STATE OF MICHIGAN

COURT OF APPEALS

GEORGEANNA BARTH and PAUL BROSCHAY,

Plaintiffs -Appellants,

v

GEOFFREY N. FIEGER,

Defendant-Appellee.

and

NORTHLANDER CORP.,

Defendant.

UNPUBLISHED
January 22, 2013

No. 306078
Oakland Circuit Court
LC No. 10-108864-NO

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

In this attorney fee lien case, plaintiffs appeal the trial court's award of 90% of the disputed attorney fees to defendant Geoffrey Fieger and 10% to plaintiff Paul Broschay. We reverse and remand.

In February 2010, plaintiff Georgeana Barth was a resident of a hotel owned by defendant Northlander Corporation. There, she was subjected to a brutal sexual assault by an individual who gained access to her room with the help of his friend who worked at the front desk. In March 2010, Barth retained the Fieger firm to represent her claims against Northlander. During the time that plaintiff was represented by the Fieger firm, her case was handled exclusively by defendant Broschay. While employed with the Fieger firm, Broschay claims to have spent approximately 50 hours of time working on plaintiff's file. In May 2011, Broschay left the Fieger firm. Barth discharged the Fieger firm and retained Broschay independently to continue representing her on a contingency fee basis. Plaintiffs claim that Fieger began a "campaign of harassment" of Barth, demanding money and misrepresenting the degree of his personal involvement in her case.

In July 2011, on the eve of trial, Broschay successfully obtained a settlement on Barth's behalf in the underlying lawsuit against Northlander. The trial court entered an order dismissing the matter pursuant to the parties' settlement agreement. Broschay claims to have spent

approximately 50 hours of time on Barth's case after the discharge of the Fieger firm. After costs, the attorney fee in this matter was approximately $221,000.

On August 11, 2011, Fieger, as lienholder, filed a motion requesting an award of attorney fees. Fieger asserted that the Fieger firm "substantially performed the entire contingency undertaken in the retention agreement, and on a quantum meruit percentage basis is entitled to an award of a substantial portion (if not all) of the $221,415.82 fee." After hearing arguments, the trial court awarded the Fieger law firm 90% and Broschay 10% of the $221,000 attorney fee. The trial court entered an order consistent with its ruling, and Broschay timely filed this appeal.

We review the decision whether to enforce a lien such as this for an abuse of discretion. *Reynolds v Polen,* 222 Mich App 20, 24, 27; 564 NW2d 467 (1997). Plaintiffs first argue that the trial court abused its discretion in failing to consider whether Fieger's alleged misconduct resulted in a forfeiture of the Fieger firm's lien interest. We agree. The trial court failed to address this issue. When counsel brought up the issue at the hearing, the trial court stated, "I'm not going to hold an evidentiary hearing on this."

"[T]he law creates a lien of an attorney upon the judgment or fund resulting from his services." *Ambrose v Detroit Edison Co,* 65 Mich App 484, 487-488; 237 NW2d 520 (1975). If an attorney's employment is prematurely terminated before completing services contracted for under a contingency fee agreement, the contingency fee agreement no longer operates to determine the attorney's fee and the attorney is entitled to compensation for the reasonable value of his services on the basis of quantum meruit, provided that his discharge was wrongful or his withdrawal was for good cause. *Reynolds*, 222 Mich App at 27; see also *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 329-30; 536 NW2d 886 (1995); *Morris v Detroit*, 189 Mich App 271, 278; 472 NW2d 43 (1991); *Ecclestone, Moffett & Humphrey, PC v Ogne, Jinks, Alberts & Stuart, PC*, 177 Mich App 74, 76; 441 NW2d 7 (1989); *Ambrose*, 65 Mich App at 488-492. "[A]s 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." *Reynolds*, 222 Mich App at 27. However, "quantum 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." *Id.* at 26.

In their responsive pleadings[1], plaintiffs alleged that Fieger engaged in interference with a known contractual relationship, in direct solicitation, and in misconduct. Additionally, plaintiffs contend that Fieger engaged in ex-parte communication with the client of another attorney (violations of MRPC 4.2 and 7.3(b)(1)-(2)). We conclude that the trial court erred in failing to consider these allegations, which, if proven, could result in a forfeiture of any right to

[1] We note that Fieger contends that Broschay failed to file any responsive pleadings with the trial court. The record shows that Broschay did file a timely response on August 19, 2011.

Fieger's lien. On remand, the trial court is instructed to hold a hearing on the issue of whether Fieger's behavior constituted misconduct.

