

No. 1-12-0898

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHARON SERPICO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 L 8152
)	
CARMEN SPINELLI and JENNIE M. SPINELLI,)	
)	
Defendants)	
)	
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IN RE: Fee Petition of PAUL W. GRAUER)	
and PAUL W. GRAUER & ASSOCIATES,)	The Honorable
)	Mary A. Mulhern,
Respondent-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: The circuit court did not err in entering an order awarding appellant attorney \$5,500 in quantum meruit legal fees and \$845.08 in costs, instead of the one-third contingency contract fee, where the attorney obtained a settlement offer of \$40,000 but was discharged and the plaintiff obtained a settlement in the amount of \$45,000 nearly six

months later with successor counsel, who deposed the plaintiff's treating physician and also requested and took part in two extensive settlement conferences. The attorney was not entitled to his contract fee because the successor attorney did the bulk of the work which ultimately resulted in settlement. The court did not abuse its discretion in entering a *quantum meruit* award of fees for 22 hours of legal work, instead of the 89 hours claimed, where the court carefully considered the attorney's fee petition and all relevant *quantum meruit* factors, including the novelty and difficulty of the subject matter and the time and labor required and the nature of the cause, and found that much of the time claimed was excessive.

¶ 1

BACKGROUND

¶ 2 Appellant, Paul W. Grauer & Associates (Grauer), appeals from an order entered by the circuit court awarding Grauer \$5,500 in legal fees and \$845.08 in costs in the underlying personal injury case. Grauer represented plaintiff Sharon Serpico against defendants for injuries she sustained allegedly as a result of a fall on July 17, 2005, at a residence owned by defendants. Grauer was retained by plaintiff under a written one-third contingent fee contract. Grauer was plaintiff's second attorney. Her previous attorney withdrew on March 10, 2009. Grauer appeared as plaintiff's attorney on May 7, 2009. Grauer's contingency contract with plaintiff was not reduced to writing until May 15, 2009. Grauer was plaintiff's attorney for over two years. The defendants' insurance carrier, State Farm, offered \$40,000 to settle the case. However, plaintiff wanted \$85,000 to settle the case. Grauer told plaintiff that he may be able to obtain another \$5,000 to \$10,000 to settle the case, but that \$85,000 was not realistic. Grauer was discharged by plaintiff in June 2011, with the \$40,000 offer pending.

¶ 3 Prior to his discharge, Grauer had attended several case management hearings, had taken a defendant's deposition, and had defended plaintiff's deposition. Grauer had also voluntarily dismissed plaintiff's lawsuit where it was originally filed in the Third Municipal District on

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July 16, 2009 and filed a new complaint in the circuit court of Cook County on July 15, 2010.

¶ 4 On July 12, 2011, plaintiff signed another contingent fee contract with Driscoll Law Office, P.C. (Driscoll). In representing plaintiff, Driscoll deposed the plaintiff's treating physician, and represented plaintiff at two extensive settlement conferences with the court. In December 2011, plaintiff then accepted an offer of \$45,000 from State Farm to settle the case.

¶ 5 Grauer filed a verified petition for attorney fees and a hearing was held. After the hearing, which included Grauer's own testimony, the circuit court awarded Grauer \$5,500 in attorney fees and \$845.08 in costs and entered final judgment. The circuit court did not award Grauer a one-third contingent fee, but instead awarded him fees pursuant to the quantum meruit theory of recovery. Grauer timely appealed this final judgment pursuant to Illinois Supreme Court Rule 301 (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)).

¶ 6 ANALYSIS

¶ 7 "A trial court's award of attorney fees is reviewed adopting an abuse of discretion standard." *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 972 (2009) (citing *In re Marriage of Bussey*, 108 Ill. 2d 286, 299 (1985)). "A trial court abuses its discretion if 'no reasonable person would take the view adopted by the trial court.'" *DeLapaz*, 394 Ill. App. 3d at 972 (quoting *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008)).

¶ 8 We find that *DeLapaz* is dispositive of this case. "A client may discharge his attorney with or without cause at any time, even in a contingency fee based agreement." *DeLapaz*, 394 Ill. App. 3d at 973 (citing *Thompson v. Hiter*, 356 Ill. App. 3d 574, 580-81 (2005)). The general rule is that "[w]hen the attorney is discharged, the contingent fee contract no longer exists and the

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contingency term is no longer operative." *Id.* (citing *Thompson*, 356 Ill. App. 3d at 581).

