

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

REINA REYES,	:	APPEAL NO. C-160218
	:	TRIAL NO. 13CV-01059
Plaintiff-Appellee,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
BEPO, INC.,	:	
	:	
BEATRIZ H. PORRAS, M.D.,	:	
	:	
SKIN DIAGNOSTICS, INC.,	:	
	:	
and	:	
	:	
ALVARO A. RYES, M.D.,	:	
	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, the trial court entered judgment in favor of plaintiff-appellee Reina Reyes on her claim for overtime pay against her former employers, defendants-appellants, Bepo, Inc., Beatriz H. Porras, M.D., Skin Diagnostics, Inc., and Alvaro A. Ryes, M.D. The defendants-appellants have appealed.

In a single assignment of error, the defendants-appellants argue that the trial court erred by denying their motion for a directed verdict. However, in a bench trial, a motion for judgment at the conclusion of the plaintiff's evidence is one for dismissal

under Civ.R. 41(B)(2), not a motion for a directed verdict under Civ.R. 50. *See Jones v. Dolle*, 1st Dist. Hamilton No. C-77357, 1978 Ohio App. LEXIS 8176 (Aug. 2, 1978). Contrary to the granting of a directed verdict, which is based on insufficiency of evidence, a motion under Civ.R. 41(B)(2) allows the trial court to weigh the evidence. *See Bank One, Dayton, N.A. v. Doughman*, 59 Ohio App.3d 60, 571 N.E.2d 442 (1st Dist.1988); *St. Clair v. Person*, 1st Dist. Hamilton No. C-010094, 2002 Ohio App. LEXIS 1154 (March 15, 2002). A reviewing court should not set aside the trial court's judgment unless it was erroneous as a matter of law or against the manifest weight of the evidence. *See Vanderlaan v. Pavlik*, 1st Dist. Hamilton No. C-150060, 2015-Ohio-5349.

In Ohio, claims for overtime pay are generally governed by R.C. 4111.03. Under R.C. 4111.03(A), an employer must pay an employee for overtime at a rate of one and one-half times the employee's wage for hours worked in excess of 40 hours in one workweek. To prove a claim under R.C. 4111.03, an employee must demonstrate that she has performed work for which she was not properly compensated. *Eads v. Axle Surgeons, Inc.*, 42 Ohio App.3d 24, 536 N.E.2d 387 (6th Dist.1987), citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S.Ct. 1187, 90 L.Ed. 1515 (1946).

In this case, Reyes presented substantial credible evidence that from January 2011 through December 6, 2012, she worked 95 hours per two-week pay period, or 47.5 hours per week, and that she had been compensated at a rate of \$14 per hour. The evidence further demonstrated that she was not paid "time and a half" for the 7.5 hours worked in excess of 40 hours in one workweek. Therefore, we conclude that the trial court's judgment in favor of Reyes on her claim for overtime pay was supported by sufficient evidence and was not against the manifest weight of the evidence. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

OHIO FIRST DISTRICT COURT OF APPEALS

Consequently, we overrule the sole assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

Enter upon the journal of the court on August 19, 2016
per order of the court _____.
Presiding Judge