2016 IL App (5th) 140175-U

NO. 5-14-0175

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JESSE WHITE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 07-L-1056
	)	
BEELMAN RIVER TERMINALS, INC.,	)	Honorable
	)	A. A. Matoesian,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The discharged law firm satisfied the burden to show that it had perfected its attorneys' lien during the pendency of the attorney-client relationship, and the trial court's award of attorney fees to the discharged law firm on a *quantum meruit* basis was not an abuse of discretion.

¶ 2 The plaintiff, Jesse White, and his attorneys, MeyerJensen, P.C., appeal the circuit court's ruling on their motion to adjudicate the attorneys' lien of White's former attorneys, SL Chapman, LLC. f/n/a LakinChapman, LLC. They raise two issues on appeal. The first issue is whether the circuit court committed reversible error in adjudicating the attorneys' lien and awarding fees to SL Chapman where SL Chapman failed to offer sworn testimony or other evidence to support its claim for fees. The second issue is

whether the circuit court erred as a matter of law when it adjudicated an attorneys' lien in favor of SL Chapman absent proof by SL Chapman that it had any statutory right to make a claim for fees pursuant to the Illinois Attorneys Lien Act (770 ILCS 5/1 *et seq*. (West 2012)). For reasons that follow, we affirm.

¶ 3 This dispute over attorney fees arose between MeyerJensen, as successor attorneys, and SL Chapman, as discharged attorneys, after White and the defendant, Beelman River Terminals, Inc. (Beelman), reached a settlement of White's injury claim. Following the settlement, MeyerJensen filed a motion to adjudicate SL Chapman's lien for attorney fees, and SL Chapman filed a petition for attorney fees and costs. The basic facts are not in dispute and are derived from the pleadings, affidavits, supporting documents, and docket entries in the record.

¶ 4 On April 23, 2007, Jesse White suffered serious injuries while working as a deckhand for Beelman. Shortly after the accident, White hired Lance Mallon and the Mallon Law Firm to pursue a claim against Beelman. In December 2007, Lance Mallon filed an action against Beelman, under the Jones Act (46 U.S.C. § 688 (2006)), in the circuit court of Madison County. In April 2008, Lance Mallon contacted the Lakin Law Firm for purposes of making a referral to or associating with the Lakin firm on White's case, and the Lakin firm agreed to review the case.

¶ 5 In January 2009, the Lakin Law Firm was dissolved and LakinChapman, LLC. was formed. As part of the dissolution and reformation process, LakinChapman agreed to take over designated cases from the Lakin firm, including White's case, which was still under review. In May 2009, Craig Jensen, an attorney employed by LakinChapman, was

assigned to investigate the merits of White's case. After a period of investigation, LakinChapman agreed to assist Mallon. In July 2010, Jensen and LakinChapman entered their appearances as co-counsel with Mallon in White's case.

¶ 6 Lance Mallon passed away in November 2010. Shortly after learning of Mallon's death, White decided to terminate his attorney-client relationship with the Mallon Law Firm, and to remain with LakinChapman. On February 16, 2011, White entered into a contingency fee contract with LakinChapman. The agreement provided that LakinChapman would receive one-third of any award collected on White's behalf. LakinChapman separately agreed to pay a referral fee to the Mallon firm. On February 23, 2011, Jensen sent letters to Beelman and its insurance carrier to notify them that the Mallon firm no longer represented White, and that LakinChapman had been retained to represent White. Jensen also notified Beelman and its carrier that LakinChapman was asserting an attorneys' lien on any sums of money paid to White as a result of the injuries he sustained while working as a deckhand on April 23, 2007.

¶ 7 On November 9, 2011, Jensen resigned as an employee of LakinChapman, and entered into an "of counsel" arrangement with the firm. According to the arrangement, Jensen agreed to complete selected cases in LakinChapman's inventory, including White's case, and LakinChapman agreed to pay Jensen a fee of $167,000 and benefits for one year, plus 11% of the attorney fees in each case in which Jensen obtained a recovery. LakinChapman also agreed to provide Jensen with malpractice coverage, office space and equipment, and assistance from the firm's secretaries, paralegals, associates, and administrative staff, and to advance costs on the selected cases.

