2015 IL App (1st) 13-3960-U

FIFTH DIVISION
February 20, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN STEVEN SANFILIPPO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Appeal from the
	)	Circuit Court of
JOHN E. SANFILIPPO, *et al*,	)	Cook County
	)	
Defendants	)	
	)	06 L 004023
(DAVID J. SANFILLIPPO,	)	
	)	Honorable
Defendant-Appellant,	)	Ronald Bartkowicz,
	)	Judge Presiding
v.	)	
	)	
LAWRENCE P. SEIWERT and DONALD L. JOHNSON,	)	
	)	
Respondents-Appellees).	)	

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Award of attorney fees based on *quantum meruit* affirmed where appellant client failed to cite and discuss supporting authority for one of his arguments and failed to provide a factual basis for his other arguments.

¶ 2 Shortly after this six-year dispute over a family trust was resolved through mediation, one of the defendants, David J. Sanfilippo, fired his attorneys, Donald L. Johnson and Lawrence P.

Seiwert, and asked the court to vacate the settlement on grounds that counsel had pressured him into the agreement. The court declined to set aside the settlement and, over the client's objection, entered a *quantum meruit* award for attorney fees. The client appeals that fee award, contending equitable relief is inappropriate where the attorneys acted unprofessionally. The appellant also contends the size of the award was unreasonable and that it was improper to order satisfaction of the award from the corpus of a spendthrift trust.

¶ 3 Plaintiff John Steven Sanfilippo was 20 years old in 2006 when he filed a complaint in the circuit court of Cook County alleging that his expectation to inherit from his grandmother's multimillion dollar trust when he was 25 years old was thwarted by his uncle, defendant John E. Sanfilippo. Since many of the parties have the same last name of Sanfilippo, we will depart from convention and refer to them, respectfully, by their first names. Neither John Steven nor his uncle, John E., is taking part in this appeal. The record on appeal indicates that the plaintiff's grandmother, Betty M. Sanfilippo, created a trust in 2000 to hold her property and investments, pay income during her lifetime, and then distribute the assets to two trusts, one trust for the benefit of her husband and the other trust for the benefit of her family. Upon her husband's death, the marital trust would close and the remaining assets would transfer to the family trust. Betty died in May 2004 and her husband, John F. Sanfilippo, died in December of the same year. Because they died in such quick succession, the marital trust was never funded. According to the plaintiff, Betty's trust documents provided for him to be the sole beneficiary of the family trust, however, a "restatement" of the trust in 2003 was advantageous to other family members and provided for his uncle John E. to receive about a third of the assets. The restatement was executed a few months before Betty's death. Betty's separate will left only $1 to the uncle and his three sons, purportedly because those family members had already received their share of Betty's

assets. The plaintiff further alleged that his uncle tortuously retained or withdrew cash that should have been in the family trust and also made false statements that induced Betty (the defendant's mother) to execute the restatement in 2003. The plaintiff amended his complaint to add allegations of undue influence and forgery. The amendments also brought in as defendants the restated trust's other beneficiaries, namely the plaintiff's father, David, who is the only appellant; the plaintiff's two sisters, April and Lindsy; and the uncle's three sons.

¶ 4 The two appellees are attorneys Johnson and Seiwert, whom the plaintiff's father (David), hired in 2009 to represent his interests in various claims about his parents' estates. David paid a $25,000 retainer and executed a modified contingent fee contract which does not identify any specific case, but refers to "claims against John E. Sanfilippo, Robert Rothstein and any other attorneys and persons relating to the estates." The contract obligated David to pay his lawyers "one-third of the gross recovery" and reimburse "all costs." David's daughters subsequently sent letters to Johnson asking counsel to also represent them in "the litigation that [our] father has with his brother and any other parties where [our] representation may be needed." Counsel then filed a written appearance for David, April, and Lindsy in the instant suit.

