

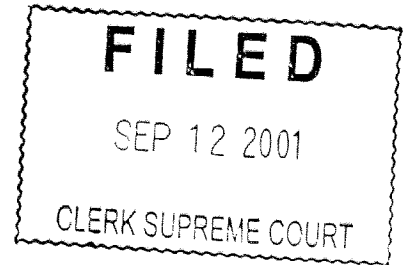
IN THE COURT OF APPEALS OF IOWA

No. 1-507 / 99-1549
Filed September 12, 2001

**BRADSHAW, FOWLER,
PROCTOR & FAIRGRAVE, P.C.,**
Plaintiff-Appellee,

vs.

JAMES B. WINKE,
Defendant-Appellant.



Appeal from the Iowa District Court for Lee (North) County, R. David Fahey, Jr., Judge.

James Bernard Winke appeals the district court's order granting summary judgment in favor of the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C. and entering a judgment against him for \$9,075.84 plus costs. **AFFIRMED.**

James Winke, Fort Madison, pro se, for appellant.

Sean O'Brien and Ann Spellman of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Mahan and Zimmer, JJ.

PER CURIAM.

James Winke appeals the district court's order granting summary judgment in favor of the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C. and entering a judgment against him for \$9,075.84 plus costs. He contends the bills are already paid, they are corporate bills, or bills owed by the State of Iowa to the law firm. We affirm.

I. Background Facts and Proceedings. James Winke entered into an oral contract with Donald Neiman, an attorney at the Bradshaw law firm, by which Neiman would provide him legal services in connection with litigation against his ex-wife and their competing claims to a closely held corporation, Progas, Inc. During the course of litigation, the firm submitted bills to Winke for costs and services rendered. Although Winke paid some of the bills, his account became delinquent. The total outstanding amount of the bills was \$9,075.84.

Bradshaw served Winke a "Notice of Default and Right to Cure." Winke requested verification of his account but, after receiving it, initiated no further communication with the firm. Bradshaw then sued Winke for breach of contract. In response to the requests for admissions submitted to Winke by Bradshaw, Winke admitted the existence of an oral contract with Bradshaw, he agreed to be responsible for the legal bills, he was provided legal services by Bradshaw, and he does not dispute the rate he was charged for the services. Bradshaw then brought a motion for summary judgment, alleging there was no dispute as to the material facts as Winke had admitted the elements of the breach of contract claim. The court granted the motion without oral argument.

On appeal, Winke claims because Bradshaw provided services in connection with litigation between his former wife and him regarding their competing claims to a closely held corporation, the corporation should pay for the services. He claims Neiman did not represent the company as he requested.

II. Scope of Review. We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.*

In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the party resisting the motion. *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717 (Iowa 2001). The court must consider every legitimate inference that can be reasonably deduced from the record in favor of the resisting party. *Id.* at 718.

An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law. On the other hand, an inference is not legitimate if it is based upon speculation or conjecture. If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists.

Id.

III. Breach of Contract. In order to be successful in its breach of contract claim, Bradshaw was required to prove (1) the existence of a contract with Winke; (2) the terms and conditions of the contract; (3) it performed all the terms and conditions required under the contract; (4) Winke breached the contract in some particular way; and (5) it has suffered damages as a result of

the breach. See *Molo Oil v. River City Ford Truck Sales*, 578 N.W.2d 222, 224 (Iowa 1998). In his answers to Bradshaw's requests for admissions, Winke admits he agreed to pay Bradshaw for expenses and professional services rendered in connection with Bradshaw's representation of him. Additionally, Winke admits Bradshaw provided him with professional services in connection with litigation involving Progas, Inc. and he does not dispute the rate he was charged. Reviewing the evidence before the district court in the light most favorable to Winke, we find the district court properly granted summary judgment in favor of Bradshaw.

Winke claims Progas, Inc. is responsible for his legal bills because he was the owner of the company and therefore had complete authority to contract with Bradshaw in a corporate capacity. This contention directly contradicts his admission he agreed to pay Bradshaw for the services rendered. Furthermore, Winke, not Progas, Inc., was the named party in the litigation with his ex-wife.

Further, Winke argues the bills are already paid. Bradshaw admits Winke paid some of the bills submitted to him, but the outstanding balance of the bills is \$9,075.84. Winke does not specify which of the legal bills are paid and did not offer any proof of such payment in resistance to the defendant's motion for summary judgment. Iowa Rule of Civil Procedure 237(e) requires a party to set forth specific facts showing a genuine issue for trial. Because Winke failed to do so, the district court properly granted Bradshaw's motion for summary judgment.

IV. Other Claims. We have reviewed Winke's other claims and find them to be without merit.

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We affirm the order of the district court granting summary judgment in favor of Bradshaw.

AFFIRMED.