¶ 8 In early 2012, LakinChapman changed its name to SL Chapman, LLC. A docket entry dated February 21, 2012, shows that Jensen notified the court and the defendant of the change in his firm's name and address. Jensen continued to work on select cases, including White's case, in his "of counsel" capacity with SL Chapman. According to docket entries and documentary exhibits in the record, Jensen served and responded to written discovery requests, obtained medical records, scheduled and completed discovery depositions, and conducted an inspection of the equipment and the site on which White's accident occurred. He also filed motions to compel and motions for sanctions when discovery was not timely. During the discovery phase of the case, a disputed issue arose regarding whether White held the status of a "seaman," for purposes of the Jones Act, at the time of his accident. This was a significant issue in the case because a plaintiff's status as a "seaman" governs his right to sue under the Jones Act and the general maritime law for unseaworthiness. In November 2012, Jensen successfully defeated Beelman's motion for summary judgment on that issue. Thereafter, the trial court issued a case management order, setting deadlines for the disclosures of fact witnesses and expert witnesses, and scheduling the case for trial on April 8, 2013, and the parties agreed to participate in mediation. The mediation was scheduled for March 4, 2013.

¶ 9 In January 2013, during the course of trial preparation, Jensen asked to be relieved of his responsibilities under his "of counsel" agreement with SL Chapman. Bradley Lakin, a member of SL Chapman, informed Jensen that the firm expected him to continue to work on and complete the assigned cases, as agreed. The record indicates that Jensen continued with trial preparations over the next few months. He scheduled a vocational

rehabilitation evaluation for White, and he scheduled the evidence deposition of White's treating physician. The notice of the evidence deposition and accompanying letter carried a signature block of "Craig Jensen, SL Chapman LLC." The deposition fees and the evaluation costs were advanced by SL Chapman. In March 2013, Beelman filed a motion for substitution of its counsel. As a result, the mediation and the trial were continued. The trial was reset for October 7, 2013.

¶ 10 On March 19, 2013, Jensen informed White that he had become a shareholder in the MeyerJensen law firm, and that he was no longer associated with SL Chapman. Jensen advised that White would need to decide whether SL Chapman, MeyerJensen, or another law firm would represent him in his case against Beelman. On March 21, 2013, White signed a directive in which he discharged SL Chapman as counsel, and selected MeyerJensen as counsel. On March 26, 2013, SL Chapman learned that White had hired MeyerJensen. On that same day, SL Chapman mailed a certified letter to Beelman's counsel, asserting its attorneys' lien. The lien letter was delivered and received by Beelman's counsel on March 29, 2013. On April 1, 2013, White executed a one-third contingent fee agreement with MeyerJensen.

¶ 11 On September 18, 2013, White and Beelman engaged in a lengthy mediation session. The following day, they reached an agreement to settle the case. In early November 2013, the parties signed the settlement documents and releases. At the time of the settlement, White was represented by Jensen and the MeyerJensen law firm.

¶ 12 On November 26, 2013, MeyerJensen filed a motion to adjudicate SL Chapman's lien for attorney fees. In the motion, MeyerJensen claimed that SL Chapman's lien was

invalid, unperfected, and unenforceable. MeyerJensen claimed that SL Chapman did not have an attorney-client relationship with White on the date it served its attorneys' lien on Beelman. MeyerJensen attached a number of exhibits in support of its motion, including White's election of MeyerJensen as his attorney of record dated March 21, 2013, the contingency fee contract dated April 1, 2013, and documents showing that SL Chapman's certified lien letter, dated March 26, 2013, was delivered to and received by Beelman's counsel on March 29, 2013.

¶ 13 The motion to adjudicate was called for hearing on December 27, 2013, before the circuit judge who had presided over White's case. Craig Jensen appeared on behalf of the plaintiff and MeyerJensen, and Rob Schmieder appeared on behalf of SL Chapman. During the hearing, counsel presented arguments on the attorneys' lien issue, and the court questioned each attorney extensively about the fee issue, but no witnesses were called.

¶ 14 During the hearing, Craig Jensen claimed that SL Chapman did not have a valid, enforceable attorneys' lien, and that SL Chapman's fee should be allocated on a *quantum meruit* basis. Jensen stated that his firm had devoted a substantial amount of time, effort, skill, and resources to bring about the plaintiff's settlement. Jensen told the court that during the time he was affiliated with SL Chapman, his work on White's case amounted to taking five depositions and supervising a law clerk in preparing the response to defendant's summary judgment motion, and that after SL Chapman was discharged on March 26, 2013, he put in at least three to four times as much work as he had put in while working for SL Chapman. Jensen recalled that the case had been stagnant for several

months while the defendant's summary judgment motion was pending. He stated that the case went "back on track" following the ruling on that motion, but then slowed again when Beelman changed attorneys. Jensen noted that the attorney fees totaled $258, 333. He claimed that MeyerJensen was entitled to the entire contingency fee minus SL Chapman's *quantum meruit* fee. Jensen declined to comment on the *quantum meruit* value of SL Chapman's services, stating that SL Chapman carried the burden to establish its *quantum meruit* fee.