¶ 5 In 2010, John E. filed amended affirmative defenses to his nephew's lawsuit. John E. tendered a different version of the document that was at the heart of John Steven's suit. The version of Betty's original trust agreement which John E. provided bore the same date in 2000 as the copy that John Steven provided, but in John E.'s copy, he and his brother, David, were equal beneficiaries of the family trust instead of John Steven being the sole beneficiary.

¶ 6 John E. contended that in 2003, while Betty was alive and John E. was helping his parents revise their estate plan by executing the restatement, he was unaware that there were different versions of the original trust document. John E. contended he was a significant

beneficiary under both his version of the 2000 trust document and under the 2003 restatement, and that this showed, as a matter of law, that he did not exert undue influence over his mother to obtain the restatement.

¶ 7 John E. further contended that while it was advantageous to them, John Steven and/or David withheld their version of the original trust agreement. More specifically, after Betty died, David did not disclose the document when a bank trustee who was appointed by the restatement decided to forgive a $350,000 promissory note that David owed to his parents or father and to allocate $350,000 to John Steven and his sisters. John E. contended his nephew accepted the benefits of the restatement and should be estopped from asserting his claims based on some other document two years after Betty's death. John E. did not explain why he was presenting his document in 2010 instead of 2007 when he answered his nephew's complaint.

¶ 8 On an unspecified date in "early 2012," the plaintiff became a client of his father's attorneys. David and John Steven (the defendant father and the plaintiff son) executed a supplemental contingent fee agreement. In this agreement, they acknowledged that they had been "fully advised" of the conflicting interests they had in resolving the litigation against John E., and indicated they were waiving that conflict. The father and son hired Johnson and Seiwert to "prosecute claims against John E. Sanfilippo and any other persons who may have liability for wrongs relating to the estates." The contract also indicated the lawyers had previously agreed to represent the plaintiff son in "Chancery cases filed by Bank of America." If John Steven prevailed, the lawyers would receive "one-third of the Gross Recovery." If David prevailed, the lawyers would receive "one-third of any Recovery which exceeds one-half the amount proved at trial as allocable to David." "But in no circumstance will the fees due Johnson and Seiwert be less than $75,000."

¶ 9 In May 2012, with the agreement of the parties, the court referred the matter to a mediator and a settlement was reached. The record indicates the meditation was accomplished during a five hour meeting. The agreement was then reduced to writing. The handwritten settlement terms were signed by the plaintiff, by the uncle on behalf of himself, by the uncle on behalf of his three sons, and by David on behalf of himself and again on behalf of his two daughters. The agreement provided for David's $350,000 promissory note to his father to be forgiven, for David's three children to each receive $250,000 cash, and for David and John E. to split the remaining assets. The record on appeal suggests that the amount of cash the children received was far less than the value of the assets that David and John E. were to divide.

¶ 10 A month later, however, David filed a *pro se* appearance and a motion to vacate and set aside the settlement because he did not "fully" read and agree to the terms at the time. David claimed that he executed the document only because attorney Johnson said that if David did not sign, Johnson would stop representing David in "numerous" pending lawsuits.

¶ 11 The next day, Seiwert served a notice of attorneys' lien on the bank trustee of the family trust.

¶ 12 In June and July 2012, David and John Steven delivered or mailed letters to Johnson and Seiwert to terminate their services and David retained new counsel.

¶ 13 In July 2012, John E. filed a motion to enforce the settlement agreement. John E. argued (1) it was a valid and detailed contract reached with the assistance of an experienced mediator, (2) the threat attributed to Johnson was not improper because an attorney has the right to withdraw when having difficulty with a client, and (3) John E.–the other key party to the contract–was not accused of any misconduct.

¶ 14 In August 2012, Johnson and Seiwert filed motions to withdraw as counsel for David, John Steven, April, and Lindsy, and to adjudicate their attorney fees. The attorneys denied that their former clients were pressured into the settlement and stated that undoing the agreement on these false grounds would perpetrate a fraud on the court and the opposing party.

¶ 15 After hearing testimony and argument, in July 2013, the trial judge denied David's motion to vacate the settlement. The court's approval of the meditation agreement has not been appealed.

