Attorneys,	)	HAMILTON CHANCERY
	)	C.A. NO. 03A01-9604-CH-00167
Plaintiffs-Appellants	)	
vs.	)	HON. HOWELL N. PEOPLES
	)	CHANCELLOR
SQUARE ENTERPRISES, INC., WILLIAM T. GRIFFIN and wife, PEARL T. GRIFFIN,	)	MODIFIED IN PART, AFFIRMED IN PART AND REMANDED
Defendants-Appellees	)	

RICHARD P. JAHN, JR., and J. CHRISTOPHER CLEM, Jahn and Weeks, Chattanooga for appellants.

C. CREWS TOWNSEND and W. SCOTT PARRISH, Miller and Martin, Chattanooga, for Appellees.

OPINION

McMurray, J.

This is an action for the collection of attorney fees. The plaintiff, Jahn & Jahn, Attorneys, and its predecessor firms, filed suit to collect fees for work performed dating back to at least 1975. Suit was filed in 1986, but the trial was delayed several times due to negotiations and the poor health of the parties.

The extensive legal work involved was centered on the defendants' attempt to purchase almost 12,000 acres in Franklin and Marion Counties. A total of six lawsuits were filed in federal and state courts, with the defendants here involved as both plaintiffs and defendants in the actions. In addition, there were five appeals to the Sixth Circuit Court of Appeals, and four appeals to our state appellate courts.

Originally, Jahn & Jahn was to be paid on an hourly basis, subject to the approval of North Carolina attorney James Griffin, the personal attorney of defendant William T. Griffin (no relation). For work done in 1973 and 1974, plaintiff billed defendants a total of $28,000, which was approved by Attorney Griffin and paid by Mr. Griffin. However, in 1975 and 1976, Mr. Griffin sought to negotiate a new fee arrangement. Plaintiffs continued to provide legal services, but did no further billing. Part of the negotiations for the new fee arrangement called for Attorney Griffin to mediate or arbitrate any fee disputes.[1] The record

[1]This agreement was reflected in a March 21, 1978 letter from Mr. Jahn to Attorney Griffin and Mr. Griffin.

includes several letters from the parties attempting to negotiate the proper fee arrangements for the legal services provided.

Negotiations finally broke down and plaintiff filed suit to collect its fees in 1986. Mr. Griffin died in 1988, and his estate was substituted as a party. Trial of this matter was held on January 25, 1995. The illness of Richard P. Jahn, Sr., a partner with Jahn & Jahn, and the attorney primarily responsible for the services provided, necessitated a continuance until June 7, 1995. In the interim, Pearl T. Griffin, wife of William T. Griffin, died, and her estate was substituted as a party. The Chancellor dismissed the cause against Pearl Griffin, and ordered judgment against the remaining defendants in the amount of $238,185.20. This appeal followed.

Plaintiff submits the following issues for our review:

1. Did the trial court err in applying the six year statute of limitations to bar plaintiff's suit against the defendant, Pearl T. Griffin?

2. Did the trial court err in awarding a judgment of $238,185.20 instead of an award of $266,185.20?

3. Did the trial court abuse its discretion in denying reasonable interest on the principal amount of the judgment?

The defendant also submits four issues for our consideration:

1. Whether the trial court erred by awarding a judgment for $238,182.00 instead of $226,128.45?

2. Whether the trial court erred by holding that Griffin and Jahn never entered into a contingency fee contract?

3. Whether appellant should be completely barred from recovery because he failed to produce detailed billing records?

4. Whether appellant's claims for hours accumulated prior to September 18, 1980, are barred by the six year limitation period set forth in T.C.A. § 28-3-109?

We will address each issue in the order raised.

