

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502014AP000030
L.T. NO.: 502014SC000075

CRAIG JAY PERKINS,
Appellant,

v.

HOWARD B. STEVENS, INC.
D/B/A PC PROFESSOR
Appellee.

Opinion filed: **JAN - 2 2015**

Appeal from the County Court in and for Palm Beach County,
Judge Ted Booras.

For Appellant: Craig Jay Perkins
14036 43rd Road
Loxahatchee, FL 33470
Craigperkins662@gmail.com

For Appellee: Stacey S. Fisher, Esq.
2775 Sunny Isles Boulevard
Suite 100
Miami, Florida, 33160
pleadings@sprechmanlaw.com

PER CURIAM.

Appellant/Defendant, Craig Jay Perkins, appeals the Final Judgment and the award of attorney's fees. Perkins argues that 1) the trial court erred in determining the fee award based upon affidavits submitted after trial; 2) the fee award was improper because the Appellee/Plaintiff, Howard B. Stevens, Inc. D/B/A PC Professor ("PC Professor"), did not request attorney's fees in its initial pleadings or at trial; and 3) the trial court erred in entering judgment against Perkins as the judgment was not supported by competent substantial evidence.

We find no merit to Perkins' arguments regarding the consideration of post-trial evidence. As to the award of prevailing party attorney's fees, we lack jurisdiction to address Perkins' arguments because the notice of appeal was limited to a review of the final judgment. *See Bove v. Ocwen Financial Corp.*, 763 So. 2d 347 (Fla. 4th DCA 1998) (dismissing appeal of cost judgment for lack of jurisdiction; notice of appeal was only timely as to judgment for damages). We find that the trial court did not err in entering a final judgment against Perkins, we find that the trial court erred in the amount awarded as principal damages and reverse.

PC Professor is a company that teaches a variety of computer-related classes. Perkins signed up for a webmaster program consisting of four modules. The enrollment agreement signed by Perkins indicated that 1) the tuition for the program was \$4,995.00, 2) the total cost of the program was \$5,145.00, and 3) Perkins was awarded a scholarship for \$2,500.00. Perkins attended three out of the four modules for which he had contracted; this translated to approximately 120 hours of the 160 hour long program.

PC Professor changed the class schedule and, due to Perkins' work schedule, he was unable to attend classes. Perkins emailed PC Professor after the class change and stated that if the original schedule could not be adhered to, then his contract needed to be terminated and he would reschedule his classes. PC Professor did not terminate Perkins' contract and continued to withdraw funds from his account. PC Professor informed Perkins that it would return to the original schedule and classes would begin in April 2013. Perkins responded that he could not take classes in April as that was busy season for his job and that he considered the contract cancelled. Perkins stopped payment for the program.

PC Professor filed a complaint against Perkins for services rendered, account stated, unjust enrichment, and breach of contract and sought damages in the amount of \$4,738.01 due

with interest from March 16, 2013. At the non-jury trial, an invoice was entered into evidence showing that the webmaster program cost \$4,995.00, Perkins was given a \$2,500.00 scholarship, there was a \$150.00 registration fee, and the scholarship for \$2,500.00 was revoked due to nonpayment. Although the cost of the program was \$4,995.00, the truth in lending section of the agreement indicated that Perkins had only financed \$2,495.00 with a finance charge of \$933.06 based upon a 21.99 percent annual interest rate, and the total sales price of the contract was \$3,578.06. The \$2,495.00 amount that Perkins financed was the cost of the program minus the \$2,500.00 scholarship.

Howard Fellman, the president and one of the owners of PC Professor, testified that the scholarship is awarded to students who need education but cannot afford the full price, and Perkins' award of the \$2,500.00 scholarship was subject to Perkins making his payments. Upon Perkins' failure to make payments, PC Professor revoked the scholarship and sought the full tuition cost of \$4,995.00. Neither the contract nor the student handbook discuss or mention scholarships or tuition discounts. At the conclusion of the trial, the trial court ruled in favor of PC Professor and found Perkins liable for principal damages of \$4,738.01 (the full cost of the program, \$4,995.00, plus the \$150.00 registration fee, less the \$406.99 Perkins had already paid).

We find no error in the trial court's determination that Perkins is liable for the payment of the classes Perkins contracted for; however, there is no competent, substantial evidence in the record to support the trial court's finding that Perkins is liable for the portion of his tuition that was paid for by the \$2,500 scholarship. The truth and lending information on the parties' agreement indicates that the amount Perkins financed was \$2,495.00 (the tuition fee of \$4,995.00 minus the \$2,500.00 scholarship). Although PC Professor argued at trial and presented testimony that the scholarship was revocable upon nonpayment of tuition, there was no evidence

presented that Perkins agreed to or was made aware of such a contractual term. PC Professor presented no documentation outlining the terms of the scholarship, and there is no indication in the parties' written agreement or the student handbook that the scholarship was revocable upon nonpayment. The parties' agreement included a clause that stated that the agreement constituted the entire agreement. Thus, there is not competent substantial evidence that Perkins signed a contract to pay the full price of \$4,995.00 and thus, the trial court erred in finding Perkins responsible for the full \$4,995.00.

Based on the foregoing, Perkins is liable for \$2,238.01, which is the cost of tuition (\$4,995.00), plus the registration fee (\$150.00), less the scholarship award (\$2,500.00), less the payments Perkins has already paid (\$406.99). Accordingly, we AFFIRM the trial court entry of a final judgment in favor of PC Professor but REVERSE as to the amount awarded. On remand, the trial court shall enter judgment *nunc pro tunc* as of the date the original judgment was entered (June 2, 2014) in the amount of \$2,238.01; the judgment shall bear an interest at a rate of 4.75% from the *nunc pro tunc* date of judgment. The trial court is directed to recalculate the award of prejudgment interest in accordance with this opinion.

G. KEYSER, FINE, and BARKDULL, JJ., concur.