¶ 16 In November 2013, a hearing was held to address Johnson and Seiwert's fee petition. The witnesses included one of John Steven's other attorneys in this action, Cary R. Rosenthal. Rosenthal testified that the case was referred to him when John Steven's first lawyer moved out of state. John Steven and David met together with Rosenthal to discuss John Steven's pending lawsuit and indicated they were allied in their interests regarding the trust. This meeting occurred before Rosenthal amended the complaint with allegations that added David and the other potential beneficiaries as parties. However, even after David was added as a defendant, John Steven and David continued to have an identity of interests. Nevertheless, Rosenthal suggested that some other attorney take on David's representation. Johnson was already helping David with other matters, so Johnson agreed to file an appearance for David and his two daughters.

¶ 17 Rosenthal further testified that he and attorney Johnson were technically on opposite sides of the case since they were working for the plaintiff and a defendant, but due to the identity of the clients' interests, the attorneys conferred, "worked fairly closely together," and "maintained an identity of interest and an outcome of the litigation" for the father and son.

¶ 18 At some point, Rosenthal decided that he would have to step back from being John Steven's primary attorney, because as a solo practitioner, Rosenthal could not devote so many

hours to a case and wait for payment. John Steven then chose to retain Johnson and Seiwert as his additional counsel. All three lawyers continued to work together on the case because of "an absolute identity of interest in the litigation" between father and son.

¶ 19 Rosenthal never withdrew from the case and he attended the meditation as John Steven's attorney. Rosenthal recommended that his client agree to settle his case because the meditation made it apparent a trial would be expensive and risky. John Steven willingly signed the settlement agreement, even though he was "extremely unhappy" about the outcome of his lawsuit.

¶ 20 Rosenthal also testified that there had always been an "inherent conflict" between father and son in the litigation, because if the son had prevailed on his claims, then his father would have taken nothing, and if the son lost his suit, then his father and uncle would have split the trust proceeds 50/50. Nonetheless, the father and son made it "very clear" to Rosenthal that they were both seeking the same result of vesting the entire trust proceeds with the son.

¶ 21 Attorney Johnson testified that David's goal was for the trust proceeds to vest with his son, John Steven; that the potential conflict of interests was explained to David; and that David and John Steven agreed the trust proceeds should go to John Steven. David reached "a separate deal with his son" about the trust proceeds.

¶ 22 David testified that he believed that the bank trustee had taken the position that David was a one-half beneficiary of a majority of the trust assets (meaning that that the trustee was treating John E.'s version of the original trust agreement as the valid version). David, however, supported his son's efforts to receive 100% of the assets under a different version of the trust documents.

¶ 23 An offer of proof was made that David had been diagnosed with Attention Deficit Disorder. David also testified that he was given special assistance in school, "mix[es] things up," "can't really see very well," has to have things read to him, has trouble with comprehension, and has to "go over [things] over and over again."

¶ 24 David testified that he believed that both contracts he signed with Johnson were in effect at the meditation, that he paid Johnson a $25,000 retainer pursuant to first contract, and that the second contract contained a $75,000 cap,[1] meaning that Johnson could collect no more than an additional $50,000 from David. David was aware of the conflict-of-interest clause when he signed the second contract, but no specific conflict was explained to him, and he was told there was no conflict of interest between himself and his son.

¶ 25 John Steven testified that he and his father had the same objectives throughout the case, until they were at the meditation. At the meditation, John Steven felt that he had to give up on his lawsuit, otherwise Johnson would stop representing David in other lawsuits and this would be detrimental to the family business which employed John Steven. John Steven characterized this development as a "conflict" between himself and his father. John Steven also testified that under the mediated settlement, he and his sisters divided $750,000.

¶ 26 David's attorney, Kevin Bry, stipulated the $750,000 amount negotiated through mediation was more than the $400,000 that David's three children would have split under the 2003 restatement to the trust agreement.

[1] Neither of the two contracts that David executed with Johnson refer to a "cap." The only mention of the $75,000 figure is in the supplemental agreement which David and John Steven signed when Rosenthal decide he could not continue to be John Steven's primary counsel. The supplemental contingent fee agreement states, "But in no circumstance will the fees due Johnson and Seiwert be *less than* $75,000." (Emphasis supplied.)