Next, plaintiffs contend that the trial court erred by failing to apply quantum meruit, and by refusing to consider plaintiffs' pleadings, affidavits, and other record evidence in calculating the division of the attorney fee. We agree.

If the trial court concludes that Fieger committed unethical and professional misconduct that resulted in a forfeiture of his firm's lien interest, then the trial court need not engage in a quantum meruit analysis. However, if the trial court does not conclude that Fieger's conduct rose to the level of unethical and professional misconduct, then the court must consider the pleadings, affidavits, and other record evidence in order to apply quantum meruit to the division of the attorney fees.

The phrase "quantum meruit" means "'as much as deserved.'" *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 359; 657 NW2d 759 (2002) (quoting Black's Law Dictionary (6th ed, 1990), p 1243). It is "an equitable principle that measures recovery under an implied contract to pay compensation as reasonable value of services rendered." *Id.* at 358 (quotation marks omitted). Black's Law Dictionary defines "quantum meruit" as follows:

> [Latin "as much as he has deserved"] (17c) 1. The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship. 2. A claim or right of action for the reasonable value of services rendered. 3. At common law, a count in an assumpsit action to recover payment for services rendered to another person. • Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff can recover even if the contract is unenforceable. . . . [BLACK'S LAW DICTIONARY (6th ed 1990).]

The method by which quantum meruit recovery of attorney fees is determined in Michigan where there exists a contingency fee agreement and the attorney was wrongfully discharged[2] or rightfully withdrew was outlined in *Morris*, 189 Mich App at 278-279:

> We recognize that there is no precise formula for assessing the reasonableness of an attorney's fee. Nevertheless, in *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), this Court enumerated several nonexclusive factors appropriately considered for such a determination, including:
>
> (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the

[2] Or the attorney was discharged with some justification, just not enough to be wrongful.

> difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.
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> While the trial court should consider these factors, its decision need not be limited to these guidelines. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982)[, mod by *Smith v Khouri*, 481 Mich 519, 522; 751 NW2d 472 (2008)]; *Smolen v Dahlmann Apartments, Ltd*, 186 Mich App 292, 296; 463 NW2d 261 (1990). We believe that the trial court may also properly consider that the attorney originally agreed to render services on a contingency basis. Such a consideration would allow the court to consider the degree of risk undertaken by an attorney who was prematurely discharged. Accordingly, it would be appropriate for the court to award the attorney a larger fee, provided that the fee was not in excess of that permitted under MCR 8.121.

A trial court may also consider the factors listed in MRPC 1.5(a), which overlap the *Crawley* factors. *Smith*, 481 Mich at 529. In *Reynolds*, 222 Mich App at 30, this Court added:

> We believe that a trial court is in the best position to assess an attorney's contribution to a case because trial courts are aware of the strengths and weaknesses of cases before them, the time and effort expended by the attorneys, and changes in the parties' leverage resulting from changes in counsel (e.g., due to attorneys' skill or reputation). We believe that the *Morris* approach to quantum meruit-one compensates an attorney for completed work on the basis of evaluating as closely as possible the actual deal struck between the client and the attorney rather than an assessment of reasonable compensation in the abstract-is also the proper means of evaluating quantum meruit in cases such as the instant one.

Similarly, Michigan Courts have identified the following nonexhaustive list of factors to be considered in determining the reasonable value of fees on the basis of quantum meruit, which are virtually identical to those referenced in *Paolillo*:

> (1) the professional standing and experience of the attorney; (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 City of Detroit*, 189 Mich App 271, 279; 472 NW2d 43 (1991) (citing *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973)).]

In reviewing the transcript of the hearing, it is clear that the trial court could not have performed a proper assessment of the quantum meruit in this case when it acknowledged that it had not even read plaintiffs' responsive pleadings. It is unclear from the record exactly how the trial court arrived at its 90/10 award. The court ignored the evidence presented, eschewing plaintiffs' responsive pleadings, and instead relied on its own personal experience:

> Okay. You know, I've done, not Plaintiff's work, but I've done this kind of work and I would imagine it's even more so on the Plaintiff's part. The lion's share of

> the work is done at the beginning of the file. All the research, all the pleadings, you know, I would think that takes the most in any kind of file really.

This was not a proper analysis, given the availability of actual documentation about the amount of time Broschay spent on this case before and after leaving the Fieger firm. Therefore, should a quantum meruit analysis be necessary, we instruct the trial court to review the documentary evidence provided by the parties and to reach a conclusion based on this evidence.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Donald S. Owens
/s/ Christopher M. Murray