RENDERED: OCTOBER 26, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000988-MR

TONY KAMBER AND
KAMBER ARCHITECTURAL PRODUCTS, LLC — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE IRV MAZE, JUDGE
ACTION NO. 08-CI-010034

FRANK ABRAMS; ABRAMS ARCHITECTURAL
PRODUCTS, INC.; SCOTT STOUT;
AND STOUT AND HEUKE — APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: COMBS AND STUMBO, JUDGES; LAMBERT, SENIOR JUDGE.[1]

STUMBO, JUDGE: Tony Kamber appeals from a decision of the Jefferson Circuit Court awarding attorney fees to his former counsel, Scott Stout, pursuant to

[1] Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Kentucky Revised Statute(s) (KRS) 376.460, Kentucky's attorney lien statute. Kamber argues that the lien was invalid, that Stout should not have been awarded the fees, and that the trial court awarded Stout an excessive amount in fees. We find that the trial court erred in its calculation of fees, but affirm in all other respects.

Stout and Kamber entered into an attorney-client relationship in October of 2008. Fees were to be paid on a contingency basis, with Stout receiving 33.3% of any judgment or settlement in Kamber's favor. Stout and Kamber had been personal friends for years prior to the engagement of this relationship. The underlying case involved a contractual dispute between Kamber and Frank Abrams.

The case proceeded without incident until the deposition of Kamber on March 2, 2010. Prior to the deposition, Abrams had offered $25,000 to settle the case. This offer was rejected. Kamber had offered to settle the case for $65,000. This, too, was rejected. Following the deposition, Kamber expressed to Stout a desire to speak privately with Abrams because he and Abrams had also been friends for a number of years. Stout agreed to the request. Stout testified that he agreed, but told Kamber not to discuss the case with Abrams. Kamber testified that Stout did not tell him not to discuss the case.

Beginning on March 3, Kamber began exchanging e-mails with Stout. The final e-mail was on March 5. The following summarizes these e-mails:

1. March 3, 2010 e-mail: Kamber e-mailed Stout asking about his ability to successfully try the case, the possibility of changing representation, and the amount Kamber would owe Stout if there was a change in representation.
2. March 3: Stout replied that he had no problem taking the case to trial, but that if Kamber chose new counsel, he would owe Stout a fee of $8,333. This was 33.3% of the last settlement offer of $25,000.
3. March 4: Kamber replied that he did not feel he had received $8,333 worth of representation. He then set out three options for proceeding. The first is that they go forward together, providing they could come up with a strategy on how to go forward and defend against the weaknesses of the case. The second would be to get another lawyer in the firm to take over the case. The third option was for Kamber to find all new representation and Stout to withdraw from the case. Kamber also discussed how he thought Stout had disregarded the planned strategy for the March 2 deposition. Kamber also asked why they had allowed the opposing party to not provide certain pieces of discovery. Kamber also mentions that he had spoken to Abrams, but does not go into detail as to what was discussed.

4. March 4: Stout replies that he is withdrawing as counsel because the attorney-client relationship has deteriorated.

5. March 4: Kamber replies asking how much he currently owes Stout.

6. March 5: Stout replies that Kamber owes 33.3% of the last settlement offer of $25,000.

Stout did indeed end the attorney client relationship and withdrew from the case. Stout then secured a lien for $8,333, or 33.3% of the $25,000 settlement offer. The case between Kamber and Abrams progressed and was settled for an undisclosed amount. A hearing on the lien was held on February 2, 2011. Kamber, Stout, and Abrams's trial counsel testified. The e-mails were also entered into evidence.

On March 25, 2011, an order was entered which awarded Stout $7,275 in attorney fees. This amount was awarded on a *quantum meruit* basis and was calculated using an hourly rate of $150. The trial court based the award on the cases of *Baker v. Shapero*, 203 S.W.3d 697 (Ky. 2006) (holding that when an attorney employed under a contingency fee contract is discharged without cause before the completion if the contract, he or she is entitled to recover attorney fees based on *quantum meruit*), and *Lofton v. Fairmont Specialty Ins. Managers, Inc.*, 367 S.W.3d 593 (Ky. 2012) (holding that an attorney employed under a contingency fee contract can recover attorney fees based on *quantum meruit* after

he voluntarily withdraws from a case, but only if the withdrawal is done with just cause).[2]

Kamber then filed a motion to alter the order arguing that the trial court awarded Stout too much in attorney fees. He also claimed that the trial court did not state sufficient findings regarding the just cause issue of attorney fees based in *quantum meruit*. On May 3, 2011, the trial court entered an order amending its prior order. The order stated that Stout had just cause to withdraw because Kamber had directly negotiated a settlement with Abrams against the advice of Stout. The trial court also found that the amount of attorney fees awarded was appropriate. This appeal followed.

Kamber's first argument on appeal is that the trial court erred in awarding Stout $150 an hour for 48.5 hours of work, for a total of $7,275. We agree. The Court of Appeals is entitled to

> set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men."

Moore v. Asente, 110 S.W.3d 336, 353-354 (Ky. 2003)(citations omitted). Here we find that the findings of the trial court regarding this issue were clearly erroneous because they were not supported by the evidence.

[2] *Lofton* was not a final case at the time the order was entered. It has since been finalized.

> *Quantum meruit* is an equitable remedy invoked to compensate for an unjust act, whether it is harm done to a person after services are rendered, or a benefit is conferred without proper reimbursement. It, therefore, entitles the one who was harmed to be reimbursed the reasonable market value of the services or benefit conferred.

Lofton at 597, citing BLACK'S LAW DICTIONARY (9th ed. 2009). The trial court is authorized to determine the reasonable amount of fees in a *quantum meruit* case. *See Bradley v. Estate of Lester*, 355 S.W.3d 470 (Ky. App. 2011). However, that amount must be within the range of values established by the witnesses. *Underwood v. Underwood*, 836 S.W.2d 439, 444 (Ky. App. 1992), *overruled on other grounds by Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001). The only amount based on *quantum meruit* submitted to the trial court was $100 an hour. Abrams's attorney did testify that he charged more than $100 an hour, but he did not state an actual amount. While the $150 an hour amount the trial court utilized might actually be a reasonable amount for this type of case, there was no evidence to support it. We therefore reverse and remand for a recalculation of fees based on the $100 an hour amount presented to the trial court.

Kamber's second argument on appeal is that the attorney lien was invalid because the amount originally sought was wrong and went against case law. We disagree.

> Each attorney shall have a lien upon all claims, except those of the state, put into his hands for suit or collection or upon which suit has been instituted, for the amount of any fee agreed upon by the parties or, in the absence of such agreement, for a reasonable fee. If the action is

> prosecuted to a recovery of money or property, the attorney shall have a lien upon the judgment recovered, legal costs excepted, for his fee. If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien.

KRS 376.460.

Stout's notice of attorney lien stated that he was seeking to recover $8,333, which was 33.3% of the $25,000 settlement offer. Kamber argues that this amount was materially false because it was based on the contingency fee agreement and not an amount based in *quantum meruit*. Kamber claims that because the amount was wrong it was in violation of *Baker v. Shapero*, *supra*, and the lien should be held void *ab initio*.

KRS 376.460 allows an attorney to recover his fees. The statute states that this fee can be based on an amount agreed to or a reasonable fee. This implicates fees based on contract and *quantum meruit*. Furthermore, at the time Stout entered his lien, the case law concerning attorney fees when an attorney voluntarily withdraws was in flux. *Baker v. Shapero* concerned an attorney being fired by his client, which is distinguishable from the case at hand. *Lofton*, which controls this case, was not final. The trial court properly awarded a fee based on *quantum meruit* and not the contingency fee amount. The lien was appropriate.

Kamber's final argument is that there was no evidence to support the trial court's finding that Stout withdrew for just cause. The trial court specifically set out the facts surrounding Stout's just cause for withdrawing in its amended order. The trial court found that Stout had no choice but to withdraw because Kamber had

negotiated a settlement directly with Abrams against his advice. We find this finding clearly erroneous, but affirm on other grounds. *See O'Neal v. O'Neal*, 122 S.W.3d 588 (Ky. App. 2002) (allowing an appellate court to affirm on an alternate theory not relied upon by the trial court).

The finding of the trial court in its amended order is clearly erroneous because at the time Stout withdrew as counsel, he did not know Kamber had negotiated a settlement amount with Abrams. All Stout knew was that Kamber had spoken to Abrams; however, as previously stated, Kamber asked Stout's permission before he spoke to Abrams. Any alleged settlement negotiations had between Kamber and Abrams was unknown to Stout; therefore, it could not be the reason for his withdrawal.

We find that the trial court set forth specific findings regarding the just cause issue in its original order of March 25, 2011; therefore, we affirm on other grounds. In the March 25 order, the trial court stated:

> Unlike Lofton, however, there were some acts on the part of Kamber to fray the attorney-client relationship. His conversation with Abrams was done after Kamber consulted with Stout; however, Stout expressly stated that his approval of the conversation between Kamber and Abrams was contingent on them not discussing settlement without counsel. Additionally, Kamber intimated that he intended to end his attorney-client relationship with Stout. Kamber also repeatedly questioned Stout's ability to effectively represent him despite assurances from Stout that he would be able to handle the case through trial. Kamber is thus not blameless in the destruction of the attorney-client relationship created with Stout.

All of these facts were contained in the e-mails exchanged between Kamber and Stout. Even though Kamber expressed a wish to maintain the relationship with Stout, there was substantial evidence to support Stout's withdrawal. "Thus, '[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal,' and appellate courts should not disturb trial court findings that are supported by substantial evidence." *Moore v. Asente* at 354 (citation omitted).

Based on the foregoing, we reverse and remand for a new calculation of attorney fees to be awarded to Stout, but affirm the trial court's judgment on all other issues.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Kirk Hoskins
Louisville, Kentucky

BRIEF FOR APPELLEES SCOTT STOUT AND STOUT AND HEUKE:

Robert C. Heuke, Jr.
Louisville, Kentucky