¶ 9 Although the facts of *DeLapaz* justified an exception to the general rule regarding a discharged attorney's fees, the facts of this case do not support the same exception. In *DeLapaz*, a discharged law firm had represented the plaintiffs in a personal injury case on a contingency fee basis. *DeLapaz*, 394 Ill. App. 3d at 970-71. The attorney at that firm who had worked on the case left the firm and took the clients with him to his successor firm and then settled the case. *DeLapaz*, 394 Ill. App. 3d at 971. The discharged firm filed a motion to adjudicate attorneys' liens and escrow funds. This court held that the discharged firm was entitled to its original contract fee of one-third of the settlement, less an amount awarded to the successor firm on a quantum meruit basis. *DeLapaz*, 394 Ill. App. 3d at 976.

¶ 10 In *DeLapaz*, this court relied on *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217 (1979), where the Illinois Supreme Court concluded that a discharged attorney was entitled to be paid on a quantum meruit basis a reasonable fee for services rendered before discharge, but approved of the California Supreme Court's reasoning that "in cases in which an attorney who has done much work is fired immediately before a settlement is reached, the factors involved in determining a reasonable fee would justify a finding that the entire contract fee is the reasonable value of services rendered." *Rhoades*, 78 Ill. 2d at 230 (citing *Fracasse v. Brent*, 6 Cal. 3d 784, 494 P.2d 9, 100 Cal. Rptr. 385 (1972)). This exception was applied in *Wegner v. Arnold*, 305 Ill. App. 3d 689 (1999), in holding that "under *Rhoades* an attorney discharged immediately prior to settlement may be entitled to the contract fee as the reasonable value of his services." *Wegner*, 305 Ill. App. 3d at 697. In *Wegner*, the attorney was discharged two days after defense counsel

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recommended to the defendant's insurance company that the case be settled for the policy limit of \$100,000. *Wegner*, 305 Ill. App. 3d at 691.

¶ 11 The major fact in support of the holding in *DeLapaz* was that the discharged firm had performed the bulk of the work on the plaintiffs' case before the settlement. *DeLapaz*, 394 Ill. App. 3d at 975. Also, another factor supporting awarding the contract fee to the discharged firm was the fact that the successor firm's verified response did not indicate that it had a written contingency fee contract between the clients and the successor firm. *DeLapaz*, 394 Ill. App. 3d at 976-77.

¶ 12 Grauer argues that the facts of this case warrant the same outcome as in *DeLapaz*, yet he argues that his theory of recovery was and remains quantum meruit. According to Grauer, *DeLapaz*'s holding awarding the discharged attorney his contract fee "is simply a special case of quantum meruit." We find no support for Grauer's argument.

¶ 13 First, in *DeLapaz* the discharged attorney was awarded his contract fee, not a fee based on quantum meruit. The successor attorney, and not the discharged attorney, was awarded a quantum meruit fee. See *DeLapaz*, 394 Ill. App. 3d at 976-77. Grauer maintains that his theory of recovery was and remains quantum meruit, yet he calculates the fee to which he believes he is entitled based on a contingent fee percentage, specifically his contingency contract fee of one-third. Such a calculation is not supported by the quantum meruit theory of recovery.

¶ 14 "A discharged attorney is entitled to be paid on a quantum meruit basis a reasonable fee for services rendered before discharge; in other words, the trial court is literally to award the attorney 'as much as he deserves.'" (Internal quotation marks omitted.) *Thompson v. Buncik*,

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2011 IL App (2d) 100589, ¶ 8 (citing Wegner, 305 Ill. App. 3d at 693). The burden of proof is on the attorney to establish the value of his services. Thompson v. Buncik, 2011 IL App (2d) 100589, ¶ 10 (citing McHugh v. Olsen, 189 Ill. App. 3d 508, 514 (1989)).

