STATE OF MICHIGAN

COURT OF APPEALS

JASON LIMBACHER,

Plaintiff,

v

BRISTOL WEST PREFERRED INSURANCE COMPANY, JOHN DOE, and JUDITH DAY,

Defendants,

and

THE SEVA LAW FIRM,

Appellant,

and

THE LAW OFFICES OF RICHARD R. MANNAUSA, PLC,

Appellee.

UNPUBLISHED
May 13, 2021

No. 353703
Oakland Circuit Court
LC No. 2018-169824-NF

Before: BOONSTRA, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Appellant, the Seva Law Firm (Seva), appeals by right the trial court's postjudgment order directing Seva to pay $8,272.55 to appellee, the Law Offices of Richard R. Mannausa, PLC (Mannausa), representing a portion of the attorney fees Seva received as a result of plaintiff's settlement with defendant Bristol West Preferred Insurance Company (BWPI). We vacate the postjudgment order and remand for further proceedings.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In October 2018, plaintiff hired Mannausa to represent him in his no-fault action against BWPI and other defendants. In exchange, plaintiff agreed to pay Mannausa one-third of any recovery obtained, after deduction of Mannausa's costs. On November 9, 2018, Mannausa filed a complaint on plaintiff's behalf, and it filed an amended complaint shortly thereafter. On May 1, 2019, Seva substituted as plaintiff's counsel, as reflected in a stipulated order that also provided for Mannausa to have a lien on any recovery for the value of the services it had rendered plaintiff up to that point. In January 2020, plaintiff entered into a settlement with BWPI; while the total settlement amount is not reflected in the record, the settlement provided that $19,725.13 in attorney fees would be payable to Seva.[1]

Shortly thereafter, Mannausa moved the trial court to enforce its lien, arguing that it was entitled to attorney fees in the amount of $24,800—49.6 hours at a rate of $500 per hour—plus $382.50 in costs. In response, Seva argued that Mannausa was only entitled to attorney fees on the basis of the percentage of work it had done on the case, not on the basis of an hourly rate, because it had agreed to work on a contingency basis. Seva also pointed out that plaintiff's settlement with BWPI provided for only $19,725.13 in attorney fees. Seva argued that Mannausa was, at most, entitled to 10% of the settled attorney fee after deducting the 40% referral fee that Seva owed to another law firm. In reply, and apparently accepting that it was limited to a percentage of the settled attorney fee, Mannausa argued that it was entitled to $9,500 in attorney fees and $382.50 in costs, which, combined, was just over 50% of the settled attorney fee.

At a hearing on the motion, Mannausa asserted that the work it performed—which Mannausa acknowledged included assisting plaintiff with matters that were not directly related to litigating his no-fault suit, such as assisting with his probation violations and retaining his chiropractic license—entitled it to 40% of the settled attorney fee. Seva argued that Mannausa's work on plaintiff's probation violations and chiropractic license should not be considered as they were unrelated to plaintiff's no-fault claims. The trial court found that $500 per hour was a reasonable rate for Mannausa's services, but noted that it was tasked with determining how much of the settled attorney fee should properly be allocated to Mannausa. The trial court declined to consider Seva's argument that this allocation should first account for the 40% referral fee owed by Seva, because Seva had not provided enough information for the court to determine whether that referral fee was reasonable or provided any legal citation supporting its assertion that Seva's referral fee should affect Mannausa's attorney fees. Without any further explanation, the court went on to state, in the conclusion of its opinion and order: "In consideration of the above facts and findings, the Court concludes that Mannausa's proposed distribution of 40%/60% is reasonable and fair. Mannausa is awarded an attorney fee in the amount of $7,890.05 (40% of $19,725.13) and costs in the amount of $382.50, for a total award of $8,272.55." Seva filed a motion for reconsideration, including with it an affidavit from its referring attorney and a spreadsheet of the time Seva spent working on the case. The trial court denied the motion.

This appeal followed.

[1] We will refer to this sum as "the settled attorney fee."

II. STANDARD OF REVIEW

We review for an abuse of discretion a trial court's award of postjudgment attorney fees. *Souden v Souden*, 303 Mich App 406, 414; 844 NW2d 151 (2013). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). "Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error, but questions of law are reviewed de novo[.]" *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005) (citations omitted). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 579; 939 NW2d 705 (2019) (quotation marks and citation omitted).

