

STATE OF MICHIGAN
COURT OF APPEALS

JAMES HEDRICK,

Plaintiff,

v

DEPARTMENT OF CORRECTIONS,

Defendant,

and

RASOR LAW FIRM, P.L.L.C.,

Appellant,

and

JONATHAN MARKO,

Appellee.

UNPUBLISHED

December 12, 2017

No. 335489

Wayne Circuit Court

LC No. 15-002445-CD

Before: GLEICHER, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Appellant, nonparty Razor Law Firm, appeals as of right the trial court's order extinguishing its lien against the proceeds of the settlement from the underlying case. The settlement was negotiated by appellee, nonparty Jonathan Marko, a former employee of appellant. We reverse and remand for further proceedings.

The settlement proceeds forming the basis for this dispute came from a discrimination suit in which plaintiff alleged that defendant denied him a promotion on the basis of plaintiff's age and race. Plaintiff originally signed an engagement agreement with appellant, promising appellant a contingency fee in the event of a recovery. At the time, appellee was employed by appellant. Approximately ten months later, plaintiff sent an e-mail to appellant terminating their attorney-client relationship and requesting appellant to send plaintiff's file to appellee. Four days later, appellee left appellant's employment and, eventually, filed a motion to substitute

himself as plaintiff's attorney. Thereafter, appellant claimed a lien on "any monies received by Plaintiff in this matter."

Shortly before the litigation underlying this appeal settled, appellee moved the trial court to extinguish appellant's lien. Appellee argued that appellant could not assert an attorney's lien, an equitable remedy, because appellant had an adequate remedy at law in the form of a separate civil suit in which appellant claimed that appellee "improperly solicited" appellant's clients. In response, appellant argued that it was entitled to a lien on the proceeds in this case under the doctrine of quantum meruit and requested an evidentiary hearing to determine the amount of its lien.

At a contentious motion hearing, the trial court stated in response to appellant's argument that "[n]obody's saying you're not entitled to a lien," and that the issue was rather "the amount of the lien." The trial court ruled that appellant was not entitled to an evidentiary hearing on that issue because such a hearing would "tie up judicial resources" and appellant would have the opportunity to conduct such a hearing in its separate civil suit with appellee. The trial court concluded that the separate civil suit would give appellant "[its] right to [its] remedy" and entered an order extinguishing appellant's lien.

On appeal, appellant argues that the trial court abused its discretion by extinguishing appellant's lien. We agree. The trial court's decision whether to impose an attorney's lien is reviewed for an abuse of discretion. *Reynolds v Polen*, 222 Mich App 20, 24; 564 NW2d 467 (1997). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 273; 761 NW2d 761 (2008).

"An attorneys' lien can be one of two kinds: (1) a general, retaining, or possessory lien, or (2) a special, particular, or charging lien." *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993). "The special or charging lien is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *Id.* "The attorney's charging lien creates a lien on a judgment, settlement, or other money recovered as a result of the attorney's services." *Id.*

Here, the trial court determined that appellant was entitled to a charging lien, and that decision is not contested on appeal. Therefore, we conclude that appellant properly asserted an attorney's charging lien on the settlement in this case that was, in part, the result of appellant's services. See *id.* The issue before us, then, is whether the trial court abused its discretion by extinguishing that lien.

Before an attorney is entitled to payment for services rendered, an attorney-client relationship "must be established by contract." *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 329; 536 NW2d 886 (1995). Here, plaintiff signed a contract with appellant, and, therefore, *plaintiff* "had the contractual obligation to pay [appellant] for services rendered." *Id.* The trial court incorrectly concluded that appellant's separate civil suit with appellee could calculate the value of appellant's lien in this case and provide appellant with its entitled remedy against plaintiff.

The dispute in this case was that, pursuant to a contract between plaintiff and appellant, appellant performed work on plaintiff's case for which appellant was never paid. Payment for appellant's work was dependent on plaintiff's recovery, if any (i.e., a contingency fee), but before any recovery could be realized, plaintiff discharged appellant. Plaintiff was later awarded damages pursuant to a settlement, yet appellant was not paid for its work. The dispute in this case is thus based on *plaintiff's* obligations to appellant; recovery in the separate civil suit, if appellant is even entitled to any recovery, is based on *appellee's* obligations to appellant. Regardless of whether an evidentiary hearing is held in the separate civil suit, appellant could still not collect from appellee compensation owed to appellant by plaintiff. Because only plaintiff, and not appellee, had an obligation to pay appellant for the services that appellant rendered in the underlying case, the trial court's decision that appellant could receive its remedy in its separate civil suit with appellee was outside the range of reasonable and principled outcomes.

Appellee argues that appellant cannot assert a lien because it has an adequate remedy at law in the separate civil suit. While it is true that a lien is an equitable remedy, see *George*, 201 Mich App at 477, and that, in general, "equity will not take jurisdiction of cases where a suitor has a full, complete, and adequate remedy at law," *Madugula v Taub*, 496 Mich 685, 706; 853 NW2d 75 (2014) (quotation marks and citation omitted), as previously explained, this case is about adjudicating plaintiff's, not appellee's, obligations to appellant. Further, although appellant could try to recover from plaintiff on their contingency-fee contract, there are two problems with doing so: first, "a client has an absolute right to discharge an attorney, and the discharge is not a breach of contract," and second, even if plaintiff somehow breached the parties' contract by discharging appellant, "[i]t would . . . be unjust to hold the client liable in damages in the amount of the full contract price for exercising that basic implied right." *Plunkett & Cooney*, 212 Mich App at 330. To solve these inequities, this Court in *Ambrose v Detroit Edison Co*, 65 Mich App 484, 491-492; 237 NW2d 520 (1975), ruled that "an attorney on a contingent fee arrangement who is wrongfully discharged, or who rightfully withdraws, is entitled to compensation for the reasonable value of his services based upon *quantum meruit*, and not the contingent fee contract." In *Reynolds*, 222 Mich App at 27, this Court clarified that

as long as a discharged attorney does not engage in disciplinable misconduct prejudicial to the client's case or conduct contrary to public policy that would disqualify any quantum meruit award, a trial court should take into consideration the nature of the services rendered by an attorney before his discharge and award attorney fees on a quantum meruit basis.

The record includes no evidence that appellant "engaged in disciplinable misconduct prejudicial to the client's case or conduct contrary to public policy." *Id.* Therefore, based on *Ambrose*, appellant's remedy could not be based on its contingent-fee contract with plaintiff, but rather could *only* be based upon quantum meruit, and "a claim in quantum meruit is equitable in nature." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 199; 729 NW2d 898 (2006). Accordingly, appellee's argument that appellant had an adequate remedy at law is without merit.

On remand, the trial court is to determine the reasonable amount owed appellant for the services it rendered in the underlying case. If necessary, the trial court should conduct an evidentiary hearing to determine the reasonable amount owed.

Revered and remanded for further proceedings. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Michael F. Gadola

/s/ Colleen A. O'Brien