¶ 15 SL Chapman filed a petition for attorney fees and costs on the date of the hearing. A sworn affidavit by Bradley Lakin was attached to the petition. Lakin's affidavit included a narrative of the significant events and the work performed on White's case while Jensen was employed by and of counsel with SL Chapman. Electronic records of the firm and other supporting documents were attached to and referenced in Lakin's affidavit. During the hearing, Schmieder argued that the bulk of the work on White's case, including discovery, defense of the summary judgment motion, and trial preparations, had been completed prior to the date that White discharged SL Chapman, and that SL Chapman had undertaken most of the significant risks and contingencies in the case. Schmieder noted that a mediation session had been scheduled for March 2013, and that the trial had been scheduled for April 2013. He pointed to docket entries in the court file to show that there was little activity in the court case from the date of substitution of defense counsel, until the settlement was announced. Schmieder noted that SL Chapman had represented White for 46 months and that MeyerJensen had represented White for approximately 6 months. Schmieder stated that under the "of

counsel" agreement between Jensen and SL Chapman, Jensen would have received 11% of the attorney fees, and SL Chapman would have received 89% of the attorney fees. Schmieder suggested that the court award MeyerJensen the sum of $51,600, and the balance of the fees to SL Chapman.

¶ 16 After considering the pleadings, affidavit, exhibits, and the arguments of counsel, the court concluded that the entire contingent fee represented the reasonable value of the services rendered by SL Chapman. The court further concluded that the work of MeyerJensen contributed to the settlement, and awarded $51,600 in attorney fees to MeyerJensen. The court entered an order awarding attorney fees totaling $51,600 to MeyerJensen, and $206,733.33 to SL Chapman. The court also awarded each firm its expenses.

¶ 17 On January 27, 2014, MeyerJensen filed a motion to reconsider the court's order. MeyerJensen claimed that the court erred in deciding the issue without an evidentiary hearing, and the error deprived MeyerJensen of opportunities to challenge a number of misstatements of fact by SL Chapman and to establish that it spent close to 100 hours in case preparation and incurred more than $9,000 in costs after SL Chapman was discharged. MeyerJensen also argued that the court misapplied the law in determining the amount of SL Chapman's fees. The motion to reconsider was called for hearing on March 21, 2014. Jensen appeared on behalf of MeyerJensen and requested that a court reporter be called to record the arguments. The request was denied, and the parties proceeded to present their arguments to the court. After considering the pleadings and the arguments of counsel, the court entered an order denying the motion to reconsider. In

the order, the court also denied Jensen's request for a court reporter. This appeal followed.

¶ 18 On appeal, MeyerJensen contends that the trial court erred in awarding attorney fees to SL Chapman where SL Chapman failed to present any evidence demonstrating that it had complied with the requirements of the Illinois Attorneys Lien Act (Act) (770 ILCS 5/1 *et seq*. (West 2012)), and where SL Chapman failed to present any evidence to support its claim for attorney fees based on *quantum meruit*.

¶ 19 In order to enforce a lien under the Act, the attorney must have been hired by the client to assert a claim or action against a party, and the attorney must then serve a written notice upon the adverse party, claiming the lien and stating his interest in the claim or cause of action. 770 ILCS 5/1 (West 2012). The lien attaches from and after the time of service of the notice. *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, 227, 399 N.E.2d 969, 973 (1979). Because the lien attaches to the cause of action that the attorney is hired to pursue, the lien must be perfected during the pendency of the attorney-client relationship. *Rhoades*, 78 Ill. 2d at 227, 399 N.E.2d at 973. Since the attorney's lien is a statutory creation, attorneys must strictly comply with the Act's requirements. *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 95, 759 N.E.2d 906, 911 (2001).

¶ 20 In this case, SL Chapman filed its petition for attorney fees, and a sworn affidavit by Bradley Lakin in support of the petition. In the affidavit, Lakin set forth the timeline of SL Chapman f/n/a LakinChapman's relationship with White, and he authenticated and attached firm documents in support of the timeline. Lakin attached a copy of the

contingent fee agreement between LakinChapman and White, which was dated February 16, 2011, and copies of the lien notices that LakinChapman sent to Beelman and its insurer on February 23, 2011. The lien notices were signed by Jensen on behalf of LakinChapman, LLC, and they were served by certified mail. Lakin also attached copies of the certified lien letter that he sent to Beelman's attorneys on March 26, 2013, to verify the lien. In addition, a docket entry, dated February 21, 2012, in the court file shows that the court and the defendant were notified of the change in the firm's name from LakinChapman, LLC, to SL Chapman, LLC. There is no evidence that SL Chapman and LakinChapman were distinct corporations. After reviewing the record, we find that SL Chapman satisfied the burden to show that it perfected its attorneys' lien during the pendency of the attorney-client relationship with White.

¶ 21 Next, MeyerJensen contends that the trial court erred in awarding attorney fees to SL Chapman where SL Chapman failed to present any evidence to support its claim for attorney fees based on *quantum meruit*. As part of this argument, MeyerJensen claims that the trial court erred in deciding the issue of attorney fees without an evidentiary hearing, and that this error deprived it of the opportunity to challenge a number of misstatements of fact made by SL Chapman's attorney and to establish that it spent close to 100 hours in trial preparation and incurred more than $9,000 in litigation expenses.

¶ 22 A trial court's award of attorney fees is reviewed under an abuse of discretion standard. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44, 578 N.E.2d 985, 990 (1991). The trial court is afforded broad discretion in deciding matters of attorney fees because that court has the advantage of close observation of the attorney's work and an

understanding of the skill and time required in a case. *Wegner v. Arnold*, 305 Ill. App. 3d 689, 693, 713 N.E.2d 247, 250 (1999).

¶ 23 In Illinois, a client may discharge his attorney at any time, with or without cause. *Rhoades*, 78 Ill. 2d at 227-28, 399 N.E.2d at 974; *DeLapaz v. SelectBuild Construction, Inc.*, 394 Ill. App. 3d 969, 973, 917 N.E.2d 93, 96 (2009). When a client discharges an attorney working under a contingent fee agreement, the agreement ceases to exist, and the discharged attorney is entitled to be paid a reasonable fee for the services rendered prior to discharge on a *quantum meruit* basis. *DeLapaz*, 394 Ill. App. 3d at 973, 917 N.E.2d at 96; *Wegner*, 305 Ill. App. 3d at 693, 713 N.E.2d at 250. Factors to be considered in determining *quantum meruit* include: the skill and standing of the attorney employed, the nature of the case and the difficulty of the questions at issue, the amount and importance of the subject matter, the degree of responsibility involved in the management of the case, the time and labor required, the usual and customary fee in the community, and the benefit resulting to the client. *In re Estate of Callahan*, 144 Ill. 2d 32, 44, 578 N.E.2d 985, 990 (1991).

¶ 24 The burden of proof is on the attorney to establish the value of his services. *Estate of Callahan*, 144 Ill. 2d at 43, 578 N.E.2d at 990. If an attorney shows that he performed much of the work on a case before discharge and a settlement immediately follows the discharge, the factors used to determine 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, 399 N.E.2d at 975; *Wegner*, 305 Ill. App. 3d at 693, 713 N.E.2d at 250.

¶ 25 In this case, MeyerJensen's motion to adjudicate SL Chapman's attorney's lien, and SL Chapman's petition for attorney fees, were argued before the circuit judge who presided over White's case. The record shows that the judge was involved in this case from its inception, and that the case was on the court's docket for more than six years. During that period, the court became very familiar with the management of the case, the nature of the case, the complexities and disputed issues raised, and the time and labor expended in litigating the case. In addition, the court had a firsthand opportunity to observe the amount of time and effort that Jensen expended on the case while affiliated with SL Chapman, and then with MeyerJensen. Thus, the court was aptly positioned to assess the skill, ability, and performance of Jensen, and to weigh the benefits resulting to the client from Jensen's service with each firm.

¶ 26 The record shows that SL Chapman represented White for approximately 46 months, while MeyerJensen represented White for approximately 6 months. The sworn affidavit and supporting documents filed by SL Chapman show that Jensen had exchanged discovery, reviewed medical records, completed depositions, and defended a significant summary judgment motion, while he was employed by or of counsel to SL Chapman. During the hearing on attorney fees, SL Chapman's attorney argued that SL Chapman had undertaken the more significant risks and contingencies involved in the case, and that the case was ready for trial at the time it was discharged. Jensen argued that the case was not ready for trial when MeyerJensen took it over. Jensen stated that he spent more than 100 hours preparing the case for mediation and trial after SL Chapman was discharged, and that these efforts led to the settlement in September 2013. Neither

Jensen nor MeyerJensen offered any records or documents in support of Jensen's statements. Docket entries in the court file indicate that most of the discovery had been completed before White discharged SL Chapman. Following SL Chapman's discharge, Jensen took the evidence deposition of one of the plaintiff's treating physicians, and he prepared for and participated in mediation.

