STATE OF MICHIGAN

COURT OF APPEALS

KATRINA DEDVUKAJ,

Plaintiff,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

JAMES P. MONTAGNE,

Appellant,

and

248-LAWYERS, P.C.,

Appellee.

UNPUBLISHED
February 5, 2013

No. 306276
Wayne Circuit Court
LC No. 10-007593-NF

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Appellant appeals as of right from an order for distribution of attorney fees. We affirm.

Appellant argues that the trial court erred when it failed to award him "99 44/100 [percent]" of one-third of the case-evaluation amount obtained by plaintiff. He argues that because he worked on the case "from inception through case evaluation," he should receive the bulk of the one-third contingency fee for which he had previously contracted.

"[T]he amount awarded as reasonable attorney fees is reviewed for an abuse of discretion." *McNeel v Farm Bureau General Insurance Co of Michigan*, 289 Mich App 76, 97; 795 NW2d 205 (2010). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id.*

"If an attorney enters into a contingency fee agreement [in a case such as the present one], the receipt, retention or sharing of the compensation which is equal to or less than one-third the net amount recovered is deemed fair and reasonable." *Morris v City of Detroit*, 189 Mich App 271, 278; 472 NW2d 43 (1991); see also MCR 8.121(A) & (B). If an attorney is discharged before completing the services under the contingency-fee agreement, the attorney is entitled to compensation for the reasonable value of his services based on quantum meruit, provided that he was wrongfully discharged or withdrew with cause. *Morris*, 189 Mich App at 278. In determining a reasonable fee, a trial court should first determine the fee customarily charged in the locality for similar legal services, through consideration of reliable surveys or credible evidence of the legal market. *Bonkowski v Allstate Insurance Co*, 281 Mich App 154, 175; 761 NW2d 784 (2008). The customary fee should then be multiplied by the reasonable number of hours expended in the case, and the result may then be adjusted by consideration of various factors. *Id*. These may include:

> (1) the skill, time and labor involved; (2) the likelihood, if apparent to the client, that the acceptance of the employment would preclude other employment by the lawyer; (3) the fee customarily charged in that locality for similar services; (4) the amount in question and the results achieved; (5) the expense incurred; (6) the time limitation imposed by the client or the circumstances; (7) *the nature* and length *of the professional relationship with the client*; (8) the professional standing and experience of the attorney; and (9) whether the fee was fixed or contingent. [*McNeel*, 289 Mich App at 100 (internal citations and quotation marks omitted; emphasis added).]

Appellant contends that he completed over 99 percent of the work on the case and that he is entitled to "99 44/100 [percent]" of the one-third contingency fee, plus costs, for a total of $7546.05. The trial court awarded appellant $2,644.20 in attorney fees and costs, using quantum meruit and a fee of $150 an hour.[1]

Although plaintiff discharged appellant from the case, there is no record evidence from which to conclude that appellant was discharged for cause. Moreover, even though he worked on the case until close to the end, he did not in fact see the case through to completion. As such, the trial court did not err in using quantum meruit to determine a fee. See *Morris*, 189 Mich App at 278 ("Jasmer, who had entered into [a contingency-fee] agreement, was discharged before completing one hundred percent of the services contracted for under the contingency fee agreement. Therefore, the contingency fee agreement no longer operated to determine Jasmer's fee, and Jasmer was entitled to compensation for the reasonable value of his services on the basis of quantum meruit . . . ."). Appellant argues that, like the attorney in *Morris*, *id*. at 280, he should be awarded "99 44/100 percent" of the one-third contingency fee.

However, *Morris* simply does not indicate that in every case in which an attorney works through to a case evaluation or other significant event, that attorney should receive nearly the

[1] As discussed *infra*, appellant also received approximately $3,900 in attorney fees earlier in the case, in connection with a wage-loss claim.

entire one-third contingency fee. In *Morris*, *id.*, the trial court had initially awarded the attorney in question the entire contingency fee, and the Court of Appeals saw fit to *reduce* that fee. The *Morris* Court in fact paid deference to the trial court when it stated that it would "vacate the trial court's August 4, 1989, order awarding Jasmer the entire one-third and remand for entry of an award of attorney fees consistent with the trial court's finding" that Jasmer had completed 99 44/100 percent of the actual work on the case. *Id.* (emphasis added).

In the present case, we again pay deference to the trial court in accordance with the abuse-of-discretion standard of review. The trial court took into account the unique circumstances of this case. Plaintiff claimed 43 hours total for working on the case (although he based his attorney-fee request on the "99 44/100 percent" argument set forth above). However, he had previously received $3,900.64 for proceedings (included in those 43 hours) relating to wage-loss benefits. In addition, appellant had been faxed, on March 15, 2011, a termination document from plaintiff, but he went on to expend approximately 15 more hours on the case. The trial court stated:

> But until there's an order entered, he's still considered at [sic] attorney. For him to have not drafted and filed the case eval and attended case eval, would have been malpractice on his part. So I can't take those hours away from him and will not take those hours away from him. In addition to that, he was successful and you accepted it.
>
> This is what I'm going to do; I'm going to give him his 43 hours at a rate of $150 an hour which will significantly reduce the attorney fee.[2]

The court stated that appellant would receive $131 for costs. The court then agreed with plaintiff's attorney that the hours expended towards the initial $3,900.64 payment should be subtracted from the total award.[3] Without further explication on the record, the court entered an order awarding $2,644.20 in fees and costs. After subtracting from this total amount the $131 in costs mentioned by the trial court, it appears that the trial court awarded appellant for approximately 16.75 hours at the stated rate of $150 an hour. These hours largely represented the work put in after the March 15 facsimile.

We cannot find an error requiring reversal in this case. Appellant was compensated for his work relating to the wage-loss issue. As for the bulk of the remaining hours, the trial court applied a $150-an-hour rate, and although appellant appears to argue, tangentially, that a higher rate should apply (assuming that the attorney-fee award is not based on the contingency-fee

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[2] Forty-three multiplied by $150 equals $6450. Below, as on appeal, appellant had requested "$7,414.35 plus costs of $131.70." Based on a document attached to his appellate brief, it appears that appellant reached the $7,414.35 figure by taking the case-evaluation award of $22,500, subtracting various fees to reach a total of $22,368.30, dividing this figure by three, and then multiplying the resulting figure by .9944 (99 44/100 percent).

[3] Appellant also agreed, on the record, with this proposition.

agreement), he does not sufficiently develop this argument on appeal but instead focuses on his "99 44/100 percent" argument. Moreover, the circumstances were unique in that appellant did receive a document relating to termination of his services but arguably did not follow up in an appropriate manner; it was not unreasonable for the trial court to apply a lower-than-average fee. In addition, at the attorney-fee hearing, after the court rejected appellant's argument based on *Morris*, appellant raised no further objection to the $150 rate imposed by the trial court. Under the circumstances, reversal is unwarranted.[4]

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter

[4] We reject the argument of 248-Lawyers, P.C., that appellant must return any attorney fees he received, because 248-Lawyers did not file a cross-appeal and because its argument (that appellant should return all attorney fees received in light of his alleged professional misconduct) was not preserved for appeal. See *Truel v Dearborn*, 291 Mich App 125, 137; 804 NW2d 744 (2010), and *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).