

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

MAX R. WHITNEY,

Appellant,

v.

Case No. 5D07-3825

MICHAEL HILL, M.D.,

Appellee.

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Opinion filed January 23, 2009

Appeal from the Circuit Court
for Orange County,
John H. Adams, Judge.

Diane H. Tutt, of Diane H. Tutt, P.A.,
Davie, for Appellant.

Bonnie J. Jackson, of Swann & Hadley,
P.A., Winter Park, for Appellee.

ORFINGER, J.

In this legal malpractice action, Max R. Whitney, the defendant below, appeals the trial court's final judgment entered after the court struck his pleadings and entered a default against him as a consequence of various discovery violations. On the limited record before us, we find no abuse of discretion and affirm the trial court's order striking Whitney's defenses and entering a default judgment against him.

Whitney also appeals the trial court's order assessing attorney's fees against him. We agree that the order is defective as the trial court failed to make findings of fact

in the judgment regarding the number of hours spent by Hill's counsel and a reasonable hourly rate as required by Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), modified, Standard Guaranty Insurance Co. v. Quanstrom, 555 So. 2d 828 (Fla. 1990). Because the court made no findings as to the number of hours reasonably expended or an hourly rate, reversal is required. Simpson v. Simpson, 780 So. 2d 985, 988 (Fla. 5th DCA 2001).

Finally, we note that the attorney's fee award appears to cover all fees incurred by Hill during the course of the litigation. As Whitney correctly argues, that is error as the amount of attorney's fees awarded should only be for that time reasonably occasioned by Whitney's misconduct and not for the entire litigation. Id. at 989.

AFFIRMED in part; REVERSED in part, and REMANDED.

PALMER, C.J. and SAWAYA, J., concur.