2015 IL App (2d) 150610-U
No. 2-15-0610
Order filed December 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LAZARO COSS-MARIN; LILIA MARIN; KEVIN COSS-MARIN, a Minor by his Father and Next Friend, Lazaro Coss-Marin; ALEXANDER COSS-MARIN, a Minor by his Father and Next Friend, Lazaro Coss-Marin; DAMARIS COSS-MARIN, a Minor by her Father and Next Friend, Lazaro Coss-Marin, Plaintiffs, v. ROBERT FELDMAN and BETH FELDMAN, Defendants (Lulay Law Offices, Plaintiff-Appellant; Goldstein, Bender and Romanoff, Defendant-Appellee).	)	Appeal from the Circuit Court of Du Page County. No. 13-L-998 Honorable Dorothy French Mallen, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in determining the proper amount of *quantum meruit* attorney fees to be awarded to the discharged law firm. Additionally, the trial court did not err in denying the discharged firm's request for discovery and ordering that the escrowed funds be disbursed per its adjudication of the discharged firm's attorney's lien.

¶ 2 The law firm of Lulay Law Offices (Lulay) appeals from the trial court's allocation of attorney fees between Goldstein, Bender & Romanoff (Goldstein) as the successor firm and Lulay as the discharged law firm. Lulay argues that the trial court erred in (1) denying its motion for discovery; (2) awarding it only $3,500 in attorney fees under a *quantum meruit* theory rather than its full one-third contract fee ($14,166) or the value of its time on an hourly basis ($10,831); and (3) releasing the escrowed attorney fees and expenses following its adjudication of Lulay's attorney lien. We affirm.

¶ 3 BACKGROUND

¶ 4 On October 23, 2011, a vehicle driven by Robert Feldman collided with the vehicle in which the plaintiffs were driving. The plaintiffs, the Coss-Marin family (Lazaro, Lilia and their children Kevin, Alexander, and Damaris), were injured as a result of the collision. On October 24, 2011, the plaintiffs hired Lulay to prosecute their personal injury claims. On November 23, 2011, Lulay informed the defendants' insurance carrier that a lien was placed on the personal injury claims at issue pursuant to the Illinois Attorney's Lien Act (770 ILCS 5/1 (West 2010)). In January 2012, Lulay was discharged and another firm, Goldstein, took over representation of the plaintiffs in the underlying personal injury case.

¶ 5 On October 22, 2013, the plaintiffs filed a complaint based on negligence against the defendants seeking to recover damages for their injuries. The defendants filed an answer and a counterclaim for contribution. The case was ultimately settled. The plaintiffs accepted the following settlement amounts: $17,500 for Lazaro; $30,000 for Lilia; $4,000 for Kevin; $800 for Alexander; and $800 for Damaris. The total settlement was $53,100.

¶ 6 On January 29, 2015, the plaintiffs filed a motion to adjudicate Lulay's lien on the settlements. In that motion, the plaintiffs alleged that, following the traffic accident at issue, they had retained Lulay. After Lulay had negotiated with the insurance company, the plaintiffs were

presented with settlement offers but rejected those offers and discharged Lulay. Goldstein was then retained. Goldstein negotiated increased offers, but the plaintiffs rejected those offers as well. Goldstein filed suit, completed discovery, and deposed each plaintiff. Thereafter, Goldstein determined that a pre-trial settlement conference with the trial court would be helpful in settling the case. After securing a settlement agreement, Goldstein negotiated more favorable terms for the plaintiffs on their medical bills. The plaintiffs asserted that while the difference between the gross offers each firm had secured for the plaintiffs was not significant, Goldstein had secured net offers that were significantly higher than the offers secured by Lulay. The plaintiffs argued that Lulay was entitled only to be paid, on a *quantum meruit* basis, a reasonable fee for services rendered before discharge.

¶ 7 On February 9, 2015, Lulay filed a petition for *quantum meruit* attorney fees. Lulay alleged that from the time it was retained on October 24, 2011, and through December 28, 2012, it had expended significant time to obtain medical records and bills; counsel the plaintiffs; investigate the claims and prepare the paperwork to present to the offending driver's insurance carrier; negotiate with the offender's carrier; and negotiate bill reductions with the care providers. On December 28, 2012, the plaintiffs accepted the offers and bill reductions that Lulay secured, and directed it to settle their cases for the following gross amounts: $26,000, $14,000, $3,000, $300, and $300, for Lilia, Lazaro, Kevin, Damaris, and Alexander, respectively. The total settlement was $43,600. On January 5, 2013, Lazaro informed Lulay that the plaintiffs had changed their minds about settling and that he had hired a different firm. On May 15, 2013, Goldstein for the first time notified Lulay that Lulay was terminated and that Goldstein had taken over the plaintiffs' case. On January 20, 2015, Goldstein called Lulay, advised that the cases had been settled, and offered to resolve Lulay's fee interest for $750.

Lulay alleged that it had accomplished 90% of the resultant settlement and that it was entitled to its contract amount of fees on the settlements it had procured plus costs of $208.87.

¶ 8 On February 20, 2015, Lulay filed a motion for leave to take discovery. Therein, Lulay alleged that in order to properly evaluate its claim for *quantum meruit*, the trial court must determine the extent to which its services resulted in the settlements ultimately accepted by the plaintiffs as compared to the work performed by Goldstein. The discovery requests thus related to the work performed by Goldstein in the plaintiffs' case. On March 2, 2015, the trial court denied the motion for leave to take discovery. The trial court found that discovery was not necessary because what was due based on *quantum meruit* did not depend on the apportionment of work performed from one firm as compared to the other. Rather, *quantum meruit* was based on the reasonable billable hours for the hours of work incurred.

¶ 9 On March 16, 2015, the trial court requested that Lulay endorse the settlement checks and ordered that Goldstein maintain the fees and expenses in escrow pending a determination as to the distribution of attorney fees. Lulay complied and Goldstein placed the fees and expenses in an escrow account.

¶ 10 On April 16, 2015, a hearing was held on Lulay's petition for *quantum meruit* attorney fees and Goldstein's petition to adjudicate the lien of Lulay. Mr. Lulay testified that Lulay was officially hired on October 24, 2011, to represent the plaintiffs regarding the underlying car accident. Medical treatment ceased in March 2012. In April 2012, Lulay sent a demand package to the offenders' carrier, Allstate. Lulay held a client meeting with the plaintiffs on July 9, 2012, to let the plaintiffs know that Lulay was still trying to maximize the offer from Allstate. A paralegal was present at that meeting. Thereafter, Lulay negotiated with medical providers to seek reductions in the plaintiffs' medical bills. The paralegal met with the plaintiffs on December 20, 2012, to present them with the final figures. After attorney fees and medical bills

the plaintiffs were to receive as a net payout: $931.70 for Lilia; $1,335 for Lazaro; $943.15 for Kevin; and $225 each for Damaris and Alexander. The plaintiffs indicated that they would accept the offers.

¶ 11 Mr. Lulay further testified that Lulay then prepared the necessary paperwork to complete the settlement. On December 28, 2012, Lulay's paralegal called the plaintiffs, leaving messages that the paperwork was ready. The plaintiffs called back and stated that they no longer wanted to accept the settlement and they hired a new attorney. Thereafter, Lulay continued to receive notices of the creditors as if it was still the plaintiffs' attorney. On May 15, 2013, Lulay finally received a notice from Goldstein that Lulay had been terminated by the plaintiffs. Lulay offered its Exhibit A, listing all the tasks completed and the amount of time spent on each task by Lulay on this case. Lulay Exhibit B showed which Lulay employee performed each task and the hourly rate for that employee. Lulay spent a total of 48.7 hours on the file and incurred expenses of $208.87. Mr. Lulay testified that, in reaching the total fees, he charged an hourly rate of $350 for himself, $262.50 for his associates, and $170.60 for the paralegals. Based on the hours spent on the case, the request for hourly fees was $10,813.81. However, Mr. Lulay requested that Lulay receive the contract fees that would have been due to Lulay if the case had settled in December 2012, as originally agreed by the plaintiffs; that amount of attorney fees was $14,166.66.

¶ 12 Mr. Lulay asserted that he personally prepared the detailed time and cost analysis set forth in Exhibits A and B. He testified that "these Exhibits A and B represent my testimony today in excruciating detail with the time spent by the individual as well as the specific nature of the time spent, the dates of the time spent, and the time spent on there in my opinion." Mr. Lulay acknowledged that the exhibits were a reconstruction and that he did not keep simultaneous time records. Goldstein objected to Exhibits A and B on the basis that Mr. Lulay had no personal

knowledge of the time spent on various tasks for employees other than himself. The trial court sustained the objection. However, the trial court stated that it would consider Exhibit A based upon the opinion of Mr. Lulay and his experience as to how much time would be spent on each task. The trial court admitted Exhibit B for purposes of who performed the tasks and how long Mr. Lulay spent on his tasks "because he can estimate his own amount of time." However, it was not admitted as to the amount of time spent by anybody else because Mr. Lulay had no personal knowledge of how much time other employees spent to complete a task.

¶ 13 On April 29, 2015, the trial court entered a written memorandum opinion. The trial court made the following findings. Mr. Lulay did not have personal knowledge of whether the December 2012 offers were or were not accepted as he never personally spoke to Lazaro or Lilia and there was no evidence they were provided with settlement statements. The offers of settlement procured by Lulay were rejected and the case was later settled by Goldstein with a "substantially greater net to the clients." Goldstein filed a complaint, conducted written and oral discovery, attended pre-trial conferences, and negotiated with the lien holders to obtain a net higher profit for all of the plaintiffs. The trial court found that Lulay was not entitled to contract fees because the case law did not support an apportionment analysis and no contract was introduced into evidence.

¶ 14 The trial court considered several factors in determining the appropriate *quantum meruit* attorney fee award: 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 the type of work in the community; and the benefits resulting to the client. As to the labor involved, the trial court found that Mr. Lulay never directly communicated with the plaintiffs; all communication was through his paralegal. Exhibits A and B were admitted solely with regard to Mr. Lulay's hours as the

remaining hours lacked foundation. Prior to his termination, Mr. Lulay spent 6.9 hours on the case. As to skill and standing, the trial court noted that Mr. Lulay had 30 years of experience in this area of the law. As to the nature of the case, the trial court noted that this was a common auto accident case and the medical treatment was neither complicated nor extensive.

¶ 15 The trial court next considered the usual and customary charge in the community. The trial court noted that a contingent fee was usual and customary. However, the trial court found that $300 per hour was a usual and customary charge for an attorney in this type of case. Finally, the trial court considered the benefits to the plaintiffs. The trial court found that the plaintiffs did not receive the benefit of counsel because all Lulay's communications were through one of its paralegals. While the total settlement procured by Lulay was $43,600, the net settlement amounts, after the payment of attorney fees ($14,233.32) and medical expenses ($25,705.98), was as follows: $1,335 to Lazaro; $932 to Lilia; $943 to Kevin; and $225 each for Damaris and Alex. As such, the total net amount recovered by the plaintiffs would have been $3,660.70. The trial court found that there was not much benefit to the clients. In contrast, the final net settlement amount, after fees and expenses, received by the plaintiffs as a result of Goldstein's representation was $17,882.75. The trial court noted that Lulay argued that the increase in the net settlement amount was due only to the passage of time and the retirement of the chiropractic health care provider. However, the trial court found that there was no evidence to support that argument. Thus, considering the time spent by Mr. Lulay and his support staff on the case, the trial court awarded Lulay $3,500 in *quantum meruit* attorney fees. Of that award, $2,070 was for Mr. Lulay's time spent on the case and the remainder was that of his support staff. The trial court awarded no expenses as there was no evidence admitted to support the request for those expenses.

¶ 16 On May 18, 2015, Lulay filed a motion to require that the attorney fees continue to be held in escrow pending appeal of the trial court's April 29, 2015, order. On that same date, the trial court entered an order denying Lulay's request that the attorney fees continue to be held in escrow and finding that, pursuant to Supreme Court Rule 304 (Ill. S. Ct. Rule 304 (eff. Feb. 26, 2010)), there was no just reason to delay enforcement or appeal. Thereafter, Lulay filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, Lulay first argues that the trial court erred in denying its request to depose Goldstein and conduct written discovery. Discovery rulings are within a trial court's wide discretion and will not be overturned absent an abuse of that discretion. *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 252 (2010). A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Puls*, 268 Ill. App. 3d 882, 888 (1994).

¶ 19 We cannot say that the trial court abused its discretion in denying Lulay's request for discovery. We note that when determining an attorney fee award based on *quantum meruit*, there may be circumstances where a court may compare, generally, the amount of work performed by the discharged attorney compared to the successor attorney. See *DeLapaz v. SelectBuild Construction, Inc.*, 394 Ill. App. 3d 969, 976 (2009). Nonetheless, under the facts in this case, discovery was not necessary for the trial court to make that comparison. It is well settled that the trial court "is not limited to the evidence presented in arriving at a reasonable fee but may also use the knowledge it has acquired in the discharge of its professional duties to value legal services rendered." *Johns v. Klecan*, 198 Ill. App. 3d 1013, 1022 (1990). Here, the trial court managed the case from the beginning and was aware of the work conducted by the successor firm. Thus, even without discovery, the trial court was able to evaluate the value of

the work performed by Lulay as compared to the successor firm and make an appropriate determination as to the attorney fee award.

¶ 20 In its brief, Lulay takes issue with the fact that the trial court found that the work performed by the successor firm was "irrelevant" and then later, in determining the fee award, noted that Goldstein filed a complaint, conducted discovery, attended pre-trial conferences, and negotiated with the lien holders. Despite Lulay's contention, the trial court never found that the work performed by Goldstein was irrelevant. The trial court stated that it would take judicial notice of the court file and the activity that occurred after Lulay was discharged. The trial court only found irrelevant the hour-by-hour tasks performed by Goldstein because the attorney fee award was not to be based on a comparison of the percentage of work performed by each firm. In other words, the trial court was not required to compare the exact amount of hours each firm worked on the case. Accordingly, under the circumstances in this case, the trial court's denial of Lulay's request for discovery was not unreasonable.

¶ 21 Lulay's second contention on appeal is that the trial court erred in awarding it only $3,500 in *quantum meruit* attorney fees. Even in a contingency fee based agreement, a client may discharge his attorney at any time. *DeLapaz*, 394 Ill. App. 3d at 973. In that circumstance, the discharged attorney is entitled to attorney fees based on *quantum meruit*, a term meaning "as much as he deserves." *Id.* A trial court should consider several factors in determining the *quantum meruit* amount of attorney fees, such as: " 'the time and labor required, the attorney's skill and standing, the nature of the case, 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.' " *Id.* (quoting *Will v. Northwestern University*, 378 Ill. App. 3d 280, 304 (2007)). The trial court has broad discretion in making a determination as to an attorney fee award due to its close observation of the

attorney's work and its deeper understanding of the skill and time required in the underlying cause. *Will*, 378 Ill. App. 3d at 304. A trial court's award of attorney fees will not be disturbed absent an abuse of discretion. *DeLapaz*, 394 Ill. App. 3d at 972.

¶ 22 In the present case, we cannot say that the trial court abused its discretion in determining Lulay's *quantum meruit* attorney fee award. First, the facts of this case demonstrate that Lulay was not entitled to its full contract fee. We note that in cases where an attorney who has done much work is fired immediately before 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." *Wegner v. Arnold*, 305 Ill. App. 3d 689, 693 (1999). In *Wegner*, the reviewing court held that the discharged attorney was entitled to the full contract fee because his work had resulted in the settlement offer that was ultimately accepted by the client. *Id.* at 695. Further, the record indicated that the settlement offer was based on the pleadings, investigation, discovery, and depositions done prior to the date of discharge. *Id.* Similarly, in *DeLapaz*, the reviewing court affirmed the trial court's order awarding the discharged firm the contingent fee less the fees earned by the successor attorneys under a *quantum meruit* theory. *DeLapaz*, 394 Ill. App. 3d at 970. The discharged firm had performed all the work to facilitate the settlement offer and the successor attorneys merely turned around and settled the case two months later. *Id.* at 974.

¶ 23 Here, the circumstances did not warrant an award of the full contract fee. While Lulay had procured an offer for the plaintiffs, the trial court found that there was no evidence that the plaintiffs ever accepted that offer or were presented with a written settlement offer. Additionally, as noted by the trial court, Goldstein performed substantial work on the case following Lulay's discharge, such as filing the complaint, conducting written discovery, completing depositions, attending pre-trial conferences and negotiating liens. The case did not

settle for two years after Lulay was discharged. As such, *Wegner* and *DeLapaz* are distinguishable from the present case and the trial court did not abuse its discretion in finding that Lulay was not entitled to its full contract fee. See *DeLapaz*, 394 Ill. App. 3d at 970; *Wegner*, 305 Ill. App. 3d at 697.

¶ 24 Lulay argues that the trial court erred in considering the work Goldstein performed after Lulay was discharged because it denied Lulay's request to discover such matters and only Lulay presented evidence at the hearing. However, as explained above, a trial court is not limited to the evidence presented in determining *quantum meruit* fees (*Johns*, 198 Ill. App. 3d at 1022) and can take judicial notice of matters of record in its own proceedings (*In Interest of J.G.*, 298 Ill. App. 3d 617, 627 (1998)). Thus, the trial court did not err in taking judicial notice of the work conducted in the case by Goldstein following Lulay's discharge.

¶ 25 Next, the trial court did not abuse its discretion in awarding $3,500 in *quantum meruit* attorney fees, rather than Lulay's requested hourly fees of $10,831. The trial court's memorandum opinion makes clear that it considered the necessary factors in making its determination. Time and labor is only one factor that the trial court should consider in determining a reasonable attorney fee under the doctrine of *quantum meruit*. *Johns*, 198 Ill. App. 3d at 1019. In awarding $3,500 in *quantum meruit* fees, the trial court properly considered the net amount that the plaintiffs would have recovered had they settled while represented by Lulay, namely, $3,660. The trial court also considered that Goldstein more than quadrupled the net amount recovered by the plaintiffs after payment of attorney fees and medical expenses. Additionally, the trial court found that this was a common auto accident case and the medical treatment was not complicated. Accordingly, we cannot say that the trial court abused its discretion in valuing Lulay's services at $3,500.

¶ 26 Lulay argues that the trial court, in determining the fee award, considered only the hours spent by Mr. Lulay on the case and failed to consider the time spent by other members of the firm. The record indicates otherwise. In determining the fee based on *quantum meruit*, the trial court considered not only Mr. Lulay's time but also awarded fees for time spent by his associates and paralegal staff. We acknowledge that the trial court sustained an objection to Exhibits A and B, Mr. Lulay's list of the tasks performed by the firm and the amount of time spent on each task and by whom. The trial court found that the estimates of the amount of time spent by someone other than Mr. Lulay on a particular task could not be admitted into evidence because Mr. Lulay did not have personal knowledge as to how long it took others to complete their tasks. However, the trial court also found that Mr. Lulay could give expert testimony, based on his experience, as to how long a particular task might take. The trial court stated that it considered most of the evidence presented and applied the appropriate weight to it. Accordingly, Lulay's contention that the trial court did not consider all the time spent on the case by all members of the firm is without merit.

¶ 27 Lulay also argues that the trial court erred in considering the net amount recovered by each plaintiff and argues that case law only looks to the gross settlement offer achieved on behalf of a client. However, Lulay has failed to cite any authority in support of this contention, and it is therefore forfeited. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19. Even absent forfeiture, it is without merit. The case law is clear that a trial court can consider benefits resulting to a client (*DeLapaz*, 394 Ill. App. 3d at 973) and there is no case law stating that it is improper for a trial court to consider the net amounts received by a client. Additionally, Lulay argues that the trial court erred in awarding fees based on a $300 hourly rate, verses the requested $350 hourly rate, because his testimony that his hourly rate was reasonable was uncontested. Again the trial court is not limited to the evidence presented and may consider other factors such as the nature of the

case, the difficulty of the subject matter, and the usual and customary charge for that type of work in the community. *DeLapaz*, 394 Ill. App. 3d at 973. Here, the trial court found, based on its own experience, that the usual and customary fee was $300 per hour. We cannot say that this was an abuse of discretion.

¶ 28 Finally, Lulay argues that the trial court abused its discretion in ordering that the attorney fees be released from escrow and be distributed within 14 days when Lulay's right to appeal did not expire sooner than 30 days. However, Lulay has failed to cite any authority in support of this contention and it is therefore forfeited. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23 (a failure to cite relevant authority results in forfeiture of an issue on appeal). Where an appellant has failed to support his or her arguments with citations to authority, this court will not research the issues on the appellant's behalf. See *id.* (noting that this court "is not a depository in which the appellant may dump the burden of argument and research" (internal quotation marks omitted)). Here, the only case Lulay cites (*Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶ 23) is to establish that a personal injury settlement is a *res* and that adjudication of a lien on that *res* is an *in rem* proceeding that does not require personal service of process. Because Lulay has failed to cite relevant authority, it has forfeited this argument.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 31 Affirmed.