III. ANALYSIS

Seva does not dispute that Mannausa is entitled to a reasonable payment for its services rendered. But Seva argues that the trial court erred by determining that Mannausa was entitled to 40% of the settled attorney fee. We conclude that the trial court failed to make sufficient findings of fact to allow for meaningful appellate review, and that a remand for further proceedings is required.

"An attorney-client relationship must be established by contract before an attorney is entitled to payment for services rendered." *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 329; 536 NW2d 886 (1995). However, "[a]n 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." *Reynolds v Polen*, 222 Mich App 20, 24; 564 NW2d 467 (1997) (quotation marks and citation omitted). A charging lien gives an attorney "an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993). In other words, an attorney's charging lien "creates a lien on a judgment, settlement, or other money recovered as a result of the attorney's services." *Id*.

In this case, when Seva took over the prosecution of plaintiff's case in place of Mannausa, Seva and Mannausa stipulated to Mannausa's lien "on any proceeds recovered in this matter for the attorney services provided and costs incurred." Seva does not contest Mannausa's assertion that it is entitled to recover under that lien. Additionally, the parties appear to agree that Mannausa withdrew from plaintiff's case voluntarily; therefore, Mannausa is entitled to compensation on the basis of quantum meruit rather than under its contract with plaintiff. *Reynolds*, 222 Mich App at 24.

In cases such as this, in which two attorneys compete for the attorney-fee portion of a judgment or settlement, quantum meruit is generally calculated "as a percentage of the work completed." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 359; 657 NW2d 759 (2002). See also *Island Lake Arbors Condo Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 402; 837 NW2d 439 (2013) (instructing that, on remand, the fact finder should determine the cash value of the party's settlement, then "consider and compare the contributions to that recovery made by both"

attorneys). In determining a reasonable fee based on the relative contributions of the attorneys, a trial court should consider several, nonexclusive factors:

> (1) the professional standing and experience of the attorney[s]; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Morris v Detroit*, 189 Mich App 271, 278-279; 472 NW2d 43 (1991) (citation omitted).]

We conclude that the trial court erred because it failed to make sufficient findings of fact to enable meaningful appellate review. See *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010) (reversing and remanding because the trial court failed "to make findings of fact that [were] susceptible to appellate review"). First, the record does not reflect any analysis of the relative contributions of Seva and Mannausa, or of the factors addressed in *Morris*. Moreover, by accepting Mannausa's argument that it was entitled to 40% of the settled attorney fee, the trial court appears to have accepted Mannausa's argument that it should be compensated for its work on plaintiff's probation violations and chiropractic licensure issue. Yet, the trial court did not address Seva's argument that Mannausa's work on those other issues was unrelated to plaintiff's no-fault action. Further, there was no evidence presented as to how Mannausa's work regarding these other issues impacted plaintiff's settlement; all the trial court had before it was Mannausa's and Seva's unsupported—and contradictory—arguments. Without any actual evidence in the record, or findings of fact made on the matter, we cannot determine whether the trial court could properly include this work on the part of Mannausa in the determination of a reasonable fee under quantum meruit.

In addition, the trial court failed to make any findings regarding what portion of Seva's work on plaintiff's case was duplicative of Mannausa's work. When a former attorney bears responsibility for a change in counsel, the costs of any duplicative work caused by that change in counsel should be deducted from the former attorney's recovery. *Reynolds*, 222 Mich App at 30. Although Seva did not specifically draw the trial court's attention to this question, the trial court could not properly allocate the settled attorney fee between Seva and Mannausa without considering it. Finally, the trial court provided no substantive analysis of the effect of Seva's referral agreement upon the proper allocation of the settled attorney fee.

For these reasons, the trial court's order granting Mannausa 40% of the settled attorney fee must be vacated and the case remanded for further proceedings. On remand, the trial court must either hold an evidentiary hearing regarding the issues identified in this opinion, or permit the parties to file additional documentary evidence that will enable the trial court to make findings sufficient to enable meaningful appellate review.

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

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola