STATE OF MICHIGAN

COURT OF APPEALS

LAW OFFICES OF SCOTT E. COMBS, and SCOTT COMBS,

Plaintiffs-Appellants/Counter-Defendants,

v

DARLENE DISHLUK,

Defendant-Appellee/Counter-Plaintiff,

and

CITY OF ROYAL OAK, MATTHEW A. TYLER, CHARTER HECK O'DONNELL & PETRULIS, P.C., THOMAS L. FLUERY, KELLER THOMA SCHWARZE SCHWARZE DUBAY KATZ, P.C., LAURA S. AMTSBUECHLER, JOHNSON ROSATI LABARGE ASELTYNE & FIELD, P.C., RONALD W. CHAPMAN, CHAPMAN & ASSOCIATES, P.C., MICHIGAN MUNICIPAL RISK MANAGEMENT ASSOCIATION, CITIZENS MANAGEMENT, INC., SEDGWICK CLAIMS MANAGEMENT, FREDERICK W. LAUCK, LAW OFFICE OF FREDERICK W. LAUCK, P.C., and ANGELLE ROTHIS,

Defendants.

UNPUBLISHED
November 29, 2005

No. 262784
Oakland Circuit Court
LC No. 2003-048065-CK

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiffs Law Offices of Scott E. Combs and Scott Combs[1] appeal as of right from the trial court's order granting defendant Darlene Dishluk summary disposition under MCR 2.116(C)(10), on Combs' claims against Dishluk for payment of attorney fees. We affirm.

[1] Plaintiffs will hereinafter be referred to collectively as "Combs."

I. Basic Facts And Procedural History

The instant action began on March 7, 2003, when Combs brought suit against Dishluk and sixteen other parties. The other parties, however, are not involved with this appeal. Combs claimed, in pertinent part, that Dishluk had breached their contingent fee agreement (the Agreement) by terminating the Agreement without good cause and by failing to pay Combs attorney fees due on a $525,000 settlement.[2] Combs alleged that Dishluk owed the fees as payment for his services in negotiating the settlement for her in an underlying wrongful discharge/discrimination suit against her employer. According to Combs, Dishluk intentionally terminated the Agreement before the settlement could be effectuated. More specifically, Combs claimed that after the settlement was agreed to and placed on the record, Dishluk began looking for a way to avoid paying attorney fees and taxes on the settlement amount. To this end, Combs alleges, Dishluk then discharged him as her attorney. Combs then filed liens in both the wrongful discharge and worker's compensation actions. In February 2003, Dishluk's new counsel placed a $540,000 settlement on the record.[3] A Worker's Compensation Board magistrate then entered a redemption order allocating $400,000 of the $540,000 for the worker's compensation action. Combs then filed the present action.

Dishluk answered Combs' complaint, alleging that she never agreed to the settlement agreement negotiated by Combs. According to Dishluk, Combs attempted to place that settlement on the record by falsely representing that she had agreed to its terms. Dishluk explained that she refused to agree to the settlement due to her concerns over the "heavy tax burden" associated with the settlement. Dishluk pointed out that after her employer's insurance carrier issued a settlement check, Combs refused to sign the check or a proposed escrow agreement needed to facilitate disbursement of the proceeds. Dishluk counterclaimed, alleging that Combs made fraudulent misrepresentations by asserting to the court that she agreed to the $525,000 settlement, that he tortiously interfered with the ultimate $540,000 settlement by refusing to cooperate with the efforts to distribute the proceeds, and that he breached the Agreement by acting contrary to the Rules of Professional Conduct.

After dismissing all of Combs' claims on the ground that they were frivolous, the trial court ordered, sua sponte, that Combs could be entitled to quantum meruit recovery on his claim for attorney fees, pending an evidentiary hearing on the matter. Dishluk then moved for summary disposition, arguing that Combs was precluded from receiving quantum meruit recovery on two grounds: (1) there was no genuine issue of fact that Combs abandoned his representation of her after she continued to refuse to sign off on the purported $525,000 settlement agreement; and (2) Combs' misconduct precluded recovery. Combs responded, contending that the only available ground on which to deny quantum meruit recovery was attorney misconduct. And, according to Combs, reconsideration of any alleged misconduct was precluded by res judicata because the Attorney Grievance Commission (AGC) had already determined that he did not engage in misconduct. Dishluk replied that res judicata was

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[2] This purported settlement agreement allocated $523,500 to Dishluk's wrongful discharge action and $1,500 redemption to Dishluk's related worker's compensation action.