¶ 15 Under quantum meruit, the amount Grauer seeks is not merited by the work actually performed. "Several factors are considered in determining the quantum meruit amount for services rendered, which include 'the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client.'" DeLapaz, 394 Ill. App. 3d at 973 (quoting Will v. Northwestern University, 378 Ill. App. 3d 280, 304 (2007)).

¶ 16 Grauer argues that the court abused its discretion by not properly considering all of the appropriate factors in arriving at a quantum meruit fee award. Specifically, Grauer argues that the particular judge who decided his fee petition never had an opportunity to observe his work, as in Wegner, 305 Ill. App. 3d at 693. However, the factor of observation of an attorney's work is not a separately required factor in determining an attorneys' fees. The reference to observation of the attorney's work in Wegner was in explaining the reasons a trial judge is granted broad discretion in determining an award of attorneys fees in a case. The Appellate Court in Wegner explained that "[t]he trial judge has broad discretion in matters of attorney fees due to the advantage of close observation of the attorney's work and the trial judge's deeper understanding of the skill and time required in the case." Wegner, 305 at 693 (citing Kannewurf v. Johns, 260 Ill. App. 3d 66, 74 (1994)).

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¶ 17 As noted above, the following factors are considered by the court: " 'the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client.' " DeLapaz, 394 Ill. App. 3d at 973 (quoting Will, 378 Ill. App. 3d at 304).

¶ 18 Grauer argues that the court only considered "time billed" on the case instead of analyzing all the quantum meruit factors. However, contrary to Grauer's assertion, the court did not rely solely on the time billed. Excerpts of the court's order reveal that the court properly considered all relevant factors in making the quantum meruit award of attorney fees.

¶ 19 First, the court considered the attorney's degree of responsibility in managing the case, the attorney's skill, and the benefits to the client:

"The defendant made an offer of \$40,000 to settle this case in June of 2011. By that time, petitioner had attended three or four case management hearings in court and had taken the defendant's deposition and attended his client's deposition [footnote]. That offer of settlement was rejected by the plaintiff and this matter was not resolved until December of 2011 when the defendant offered \$45,000.00 to settle this case, more than ten percent more than the first offer. That increased offer was made six months after petitioner had withdrawn from the case, plaintiff secured new counsel, the treating physician's deposition had been taken, and two extensive settlement conferences conducted by the court had occurred. Petitioner testified that in his opinion, the \$40,000.00 offer was 'pretty close' to what he valued the case at, based on his research in the Jury Verdict

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Reporter, yet at no time did he seek any court assistance from any of the dozens of available judges to persuade the plaintiff of the reasonableness of that offer. As a matter of fact, plaintiff's current counsel sought and received that assistance, which was successful in persuading plaintiff that [the] new offer of \$45,000.00 made in December, 2011, was adequate."

¶ 20 The court thus noted that the bulk of effort spent in reaching a settlement was by the successor firm, Driscoll, and not by Grauer. Grauer is not entitled to his contract fee under *DeLapaz* because the successor attorney did the bulk of the work which ultimately resulted in settlement. Though Grauer seeks to cloak the one-third calculation he seeks as a quantum meruit amount, it is quite plainly equivalent to the one-third contingency fee contract amount in his retainer agreement with plaintiff. The court did not abuse its discretion in refusing to award Grauer his one-third contingency contract fee.

¶ 21 The court also considered the novelty and difficulty of the subject matter and the time and labor required and the nature of the cause:

**** Petitioner testified at the hearing on his Verified Petition that it was necessary to voluntarily dismiss the pending lawsuit and refile the lawsuit in the Daley Center because his experience with juries in the Third Municipal District was 'terrible' for plaintiffs' cases and that the original Complaint filed did not have the requisite Supreme Court Rule 220 [sic] affidavit attached. The court finds that neither reason for voluntarily dismissing the case is persuasive. There is nothing in the record to support petitioner's opinion that a jury in the Daley Center would be any more receptive to plaintiff's claim,

especially since prospective jurors for both locations are drawn from the same pool, but even if that were true, a simple motion to amend the Complaint to include the Supreme Court Rule 222 Affidavit and to transfer the case to the Daley Center venue could have been filed and presented, at no cost to the plaintiff and without causing a delay of one year. Therefore, the 3.90 hours and \$414.00 in expenses attributable to the voluntary dismissal and refiling of the lawsuit are not recoverable."

