

JOSEPH S. ALT, PLAINTIFF-APPELLEE v. COMMUNITY CABLE, INC., DEFENDANT-APPELLANT

CASE NO. 1-95-64

COURT OF APPEALS OF OHIO, THIRD APPELLATE DISTRICT, ALLEN COUNTY

1996 Ohio App. LEXIS 1707

March 28, 1996, DATE OF JUDGMENT ENTRY

NOTICE: [*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

PRIOR HISTORY: CHARACTER OF PROCEEDINGS: Civil appeal from Common Pleas Court.

DISPOSITION: JUDGMENT: Judgment affirmed

CASE SUMMARY

PROCEDURAL POSTURE: Defendant non-prevailing party appealed a judgment from the Allen County Court of Common Pleas (Ohio), which awarded plaintiff prevailing party attorney's fees of \$ 8,100 on the ground that it was the prevailing party under [Ohio Rev. Code Ann. § 1345.09\(F\)](#).


OVERVIEW: The trial court awarded the prevailing party attorney's fees of \$ 8,100 on the basis that he was the prevailing party as set forth in [Ohio Rev. Code Ann. § 1345.09\(F\)](#). On appeal, the non-prevailing party contended that the trial court erred when it held that the prevailing party had proven the amount and reasonableness of attorney fees incurred despite the absence of sufficient, competent evidence as to either issue. The trial court's judgment was affirmed. The court held that the evidence of the number of hours expended, the hourly rate, and the counsel's professional skills supported the trial court's finding that the attorney's fees awarded were reasonable.

OUTCOME: The court affirmed the trial court's judgment awarding attorney's fees to the prevailing party.

CORE TERMS: Consumer Sales Practices Act, assignments of error, assignment of error, hourly rate, reasonableness, reasonable value, unconscionable, conscience, shock, legal services, recoverable, calculation, expended, pursuing

LexisNexis(R) Headnotes ♦ [Hide Headnotes](#)


[Civil Procedure](#) > [Remedies](#) > [Costs & Attorney Fees](#) > [Attorney Expenses & Fees](#) > [Reasonable Fees](#) 

HN1  A court is permitted to award a reasonable attorney's fee limited to the work reasonably performed if a supplier has knowingly committed a violation of Ohio Rev. Code Ann. § 1345. Such an award is within the discretion of the trial court and will be upheld absent an abuse of that discretion. An abuse of discretion connotes an attitude on the part of the court that is unreasonable,


unconscionable or arbitrary. Furthermore, unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere chiefly because the trial court, who was involved not only in the trial, but in preliminary matters, is in a better position to determine the reasonableness of such fees. [More Like This Headnote](#)

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[Torts](#) > [Business Torts](#) > [Unfair Business Practices](#) > [General Overview](#) 

HN2  The Consumer Sales Practices Act is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to [Ohio Rev. Code Ann. § 1.11](#). [More Like This Headnote](#)

[Civil Procedure](#) > [Remedies](#) > [Costs & Attorney Fees](#) > [Attorney Expenses & Fees](#) > [Reasonable Fees](#) 

HN3  In determining an award under [Ohio Rev. Code Ann. § 1345.09\(F\)\(2\)](#), the Ohio Supreme Court has held that a trial court: should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in Ohio Code Prof. Resp. DR 2-106(B). These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the discretion to determine which factors to apply, and in what manner that application will affect the initial calculation. [More Like This Headnote](#)

COUNSEL: ATTORNEYS:

MR. **PAUL CROUSHORE**, Reg. No. 0055524, Attorney at Law, 601 South High Street, Columbus, Ohio 43215, For Appellant.

MR. KURT SAHLOFF, Reg. No. 0055524, Attorney at Law, 321 East Main Street, P.O. Box 303, Ottawa, Ohio 45875, For Appellee.

JUDGES: HADLEY, P.J. EVANS and BRYANT, JJ., concur.

OPINIONBY: HADLEY

OPINION: OPINION

HADLEY, P.J. Defendant-appellant, Community Cable, Inc. ("appellant") appeals from the judgment entry of the Allen County Court of Common Pleas awarding attorney's fees of \$ 8,100 to plaintiff-appellee, Joseph Alt ("appellee").

Appellee filed a complaint on September 22, 1994 against appellant n1 alleging, among other things, fraud, breach of contract, and unfair and deceptive sales acts or practices pursuant to R.C. Chapter 1345, The Consumer Sales Practices Act,

regarding a transaction involving a satellite dish system. Appellant filed an answer and counterclaim on November 21, 1994. A trial was held on August 28, 1995. The parties presented [*2] stipulations to the court which included that appellee would be the prevailing party pursuant [R.C. 1345.09](#) and, therefore, the matter continued to trial to ascertain whether appellee was entitled to attorney's fees under [R.C. 1345.09\(F\)](#). In its judgment entry of September 6, 1995, the trial court awarded appellee attorney's fees of \$ 8,100. It is from this judgment entry that appellant presents the following assignments of error.

- - - - - Footnotes - - - - -

n1 Other defendants were also named.