DISMISSAL OF PEARL GRIFFIN

Plaintiff's first issue is whether the trial court was in error in applying the six-year statute of limitations to bar this action against Pearl T. Griffin. Plaintiff contends that Pearl Griffin's interests were intertwined and indistinguishable from those of William Griffin and Square Enterprises, Inc. The Chancellor dismissed the suit as to Pearl Griffin, finding that there was no showing of services rendered to Mrs. Griffin after September 1980.[2] The Chancellor clarified his order by ruling that plaintiff presented no proof that fee arrangements were ever discussed with Mrs. Griffin, the draft fee arrangements do not include lines for her signature, and she was never sent a bill for

[2]This suit was filed in September, 1986.

services at any time. Furthermore, the court found that the plaintiff never submitted evidence of the value of any services to Mrs. Griffin as opposed to the total of the value of services for the other defendants.

Pearl Griffin was named as both a plaintiff and defendant in some of the cases involved with plaintiff's representation. Defendant does not dispute that, but claims that Mrs. Griffin's interests were minor in the litigation, and the last case involving her was decided by a final order on July 10, 1980, entered by the Chancery Court of Franklin County. Plaintiff responds by stating that the legal work involved did not end with the 1980 final judgment, because more work was involved interpreting the final judgment. Indeed, the Chancellor did issue two letter rulings in 1981 clarifying the 1980 judgment. If that work was done on behalf of Mrs. Griffin, the filing of this suit would have been within the applicable statute of limitations.

The extensive record on appeal contains a Rule Docket from the Chancery Court of Franklin County that reflects the filing of two letters from the Chancellor in 1981, which was after the final judgment. The Rule Docket also reflects that a notice of appeal was filed in 1981. Plaintiff claims that this notice was filed on behalf of the Griffins. The Rule Docket does not specify which party filed the notice of appeal. However, the middle section of

this Court issued an opinion that supports the entries on the Rule Docket. We quote from that opinion as follows:

> On August 11, 1980, the plaintiffs filed a timely motion pursuant to Tenn.R.Civ.P. 52.02 and 59.03 to alter or amend the findings and judgment of the court. The trial court overruled plaintiffs' motion on May 15, 1981.
>
> On May 30, 1981, plaintiffs filed a second post-judgment motion under Tenn.R.Civ.P. 59.03 to alter or amend the judgment. The plaintiffs also filed a notice of appeal on June 12, 1981. The second post-judgment motion has yet to be ruled on by the lower court.

Griffin v. Lewis, opinion filed October 1, 1982 at Nashville.

The evidence from the Rule Docket and from the Court of Appeals clearly shows that work was performed on the Franklin County Chancery Court case after the final judgment issued in 1980, and within the statute of limitations as to Mrs. Griffin.

Defendants, however, submit that the ruling of this Court was that the 1980 Judgment was a final judgment. Apparently, they conclude that because this Court held that it was a final judgment, we are to ignore the work that was performed after 1980. We respectfully reject this reasoning.

When services are to be performed over an extended period of time under an express or implied contract that does not fix a term of employment or a time when compensation is to be paid, the statute of limitations begins to run only when the services are

fully performed or employment is otherwise terminated. See Murray v. Grissim, 290 S.W.2d 888 (Tenn. App. 1956). Under that rule, clearly the services involved in the Franklin County case were not concluded or terminated with the 1980 judgment. Even though this court issued an opinion that the 1980 judgment was final, it does not negate the fact that work was performed after 1980. We believe that in this context, the services of the plaintiff did not end when a final judgment was reached in Franklin County, but when the attorneys actually ceased working on the matter. We therefore find that the evidence preponderates against the finding of the chancellor that no work was performed after the 1980 final judgment of the Franklin County Chancery Court.

Even though work was performed after 1980 does not automatically entitle the plaintiff to collect from Mrs. Griffin. Defendants allege that plaintiff cannot look to Mrs. Griffin, because plaintiffs did not offer any proof to explain how the attorney client relationship developed or how Mrs. Griffin was involved in the various lawsuits. Specifically, defendants claim that "most state court issues did not involve her." We find this argument unpersuasive.