¶ 22 Then, regarding the time billed by Grauer specifically, the court found the following:

"This court finds that much of the time claimed in the Verified Petition is excessive. For example, the petitioner agrees that plaintiff discharged him yet he testified that he billed 1.2 hours drafting the motion to withdraw, including research and reviewing the file. That is neither necessary nor reasonable; he could have sent his client a stipulation agreeing to his withdrawal and accomplished this as an agreed order. Another example of excessive time claimed is the entry for July 16, 2009. Though already excluded by this order, the petitioner's testimony that it took him more than 45 minutes to research and draft the motion for voluntary dismissal of the original lawsuit is additional evidence of excessive time being claimed. The motion filed is only three sentences long and the law on this matter is well-settled, though the leading case on it is not included in petitioner's motion. Another example of overstatement of hours spent on this case is petitioner's claim that he spent 4.70 hours preparing for, traveling to and from, and attending the defendant's deposition. At the hearing on the Verified Petition, petitioner testified that preparation for the deposition took 45 minutes. That is a total of 2.5 hours,

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yet his Verified Petition claims 4.7 hours. Granted, the Verified Petition also includes on that date an entry for time spent on a phone conversation with defendant's counsel about moving the deposition to a time earlier that day than originally scheduled, but there is no support for the court to conclude that such a phone conversation would take another 2.2 hours.

Since petitioner was permitted to withdraw on July 21, 2011, the 2.25 hours claimed for legal services rendered and \$89.35 in expenses claimed after that date are not compensable since he no longer represented the plaintiff."

¶ 23 The court did not abuse its discretion in finding that the hours claimed were excessive, based on the actual time required for the work performed, with which the court was familiar. See *Cabrera v. First National Bank of Wheaton*, 324 Ill. App. 3d 85, 103-04 (2001) (finding no abuse of discretion in the circuit court's assessment of the reasonableness of the amount of time expended; the trial court considered the number of times the parties appeared before the court, the size of the briefs submitted, the amount of research required for the various arguments, and the amount of discovery). "In assessing the propriety of a fee request, a trial court may rely on its own experience." *Cabrera*, 324 Ill. App. 3d at 104 (citing *Heller Financial, Inc. v. Johns-Byrne Co.*, 264 Ill. App. 3d 681, 691 (1994)). "The determination of the reasonableness of a request for fees is a matter that lies within the discretion of the trial court." *Id.* (citing *Heller Financial, Inc.*, 264 Ill. App. 3d at 690). We also note, as did the circuit court, that nearly a year went by with no litigation on the case when Grauer voluntarily dismissed plaintiff's original lawsuit in the Third Municipal District on July 16, 2009 and filed a new complaint a year later in the circuit court of

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Cook County on July 15, 2010.

¶ 24 The court's determination to award Grauer fees for 22 hours of legal services, instead of the 89 hours he sought, was not an abuse of discretion, given the record and the court's careful consideration of Grauer's fee petition, which included all relevant factors, including the novelty and difficulty of the subject matter and the time and labor required and the nature of the cause.

¶ 25 Finally, the court considered the usual and customary charge for that type of work in the community, and chose to use Grauer's own hourly rate of \$250 per hour, thus yielding the total of \$5,500 for 22 hours of legal service. The court did not reduce Grauer's hourly rate.

¶ 26 The court determined that "[b]ased on the record," Grauer was entitled to \$5,500, representing 22 hours of legal service on the case. The court did not focus solely on the time billed, as argued by Grauer, but, rather, reviewed all the proper factors in making the quantum meruit fee award. Under the abuse of discretion standard, we cannot find that no reasonable person would find as the court did in this case.

¶ 27 **CONCLUSION**

¶ 28 The circuit court did not abuse its discretion in awarding Grauer \$5,500 in attorney fees representing 22 hours of legal services as a reasonable fee and \$845.08 in costs. As a discharged attorney Grauer was entitled only to a quantum meruit amount of attorney fees for his representation, and the facts of this case do not come within the purview of the exception to this general rule as stated in DeLapaz. The court properly considered all relevant quantum meruit factors in calculating Grauer's fees.

¶ 29 Affirmed.

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