

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

HALE & HALE, LTD, AND DAKOTA J. HALE, INDIVIDUALLY

Respondent

v.

THE ARNOLD AND JEANIE PETTIT DECLARATION OF TRUST
DATED 2/1/95, ARNOLD AND JEANIE PETTIT

Appellants

DOCKET NUMBER **WD69872**

DATE: September 15, 2009

Appeal From:

Circuit Court of Vernon County, MO
The Honorable Joseph B. Phillips, Judge

Appellate Judges:

Division Three: Thomas H. Newton, C.J., James Edward Welsh, and Karen King Mitchell, JJ.

Attorneys:

James L. Guthrie, Jr., Nevada, MO
David Slaby, St. Louis, MO

Counsel for Appellants
Counsel for Respondents

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

HALE & HALE, LTD, AND DAKOTA J. HALE, INDIVIDUALLY,
Respondent,

v.

THE ARNOLD AND JEANIE PETTIT DECLARATION OF TRUST
DATED 2/1/95, ARNOLD AND JEANIE PETTIT, Appellants

WD69872

Vernon County

Before Division Three Judges: Newton, C.J., Welsh, and Mitchell, JJ.

Hale & Hale, a licensed general real estate business, sued the Pettits for damages after the Pettits refused to pay a real estate commission on property that Mr. Pettit had listed exclusively with Hale & Hale. After a bench trial, the trial court ruled in favor of Hale & Hale and awarded Hale & Hale its commission plus interest, attorney fees and costs against the Pettits as individuals and trustees. The Pettits appeal, raising six points.

AFFIRMED AND REMANDED.

Division Three Holds:

The Pettits argue in their first point that the trial court erred in admitting photocopied licenses to prove Hale & Hale was licensed because they were not the best evidence. In their second point, they argue that even if the photocopied licenses were properly admitted, those photocopied licenses did not show that Hale & Hale was validly licensed at the time they rendered brokerage services in 2005. The best evidence rule requires the original document to be adduced when the content of that writing is at issue. The photocopied licenses did not violate the best evidence rule because the Pettits did not challenge the content of the photocopies. Although the photocopied licenses only showed present licensure, other sufficient evidence supports a reasonable inference that Hale & Hale was licensed in 2005. The Pettits' first and second points are denied.

In their third point, the Pettits argue that the trial court erred in entering judgment against Ms. Pettit in her individual capacity because she had not signed the exclusive listing agreement. Although spouses are not automatically agents of each other, Ms. Pettit's involvement was sufficient under the circumstances for Hale & Hale to reasonably infer that Mr. Pettit was her agent. The Pettits' third point is denied.

In their fourth point, the Pettits argue that the trial court erred in admitting the exclusive listing agreement, a seller's disclosure statement, and the offer from a buyer to purchase the property at the listed price because they were the products of the unlawful practice of the law. The Pettits rely on *Hulse v. Criger*, 247

S.W.2d 855 (Mo. banc 1952), for support. *Criger* precludes real estate brokers from preparing legal documents to effect the purchase or sale of property under certain circumstances. *Id.* at 862-63. *Criger* is inapposite because Hale & Hale's recovery was based on producing a buyer rather than selling the property; hence, no transaction occurred. The Pettits' fourth point is denied.

In their fifth point, the Pettits argue that the trial court erred in awarding a commission to Hale & Hale because there was no substantial evidence to support a finding that Hale & Hale produced a ready, willing, and able buyer entitling the brokerage to commission. A buyer who makes an offer below the stated price is not a ready and willing buyer. The Pettits claim that the offer was below the stated price because a valuable propane tank was included in the buyer's description of the property, but was not included in the description of the property to be sold on the exclusive listing agreement. At trial, Hale & Hale adduced evidence that the propane tank was included in the sale. The trial court disbelieved the Pettits, and we defer to that determination. The Pettits' fifth point is denied.

In their sixth point, the Pettits argue that the trial court erred in awarding attorney fees because there was no substantial evidence to support it. We presume an attorney fees award to be correct but the party challenging the award can overcome the presumption by showing that the trial court abused its discretion. Because there was evidence to support the award, the Pettits failed to show an abuse of discretion. The Pettits' sixth point is denied.

In conclusion, we affirm the trial court's decision. Hale & Hale filed a motion for attorney fees and expenses on appeal, which was taken with the case. We award such fees and remand the case to the trial court to determine a reasonable amount of attorney fees.

Opinion by: Thomas H. Newton, C. J.

Date: September 15, 2009

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