By their own admission, at least part of the representation by the plaintiff involved work for Mrs. Griffin. More persuasive is plaintiff's argument that the work performed for all parties is

indistinguishable as to each party, and was never contemplated to be billed on a piecemeal basis. It is clear from the record that the plaintiff was hired to perform the legal services necessary for the purchase of the land in Franklin and Marion Counties, whatever those services may be.

Finally, as to this issue, defendant argues that the parties contemplated the exclusion of Mrs. Griffin from any fee arrangement. We likewise find this argument unpersuasive. Plaintiff argues that Mr. Griffin, who negotiated the fee arrangement, was acting as an agent for his wife. The record contains a proposed fee arrangement, drafted by Mr. Griffin's personal attorney, which states: "Griffin represents that he has the necessary authority to execute this Agreement on behalf of his wife to the extent she may have an interest in the property as well as on behalf of Square." We also find in the record a letter from Mr. Jahn to Mr. Griffin dated Sept. 29, 1976, whereby he sets forth proposals for the fee arrangement. In the letter, Mr. Jahn states: "After considerable thought we propose the following to you and Mrs. Griffin." (Emphasis ours).

Our review of the entire record persuades us that that there is sufficient evidence to find that Mrs. Griffin was liable for the attorneys fees. We find that the evidence so preponderates. Consequently, we reject defendants' contention that Mr. Griffin was

not the agent of Mrs. Griffin, and hold that the plaintiff can look to the estate of Pearl Griffin for collection of the judgment.

PRINCIPAL AMOUNT OF JUDGMENT

Plaintiff contends that the Chancellor erred in computing the amount awarded. The trial court awarded the plaintiff $238,185.20, based upon an exhibit prepared by the plaintiff reflecting a total of $266,185.20 based upon the hours worked. As mentioned above, the defendant had already paid $28,000 to plaintiff. The Chancellor subtracted that amount from the total submitted by the plaintiff to arrive at the judgment of $238,185.20. However, the plaintiff had already subtracted that figure before arriving at $266,185.20. We believe that the Chancellor was in error in subtracting the $28,000 already paid, and, therefore, are of the opinion that the the amount of the judgment should be increased to $266,185.20.

PREJUDGMENT INTEREST

The third issue raised by the plaintiff is whether the trial court abused its discretion in denying interest on the principal amount of the judgment. Tennessee Code Annotated § 47-14-123 provides that prejudgment interest may be awarded as an element of

damages "in accordance with the principles of equity at any rate not in excess of the maximum effective rate of ten percent (10%) per annum." See also Schoen v. J.C. Bradford & Co., 667 S.W.2d 97 (Tenn. App. 1984). Generally, the rule is to allow interest in all cases where the amount of the debt is certain and not disputed on reasonable grounds, in accordance with principles of equity. Mitchell v. Mitchell, 876 S.W.2d 830 (Tenn. 1994); Textile Workers Union v. Brookside Mills, Inc., 326 S.W.2d 671 (Tenn. 1959). Prejudgment interest is not allowed as a matter of right in Tennessee on unliquidated claims for damages. B.F. Myers & Son of Goodlettsville, Inc. v. Evans, 612 S.W.2d 912 (Tenn. App. 1980). Since the amount of the services rendered in this case was uncertain and disputed, whether to award prejudgment interest was within the sound discretion of the trial court, and that decision will not be disturbed upon appellate review unless the record indicates a manifest and palpable abuse of discretion. See Engert v. Peerless Insurance Co., 53 Tenn. App. 310, 382 S.W.2d 541 (1964); Teague Brothers, Inc. v. Martin & Bayley, Inc., 750 S.W.2d 152 (Tenn. App. 1987); In re Estate of Cooper, 689 S.W.2d 870 (Tenn. App. 1985). The award of prejudgment interest as an element of damages is not to be considered a penalty imposed upon the defendant. In re Estate of Davis, 719 S.W.2d 526 (Tenn. App. 1986). The trial court declined to award prejudgment interest, finding that neither party was particularly to blame for the long delay in trying this matter, but emphasized that in a case such as

this, it is the attorney's responsibility to reach and finalize an agreement over fees. We find no abuse of discretion.

