2014 IL App (1st) 120624-U
No. 1-12-0624
Order filed April 23, 2014

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DERICO & ASSOCIATES, P.C.,	)	
	)	
Plaintiff-Appellant,	)	Appeal from the Circuit Court
	)	of Cook County.
v.	)	
	)	
BEVERLY STEWART, ATG-TRUST COMPANY, as Independent Administrator of the ESTATE OF KURT STEWART, and EVANSTON NORTHWESTERN HEALTHCARE CORP., and Illinois not-for-profit corporation,	)	No. 07 CH 8588
	)	
	)	
	)	The Honorable
	)	John C. Griffin,
	)	Judge, presiding.
	)	
Defendants-Appellees.	)	

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Attorney's fee award was not against manifest weight of the evidence where trial court found law firm's work did not significantly benefit the client, who retained other lawyers to file suit and settle the case against the hospital. Also, trial court did not err in refusing to compel production of the successor's attorney's fee agreement.

¶ 2 A law firm appeals the attorney's fees awarded it for representing defendant Beverly Stewart and her late husband, Kurt, for nine days, before being discharged in favor of another

firm that saw the matter to fruition. The firm contests the trial court's (i) finding that its work did not significantly benefit the Stewarts and (ii) refusal to either compel production of the replacement counsel's fee arrangement or consider that fee arrangement pertinent to its decision. We affirm.

¶ 3 BACKGROUND

¶ 4 Jim Derico began practicing law in 1985. Seven years later, he started the law firm that bears his name, Derico & Associates, P.C., the plaintiff. Derico handled primarily employment discrimination, insurance coverage, and nursing malpractice cases, and was involved in four medical malpractice cases, none of which went to trial.

¶ 5 On February 15, 2006, Beverly Stewart met Derico at his office. She had been referred to Derico by a former client of his. She explained that her husband, Kurt, had been given too much anesthesia during surgery at Evanston Northwestern Hospital causing him to suffer brain damage. At the time, Kurt had been in a coma for over a week, and the hospital told her it would "take care of her," or she would be "well taken care of." Derico interpreted this to mean that the hospital would not contest liability. Beverly retained Derico to represent her and Kurt against the hospital, and signed a retainer agreement.

¶ 6 The retainer agreement provided that Derico would be entitled to one-third of any settlement plus costs and other expenses. Derico explained to Beverly that "as long as it was just about working up a settlement" he could handle her case, but if the hospital contested liability, he would bring in another attorney. He offered to work on an hourly basis, but Beverly preferred the contingency fee arrangement.

¶ 7 The same day, Derico faxed a letter to the hospital that Beverly retained him, and noted, "I understand that you and Mrs. Stewart have discussed her immediate financial needs. I would

like to follow up with those discussions as soon as possible. *** I look forward to working with you to amicably resolve this matter." Derico also spoke to employees at the hospital's risk management department and was told that the hospital planned to offer Beverly and Kurt a "nice structured settlement" and that the Stewarts did not need a lawyer.

¶ 8 The following day, February 16, Derico again contacted the hospital risk management department. He was told that the hospital planned to pay Beverly $7,000 to cover short-term expenses. Derico consulted with a life care planner to determine the cost of Kurt's long-term care and with a neurologist about possibly consulting. In addition, he conducted some research on the Illinois Tort Reform Act.

¶ 9 On February 17, the hospital sent an email to Derico regarding the $7,000 payment and the availability of Kurt's medical records. In response, Derico stated that the payment would not constitute a full release of the Stewart's claims. Derico researched cases similar to Kurt's in the *Cook County Jury Verdict Reporter*.

