

[Cite as *Durham v. Forest River, Inc.*, 2010-Ohio-6654.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MELISSA DURHAM, et al.

Plaintiffs-Appellees

-vs-

FOREST RIVER, INC., et al.

Defendants-Appellants

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. CT2009-0045

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. CH2007-0448

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 15, 2010

APPEARANCES:

For Plaintiffs-Appellees

LAURA K. MCDOWALL
MCDOWALL CO., LPA
503 Canton Road
Post Office Box 6600
Akron, Ohio 44312

RONALD L. BURDGE
2299 Miamisburg Centerville Road
Dayton, Ohio 45459

For Defendants-Appellants

KEVIN C. CONNELL
MARK C. ENGLING
FREUND, FREEZE & ARNOLD
One Dayton Centre
1 South Main Street, Suite 1800
Dayton, Ohio 45402-2017

Wise, J.

{¶1} Appellants Forest River, Inc. and Holman Motors, Inc. appeal the September 22, 2009, decision of the Muskingum County Court of Common Pleas awarding counsel for Appellees \$159,014.62 in attorney fees.

STATEMENT OF FACTS AND LAW

{¶2} On July 1, 2005, Melissa and Timothy Durham bought a new 2005 Forest River Sunseeker 3100SS motor home. The vehicle was manufactured by Forest River, Inc. and sold by Forest River's authorized dealer, Holman Motors, Inc.

{¶3} Within the first year, Appellant encountered numerous defects and conditions that substantially affected the use, safety, and value of the vehicle. The defects and nonconformities were reported to Forest River directly and through its authorized warranty service facility, Holman Motors. A number of repairs were made to the vehicle, including complete replacement of the outer walls of the vehicle.

{¶4} On June 29, 2007, Appellees Melissa and Timothy Durham filed a lawsuit against Appellants Forest River, Inc. and Holman Motors, Inc. alleging violations of Ohio's lemon law, breach of warranty, and Consumer Sales Practices Act.

{¶5} The original Complaint generally alleged three Counts against both Defendants (1) violation of Ohio's Lemon Law, (2) breach of express warranties and the implied warranty of merchantability, and (3) violation of the Ohio Consumer Sales Practices Act ("OCSPA").

{¶6} Defendants filed separate Answers to the Complaint.

{¶7} On January 4, 2008, Appellees filed an Amended Complaint. In the Amended Complaint, Appellees alleged violations of Ohio's "Lemon Law" as set forth in

Ohio Revised Code § 1345.71, et seq. Appellees also alleged Forest River and Holman breached express warranties and an implied warranty of merchantability under Ohio law and the Magnuson-Moss Warranty Act (15 USC § 2301, et seq.). Appellees also sought recovery of attorney fees for the alleged violations of the Magnuson-Moss Warranty Act. Appellees further alleged that the acts and practices of Forest River and Holman in connection with the sale of the recreational vehicle violated the OCSPA (Ohio Rev. Code § 1345.01, et seq.). Appellees also sought attorney fees under the OCSPA.

{¶8} Over the course of the next 18 months, the parties developed the factual record through written discovery, 20 depositions, vehicle inspections, investigation, and witness interviews.

{¶9} On August 29, 2008, Appellants Forest River and Holman Motors filed a motion for summary judgment asking for judgment on all of the Appellees' claims.

{¶10} Appellees filed a motion for partial summary judgment addressing the 22 affirmative defenses asserted by Forest River and the 15 affirmative defenses asserted by Holman Motors.

{¶11} On September 19, 2008, the trial court denied the Forest River/Holman motion for summary judgment.

{¶12} The original trial date of September 24, 2008 was continued and rescheduled for December 8, 2008.

{¶13} At the final pretrial held December 2, 2008, the parties reached a settlement. As part of the settlement, the parties agreed that Appellees' counsel was entitled to mandatory attorney fees in an amount to be determined by the trial court.

{¶14} On August 3, 2009, and August 21, 2009, the trial court conducted a hearing on the attorney fees issue. The trial court heard testimony from five witnesses and accepted 203 pages of exhibits. At the conclusion of the hearing, the court heard arguments of counsel and requested that each party submit proposed findings of fact and conclusions of law.

{¶15} On September 22, 2009, the trial court issued its findings of fact and conclusions of law, awarding Appellees' counsel \$159,014.62 in attorney fees.

{¶16} Appellants now appeal, assigning the following sole error for review:

ASSIGNMENT OF ERROR

{¶17} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS, FOREST RIVER, INC. AND HOLMAN MOTORS, INC. AND ABUSED ITS DISCRETION BY GRANTING JUDGMENT IN FAVOR OF PLAINTIFF'S COUNSEL, MCDOWALL CO., LPA AND AGAINST DEFENDANTS, JOINTLY AND SEVERALLY, IN THE AMOUNT OF \$159,014.62 FOR ATTORNEY FEES IN THIS MATTER AS SET FORTH IN ITS SEPTEMBER 22, 2009 AMENDED JOURNAL ENTRY."

I.

{¶18} Appellants herein argue that the trial court abused its discretion in its award of attorney fees in this matter. We disagree.

{¶19} Generally, regardless of who prevails in a lawsuit, each party is responsible for his or her own attorney fees. 30 Ohio Jurisprudence 3d (1999) 117, Damages, Section 91. A prevailing party, however, may be entitled to attorney fees if a statute so provides or if they are able to demonstrate that a party against whom the fees

are sought acted in bad faith. *Id.*; see, also, *Sladoje v. Slettebak* (1988), 44 Ohio App.3d 206, 542 N.E.2d 701.

{¶20} In *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 569 N.E.2d 464, the Ohio Supreme Court discussed calculation of attorney fees. The Court stated that to determine a “reasonable” award of attorney fees 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.” *Bittner* at 145, 569 N.E.2d 464.

{¶21} Our standard of reviewing a trial court's decision regarding the award of attorney fees is the abuse of discretion standard. *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 569 N.E.2d 464. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶22} Appellant challenges time spent between the original settlement demand and the final settlement, the filing of an amended complaint and the deposing witnesses as being unreasonable or unnecessary. Appellant also argues that certain expenses were likewise unreasonable or unnecessary.

{¶23} The trial court in this case held a two-day hearing on the issue of attorney fees wherein it heard testimony from five witnesses and was presented with more than 200 pages of exhibits. Following such hearing, the trial court prepared and filed a detailed, eleven-page judgment entry. Upon review of such judgment entry, it is clear that the trial court clearly considered the *Bittner* factors delineated in DR 2-106 and

found the Lodestar fee in this case was reasonable and that none of the factors justified a modification of the Lodestar fee. The trial court carefully considered Appellant's objections to certain fees and expenses. The trial court reviewed the billing entries and expenses and determined that the hourly rates and time spent by the attorneys and paralegals were reasonable.

{¶24} Upon review, we find Appellant has failed to establish that the trial court abused its discretion in determining the award of attorney fees in this case.

{¶25} Accordingly, Appellant's sole assignment of error is overruled.

{¶26} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JUDGES