[3] On Dishluk's motion, the $540,000 settlement funds were interpleaded into the present action.

inapplicable because the issue of Combs' misconduct was never decided by the AGC; it merely declined to pursue a formal complaint.

At a hearing on the motion, the trial court indicated that Combs engaged in misconduct by not working out the best deal for his client and instead seeking to "feather[] his own nest." Further, the court found that Combs petulantly withdrew from, or abandoned, the case after Dishluk would not agree to the $525,000 settlement. The court noted that Combs told Dishluk to fire him to save him the hassle of filing a motion to withdraw. Therefore, the court concluded, Combs was not entitled to any attorney fees. Accordingly, the court granted Dishluk summary disposition. The court later denied Combs' motion for reconsideration.

II. Summary Disposition

A. Standard Of Review

Under MCR 2.116(C)(10), a party may move for dismissal of a claim on the ground that there is no genuine issue with respect to any material fact and that the moving party is entitled to judgment as a matter of law. The movant on a (C)(10) motion bears the initial burden to produce documentary evidence supporting a finding that there is no genuine issue with respect to any material fact.[4] The nonmovant then has the burden of showing that a genuine issue of disputed fact does exist and to produce admissible evidence to establish those disputed facts.[5] Conjectures, speculations, conclusions, mere allegations or denials, and inadmissible hearsay are not sufficient to create a question of fact for the jury.[6] Further, it is no longer sufficient for a plaintiff to promise to offer factual support for his claims at trial.[7] We review de novo the trial court's ruling on a motion for summary disposition.[8]

B. Quantum Meruit Recovery

Combs argues that the trial court erred by ruling, as a matter of law, that he abandoned representation of Dishluk because none of the evidence indicates that he abandoned the Agreement, rather he was wrongfully discharged. Combs further contends that the trial court erred in suggesting that he engaged in misconduct. We disagree.

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[4] *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

[5] *Meagher v Wayne State Univ*, 222 Mich App 700, 719; 565 NW2d 401 (1997); *Neubacher*, *supra* at 420.

[6] *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995); *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995); *Neubacher*, *supra* at 420; *SSC Assoc Ltd Partnership v Detroit Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

[7] *Maiden*, *supra* at 121; *Smith v Globe Life Ins, Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999).

[8] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Combs would be entitled to compensation for the reasonable value of his services based on quantum meruit if he was wrongfully discharged or rightfully withdrew,[9] and he did not abandon Dishluk's case[10] or engage in misconduct.[11] But we conclude that Combs is not entitled to quantum meruit recovery because there is no question of fact that he effectively, and wrongfully, withdrew from, or abandoned, Dishluk's case. And although Combs contends that he was justified in withdrawing, his misconduct produced this justification.

The documentary evidence submitted below clearly shows that Combs and Dishluk were in disagreement regarding the proposed $525,000 settlement. During an October 11, 2002 hearing to discuss the proposed release and settlement agreement, Combs represented to the trial court that Dishluk was in agreement with the terms of the settlement. The court allowed the parties until November 15 to finalize the agreement by obtaining signatures from all the parties, including Dishluk, and filing dismissal orders. Despite Combs' assertions that Dishluk had agreed to the settlement, her correspondence to Combs indicates that she had not, in fact, agreed to its terms. In a letter dated October 4, 2002, following an October 2 facilitation conference, Dishluk told Combs that she had concerns about the proposed settlement. In another letter sent October 8, Dishluk adamantly expressed her disagreement with the terms of the settlement, specifically indicating that she would not sign the agreement until it was "corrected." That same day, Combs acknowledged that Dishluk might want him "to try to cancel the agreed to settlement." He explained that "it appears illogical and unreasonable for you to try and reject a settlement of $525,000.00 for the mere chance of prevailing after a two week trial, and the likelihood of a jury verdict in all likelihood far below $525,000.00 . . . . If you are sure you want to give up these guarantees for instead trial chances [sic], then I need to know as soon as possible." Dishluk reiterated her stance in further correspondences sent October 9 and October 10.