¶ 27 At the conclusion of the testimony and oral arguments, the trial judge ruled that there had been no conflict of interest between father and son because they had been in agreement that David "in effect, was standing down" and that the two of them would try to enforce the version of the trust agreement that made John Steven the sole beneficiary. The judge found that the fee arrangement was unclear, to the extent that it should not be enforced, and that the attorney fees would be determined on the basis of *quantum meruit*. The judge also indicated that *quantum meruit* was appropriate because Johnson and Seiwert were discharged prior to the conclusion of the suit.

¶ 28 Johnson and Seiwert then testified that their time sheets were accurate and reflected their work on the case and that all of the fees were reasonable and necessarily incurred.

¶ 29 David called attorney Rosenthal in rebuttal. Rosenthal testified that a fair and reasonable hourly rate for Johnson and Seiwert's work would be no more than $325.

¶ 30 David states in his appellate brief, "The trial court ultimately ordered all but nine hours the attorneys requested at a rate of $350 per hour, for a judgment totaling $105,350." However, the only record citation that David provides is to a trial court order that does not specify an hourly rate. The order indicates David is to pay Johnson $63,700 and Seiwert $41,650 and that the judge denied any fee recovery from John Steven, April, or Lindsy. Thus, David is the only party required to compensate his attorneys and John Steven remains liable to attorney Rosenthal for attorney fees on an hourly basis pursuant to their contract.

¶ 31 Next, in accordance with the mediated settlement and the terms of Betty's original trust agreement, the judge approved a petition filed by the bank trustee to transfer assets into trusts set up for April and Lindsy. The judge also ordered the bank trustee to wait for further orders regarding the distribution of assets intended to benefit John Steven, John E., and David.

Specifically, the trustee was not to release the $350,000 promissory note to David and was to delay the creation and funding of a trust for John Steven, two trusts for David, and two trusts for John E. (the "John F. Sanfilippo GST Exempt Trust f/b/o David J. Sanfilippo," the "John F. Sanfilippo NON GST Exempt Trust f/b/o David J. Sanfilippo," the "John F. Sanfilippo GST Exempt Trust f/b/o John E. Sanfilippo," and the "John F. Sanfilippo NON GST Exempt Trust f/b/o John E. Sanfilippo").

¶ 32 The judge also entered orders stating that the attorney fee rulings were final and appealable within the meaning of Supreme Court Rule 304(a) and that enforcement was stayed provided that the bank trustee deposit $200,000 with the clerk of the circuit court. The order specifies that the trustee was holding cash from the sale of bonds by the "Betty trust" and the "John Trust," some of the sale proceeds were to be distributed to the two trusts established for David's benefit, and $200,000 "from David's Share of the Cash" was to be deposited with the court clerk pending resolution of this appeal and a petition to enforce a lien for attorney fees filed by some of David's other lawyers.

¶ 33 On appeal, David first contends it was an abuse of discretion to award fees in addition to Johnson's $25,000 retainer where the attorney fee arrangement violated numerous rules of professional conduct. He contends one or both of the fee contracts was improper because the attorneys (1) provided for contingent compensation while also indicating counsel would be paid regardless of which of their clients prevailed, (2) did not specify any services or lawsuit or state how compensation would be calculated if there was a settlement, and (3) did not disclose the division of fees between lawyers at different firms. David's fourth challenge to the fee contract was that it allowed for representation of clients with conflicting interests without adequate explanation of the potential conflict and the clients' informed consent. His fifth contention is that

the supplemental fee agreement (the second contract and the one that was signed when John Steven also hired David's attorneys) was the product of undue influence, in that Johnson threatened to withdraw from this and other cases if David and John Steven did not sign. David contends these contract terms were contrary to the Illinois Code of Professional Responsibility, which governs attorney conduct.

