

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THOMAS BIEDUL,

Plaintiff-Appellant,

v

JAY N. SIEFMAN, P.L.L.C., and JAY N.  
SIEFMAN,

Defendants-Appellees.

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UNPUBLISHED

November 21, 2006

No. 263736

Oakland Circuit Court

LC No. 03-054890-CK

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff Thomas Biedul appeals as of right a judgment of no cause of action and an order granting mediation sanctions in this breach of contract action. We affirm.

Plaintiff was a business partner of Thomas Giannico (Giannico). Plaintiff and Giannico each owned 50 percent of International Restaurant Consultants, Inc. (IRC). IRC obtained a settlement of approximately \$546,000 in a suit against Domino's Pizza, Inc. Giannico then sued plaintiff and IRC. Plaintiff asked defendants to represent him in the suit against Giannico. Plaintiff and defendant Jay N. Siefman (Siefman) initially entered into an hourly fee agreement, allegedly with a retainer. Within a few months, plaintiff purportedly breached the agreement and Siefman "renegotiated" the fee agreement, telling plaintiff that the hourly fee would now be the "lower end" of the fee.

Meanwhile, Siefman negotiated a settlement with Giannico on behalf of plaintiff. Giannico agreed to pay plaintiff \$225,000. Under the settlement agreement with Giannico, the \$225,000 was distributed to Siefman's trust account. On January 14, 2002, a meeting occurred between plaintiff and Siefman regarding the settlement and how the settlement proceeds would be allocated. The "settlement statement" presented to plaintiff at the meeting reflected a fee to Siefman of \$60,000. Plaintiff signed the settlement statement, under the words "AGREED TO AND ACCEPTED BY." Later, plaintiff filed this action, asserting claims of breach of contract, unjust enrichment, and conversion. The trial court granted summary disposition on the unjust enrichment claim. At trial, the court granted a directed verdict on the conversion claim. The jury returned a verdict for defendants on the breach of contract claim. The trial court also denied plaintiff's motion for judgment notwithstanding the verdict (JNOV) or new trial. This appeal followed.

As a preliminary matter, we note that plaintiff raises several issues on appeal that were not contained within the statement of the questions presented. See MCR 7.212(C)(5). “An issue not contained in the statement of questions presented is waived on appeal.” *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Therefore, we shall only address those issues properly raised in plaintiff’s statement of the questions presented.

Plaintiff first argues that this Court should reverse the trial court as a matter of law because the jury verdict contradicts established Michigan law that a contingency fee agreement between an attorney and client must be in writing, and because Siefman unilaterally changed the parties’ hourly fee agreement to an oral contingency agreement at the time of settlement. We disagree.

This Court reviews de novo a trial court’s decision on a motion for JNOV. *Craig v Oakwood Hosp*, 471 Mich 67, 77; 684 NW2d 296 (2004). This Court reviews the evidence and all legitimate inferences in a light most favorable to the nonmoving party. *Id.*

Michigan Rule of Professional Conduct (MRPC) 1.5(c) provides:

A fee may be contingent on the outcome of the matter for which the service is rendered . . . . *A contingent-fee agreement shall be in writing* and shall state the method by which the fee is to be determined. Upon conclusion of the contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination. [Emphasis added.]

Here, both parties testified that the fee agreement was originally an hourly one. Next, there was evidence that the fee arrangement was “renegotiated.” Siefman testified that in September 2001, after plaintiff failed to pay the remaining \$2,000 of the alleged \$5,000 retainer, he and plaintiff “sat down and I told him that he was in breach of the agreement, that he had not paid the retainer . . . .” Siefman also testified: “I told him that I would consider continuing with the case and that we were going to renegotiate the fee . . . to predicate it on the quality of the services that are provided.” Siefman further testified:

*Q.* So you did not promptly establish a new fee after telling Mr. Biedul that the old fee agreement was [not] going to be operative anymore, did you?

*A.* I sure did. I told him what we were going to do and he was perfectly agreeable with it. He said that was fine. And that happens frequently with clients, predicated on the quality of the work and the services and the result. That’s not an unusual circumstance.

