

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

JERRY BURCK	:	APPEAL NO. C-060858
and	:	TRIAL NO. A-0402283
RHONDA NASSIF,	:	
Plaintiffs-Appellants,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
OTTO REALTY CORPORATION,	:	
Defendant-Appellee,	:	
and	:	
THOMAS DIEHL, et al.,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiffs-appellants Jerry Burck and Rhonda Nassif filed suit against Thomas and Sylvia Diehl,<sup>2</sup> William McMahon,<sup>3</sup> and defendant-appellee, Otto Realty Corporation, regarding a real-estate matter. The case was tried to the bench. Burck and Nassif prevailed against Otto Realty and were awarded both compensatory and

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup>Burck and Nassif's claims against the Diehls were stayed pursuant to the United States Bankruptcy Code.

<sup>3</sup>Burck and Nassif subsequently dismissed their claims against William McMahon.

punitive damages. They then filed a motion for attorney fees. The trial court set a hearing date and conducted a hearing on their motion.

At the hearing, Burck and Nassif submitted fee statements from their attorneys, as well as an affidavit of a licensed practitioner regarding the reasonableness of their attorneys' hourly rates. They requested a fee award of \$30,701. At the conclusion of the hearing, the trial court awarded them \$10,000.

In their sole assignment of error, Burck and Nassif now argue that the trial court erred in awarding them a lesser amount of attorney fees than they had requested. We disagree.

In determining an award of attorney fees, the trial court must multiply the number of hours reasonably expended by a reasonable hourly fee. The trial court may then modify the amount of fees by applying the factors listed in DR 2-106(B).<sup>4</sup> An appellate court reviews the trial court's decision under an abuse-of-discretion standard.<sup>5</sup> "Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere."<sup>6</sup> The trial judge who has participated in both the trial and the preliminary proceedings has a much better opportunity to determine the value of the services rendered by the attorneys making the claim.<sup>7</sup>

In this case, our review of the record does not support Burck and Nassif's claim that the trial court abused its discretion in awarding them \$10,000 in attorney

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<sup>4</sup> *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 146, 569 N.E.2d 464.

<sup>5</sup> *Okocha v. Fehrenbacher* (1995), 101 Ohio App.3d 309, 321, 655 N.E.2d 744.

<sup>6</sup> *Bittner*, supra, at 146, quoting *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.* (1985), 23 Ohio App.3d 85, 91, 491 N.E.2d 345.

<sup>7</sup> *Id.*

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fees. We, therefore, overrule their sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on August 29, 2007,  
per order of the Court \_\_\_\_\_.  
Presiding Judge