- - - - - End Footnotes- - - - -

Assignment of Error No. 1

The trial court erred when it held that plaintiff had proven the *amount and reasonableness* of attorney fees incurred despite the absence of sufficient, competent evidence as to either issue.

Assignment of Error No. 2

The trial court erred when it held that Community Cable, Inc., 'did not challenge by cross-examination or offer other evidence to contradict' plaintiff's testimony as to the amount of his legal expenses where the burden lies with the plaintiff, not the defendant.

[*3]

Since appellant's two assignments of error are interrelated, we address them jointly. First, appellant submits that the trial court erred by granting an award of attorney's fees based solely on appellee's testimony. Next, appellant asserts that the trial court's statements indicate that it incorrectly placed the burden on appellant regarding attorney's fees.

Initially, we reject appellant's second assignment of error. While the trial court stated that appellant failed to contest the testimony concerning the fees, upon reviewing the entire judgment entry, we cannot find that the trial court placed a burden on appellant regarding the attorney's fees, but instead considered the evidence presented by appellee and other factors to determine whether such fees were warranted as discussed *infra*. See [Bierlein v. Alex's Continental Inn, Inc. \(1984\), 16 Ohio App. 3d 294, 302, 475 N.E.2d 1273](#) (stating a party "must demonstrate the reasonable value of such services" when making a claim for attorney's fees).

[R.C. 1345.09\(F\)\(2\)](#) permits ^{HN1} a court to award "a reasonable attorney's fee limited to the work reasonably performed" if a supplier has knowingly committed a violation of R.C. [*4] Chapter 1345. n2 Such an award is within the discretion of the trial court and will be upheld absent an abuse of that discretion. [Bittner v. Tri-County Toyota, Inc. \(1991\), 58 Ohio St. 3d 143, 146, 569 N.E.2d 464](#). An abuse of discretion "connotes an attitude on the part of the court that is unreasonable,

unconscionable or arbitrary." [Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd. \(1992\), 63 Ohio St. 3d 498, 506, 589 N.E.2d 24.](#) Furthermore, "unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere" chiefly because the trial court, who was involved not only in the trial, but in preliminary matters, is in a better position to determine the reasonableness of such fees. [Bittner v. Tri-County Toyota, Inc., 58 Ohio St. 3d at 146.](#)

----- Footnotes -----

n2 We note that ^{HN2} "The Consumer Sales Practices Act is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to [R.C. 1.11.](#)" [Einhorn v. Ford Motor Co. \(1990\), 48 Ohio St. 3d 27, 29, 548 N.E.2d 933.](#)

----- End Footnotes----- [*5]

^{HN3} In determining an award under [R.C. 1345.09\(F\)\(2\)](#), the Ohio Supreme Court has held that a trial court:

should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR 2-106(B). These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the discretion to determine which factors to apply, and in what manner that application will affect the initial calculation.
n3

----- Footnotes -----

n3 **We are aware that the attorneys in *Bittner* submitted "well-documented time reports," but do not find that determinative of whether the fees in the instant case are warranted. *Id.* at 145.**

----- End Footnotes----- [*6]

***Id.* at 145-146.**

In the present case, appellee testified to the total amount of his attorney bill, the number of hours expended, and the hourly rate of \$ 100. The trial court held that an hourly rate of \$ 100 was reasonable for legal services in the consumer fraud area. Citing to the factors in *Bittner*, the trial court "considering the totality of the circumstances" found that the pleadings, discovery, attendance at pre-trials, jury trial preparation, appellant's reluctance to negotiate a rescission, the outcome of the litigation,

elimination of a debt, and professional skills of appellee's counsel supported a determination that eighty-one hours was representative of work reasonably performed. n4

----- Footnotes -----

n4 We also note that appellant, at page seven and eight of its brief, states "there is no possibility of making any determination as to the amount or reasonableness of the time spent pursuing the Consumer Sales Practices Act/Home Solicitation claim versus the primary claim of fraud pleaded by plaintiff but dismissed prior to the decision." In *Bittner*, the Ohio Supreme Court stated that where "claims can be separated into a claim for which fees are recoverable and a claim for which no fees are recoverable, the trial court must award fees only for the amount of time spent pursuing the claim for which fees may be awarded." *Id.* at 145. In the case *sub judice*, the trial court did not explicitly state that the fees were only for the claims under R.C. Chapter 1345 although it is apparent that the trial court was well aware of the limitation of fees to "work reasonably performed" under this chapter. While a more specific reference could have possibly been made, we decline to second guess the trial court as the amount awarded fails to "shock the conscience" nor indicates an unconscionable or arbitrary award.

----- End Footnotes----- [*7]

Thus, while we implore attorneys to introduce complete evidence concerning the reasonable value of their work, based on the abuse of discretion standard, we cannot find that the trial court acted unreasonably, unconscionably or arbitrarily in the instant case. The trial court, in its judgment entry, stated that it considered the hourly rate, the hours worked, and the factors it found pertinent pursuant to DR 2-106. Summarily, appellant's first and second assignments of error are overruled.

Having found no error prejudicial herein, the judgment entry of the Allen County Court of Common Pleas is affirmed.

Judgment affirmed.

EVANS and BRYANT, JJ., concur.