DEFENDANT'S COMPUTATION OF THE JUDGMENT

The defendant claims that the proper calculation of the judgment was $226,128.96, due to a $13,011.00 credit to plaintiff in 1974. Defendant claims that plaintiff's own statements sent to Mr. Griffin do not reflect a past due balance for work completed in 1974. We have found that the Chancellor was in error in his computation of the judgment, but we do not believe that his error was in favor of the plaintiff, as defendants allege. We note, however, that the evidence introduced showed that defendants had only paid $28,000.00 in payments, which would not include the $13,000.00 that defendants now claim was paid. The Chancellor found that the defendants had only paid $28,000.00 for legal services, and we we are unwilling to hold that the evidence preponderates to the contrary.

CONTINGENCY CONTRACT

The next issue raised by the defendants is that the trial court erred by holding that Mr. Griffin and Jahn & Jahn did not enter into a contingency fee contract. Defendants claim that despite a failure of the parties to sign a written contract, a

valid contract was nevertheless reached. Defendant correctly cites several Tennessee cases containing the fundamental principles of contract law, which we need not cite herein. However, while defendant's recitation of the law is correct, their application to the facts at hand is not.

Defendants first argue that both parties believed a contingency fee contract existed, evidenced by the fact that plaintiff ceased billing Mr. Griffin on an hourly rate in 1976, and expressed "extreme displeasure" over the settlement of one of the cases he was handling. We believe the evidence suggests otherwise. Defendants cite several letters in the record from Mr. Jahn concerning a proposed fee arrangement. Defendants claim that these letters are evidence that a contract was formed, but that the parties continued to "bicker about certain immaterial terms." We have reviewed the correspondence cited to us, and find that the points of contention between the parties amounts to more than simple bickering about immaterial terms.

According to the correspondence, Mr. Jahn sent Mr. Griffin a proposed contingency fee contract in 1977. Defendants contend that Mr. Griffin accepted the proposal, as evidenced by a letter from Mr. Jahn to Mr. Griffin and Attorney Griffin, dated May 10, 1978. In that letter, Mr. Jahn wrote "(d)uring the recent hearings Bill advised me that he was agreeable to the attached fee contract which

we submitted sometime back, other than he wanted to be sure that he was under no obligation to invest further in the Lewis property, or to retain an investment in same if he did not choose to do so voluntarily." We do not find this to be evidence that Mr. Griffin had in fact agreed to the contract, but instead evidence that he was agreeable to the contract, with certain details yet to be worked out. This interpretation is reinforced by the fact that Mr. Jahn asked Mr. Griffin to reexamine the contract to see if it did address his concerns. There is no evidence at that point that the contract was altered in any way. Therefore, we believe that at that time, Mr. Jahn was resubmitting his original offer, rather than acknowledging an acceptance by Mr. Griffin. Mr. Griffin never signed the original contract that defendants claim was accepted. Rather, the parties continued to have correspondence trying to iron out the details of the contract. In essence, we believe the parties agreed that a contingency fee arrangement was the appropriate way for the plaintiff to be compensated for services rendered, but an actual contingency fee arrangement was never reached. Therefore, a meeting of the minds never occurred. As pointed out by the defendants, we will not uphold an agreement that is indefinite and uncertain as to the obligations imposed upon the parties. See Jamestowne on Signal v. First Federal Savings & Loan, 807 S.W.2d 559 (Tenn. App. 1990).

