2013 IL App (5th) 120150-U

NO. 5-12-0150

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

SCHARF LAW FIRM,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Montgomery County.
	)	
v.	)	No. 11-SC-280
	)	
BRETT WHITWORTH,	)	Honorable
	)	Douglas L. Jarman,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Spomer and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in finding that attorney met his burden of proof for a *quantum meruit* award of additional fees against former client.

¶ 2 Brett Whitworth, defendant, appeals the judgment entered after a bench trial in the circuit court of Montgomery County in favor of the Scharf Law Firm (Scharf), awarding Scharf attorney fees in the amount of $3,189 based upon the theory of *quantum meruit*. Whitworth argues that the judgment awarding *quantum meruit* attorney fees is against the manifest weight of the evidence, especially in light of the fact that the parties had an agreement for a flat fee. We reverse.

¶ 3 In April of 2008, Whitworth hired Scharf to represent him in a parentage action. The case ultimately involved three possible fathers for the then 10-year-old child. DNA testing subsequently revealed Whitworth to be the father.

¶ 4 By April of 2010, Whitworth discharged Scharf from representing him because

Whitworth believed Scharf was "botching up" the case. According to Whitworth, Scharf never provided him with any details, and, in fact, had never even met with him in person. Whenever Whitworth made an appointment to meet with Scharf, Scharf would either cancel the appointment or not be in his office at the designated time. Whitworth did not know if Scharf performed any of the legal services listed in the ledger Scharf presented the day of the fee hearing. He further testified Scharf never informed him that he would be billed $150 per hour for Scharf's legal services. Before discharging Scharf, Whitworth claimed to have only received a couple of bills from Scharf. He further claimed that none of the bills reflected an hourly rate. According to Whitworth, Scharf agreed to represent him for a flat fee of $2,500 which he could pay off over time. Based on the limited record presented, Whitworth appears to have paid Scharf a total of $3,800, $1,300 over the agreed-upon fee. Whitworth believed he paid more because of a mistake by his secretary, who was responsible for paying the legal bills.

¶ 5 Scharf testified that the parentage case was very unusual and that he was unaware of all of the complexities of the case when he was first retained. He further testified that he would never handle a family law case for a flat fee. While he usually has family law clients sign fee agreements, he never met with Whitworth at his office, and accordingly no such agreement was signed. Scharf testified that he kept track of his hours on a monthly basis and would send bills to Whitworth each month. He submitted as an exhibit at trial a ledger of his hours allegedly expended on the case. According to the ledger, he billed Whitworth 54.9 hours at $150 an hour. He believed that Whitworth still owed him $4,240 after giving him credit for $2,300 in payments. Scharf further testified that a credit of $1,300 was not actually a credit, but rather reflected a retainer payment. After being discharged, Scharf filed a complaint in small claims court seeking to collect the unpaid attorney fees allegedly incurred in representing Whitworth in the parentage action.

¶ 6 The trial court found, under the theory of *quantum meruit*, that the reasonable value of Scharf's legal services was $5,689. The court further determined that Whitworth had paid Scharf a total of $2,500. After giving him credit for such payments, the court entered judgment in favor of Scharf for $3,189. Whitworth argues on appeal that the court erred in failing to find that there was a flat attorney fee agreement between the parties. He further contends that the additional award of fees under *quantum meruit* is against the manifest weight of the evidence.

¶ 7 As a court of review, we will only substitute our judgment for that of the trial court in a bench trial when that judgment is against the manifest weight of the evidence. *People ex rel. Department of Labor v. 2000 W. Madison Liquor Corp.*, 394 Ill. App. 3d 813, 817, 917 N.E.2d 551, 556 (2009); *First Baptist Church of Lombard v. Toll Highway Authority*, 301 Ill. App. 3d 533, 542, 703 N.E.2d 978, 984 (1998). A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154, 746 N.E.2d 827, 830-31 (2001). We conclude that, in this instance, the judgment is against the manifest weight of the evidence. Scharf failed to make a *prima facie* case for additional fees under the theory of *quantum meruit* and, therefore, should not have been awarded any additional fees.

¶ 8 A discharged attorney may be compensated for legal services rendered before being discharged on a *quantum meruit* basis. *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, 399 N.E.2d 969 (1979). *Quantum meruit* is based on the implied promise of a recipient of services to pay for those services which are of value to him. *Ashton v. Cook County*, 384 Ill. 287, 301, 51 N.E.2d 161, 167 (1943). Otherwise, the recipient would be unjustly enriched if he were able to retain the services without paying for them. *Romanek-Golub & Co. v. Anvan Hotel Corp.*, 168 Ill. App. 3d 1031, 1041, 522 N.E.2d 1341, 1348 (1988).

Accordingly, under *quantum meruit*, the former client is liable for the reasonable value of the services received during the attorney's employment. *In re Estate of Callahan*, 144 Ill. 2d 32, 40-41, 578 N.E.2d 985, 988 (1991). The burden of proving the reasonable value of the services performed rests with the attorney, however. Accordingly, the attorney is required to submit evidence to the trial court from which it can make a reasoned decision in accordance with applicable law. *Lossman v. Lossman*, 274 Ill. App. 3d 1, 5, 653 N.E.2d 1280, 1285 (1995). Factors to consider when determining the reasonable value of the attorney's services are the skill and standing of the attorney, 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 client. *Lee v. Ingalls Memorial Hospital*, 232 Ill. App. 3d 475, 478, 597 N.E.2d 747, 750 (1992). The simple calculation of an hourly rate applied to a number of hours allegedly billed does not establish the reasonable value of the services to the client. *In re Estate of Healy*, 137 Ill. App. 3d 406, 410, 484 N.E.2d 890, 893 (1985).

¶ 9 We agree with the trial court's finding that the hourly fee Scharf charged was reasonable. The issue is the amount of hours charged. Put simply, we conclude that Scharf did not establish that the services performed or the total hours allegedly expended on Whitworth's behalf were reasonable under the circumstances. As an example, according to the ledger submitted at trial, Scharf charged Whitworth for continuances that were occasioned by conflicts in Scharf's own schedule. True, the parentage case may have been more complex than the average parentage case, but Scharf did little to keep his client informed of the details. In fact, Scharf never even met with Whitworth during the entire two-year time frame that Scharf was the attorney of record. Additionally, at the fee hearing, Scharf did not offer into evidence any actual monthly bills he claimed to have sent to

Whitworth. Whitworth testified he received no bills reflecting an hourly billing rate during the entire time he was represented by Scharf. Scharf also presented no testimony or evidence that at any time during the two-year period that he handled this case, did he ever contact Whitworth about paying the balance of any fee due and owing.

¶ 10 Without a fee agreement, *quantum meruit* was the only way Scharf could proceed to recover any attorney fees. There simply was too little evidence on the record to support the award of any additional fees than those already paid by Whitworth. What little evidence was presented was confusing and contradictory as evidenced by the $1,300 credit which may or may not have been paid and monthly billing statements which may or may not have been mailed. Scharf claimed that Whitworth's file was two to three inches thick, yet he presented nothing at trial to support such a statement. We therefore conclude that the award of any additional attorney fees under a theory of *quantum meruit* was against the manifest weight of evidence in this instance. Based upon the record before us, we conclude that the Scharf Law Firm has been compensated in full for its representation of Whitworth on the parentage claim, and find there is no reason to remand this case for further proceedings. Therefore, the judgment of the court in favor of Scharf is reversed.

¶ 11 For the reasons stated above, we reverse the judgment of the circuit court of Montgomery County.

¶ 12 Reversed.