

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000518-MR

GREATER CINCINNATI INVESTIGATION,
INC., GENERAL CORPORATE
INVESTIGATION CO.'S, INC.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 96-CI-01170

GREG BOSLEY AND KEN ROBINSON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE AND GUIDUGLI, JUDGES; PAISLEY, SENIOR JUDGE.¹

DYCHE, JUDGE: Appellees Bosley and Robinson were employees of appellant Greater Cincinnati Investigation, Inc. (GCI), which, as might be gleaned from its name, is a private investigation business. Bosley and Robinson left GCI, established a business

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

of their own, and violated an agreement with GCI by soliciting customers of GCI and obtaining business from those customers. GCI filed this action to recover money damages for the breach of the agreement. The Kenton Circuit Court granted judgment to GCI on the issue of liability, which is not appealed. GCI appeals the amount of damages found by the court, specifically challenging the court's method of calculating the damages. We affirm.

The trial court conducted a thorough hearing on the issue of damages, finding that, based upon evidence submitted by GCI, for the five years prior to the pertinent time period GCI's net profit was "a mere 3% of gross sales and 5.4% of gross profit." Finding that GCI was entitled to damages based upon the net profits lost as a result of appellees' misconduct, "that a reasonable method of calculating the net loss sustained by [GCI] would be to determine the profit it would have realized had it performed the work instead of [appellees]."

In order to perform this calculation, the court took the evidence presented by GCI and made computations as follows: "\$209,691.25 (gross sales) less \$70,196.00 (cost of investigators) = \$139,495.25 (gross profit) x .054= \$7,532.74." Judgment was entered in that amount. This takes into account the historical performance of GCI's business, its labor-intensive nature ("the net profit after payment of salary and

other operating expenses is a small percentage of their total sales or total income"), and total overhead expenses of the business.

On appeal, GCI states that the trial court "incorrectly used tax accounting net profit to measure damages, and thereby unrealistically reduced the appellants' [sic] loss by its fixed cost." GCI proceeds to provide alternate methods for determination of damages in a case like this, which have been approved by other courts. It never, however, argues or demonstrates how the trial court's method is incorrect other than the bald assertion that fixed costs should not be included in the calculation.

While the alternate methods presented by GCI might have been acceptable for use by the court, GCI has presented no valid argument as to why the trial court's calculations are in error. The trial court had a full opportunity to hear the evidence and its decision will not be disturbed absent clear factual error, mistake of law, or abuse of discretion. We find none of these, and affirm the judgment of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

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