¶ 27 Under the theory of *quantum meruit*, a court is to award an attorney as much as he deserves. *Wegner*, 305 Ill. App. 3d at 693, 713 N.E.2d at 250. In determining the reasonable value of the services provided by SL Chapman, the trial court was called upon to parse out the value and benefits of Jensen's work during the period he was affiliated with SL Chapman, and the period he was affiliated with MeyerJensen. The record in this case clearly shows Jensen performed most of the pretrial trial preparations and trial preparations while he was working for SL Chapman, and that the client obtained substantial benefits from this work. The record also shows that after Jensen affiliated with MeyerJensen, he obtained the evidence deposition of one of the plaintiff's treating physicians, and participated in a lengthy mediation session which resulted in a settlement that was beneficial to the client. This is a case in which the law firm who had done much of the work was discharged without cause a few months before a settlement was reached. White's case was settled with Beelman for $775,000. Under the contingency fee agreement, the attorney fees totaled $258,333.33. In this case, the court concluded that the entire contingent fee represented the reasonable value of the services rendered by SL Chapman. The court further concluded that the work of MeyerJensen contributed to the settlement, and awarded $51,600 in attorney fees to MeyerJensen. We note that the fees

awarded to MeyerJensen represent almost 20% of the total attorney fees in this case. After reviewing the record, we find that the factors involved in determining a reasonable fee in *quantum meruit* support the court's determination that the entire contingency fee should be awarded to SL Chapman, less a reasonable fee to MeyerJensen for its service, and we find no abuse of discretion in the court's award.

¶ 28 In this point, MeyerJensen also contends that the trial court erred in deciding the issue of attorney fees without an evidentiary hearing, and that the error deprived it of the opportunity to challenge a number of misstatements of fact by SL Chapman and to establish that it spent close to 100 hours in case preparation and incurred more than $9,000 in costs. Initially, we note that MeyerJensen made no offer of proof regarding what evidence or testimony it would have presented during an evidentiary hearing. As such, it has failed to establish any prejudice. In addition, the record shows that the court was presented with evidence in the form of the Lakin affidavit, and other supporting documents which had been submitted by the parties along with their respective motions. The court also had access to the court file from the Jones Act case. The record shows that there was little dispute about the nature of the work that was performed by each firm, and that the primary area of dispute involved the value of each firm's services and the relative benefits to the client from those services. In determining a reasonable fee under *quantum meruit*, the trial court is not limited to the evidence presented, but may also use the knowledge it has acquired in the discharge of its professional duties to value the legal services rendered. *Johns v. Klecan*, 198 Ill. App. 3d 1013, 1022, 556 N.E.2d 689, 695 (1990); *Estate of Healy*, 137 Ill. App. 3d 406, 411 484 N.E.2d 890, 894 (1985). Although

there was no formal evidentiary hearing in this case, the attorneys for SL Chapman and MeyerJensen were provided with ample opportunity to address the court, and to present their arguments regarding the value of their services. Moreover, the trial court was involved with White's case from its inception, and it had an excellent opportunity to observe SL Chapman's work product and MeyerJensen's work product. After reviewing the record, we find that this contention of error is without merit.

¶ 29 MeyerJensen next contends that the trial court erred in denying its request for a court reporter during the hearing on its motion to reconsider, but fails to provide an adequate record or cite to any authority to support this contention. Supreme Court Rule 341(h)(7) requires the appellant to cite authority in support of its argument. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). The failure to cite relevant authority results in a forfeiture of the argument. Additionally, MeyerJensen failed to provide any record of the hearing on its motion to reconsider. Illinois Supreme Court Rule 323(c) provides that in cases where no verbatim transcript of the proceedings is obtainable, the appellant may prepare a bystander's report, which must be served on all parties and approved by the trial court. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). We note that Craig Jensen filed an affidavit in the circuit court approximately six weeks after the hearing, but the filing of the affidavit did not satisfy the requirements for a bystander's report. Ill. S. Ct. R. 323(c). Because MeyerJensen failed to cite any authority in support of its argument and failed to provide a bystander's report, it has forfeited review of the argument.

¶ 30 During the pendency of this appeal, SL Chapman filed a motion to dismiss the appeal for lack of standing or lack of jurisdiction, and alleged that the appellant, Jesse

White, lacked standing because he had no interest in the outcome of the case, and that no other interested party joined in White's appeal. We granted the appellant leave to file a response, and ordered the motion taken with the case. After reviewing the submissions that were filed, we now deny SL Chapman's motion to dismiss.

¶ 31 Accordingly, the judgment of the circuit court is affirmed.

¶ 32 Affirmed.