IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

WILLIAM LEON MARCUS,	)	
	)	KNOX CIRCUIT
Plaintiff/Appellant	)	
	)	No. 03A01-9510-CV-00365
v.	)	
	).	
SIDNEY W. GILREATH,	)	
	)	AFFIRMED
Defendant/Appellee	).	

Carl Winkles, Knoxville, For the Appellant.

Richard L. Duncan, Knoxville, For the Appellee.

MEMORANDUM OPINION
(Pursuant to Rule 10(b), Rules of the Court of Appeals)[1]

INMAN, Senior Judge

This non-jury action, which sought recovery of the balance of a fee allegedly owing to the plaintiff, a toxicologist, by the defendant, an attorney, was dismissed following presentation of the evidence. Our review is *de novo* on the record accompanied with the presumption that the judgment is correct unless the evidence otherwise preponderates. TENN. R. APP. P. 13(d).

The trial judge found, *inter alia*:(1) that the plaintiff held himself out to be an expert in the field of toxicology and available for employment as an expert witness in that discipline; (2) that he was employed by the defendant to testify concerning toxicological damages in a tort action pending in North Carolina; (3) that the

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[1]**Rule 10. Affirmance without opinion -- Memorandum opinion.** (b) MEMORANDUM OPINION. The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

credibility of the plaintiff was crucial to the successful prosecution of the tort action; (4) that the plaintiff grossly misrepresented his qualifications as an expert in toxicology and failed to reveal critical facts in his educational background which in concert served to discredit his expertise and caused a material breach of contract.

We do not deem it necessary to recount the essentially undisputed evidence offered in this case. Suffice to state that it does not preponderate against the judgment.

The plaintiff argues that the defendant agreed to pay the balance of his fee upon demand, which forecloses the initial defenses. The trial judge found there was no estoppel or ratification, and we agree with his conclusion. The judgment is accordingly affirmed at the cost of the appellant.

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William H. Inman, Senior Judge

Concur:

_____
Herschel P. Franks, Judge

_____
Don T. McMurray, Judge