Dishluk attested that she and Combs met on the morning of October 8 and he requested that she sign the proposed settlement agreement. After Dishluk refused, she averred that Combs stated that he would meet with the trial judge on October 11 to adjourn the upcoming trial date. But, contrary to Dishluk's refusal to accept the settlement, Combs went ahead and placed the agreement on the record at the October 11 hearing. In an October 25, 2002 letter, Dishluk again said that she was not in agreement with the settlement. And in a November 1, 2005 letter, Combs acknowledged Dishluk's position but asserted that the parties were committed to the settlement agreement that he had placed on the record.

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[9] This principle is also included in the Agreement, which states that Combs was to be compensated on a one-third contingency basis, unless he was "discharged or withdr[e]w prior to the resolution of said matter, in which case a quantum meruit attorney fee recovery will come into effect."

[10] *Rippey v Wilson*, 280 Mich 233, 245; 273 NW 552 (1937); *Reynolds v Polen*, 222 Mich App 20, 24, 25; 564 NW2d 467 (1997).

[11] *Reynolds*, *supra* at 26 ("[Q]uantum meruit recovery of attorney fees is barred when an attorney engages in misconduct that results in representation that falls below the standard required of an attorney (e.g., disciplinable misconduct under the Michigan Rules of Professional Conduct) or when such recovery would otherwise be contrary to public policy."

In light of her continued refusal to accept the settlement agreement that he negotiated, Combs unequivocally and repeatedly indicated to Dishluk that he would no longer continue to serve as her counsel unless she abided by the terms of the settlement agreement. In a November 11, 2002 letter to Dishluk, Combs contended that the settlement agreement was properly placed on the record and subject to enforcement. He advised her that if she insisted on contesting the terms of the settlement agreement that he would withdraw as counsel. He reiterated this position in facsimiles sent to Dishluk on November 13 and 14. Several attorneys associated with the worker's compensation matter also attested that they heard Combs tell Dishluk at a November 15, 2002 conference that he would be withdrawing from the case but suggested that she just fire him "to save him the hassle of filing a motion." In a November 17, 2002 facsimile to Dishluk, Combs reiterated his suggestion that she discharge him so that he could "avoid the work of a motion to withdraw." And at a December 11, 2002 hearing, Combs admitted, "I suggested that Ms. Dishluk terminate me; it was my suggestion."

There is good cause for an attorney to withdraw from a suit if there has been a complete breakdown in the attorney-client relationship.[12] But a client's rational refusal to settle can never be sufficient grounds to constitute good cause for an attorney to withdraw. "The client has control of the lawsuit, and can refuse even the most reasonable settlement offer."[13] Although Combs never pursued a formal motion to withdraw from the case, we conclude that he effectively, and wrongfully, withdrew from, or abandoned, the case. Despite Combs' claim that he was justified in withdrawing on the ground that Dishluk was unreasonably seeking to rescind "the agreed to settlement," Combs failed to meet his burden to produce admissible evidence to establish that Dishluk did, in fact, agree to the settlement.[14] Absent such evidence, there can be no question of fact that Dishluk did not agree to the settlement, and, accordingly, absent such agreement, there can be no question that Combs committed disciplinable misconduct by representing to the court that she was in agreement with the settlement.[15] In other words, the real reason Combs withdrew from the case was merely his disagreement with Dishluk's decision to reject the settlement that he negotiated, which, as indicated, does not constitute good cause to withdraw.

Thus, Combs is not entitled to quantum meruit recovery. He lacked good cause to withdraw from his client's case and he exacerbated the situation by engaging in misconduct.

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[12] *Ambrose v Detroit Edison Co*, 65 Mich App 484, 488; 237 NW2d 520 (1975).

[13] *Id*. at 491.

[14] *Meagher*, *supra* at 719; *Neubacher*, *supra* at 420.

[15] MRPC 1.2(a) states, "A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter." MRPC 3.3(a) states, "A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal[.]"

C. Res Judicata

Combs also argues that the AGC's decision not to pursue a formal complaint against him serves to preclude further consideration of his alleged misconduct. We disagree. We review de novo the applicability of the doctrine of res judicata.[16]

Res judicata bars relitigation of claims, between the same parties, that are based on the same transaction or events as a prior suit. The doctrine applies when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first.[17] With respect to the fourth requirement, if different facts or proofs would be required, res judicata does not apply.[18] The claim here involved Combs' contention that he was entitled to quantum meruit recovery for his work as Dishluk's counsel. This question could not have been, nor was it, resolved by the AGC. Accordingly, res judicata is inapplicable as a matter of law.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell

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[16] *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

[17] *Id*. at 334.

[18] *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988).