¶ 34 He cites three paragraphs of Rule 1.5 of the Illinois Code of Professional Responsibility: Rule 1.5(a), which states that a lawyer must not contract for an unreasonable amount of fees or expenses; Rule 1.5(c), which indicates a contingent fee contract should specify the method for determining the fees owed, including the percentage owed in the event of trial, settlement, or appeal; and Rule 1.5(e), which requires a fee division between lawyers who are not in the same firm to be in proportion to the services performed by each lawyer and that the client must agree to the arrangement. Ill. S. Ct. Rs. 1.5(a), 1.5(c), 1.5(e) (eff. Jan. 1, 2010). David also cites Rule 1.7, which bars representation of conflicting interests without the clients' informed consent; and Rule 1.8, which prohibits an attorney from entering a business transaction with a client or knowingly acquiring an ownership or other interest adverse to the client unless the transaction and terms are "fair and reasonable" and fully disclosed. Ill. S. Ct. Rs. 1.7, 1.8 (eff. Jan. 1, 2010).

¶ 35 We review the fee award under the abuse of discretion standard. *In re Marriage of Pagano*, 154 Ill. 2d 174, 192, 607 N.E.2d 1242, 1251 (1993).

¶ 36 Although David argues the fee arrangement was improper, the judge found the fee contracts were unclear and unenforceable, but the judge did not find the contracts provided for an unreasonable amount of attorney fees or were improper in any way. Additionally, David fails to cite any authority specifically holding that an unclear fee agreement is grounds for denying recovery under *quantum meruit*.

¶ 37 He first cites *Pagano*, 154 Ill. 2d at 190, 607 N.E.2d at 1250, but that opinion actually supports the award of fees in this instance. *Pagano* concerned a fee dispute at the conclusion of a bitter divorce case in which issues of property distribution, maintenance, child custody, and child support were all contested. *Pagano*, 154 Ill. 2d at 179-80, 607 N.E.2d at 1244-45. The client became disgruntled over the fact that as the case progressed, her lawyer had her sign agreed orders requiring her to pay her attorney fees and waiving the trial judge's review of timesheets and adjudication of whether the client or her husband would be responsible for her attorney fees. *Pagano*, 154 Ill. 2d at 180-82, 607 N.E.2d at 1245-46. The client had paid a $2,500 initial retainer (*Pagano*, 154 Ill. 2d at 179, 607 N.E.2d at 1244) and, although she did not dispute the fact that she had been properly represented in the two-year dispute, she contended that because the lawyer had treated her improperly, she should not have to pay for any of his services. *Pagano*, 154 Ill. 2d at 182-83, 607 N.E.2d 1242. However, after hearing testimony and reviewing the attorney's time sheets, the trial judge ordered the client to pay fees. *Pagano*, 154 Ill. 2d at 178, 607 N.E.2d at 1244.

¶ 38 When she appealed the order, the supreme court noted the general rule that attorneys are entitled to reasonable fees for their services and to reimbursement of reasonable expenditures. *Pagano*, 154 Ill. 2d at 190, 607 N.E.2d at 1249. This is true even if the client is dissatisfied with the attorney's representation and has discharged him or her. *Durr v. Beatty*, 142 Ill. App. 3d 443, 448, 491 N.E.2d 902, 906 (1986) ("We recognize the general rule that where an attorney employed to prosecute a case on a contingent fee basis is discharged, the attorney is entitled to recover on a *quantum meruit* theory the reasonable value of his services performed until the time of discharge."). This may true even when an attorney has acted improperly—it depends upon the degree of impropriety. *Pagano*, 154 Ill. 2d at 189-90, 607 N.E.2d at 1249. In English, *quantum*

