

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

BLACKBOX, INC.,

Appellant,

v.

CASE NO. 5D00-0000

JAMES L. DOE and
MARCIA E. DOE, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH
JUDICIAL DISTRICT IN AND FOR ORANGE COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

JOHN SMITH, ESQ.
Fla. Bar No. 000000
000 North Granger Ave., Suite 000
Maitland, FL 00000
(000) 000-0000
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

PRELIMINARY STATEMENT.....1

STATEMENT OF THE CASE/FACTS.....2

SUMMARY OF ARGUMENT.....3

ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REDUCING THE LODESTAR AMOUNT OF PLAINTIFF’S ATTORNEY’S FEE AWARD WITHOUT MAKING SPECIFIC FINDINGS JUSTIFYING SAID REDUCTION.....4

CONCLUSION/CERTIFICATE OF SERVICE.....7

CERTIFICATE OF COMPLIANCE.....8

TABLE OF AUTHORITIES

<u>Bayer v. Global Renaissance Arts, Inc.</u> , 869 So.2d 1232 (Fla. 2d DCA 2004).....	5, 6
<u>Cheung v. Executive China Doral, Inc.</u> , 638 So.2d 82 (Fla. 3 rd DCA 1994).....	5
<u>Florida Patient’s Compensation Fund v. Rowe</u> , 472 So.2d 1145 (Fla. 1985).....	4
<u>Fowler v. First Federal Savings & Loan Assn. of Defuniak Springs</u> , 643 So.2d 30 (Fla. 1 st DCA 1994).....	5, 6
<u>Giltex Corp. v. Diehl</u> , 583 So.2d 734 (Fla. 1 st DCA 1991).....	5, 6
<u>Guardianship of Halpert v. Rosenbloom, P.A.</u> , 698 So.2d 938 (Fla. 4 th DCA 1997).....	5, 6
<u>Hindle v. Fuith</u> , 33 So.3d 782 (Fla. 5 th DCA 2010).....	4
<u>Jones v. Associates Financial, Inc.</u> , 565 So.2d 394 (Fla. 1 st DCA 1990).....	5
<u>Kouzine v. Kouzine</u> , 44 So.3d 213 (Fla. 5 th DCA 2010).....	4
<u>Larocka v. Larocka</u> , 43 So.3d 911 (Fla. 5 th DCA 2010).....	4
<u>Parton v. Palomino Lakes Property Owners Assn., Inc.</u> , 928 So.2d 449 (Fla. 2d DCA 2006).....	5, 6

PRELIMINARY STATEMENT

Appellant, BLACKBOX, INC., a Florida corporation, Plaintiff below, will be referred to in this Initial Brief as "Plaintiff".

Appellees JAMES L. DOE and MARCIA E. DOE, as Trustees of the James L. Doe and Marcia E. Doe Living Trust, Defendants below, will be referred to in this Answer Brief as "Defendants".

Citations to the record below will be to the Appendix (and tabs attached thereto) filed by Plaintiff. (e.g., [A:10]).

STATEMENT OF THE CASE AND FACTS

Plaintiff appeals from the trial court's 04/25/11 Final Summary Judgment of Foreclosure of Construction Lien (hereinafter "04/25/11 Final Judgment") [A: __].

On or about November 22, 2010, Plaintiff filed a one-count complaint to foreclose a construction lien against property owned by Defendants and located in Orange County, Florida [A: __].

Thereafter, on or about April 25, 2011, the trial court entered the above-referenced 04/25/11 Final Judgment against Defendants and in favor of Plaintiff.

Regarding the issue of prevailing party attorney's fees, the trial court incorporated Plaintiff's lodestar figures regarding hours reasonably expended (11.90 hrs) and reasonable hourly rate (\$400.00/hr) into its 04/25/11 Final Judgment. When calculating the amount of Plaintiff's fee award, however, the trial court inexplicably crossed out the lodestar amount (\$4,760.00), and instead the court awarded \$1,500.00 in attorney's fees. In doing so, the trial court made no specific findings justifying the substantial reduction in the lodestar amount.

This appeal followed.

SUMMARY OF ARGUMENT

The trial court committed reversible error by reducing the lodestar amount of Plaintiff's attorney's fee award without making specific findings justifying said reduction.

ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REDUCING THE LODESTAR AMOUNT OF PLAINTIFF'S ATTORNEY'S FEE AWARD WITHOUT MAKING SPECIFIC FINDINGS JUSTIFYING SAID REDUCTION

The issue presented for review is whether the trial court committed reversible error by reducing the lodestar amount of Plaintiff's attorney's fee award without making specific findings justifying said reduction.