As to defendants' contention that the plaintiff believed that they were operating under a contingency fee arrangement since they ceased hourly billing and became upset over the termination of one of the cases, we believe that these acts were consistent with the understanding that the parties were attempting to negotiate a contingency fee arrangement, but had yet to do so. The record is replete with correspondence from Mr. Jahn insisting that an arrangement be reached. That evidence shows that in fact Mr. Jahn was not operating under a contingency fee, but rather anticipated that he eventually would be.

BILLING RECORDS

The next issue raised by defendants is whether the plaintiff should be barred from recovery because it failed to produce detailed billing records. Although plaintiff was unable to produce the billing records due to their inadvertent destruction, it was able to produce evidence of the total amount of services rendered (4,404.4 hours, with 622 of those hours being paid). plaintiff presented the testimony of Mr. Jahn concerning the total amount of hours he and his firm had spent, and testimony of the value of those services by Chattanooga Attorney Harry Weill.[3] The Chancellor stated that he was "satisfied that the hourly amounts, the time

[3]We note that the detailed records were available during the discovery process of this trial, but were destroyed prior to the trial.

actually involved and spent by the plaintiffs, is in fact reasonable and necessary," and that there was "ample reference and documentation to the number of hours that had been accrued as of specific times, so the Court is satisfied that the hourly summary that has been prepared and introduced as part of Exhibit 1, Tab 2, is in fact an accurate delineation of the amount of time devoted by the plaintiff and other members of his law firm."

Since this was a factual determination by the trial court, our standard of review is de novo upon the record, accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. Rule 13(d), Tennessee Rules of Appellate Procedure. We find no evidence in the record that the time claimed to have been spent by the plaintiff was incorrect. This issue is without merit.

STATUTE OF LIMITATIONS

The final issue raised in this appeal is whether the plaintiff's claim for hours accumulated prior to September 18, 1980 is barred by the six-year limitation period as set forth in Tenn. Code Ann. § 28-3-109. As we have previously stated, we do not believe that either party contemplated the services rendered were to be billed on a piecemeal basis. Therefore, since no definite contract was ever entered into, under the teachings of Murray v. Grissim,

discussed supra, we hold that the statute of limitation did not begin to run until all of the work ended in the Franklin County Chancery case. We find that plaintiff was hired to assist the defendants in purchasing land, which service required extensive litigation. Despite the fact that numerous lawsuits and appeals were involved, the work performed up until the end of the Franklin County appeal (with the exception of the work billed and paid on an hourly basis) was continuous in nature, a direct result of the attempted purchase of the land, and is not barred by the statute of limitation cited by defendants.

The judgment of the trial court is modified to award a judgment in the amount of $266,185.20 to the plaintiffs against all defendants, including Pearl T. Griffin. The judgment of the trial court is affirmed in all other respects. Costs are taxed to the appellees and this cause is remanded to the trial court for the collection thereof.

_____
Don T. McMurray, J.

CONCUR:

_____
Houston M. Goddard, Presiding Judge

_____
Charles D. Susano, Jr., Judge

IN THE COURT OF APPEALS

JAHN & JAHN, Attorneys, Plaintiffs-Appellants	)	HAMILTON CHANCERY C.A. NO. 03A01-9604-CH-00167
vs.	)	HON. HOWELL N. PEOPLES CHANCELLOR
SQUARE ENTERPRISES, INC., WILLIAM T. GRIFFIN and wife, PEARL T. GRIFFIN, Defendants-Appellees	)	MODIFIED IN PART, AFFIRMED IN PART AND REMANDED

ORDER

This appeal came on to be heard upon the record from the Chancery Court of Hamilton County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was error in the trial court, however the judgment of the trial court can be modified pursuant to Rule 36, T.R.A.P. to correct the error.

The judgment of the trial court is modified to award a judgment in the amount of $266,185.20 to the plaintiffs against all defendants, including Pearl T. Griffin. The judgment of the trial court is affirmed in all other respects. Costs are taxed to the

appellees and this cause is remanded to the trial court for the collection thereof.

PER CURIAM