meruit means " 'as much as he deserves.' " *Much Shelist Freed Denenberg & Ament P.C. v. Lison*, 297 Ill App. 3d 375, 378, 696 N.E.2d 1196, 1199 (1998) (quoting *First National Bank v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 688 N.E.2d 1179, 1185 (1997). "*Quantum meruit* is based on the implied promise of a recipient for services to pay for valuable services because otherwise the recipient would be unjustly enriched." *Much Shelist*, 297 Ill. App. 3d 379, 696 N.E.2d at 1199. The *Pagano* court discussed cases in which attorneys breached their fiduciary duties by mishandling assets. *Pagano*, 154 Ill. 2d at 189-90, 607 N.E.2d at 1249. Those cases indicated the attorneys were required to turn over the assets, but would be allowed to recover fees from the clients. *Pagano*, 154 Ill. 2d at 190, 607 N.E.2d at 1249. Attorney misconduct must be egregious before a court will require the outright forfeiture of compensation. *Pagano*, 154 Ill. 2d at 190, 607 N.E.2d at 1249; *Much Shelist*, 297 Ill. App. 3d at 381, 696 N.E.2d at 1201 (whether *quantum meruit* recovery is barred due to attorney impropriety depends upon the egregiousness of the conduct involved). The trial court determines, in its discretion, whether the attorney acted egregiously. *Much Shelist*, 297 Ill. App. 3d at 382, 696 N.E.2d at 1201.

¶ 39 Adhering to these principles in *Pagano*, the supreme court declined to overrule the trial judge's decision to award attorney fees. The supreme court emphasized that the judge's conclusion that the divorce attorney did not act improperly was based on the judge's first-hand assessment of the credibility of the witnesses and the proper weight to be given to their testimony and that the judge was "clearly in the best position to make these determinations." *Pagano*, 154 Ill. 2d at 188, 607 N.E.2d at 1248.

¶ 40 Here, the conduct that David complains of cannot be characterized as egregious and the trial judge, who was in the best position to assess the circumstances, did not consider it to be

improper and grounds for denying the attorneys their reasonable compensation for services rendered. *Pagano* is support for the *quantum meruit* award, not a basis for its reversal.

¶ 41 David also relies on *Todd W. Musburger*, but again, this is a case that actually supports the ruling that David challenges. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781, 914 N.E.2d 1195 (2009). There, the court ruled that a discharged entertainment lawyer was not entitled to enforce a fee contract which ceased to exist when the lawyer was discharged, but, the lawyer could recover the reasonable value of his services under a *quantum meruit* analysis. *Todd W. Musburger*, 394 Ill. App. 3d at 795, 914 N.E.2d at 1209. Allowing a discharged attorney to enforce a contractual fee agreement or collect on a contingency would unreasonably interfere with the client's right to discharge his or her attorney at any time. *Todd W. Musburger*, 394 Ill. App. 3d at 795, 914 N.E.2d at 1209.

¶ 42 The other authority David cites is distinguishable on the facts and does not warrant discussion.

¶ 43 Consistent with *Pagano* and *Todd W. Musburger*, this trial judge did not enforce the cancelled contracts for Johnson and Seiwert's services and instead properly proceeded under *quantum meruit* to compensate the discharged attorneys with amounts that the judge determined to be reasonable based on the testimony and supporting documents. In light of the judge's determination that certain attorney fees were reasonable compensation and justified on the basis of *quantum meruit*, we reject David's assertion that Rule 1.5 is grounds for disturbing the award.

¶ 44 David's contention that the attorneys improperly represented clients with conflicting interests contrary to Rule 1.7 is belied by the consistent testimony from David, John Steven, Rosenthal, and Johnson that father and son were allied in their opposition to John E.'s recovery and had the same objective of vesting the entire trust in John Steven. Furthermore, David's

testimony that there was never an explanation or discussion of the potential conflict is contrary to Johnson's recollection of his meeting with David and John Steven and with the plain language of the short agreement which David and John Steven signed. The trial judge heard the witnesses testify, observed their demeanor, and did not find David's contrary recollection credible. David has not given us reason to second guess the trial judge's conclusions. *Pagano*, 154 Ill. 2d at 188, 607 N.E.2d at 1248.