Because the record does not contain a transcript of the proceedings below, Plaintiff acknowledges that this Court's review is limited to errors apparent on the face of the final judgment. Kouzine v. Kouzine, 44 So.3d 213, 214 (Fla. 5th DCA 2010); Larocka v. Larocka, 43 So.3d 911, 912 (Fla. 5th DCA 2010); Hindle v. Fuith, 33 So.3d 782, 785 (Fla. 5th DCA 2010).

The requirement that a trial court make specific findings in support of an adjustment to the lodestar amount is set forth in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145, 1151 (Fla. 1985), wherein the Florida Supreme Court ruled as follows:

In determining the hourly rate, the number of hours reasonably expended, and the appropriateness of the reduction or enhancement factors, the trial court must set forth specific findings. *If the court decides to adjust the lodestar, it must state the grounds on which it justifies the enhancement or reduction.*

“The requirements of Rowe are mandatory and the failure to make the requisite findings constitute reversible error.” Cheung v. Executive China Doral, Inc., 638 So.2d 82, 84 n.4 (Fla. 3d DCA 1994)(quoting from Jones v. Associates Financial, Inc., 565 So.2d 394, 394 (Fla. 1st DCA 1990).

Moreover, an order awarding attorney’s fees will be deemed “fundamentally erroneous on its face” when the trial court fails to make specific findings as to the hourly rate, the number of hours reasonably expended, and the appropriateness of reduction or enhancement factors as required by Rowe. Parton v. Palomino Lakes Property Owners Assn., Inc., 928 So.2d 449, 453 (Fla. 2d DCA 2006); Giltex Corp. v. Diehl, 583 So.2d 734, 735 (Fla. 1st DCA 1991). In such circumstances, reversal is warranted even in the absence of a hearing transcript. Bayer v. Global Renaissance Arts, Inc., 869 So.2d 1232, 1232 (Fla. 2d DCA 2004)(“[t]he appellants’ failure to include a transcript of the fee hearing in the record on appeal does not preclude this court’s review of the supplemental final judgment because the error is apparent from the face of the judgment”); Guardianship of Halpert v. Rosenbloom, P.A., 698 So.2d 938, 939-940 (Fla. 4th DCA 1997)(“[t]he failure of Appellant to furnish a transcript [of the fee hearing] does not preclude appellate review in the instant case because reversible error appears on the face of the order”); Fowler v. First Federal Savings & Loan Assn. of Defuniak Springs, 643 So.2d 30, 33 (Fla. 1st DCA 1994)(“[w]hile the

award of attorneys fees may very well have been based on competent, substantial evidence, the lack of a transcript and the absence of any specific findings in the final judgment supporting the award compels reversal”); Giltex Corp. v. Diehl, supra, 583 So.2d at 735 (“[w]hile the lack of a transcript or stipulated statement might otherwise require affirmance, this rule is not applicable in this case because the trial court’s order is fundamentally erroneous on its face for failure to make the express findings required by Rowe”).

In this case, even a cursory reading of the 04/25/11 Final Judgment reveals that the trial court made a substantial reduction in the lodestar amount without making any specific findings justifying said reduction as required by Rowe. Absent specific findings justifying said reduction of the lodestar amount, the 04/25/11 Final Judgment is subject to reversal as “fundamentally erroneous on its face”. Parton v. Palomino Lakes Property Owners Assn., Inc., supra, 928 So.2d at 453; Giltex Corp. v. Diehl, supra, 583 So.2d at 735. Moreover, as noted above, a reversal is warranted even absent a hearing transcript since the reversible error appears on the face of the judgment. Bayer v. Global Renaissance Arts, Inc., supra, 869 So.2d at 1232; Guardianship of Halpert v. Rosenbloom, P.A., supra, 698 So.2d at 939-940; Fowler v. First Federal Savings & Loan Assn. of Defuniak Springs, supra, 643 So.2d at 33.

CONCLUSION

For the above-mentioned reasons, Plaintiff contends that the trial court's 04/25/11 Final Judgment should be reversed and remanded for further proceedings.

Respectfully submitted,

JOHN SMITH, ESQ.
Fla. Bar No. 000000
000 North Granger Ave., Suite 000
Maitland, FL 00000
(000) 000-0000
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Initial Brief was served by ordinary mail this ____ day of _____, 2011 upon

JOHN SMITH, ESQ.
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

This is to certify that the type size and style set forth in this Initial Brief is 14 point Times New Roman, which contains 10 characters per inch.

JOHN SMITH, ESQ.
Attorney for Appellant