¶ 10 The next day, February 18, Derico continued his research, and picked up Kurt's medical records from Beverly. On February 20, Derico received an email from the hospital risk management staff, which read, "I have received an update on Mr. Stewart's condition. I am pleased to report that his status has improved considerably. He is breathing on his own and seems to be tracking his care providers with his eyes and communicating with mouth gestures. *** Until we have a handle on his long term care needs, we will not be in a position to discuss settlement." Derico agreed it was too early to discuss settlement and requested medical records from Kurt's earlier hospitalizations. Derico picked up some forms to open a probate estate for Kurt and pulled the file for a medical malpractice case that involved a woman who went into a coma after surgery.

¶ 11 Also on February 18, the hospital called Derico to ask if Beverly could speak with someone from the hospital's risk management department. They told Derico that Beverly had called crying and asking to speak to someone. Derico called Beverly and asked her not to speak to anyone without him. He inquired if she had someone to support her, and she said she did. Derico also called Dr. Steven Fox, a life care planner, to help determine the cost of Kurt's long-term care and life expectancy. Fox estimated off-hand that the best care for Kurt would be $1,000 per day.

¶ 12 On February 21, Derico spoke to Dr. Mark Westcott, who interpreted some of the records from Kurt's surgery. The following day, February 22, the hospital called Derico to say that a social worker had met with Beverly and told her there was nothing else the hospital could do for Kurt, and the hospital planned to move him to a care facility. Derico spoke with Beverly, and she told him she did not want Kurt moved to a public aid facility or nursing home. That evening, Derico visited with Beverly and her family in the hospital. He explained that because Kurt had no insurance, before long the hospital would move him to a public aid facility or a facility that accepted Medicaid. He also explained that he believed Beverly's claims to be worth about $3 million, and that Kurt's care would cost about $7 - $8 million, based on $1,000 per day and Kurt living 20-25 years. Derico advised Beverly that the case should settle for $8-$12 million, and that the initial demand should be $15-$20 million. Derico asked Beverly for the authority to retain Fox as a life planner. Beverly asked Derico to hold off. According to Beverly, Derico referred to Kurt as "that man," which deeply offended her.

¶ 13 On February 23, Derico sent the hospital a notice of attorney's lien. He called Beverly, about making a demand. Beverly said she would think about it. On February 24, Beverly discharged Derico and the firm over the phone. She stated that she had been "asking around"

and didn't "like what [she] was hearing about" him. Derico informed her that he was entitled to compensation for his work. Beverly sent a letter to Derico that day, copied to the hospital, confirming the discharge. Derico responded with a letter confirming his discharge and reminding Beverly of his lien. Beverly stated that she discharged Derico because he did not care about Kurt.

¶ 14 Derico estimated that he worked 50 - 60 hours, and his then-hourly rate was about $250 to $300. He spent $272.64 in expenses.

¶ 15 Beverly retained Dudley & Lake, which hired a care planner, opened a guardianship estate, took over settlement negotiations, and, in October 2006, filed a complaint against the hospital. In December 2006, the case settled for $9 million. The court approved attorney's fees of $300,000 and expenses of about $10,000. The court did not address Derico's lien. Derico did not learn of the lawsuit and settlement until early 2007.

¶ 16 In March 2007, Derico filed suit against defendants seeking about $1.64 million in attorney's fees. After a bench trial, the court awarded $13,750 in attorney's fees and $302.16 in expenses, totaling $14,052.16. The trial court found that "Derico was making headway in the preparation of the case. But *** [there was no] evidence supporting that his work at that point would have been of significant benefit to the client." Kurt passed away in 2011.

¶ 17 This appeal followed.

¶ 18 ANALYSIS

¶ 19 Amount of Attorney's Fees

We will not reverse the trial court's findings unless the findings are against the manifest weight of the evidence, that is, when an opposite conclusion is apparent or when the findings

appear to be unreasonable, arbitrary, or not based on the evidence. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 594-99 (1st Dist. 2000).