Siefman testified that the new fee arrangement kept the \$200 an hour as the minimum fee, but that plaintiff would pay more because he had breached the hourly fee agreement:

[T]he idea of getting paid hourly is to get paid current when the bill is provided . . . . And he said he couldn’t pay it. I happened to have been a generous person in terms of waiting to get paid when I wasn’t being paid by

somebody who said he was going to pay me hourly. And we talked about it, and he said that he would continue to pay me money, which he did not, and that the . . . minimum basis of the fee would be the \$200 an hour. . . . So the \$200 an hour remained, that was the bottom end of the fee that he was going to be charged. And he knew that he was going to be charged more money because he breached the agreement with me.

Siefman denied that the “upper end” of the fee was contingent on the outcome, rather “[i]t was something that we would negotiate at the end predicated on the services provided. But it was not predicated on a contingency because he was obligated to pay me the money.” Because there was evidence on both sides of this question, and the evidence must be viewed in a light favorable to defendants, it was for the jury to determine whether the renegotiated fee arrangement was contingent on the outcome. In addition, because there was conflicting evidence regarding whether a new agreement was formed, it was for the jury to determine whether defendants breached the original hourly fee agreement. The jury returned a verdict in defendants’ favor, evidently concluding that Siefman did not breach the hourly fee agreement. Because there was evidence to support this verdict, the trial court did not err in denying plaintiff’s motion for JNOV.

Plaintiff next argues that the trial court erred in allowing witnesses to testify regarding plaintiff’s character, because plaintiff did not “open the door” by placing plaintiff’s character at issue. We disagree. This Court reviews rulings regarding admission or exclusion of evidence for an abuse of discretion. *LeGendre v Monroe Co*, 234 Mich App 708, 721; 600 NW2d 78 (1999). An abuse of discretion occurs when the trial court chooses an outcome falling outside the permissible principled range of outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MRE 608(a) provides:

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may only refer to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Here, defendants offered the testimony of Giannico that plaintiff pocketed money from their Mexico business to support a lavish lifestyle, and that plaintiff would say anything to get to the position he wanted. This latter testimony constitutes opinion testimony regarding plaintiff’s character for untruthfulness. MRE 608(a)(1) expressly allows for opinion testimony regarding a person’s character for untruthfulness. MRE 608(a)(2) only requires that the “door be opened” when it is character for truthfulness that is offered. Accordingly, the trial court did not abuse its discretion in admitting opinion testimony concerning plaintiff’s character for untruthfulness.

Plaintiff next argues that the trial court erred in excluding expert witness testimony regarding Siefman’s alleged failure to adhere to certain rules of professional conduct. This Court reviews for an abuse of discretion a trial court’s decision to admit or exclude expert testimony. *In re Wentworth*, 251 Mich App 560, 562-563; 651 NW2d 773 (2002). Under MRE 702, “evidence is admissible if it complies with a three-part test. . . . First, the expert must be

qualified. Second, the evidence must provide the trier of fact a better understanding of the evidence or assist in determining a fact in issue. Finally, the evidence must be from a recognized discipline.” *Id.* at 563 (citations omitted).

We conclude that the expert’s testimony would not have provided the trier of fact with a better understanding of the evidence or have assisted in determining a fact in issue. A violation of a rule of professional conduct does not independently give rise to a claim for damages. See MRPC 1.0(b); *Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000). Further, expert testimony regarding legal ethics is not helpful to determining a fact in evidence for a breach of contract claim, because violating an ethical rule will not normally constitute a breach of contract. See *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) (noting the elements of breach of contract claim). Therefore, under the facts of this case, proving that Siefman violated an ethical rule would not be helpful for proving a breach of the applicable contract or for ascertaining damages as the result of any breach. Therefore, the trial court did not abuse its discretion in excluding from trial plaintiff’s proposed expert in legal ethics.

Plaintiff next argues that the trial court erred in refusing to instruct the jury regarding relevant portions of the MRPC. However, plaintiff does not adequately address this claim of error in the body of his brief. Therefore, this issue has been abandoned on appeal. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Plaintiff next argues that the trial court erred in failing to grant plaintiff’s motion for a new trial, because (1) plaintiff was unfairly prejudiced by the character evidence that was improperly admitted, and (2) plaintiff was not permitted to present expert witness testimony regarding the MRPC. We disagree. This Court reviews for an abuse of discretion a trial court’s ruling on a motion for new trial. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 498; 668 NW2d 402 (2003). However, we have already determined that the trial court properly admitted the evidence concerning plaintiff’s character and properly excluded plaintiff’s expert on the MRPC. Therefore, the trial court could not have abused its discretion when it denied plaintiff’s motion based on these claims of error.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski