2015 IL App (3d) 140388-U

Order filed September 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

PAMELA DUKOVAC AND MARIO DUKOVAC, as representatives and administrators of the estate of EMILY A. DUKOVAC, deceased AND CHELSEA M. HAMM,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiffs-Appellees,	)	
v.	)	Appeal No. 3-14-0388 Circuit No. 12-L-161
BRIESER CONSTRUCTION COMPANY, a Delaware Corporation, WAYNE EQUIPMENT & MAINTENANCE CO., INC., an Illinois Corporation, and FREDRICK T. WERNER,	)	
Defendants	)	
(Sinson Law Group, Third Party Lienholder – Appellant).	)	The Honorable Michael J. Powers, Judge, presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: An order granting attorney's fees to a discharged attorney on a *quantum meruit* basis was upheld on appeal because the trial court adjudicated the rights of the parties, concluding that a reasonable fee was not the contingency contract fee but an hourly rate based upon the hours worked. The hourly rate, based upon what the trial court deemed a reasonable rate for the work in the county, taking into consideration the attorney's years of experience, was not an abuse of discretion.

¶ 2 The appellant, Sinson Law Group (Sinson), a discharged law firm, appealed from the trial court's determination that it was only entitled to collect attorney's fees on a *quantum meruit* basis and the calculation of those fees.

¶ 3 FACTS

¶ 4 On March 8, 2010, Emily Dukovac was a passenger in her friend, Alainna Haiman's, car when it was struck by the defendant Frederick T. Werner, who was driving a work truck. Emily, who was 17 years old, was killed instantly, and another passenger, plaintiff Chelsea Hamm, was severely injured. Thereafter, Sinson was hired to represent Emily's estate in a civil suit against Werner and his employer. Pamela and Marco Dukovac, as representatives and administrators of Emily's estate, entered into a standard contingency fee agreement with Sinson.

¶ 5 Sinson initially filed suit against Haiman, who was uninsured at the time of the accident. After written discovery was completed, Haiman filed bankruptcy. Sinson represented Emily's estate in Haiman's bankruptcy proceedings. On or about August 5, 2010, Sinson settled a claim for uninsured motorist benefits on behalf of Emily's estate for the policy limit of $100,000. Sinson took a fee of $33,333.33 and was reimbursed for costs of $8,251.31, which included accident reconstruction and filing fees. Thereafter, in February 2012, Sinson filed the instant action on behalf of Emily's estate and Hamm against the defendants in the instant suit, Werner and his employer. Sinson alleges that it received an oral settlement offer of $25,000 on behalf of

Emily's estate from the defendants in June or July 2012 but recommended that the Dukovacs reject the offer.

¶ 6 On September 6, 2012, Sinson was discharged as the attorney for both Emily's estate and for Hamm. The plaintiffs hired Whiteside & Goldberg, Ltd. (Whiteside), also based on a contingency fee agreement. On May 21, 2013, Whiteside reached a settlement with the defendants, $50,000 for Emily's estate and $25,000 for Hamm.

¶ 7 When hired, Sinson had placed attorney's liens on any settlement. After settlement, Whiteside brought a motion to adjudicate Sinson's liens. Sinson argued that it was entitled to the full contract fee, rather than *quantum meruit* recovery, because Whiteside did little or no work after taking over the case. The trial court ruled that Sinson would only be entitled to *quantum meruit* recovery, ordered Sinson to submit time records, and denied Sinson's motion to compel discovery. Without allowing Sinson to present live testimony, the trial court ruled that it did not see the case as an exception to the general rule of *quantum meruit* and again ordered Sinson to submit time records. Sinson submitted an affidavit listing hours worked on the case as 66.6 and seeking to be reimbursed at $400 per hour. The trial court awarded Sinson $10,540 of the $25,000 in attorney fees, which was 52.7 hours at $200 per hour. Whiteside received the balance of $14,460. Sinson appealed.

¶ 8 ANALYSIS

¶ 9 Sinson argues that the trial court denied it due process by failing to hold an evidentiary hearing and limiting its recovery to *quantum meruit*. The plaintiffs contend that the trial court correctly considered the evidence and was under no obligation to hold any further evidentiary hearing.

¶ 10 Under Illinois law, a client has the right to terminate her attorney at any time and, when such occurs, any contingency fee agreement is no longer enforceable. *Will v. Northwestern University*, 378 Ill. App. 3d 280, 303 (2007). Generally, the discharged attorney is entitled to be paid a reasonable fee on a *quantum meruit* basis for services rendered before termination. *Will*, 378 Ill. App. 3d at 304. There are cases where the reasonable fee is the entire contract fee, especially if the discharged attorney performed a lot of work on a case and a settlement immediately follows the discharge. *DeLapaz v. SelectBuild Construction, Inc.*, 394 Ill. App. 3d 969, 974 (2009). We review the trial court's decision regarding attorney's fees for an abuse of discretion. *DeLapaz*, 394 Ill. App. 3d at 972.

¶ 11 Section 1 of the Attorneys Lien Act provides, in part, that upon the filing of a petition to enforce an attorney's lien for fees, the trial court "shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce the lien." 770 ILCS 5/1 (West 2012). Here, the trial court did adjudicate the rights of the parties and there was not a denial of due process. Although Sinson argues that the trial court made a ruling without hearing evidence, that is not accurate. The trial court had before it Sinson's affidavit and time sheets reflecting Sinson's work on the case. The trial court was also aware that Sinson was discharged without reaching a settlement agreement, but a settlement was reached months later for a different amount. Based on that information, the trial court determined that a reasonable fee was not the entire contract fee. Despite Sinson's argument to the contrary, discovery regarding the nature and amount of work done by Whiteside was not relevant to the determination of Sinson's reasonable fee. See *Moenning v. Union Pacific Railway Co.*, 2012 IL App (1st) 101866, ¶ 18 (After a petition to enforce an attorney's lien is filed, the court must "hear evidence related to the

services rendered by the attorney.") The trial court's conclusion that a reasonable fee for Sinson was $10,540, based upon the submitted hours, was not an abuse of discretion.

¶ 12 Sinson further argues that the trial court's hourly rate of $200 was an abuse of discretion and did not consider the attorney's experience, skill or reputation. Sinson contends that there was no evidence offered regarding the prevailing market rate.

¶ 13 In determining a reasonable fee under the *quantum meruit* theory for services rendered, courts should consider "'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 973-74 (quoting *Will*, 378 Ill.App.3d at 304). 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 professional duties to value legal services rendered." *Will*, 378 Ill. App. 3d at 304 (quoting *Johns v. Klecan*, 198 Ill. App. 3d 1013, 1022 (1990). Sinson's challenges the trial court's market rate, i.e., the usual and customary charge for that type of work in the community. However, the trial court acknowledged Sinson's 25 years of experience, noted its familiarity with the hourly rates of Will County attorneys, and rejected federal court rates of $375 and $400 per hour, in arriving at its figure of $200 per hour. This was not an abuse of discretion.

¶ 14 Whiteside asks for interest on judgments pursuant to 735 ILCS 5/2-1303 (West 2012). By its terms, that statute applies to a judgment. This was an adjudication of a lien, and the money was held in Whiteside's client account. Thus, Whiteside is not entitled to interest under this statute.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.