¶ 20 The firm argues that little substantive activity occurred after it was discharged, and points to its estimate of the value of the Stewarts' case, $8 to $12 million, as its primary contribution. While it is true that Derico provided Beverly with this estimate, it was not based on an expert's written opinion. Of more significance, Derico's nine-day representation, based on the evidence, constituted little more than a preliminary review of the facts and the controlling law, and a review of jury verdicts. Derico did not file or draft a complaint, obtain a physician's affidavit under 735 ILCS 5/2-622(a) (West 2010), open a guardianship estate, retain a life care planning or other expert, or prepare a written report quantifying damages. All of these things were done by the successor attorneys.

¶ 21 While Derico used this research to arrive at a rough figure for damages, we cannot say that the trial court's characterization was against the manifest weight of the evidence.

¶ 22 In addition, Derico argues that the trial court misapplied the law of *quantum meruit*, and should have considered the fee arrangement negotiated by the subsequent attorney. Derico asserts that, instead of having to pay a third of the settlement, the Stewarts only paid the subsequent attorneys a flat fee of $300,000, which Derico, if it had been able to do so, would have used to establish that Beverly took Derico's value estimate and saved over $1.6 million in fees.

¶ 23 "Under Illinois law, a client may discharge his attorney at any time, with or without cause. [Citation.] When a client terminates an attorney working under a contingent-fee contract, the contract ceases to exist and the contingency term is no longer operative. [Citation.] 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.' [Citation.] *** '[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.' "Thompson *v. Buncik*, 2011 IL App (2d) 100589, ¶ 8. In calculating an attorney's recovery in *quantum meruit*, "the trial court should assess several factors, including 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." *Will v. Northwestern University*, 378 Ill. App. 3d 280, 304 (2007).

¶ 24 The firm cites, as an exception to the law of *quantum meruit*, *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217 (1979). In *Rhoades*, the client retained a law firm to represent him against his employer, and agreed to a 25% contingency fee. *Id.* at 220-21. The client discharged the firm the next day after deciding not to go through with the lawsuit. *Id.* at 221. The firm filed suit anyway and sent a notice of attorney's lien to the employer. *Id.* The firm eventually dismissed the case at the client's request, and the client settled his claim on his own. *Id.* at 221-22. The firm petitioned to adjudicate its lien, the trial court awarded it 25% of the settlement, and the appellate court reversed. *Id*. at 222.

¶ 25 The supreme court addressed the issue of whether a discharged law firm was still due its full contingent fee. *Id*. at 226. The court held that the firm should recover "on a quantum meruit basis a reasonable fee for services rendered before discharge." *Id*. at 230. In *dicta*, the court noted that a discharged attorney might be able to recover the full contingent fee "in cases in which an attorney who has done much work is *fired immediately before a settlement* is reached."

(Emphasis added.) *Id.* This rule discourages clients from discharging their attorney moments before a settlement in an effort to avoid paying contingent attorney's fees.

¶ 26 The *Rhoades dicta* is inapplicable. Beverly did not discharge Derico "immediately before a settlement." The cases applying *Rhoades* make this distinction. In *Wegner v. Arnold*, the client retained the attorney to file wrongful death case on a contingency basis. *Wegner v. Arnold*, 305 Ill. App. 3d 689, 690-91 (1999). The attorney represented the client for over a year. *Id.* at 691. During that time, the attorney investigated the death, filed pleadings, issued written discovery, and conducted depositions. *Id.* at 692. Two days before the discharge, the opposing counsel recommended that the insurer pay the $100,000 policy limit and the insurer agreed. *Id.* at 691-92. The case soon settled, and the trial court awarded the discharged attorney $7,000 in *quantum meruit*. *Id.* at 692-93.