¶ 45 David's contention that he was subjected to undue influence in violation of Rule 1.8 by Johnson's statement that Johnson would withdraw from this and other cases unless David and John Steven signed the supplemental fee contract is not supported by any authority indicating that it is improper for an attorney to withdraw or state his intention to withdraw. The authority David cites, Rule 1.8, does not concern attorney withdrawal. Rule 1.8 is the rule which prohibits an attorney from entering a business transaction with a client or knowingly acquiring an ownership or other interest adverse to the client unless the transaction and terms are "fair and reasonable" and fully disclosed. Ill. S. Ct. R. 1.8 (eff. Jan. 1, 2010). The other decisions David cites, *Durr* and *Pagano*, do not involve attorneys who contemplated withdrawing.

¶ 46 Nonetheless, it is unusual for an attorney and client to execute a new fee contract after a case is underway and *Durr* and *Pagano* indicate that a contract entered into after the establishment of an attorney-client relationship is presumptively fraudulent and that the attorney bears the burden of showing that the contract was "made with unquestionable good faith, fairness, adequacy of consideration and freedom from undue influence." *Durr*, 142 Ill. App. 3d at 449, 491 N.E.2d at 907; *Pagano*, 154 Ill. 2d at 185, 607 N.E.2d at 1247 ("when an attorney, once retained, enters into a transaction with the client, it is presumed the attorney exercised undue influence"). The attorney may rebut the presumption of undue influence by showing full and fair

disclosure to the client of all material facts affecting the transaction and that the transaction is fair. *Durr*, 142 Ill. App. 3d at 450, 491 N.E.2d at 908.

¶ 47 Here, the obvious reason for the second fee contract is that midway through the case, John Steven, who was being represented by Rosenthal, also retained Johnson and Seiwert. John Steven could have signed his own, separate contract with Johnson and Seiwert, and David could have signed a supplemental agreement regarding the inherent conflict. It made sense, however, for John Steven and David to sign a single contract together acknowledging that although there was an inherent conflict in their interests, they wanted the same attorneys to represent them and were waiving that conflict.

¶ 48 As for whether the contract was fair, made in good faith, and with full disclosure to David, there was testimony to that effect from Johnson, and Johnson was found by the trial judge to be the more credible witness. We also point out that, to the extent the discarded contracts are comprehensible, it appears David agreed to pay the same amount of attorney fees in both contracts that he signed for Johnson's services. When he first retained Johnson, David agreed to pay "one-third of the gross recovery" and when David and Steven subsequently contracted together with Johnson and Seiwert by executing the supplemental agreement, the attorney fees were again stated as "one-third of Gross Recovery." The second contract includes the additional statement that David's fee would be "one-third of any Recovery which exceeds one-half the amount proved at trial as allocable to David." This additional statement is incomprehensible but irrelevant because it speaks of compensation after a trial and this case did not go to trial. Neither of the two fee contracts was sufficiently complete and clear enough to be enforced, however, the stated amount of attorney compensation clearly did not change from contract to contract. The first contract was executed when David first retained Johnson and was presumably free and

capable of bargaining and the second contract was executed after the attorney-client relationship had formed and David was purportedly subjected to undue influence. Nonetheless, both contracts provide for the same "one-third" of what was recovered. Accordingly, Johnson did not gain an unfair advantage over David by contracting with him during the existence of an attorney-client relationship. Moreover, the trial judge discarded both contracts and proceeded under a *quantum meruit* analysis to determine a reasonable fee award. Thus, David's contention that his execution of the second contract is tainted, "the opposite of what Rule 1.8 seeks to ensure," and an excuse for not compensating his attorneys is not persuasive.

¶ 49 David's second main contention on appeal is that the $105,000 fee award was excessive because Johnson and Seiwert were latecomers to an existing case, did almost no work, and got no results for David. David states that if he never met the attorneys, he still would have received forgiveness of the $350,000 promissory note. He points that while the attorneys helped his children split $750,000, instead of $350,000, or $400,000, that was not a benefit to David. He contends the attorneys should have been awarded "well under" $105,000 and that because they "lost" this case, they should have been held to contract language limiting their compensation to $75,000 if they lost the case. (We were unable to find any contract language to that effect.) Continuing, David contends there were "numerous and many wrongful hours billed" and he emphasizes some of the attorneys' testimony about their fee petition—such as Johnson's statement that he sometimes recorded multiple tasks in a single entry on his time sheets instead of specifying the amount of time spent on the individual tasks. David criticizes Seiwert's testimony that Seiwert created his time records from his memory and estimation years later. After further critique of the attorneys' testimony, David proposes that "Rosenthal's fee of $225 to $325 an hour seems more in line with what would be customary for such work rather than the

$350 per hour the trial court awarded." David asks this court to "reverse the amount awarded to nothing or an amount well under the amount the trial court awarded."

