

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000689-MR

ERROL COOPER AND LEE VAN HORN

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 04-CI-03207

DEREK GORDON AND  
RACHAEL YAVELAK

APPELLEES

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MOORE, AND NICKELL, JUDGES.

LAMBERT, JUDGE: Attorney Errol Cooper appeals the circuit court's division of attorney's fees between himself and attorneys Derek Gordon and Rachael Yavelak, who are with the law firm of Angellis & Gordon, regarding a settlement reached in the underlying personal injury action. For the reasons set out herein, we affirm the circuit court's fee division.

## **Background**

This action began as a personal injury case arising from a vehicular collision between one James Crawford and James Haney and Haney's minor daughter, who were riding a motorcycle. The collision killed James Haney and injured his daughter. Following the collision and Haney's death, his widow and daughter brought suit against Crawford under the representation of attorney Erroll Cooper.

The record shows that Cooper obtained a settlement offer of \$25,000 for Haney's widow, which she accepted. But substantial evidence in the record indicates that Cooper did not obtain a settlement offer for Haney's injured daughter and also failed to abide by her instruction not to seek settlement but take the case to trial. Also, substantial evidence indicates that Cooper failed to communicate with Haney's daughter and allowed her claim to remain on the docket for two years.

Eventually, Haney's daughter discharged Cooper and hired the law firm of Angellis & Gordon to represent her. Her new counsel pushed for trial as she desired, but the circuit court ultimately ordered a settlement hearing. At the settlement hearing, Haney's daughter eventually agreed to accept a \$25,000 settlement offer from Crawford's insurance carrier, which represented the policy limits.

Following the settlement of the decedent's daughter's claim, the circuit court conducted a fee-division hearing because Cooper had filed an attorney's fee lien after being discharged. At the hearing, the circuit court took evidence from Haney's daughter, from counsel, and from a representative of Crawford's insurance carrier. At the

conclusion of the hearing, the circuit court found that Haney's daughter had properly discharged Cooper for cause. Based on this finding, the circuit court (1) awarded the firm of Angellis & Gordon a fee of \$7,807.50 for pushing the case to settlement; and (2) awarded Cooper a fee of \$525.83 for filing the initial complaint. Cooper now appeals, contending that he is entitled to one-third of the second \$25,000 settlement.

### **Issue and Legal Standards**

This case turns on the question whether attorney Errol Cooper was discharged for cause. In *LaBach v. Hampton*, 585 S.W.2d 434 (Ky.App. 1979), we strongly implied that an attorney discharged by a client for cause is not entitled to a full fee, but instead, at most, *quantum meruit* for any services rendered prior to his discharge. The circuit court's opinion assumes this construction of *LaBach* is controlling, and the papers lodged with us by both parties make a similar assumption. Thus, we hold that the most an attorney discharged for cause may receive in a fee-division dispute is *quantum meruit* for beneficial services rendered prior to his discharge. Additionally, we note that *LaBach* further indicates that, in a fee-dispute, the trial court is a proper finder of fact. Therefore, under CR 52.01, the circuit court's factual and credibility determinations are binding on us unless clearly erroneous.

### **Analysis**

After reviewing the record, we find that the trial court's factual determination that Cooper was properly discharged for cause is not clearly erroneous because substantial testimony, which the circuit court is entitled to give credence,

indicates that Cooper did not exercise due diligence in his representation of Haney's injured daughter. The decedent's daughter testified that, after Cooper filed a complaint on her behalf, he (1) refused to take the case to trial; and (2) failed to communicate with her. Moreover, an agent of Crawford's insurance carrier indicated that he did not extend a settlement offer to Cooper for Haney's daughter because Cooper failed to provide him with any documentation regarding her injuries. He further testified that Cooper only extended a settlement offer for the decedent's daughter's injuries after she was represented by the firm of Angellis & Gordon, which pushed her case for trial.

Thus, despite any rebuttal testimony below, the circuit court was completely entitled to weigh the witnesses' relative credibility and make the fact findings that it did in its 12-page written opinion. *See* CR 52.01. Cooper's fee award of \$525.83 does not strike us as unjust or inequitable and does not contravene *LaBach v. Hampton*, 585 S.W.2d 434 (Ky.App. 1979), the authority upon which Cooper relies, because the binding factual determinations of the circuit court indicate that (1) Cooper did little more than file an initial complaint and largely ignored his client and her instructions; and (2) that Angellis & Gordon diligently worked on the case and eventually resolved the matter.

### **Conclusion**

For the foregoing reasons, we affirm the fee division of the Fayette circuit court in this case.

ALL CONCUR.

BRIEF FOR APPELLANT:

Errol Cooper  
Lee Van Horn  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Derek G. Gordon  
Angellis & Gordon  
Lexington, Kentucky