¶ 27 The appellate court reversed, noting, "The factors involved in determining a reasonable fee in *quantum meruit* support the conclusion that the contract fee should be awarded in this case. Here, [the attorney] expended at least 53 hours of legal work on the case over an 18-month period. During that time, he conducted sufficient work on the case to cause [his opposing counsel] to recommend that Allstate pay the policy limit of $100,000 to settle the claim, which [the client] accepted. Thus, [the attorney's] efforts obtained the maximum gross benefit available to the client. It is also clear from [the opposing counsel's] affidavit that the recommendation was based on the pleadings, investigation, discovery, and depositions done prior to the date of discharge. Thus, the result was solely attributable to [the attorney's] legal work." *Id.* at 695.

¶ 28 Unlike in *Wegner*, Derico's work had little to no effect on the settlement. The correspondence between the successor counsel and the hospital's risk management department do not reference Derico or his work on the Stewarts' case.

¶ 29 Another instructive case is *DeLapaz v. SelectBuild Construction, Inc*, 394 Ill. App. 3d 969, 970-71 (2009). The firm represented the client from February 2006 to June 2007, when the firm fired the primary attorney on the case. *Id.* at 971. That attorney took the case with him. *Id*. The case settled two months later. *Id*. The trial court awarded the first firm the full contingency fee less a *quantum meruit* recovery for the successor firm. *Id.* at 971-72. In affirming, the appellate court noted that the initial firm performed the vast majority of the work before being discharged, and that the award was therefore not unreasonable. *Id.* at 976. Applying *DeLapaz*, Derico did not provide the majority of the work on the Stewarts' case; rather, Derico's contribution was limited to preliminary investigation, research, and valuation. In other words, the work was minimal.

¶ 30 The firm also argues that the Stewarts were unjustly enriched after switching attorneys by paying only $300,000 and not a third of the settlement, saving $1.6 million. Recovery under *quantum meruit* ensures that the recipient of services pay for those services, and is thus not unjustly enriched. *In re Estate of Callahan*, 144 Ill. 2d 32, 40 (1991). Under these facts, the successor attorney's flat fee has no relevance to plaintiff's recovery. The law, as laid out in *Rhoades* and its progeny, is that the court should inquire into the division of labor between the discharged and successor attorney. *Rhoades*, 78 Ill. 2d at 230; *Wegner*, 305 Ill. App. 3d at 695; *DeLapaz*, 394 Ill. App. 3d at 976. The trial court concluded that the successor attorney performed most of the work, and, that finding cannot be said to be unreasonable.

¶ 31 The firm further argues that the failure to award it a contingency fee is against public policy because it will have a chilling effect on the attorney-client relationship. The firm asserts, "an attorney may be unwilling to express to his client the value of the case in fear of being fired" and replaced with a cheaper attorney.

¶ 32 The *Rhoades* court addressed the policy. In balancing a client's right to discharge his or her attorney at any time with the attorney's right to compensation on a contingency basis, the law favors the right of the client. *Rhoades*, 78 Ill. 2d at 230. The exception is where the client fires the lawyer just before settlement, and the settlement can be attributed mostly to the lawyer's work. *Id.*; *Wegner*, 305 Ill. App. 3d at 695; *DeLapaz*, 394 Ill. App. 3d at 976. Because those circumstances are not present here, we find no violation of public policy.

¶ 33 Motion to Compel Discovery of Fee Agreement

¶ 34 The firm argues that the trial court erred in denying its motion to compel production of the successor attorney's fee agreement. A trial court is 'afforded great latitude in determining the scope of pretrial discovery, as the concept of relevance for discovery purposes encompasses not only what is admissible at trial, but also that which may lead to the discovery of admissible evidence.' [Citation.]" *Powers v. Rosine*, 2011 IL App (3d) 100070, ¶ 12. As stated, the fee arrangement between the Stewarts and the successor attorneys was irrelevant to determine the nature of plaintiff's recovery. Moreover, Derico only argues that the successor's fee agreement is relevant to determine the amount of Dudley's fee. But that fee is already known, having been established by the record in the guardianship proceedings. The trial court's denial of Derico's motion to compel was not an abuse of discretion.

¶ 35 Affirmed.