¶ 50 David's appellate argument lacks sufficient detail. For instance, although he characterizes the fee award as excessive, he fails to identify specific time record entries by date or task as unnecessary or excessive charges and apparently expected the trial judge and this court to identify those tasks for him. He takes issue with the $350 hourly rate that was awarded and argues for a reduction, but instead of arguing for some other specific rate, he makes the vague proposal that the fees be reduced by $25 to $125 per hour and he fails to explain how we would select an appropriate figure. He prefers Rosenthal's lower rates, but makes no effort to explain why that attorney's billing rates should be applied to Johnson and Seiwert. Furthermore, David fails to perform any mathematical calculations whatsoever. David's general criticism leads him to conclude that an appropriate fee award would be for any amount that is less than $105,000.

¶ 51 This type of argument, in which the court is invited to peruse the time sheets and transcripts in the record on appeal, identify and deduct hours that it determines are inappropriate, and arbitrarily assign a new hourly rate for counsels' work, is not in keeping with the standards of appellate practice. Appeals start with the presumption that the trial judge's ruling was in conformity with the law and the facts. *Behrstock v. Ace Hose & Rubber Co.*, 147 Ill. App. 3d 76, 86, 496 N.E.2d 1024, 1030 (1986) ("it is well settled that all reasonable presumptions are in favor of the action of the trial court"); *In re Alexander R.*, 377 Ill. App. 3d 553, 556, 880 N.E.2d 1016, 1019 (2007) (stating the general and well-established principle of appellate review that the trial judge knows and follows the law). The appellant bears the burden of overcoming the presumption that the trial judge ruled correctly. *Behrstock*, 147 Ill. App. 3d at 86, 496 N.E.2d at 1030 (the burden is on the appellant to show affirmatively the errors assigned on review; the

appellant must overcome the presumption that the trial court's judgment was correct); *In re Alexander R.*, 377 Ill. App. 3d at 556, 880 N.E.2d at 1019 (it is the appellant's burden to demonstrate the existence of error in the record). The appellant must present reasoned argument and citation to not only legal authority but also to the specific portions of the record which support the appellant's claim of error. Ill. S.Ct. R. 341(h)(7) (eff. Sept.1, 2006) (rule of appellate practice mandating that the appellant's brief contain reasoned argument and supporting citation); *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 881, 929 N.E.2d 641, 653 (2010) (indicating it is well established that mere contentions, unsupported by reasoned argument and citation, do not merit consideration on appeal); *1212 Restaurant Group, LLC v. Alexander*, 2011 IL App (1st) 100797, ¶ 51, 959 N.E.2d 155 (same). We decline to perform these tasks for the appellant. David has waived his contention that the fee award was excessive. *1212 Restaurant Group*, 2011 IL App (1st) 100797, ¶ 51, 959 N.E.2d 155 (finding waiver of deficient argument).

¶ 52 David's final contention is that it was improper for the judge to order, over David's objection, that the fee award could be recovered from the proceeds of the spendthrift trust which was at issue in this litigation. David, however, fails to quote any portion of a trust agreement or cite any part of the record indicating that trust corpus was protected by spendthrift language. The argument is waived due to David's lack of adequate presentation and citation to the record. *1212 Restaurant Group*, 2011 IL App (1st) 100797, ¶ 51, 959 N.E.2d 155.

¶ 53 Having rejected all of David's arguments, we affirm the orders of the trial court.

¶ 54 Affirmed.