

**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANTS:

ATTORNEY FOR APPELLEE:

**CHAD E. GROVES**  
Henderson, Kentucky

**TERRY A. WHITE**  
Evansville, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

TODD AVERY and KELLY ELLIOTT-AVERY, )

Appellants-Defendants, )

vs. )

No. 82A05-0607-CV-374

DENTASAFE, INC., )

Appellee-Plaintiff. )

APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Mary Margaret Lloyd, Judge  
Cause No. 82D03-0203-CC-1294

**MAY 1, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Defendants-Appellants Todd Avery (“Avery”) and Kelly Elliot-Avery (collectively, “the Averys”) appeal the trial court’s judgment in favor of Plaintiff-Appellee Dentasafe, Inc. (“Dentasafe”). We affirm.

The Averys raise one issue for our review, which we restate as: whether the trial court abused its discretion in admitting certain expert opinion testimony.

Avery met Daniel Fink, a member of the multi-dentist practice called Dentasafe, at a neighborhood cookout. Fink stated during their conversation that he was interested in starting a motorcycle dealership and was soliciting investors. Avery, who had experience in the construction of buildings, offered to work with Fink in making preliminary plans for the bike shop building.

Subsequently, Avery and his wife, Kelly, became Fink’s patients. After Avery and Fink talked about the bike shop while Avery was receiving dental care, they entered into an oral agreement whereby Avery would prepare preliminary building plans in exchange for Fink’s dental services for Avery and his family. Fink told Avery that he did not want to invest any sums of money at the time and that he only wanted the preliminary plans to show to potential investors.

Fink continued to do dental work for Avery, Kelly, and their son, Matthew. Later, Avery brought an incomplete eight-page plan to Fink. Fink asked Avery what Fink’s maximum cost was going to be, and Avery responded that he had approximately \$2,500.00 invested in the development of the plans and that he couldn’t see it costing any more than \$7,500.00 to develop additional plans. Initially, Fink gave Avery an \$8,000.00 allowance against the dental bill.

Ultimately, Fink did extensive dental work for Avery, including total mouth reconstruction for Kelly, and the bill was \$17,525.71 after insurance payments. Avery did not attempt to pay this bill, and the business relationship between Avery and Kelly ended. Fink did not receive anything from Avery except the eight-page plan.

Dentasafe filed suit against the Averys, asking the trial court for a \$17,525.71 judgment. At trial, Avery represented that the preliminary plans were worth \$25,000.00 because of the extensive time expended by him and a number of subcontractors in their preparation. Dentasafe's expert, however, testified that the plans were a "far cry" from being finished and estimated the value of the plans at \$2,240.00. After the trial, the court awarded Dentasafe \$13,844.00, an amount that included a \$2,500.00 setoff for the value of the plans. The Averys now appeal.

The Averys contend that the trial court abused its discretion in admitting and relying upon the valuation given by Andrew Easley, Dentasafe's expert. Specifically, they contend that Easley, an engineer, was not qualified to make a valuation and that his lack of qualifications is illustrated by his reliance upon the opinion of one of his employees. The Averys cite *Faulkner v. Marrkay of Indiana, Inc.*, 663 N.E.2d 798, 801 (Ind. Ct. App. 1996), *trans. denied*, for the proposition that an expert "must rely on his own expertise in reaching his opinion and may not simply repeat the opinions of others."

Indiana Evidence Rule 702(a), which governs the admission of expert witness testimony, provides that a person may testify in the form of opinion or otherwise if, among other things, the person qualifies as an expert by knowledge, skill, experience, training, or education. The trial court's determination regarding the admissibility of

expert testimony under Rule 702 is a matter within its broad discretion, and the determination will be reversed only for abuse of that discretion. *Fulton County Commissioners v. Miller*, 788 N.E.2d 1284, 1288 (Ind. Ct. App. 2003). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

In the present case, we disagree with the Averys for two reasons. First, Easley testified that he determined the value of the plans and then asked an employee to review Easley's valuation "to make sure I [Easley] was being objective." Tr. at 16. Upon questioning from the Averys' attorney, Easley testified that he asked for the review to make sure "I [Easley] was being fair." Tr. at 17. Easley later testified that he determined the value and his employee concurred with those values. Easley further testified that he determines the values of plans on a regular basis. Tr. at 34. It is apparent that Easley relied upon his own opinion of the value of the plan and did not simply repeat the opinion of another. Accordingly, the trial court did not abuse its discretion in admitting Easley's opinion testimony.

Second, we note that the trial court used the \$2,500.00 value communicated to Fink by Avery. The Averys do not challenge the \$2,500.00 figure in their brief. The trial court did not abuse its discretion in using a figure that was slightly higher than Easley's valuation in determining the amount of the setoff.

Affirmed.

SHARPNACK, J., and ROBB, J., concur.