RENDERED: FEBRUARY 27, 2015; 10:00
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-002163-MR

LAW FIRM OF FLORA TEMPLETON STUART — APPELLANT

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 10-CI-00150

CROCKER LAW OFFICE, PLLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, D. LAMBERT, AND STUMBO, JUDGES.

KRAMER, JUDGE: The Law Firm of Flora Templeton Stuart (the "Stuart Firm") appeals an order and judgment of the Warren Circuit Court which resolved an attorney's fee dispute between the Stuart Firm and the appellee, Crocker Law Office, PLLC. Upon review, we affirm.

The procedural history and factual findings recited in the circuit court's order and judgment are thorough, undisputed, and consistent with our own assessment of the record. We therefore adopt them as follows:

> On December 27, 2006, Wyonia Butler was injured when her car was struck by a garbage truck insured by KACo.[1] She sustained neck and back injuries. Flora Templeton Stuart had previously represented her in a motor vehicle accident case approximately four years earlier, so Ms. Butler contacted Ms. Stuart on February 7, 2007. On March 2, 2007, Ms. Butler executed and returned to Ms. Stuart's office the Contingent Fee Agreement under which Ms. Stuart would receive an attorney fee of 1/3 of any recovery. Soon thereafter, Ms. Stuart began to collect medical records from Ms. Butler's healthcare providers, and continued to obtain records periodically for the next two years.
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> Additionally, Ms. Stuart sent out letters, including letters to KACo announcing her representation of Ms. Butler and requesting insurance coverage information. She also wrote Medicare to notify them of her claims. The plaintiff's[2] case management software produced five pages of "case notes" reflecting many of the actions taken on behalf of Ms. Butler by the plaintiff. Much of the actions were undertaken by paralegals, which is not unusual in these types of cases.
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> When Ms. Stuart began representing Ms. Butler for this injury in March of 2007, Ms. Butler was still undergoing medical treatment and had not reached maximum medical improvement. Ms. Stuart and her staff had discussions with the plaintiff regarding her medical treatment and recommended a physician in Nashville to her. Ms. Butler ultimately had surgery in January of 2009, and was released by her surgeon in March of 2009.

[1] Kentucky Association of Counties All Lines Fund Trust.

[2] To clarify, the "plaintiff" described in the circuit court's opinion is the Stuart Firm, and the "defendant" is the Crocker Law Office.

During the period of time from March of 2007, to March of 2009, the testimony, exhibits, and case management notes reflect numerous communications between the plaintiff and Ms. Butler, as well as between the plaintiff and her treating physicians in obtaining records. It appears that Ms. Stuart advised Ms. Butler that it would be optimal for Ms. Butler to reach maximum medical improvement prior to attempting to settle the case. Ms. Butler ultimately had surgery performed by a Nashville orthopedic surgeon, Dr. Schoettle, a surgeon recommended by Ms. Stuart, on January 7, 2009. After Dr. Schoettle released her from his care in March of 2009, the plaintiff and Ms. Butler began discussing their approach to settlement negotiations. Presumably, Ms. Stuart, as well as her staff, would have reviewed medical and other records to understand the facts and formulate a plan. At this point, it appears that Ms. Butler was very satisfied with the plaintiff's representation, with Butler sending a thank you note to the plaintiff on March 31, 2009. Ms. Stuart had a telephone conference with Ms. Butler on March 24, 2009, which addressed Ms. Butler's pre-existing injuries and previous surgeries and, apparently, resulted in authorization for Ms. Stuart to propose a settlement of $300,000, plus PIP. Follow-up letters confirmed this authority.

On April 22, 2009, Ms. Stuart sent KACo a detailed demand letter and settlement package with documentation. The 12-page demand letter was the culmination of a joint effort between Ms. Stuart and Leeann Darling, the paralegal, who organized the file and assisted in pulling together necessary information and documentation for the settlement demand. Ms. Stuart reviewed medical bills, records, and other information and an initial draft of the settlement letter was prepared by Ms. Darling for Ms. Stuart's review and revision. Ms. Stuart made several revisions, and ultimately the settlement package was forwarded to KACo. After the initial demand letter was sent on April 22, 2009, Ms. Butler again, on May 1, 2009, sent a letter of appreciation to Ms. Stuart and her staff.

KACo's insurance adjuster, Karen Lasch, responded to the settlement demand on May 12, 2009, with a telephone call to Ms. Stuart and requested additional information and medical documentation regarding Ms. Butler's pre-existing injuries and medical treatments, including 10 years of medical records, 5 years of Butler's tax returns, and the amount of the Medicare lien. The exhibits show that this information was collected by Ms. Stuart's staff through communications with Ms. Butler and her family physician, and on May 28, 2009, Ms. Stuart sent Ms. Lasch a letter with some of that documentation, with the medical records being sent to KACo on June 3, 2009. The turnaround time for providing this information was reasonable.

On July 15, 2009, Christy Pearson calculated the Medicare lien and estimated it to be $30,000. She apparently discussed this matter with Ms. Stuart on that date. It appears the estimate would have been done at that time in preparation for discussing settlement further with Ms. Butler in order to advise her of the net amount.

On July 10, 2009, KACo made an initial settlement offer of $112,124. Ms. Stuart sent a letter to Ms. Butler at that time advising her of the offer, requesting authority to accept $125,000, plus PIP, but intending to make a counter offer of $220,000, plus PIP. Ms. Butler responded on July 15, 2009, with a letter to the paralegal, Leeann Darling, expressing concern about the progress of negotiations and questioning the amount of the settlement, indicating that she believed she was being asked to accept the latest offer. She asked about how much she still owed to her doctors and any potential Medicare lien, as well as potential future bills. As a result, the next day, either Ms. Stuart or her paralegal sent Ms. Butler a letter clarifying that she was requesting authority to make a counter demand of $220,000, authority to settle the case for $125,000, and that she believed the case would settle between those two amounts. She also assured Ms. Butler that she would not make a settlement demand without express authority to do so.

On July 23, 2009, Ms. Butler spoke by telephone with Ms. Darling regarding the medical liens. By this time, Christy Pearson had already calculated an estimate of $30,000 for the Medicare lien.

On July 29, 2009, Ms. Stuart sent a new demand letter to Ms. Lasch with a counter offer of $220,000, plus medical expenses. Ms. Lasch responded by email on July 30, 2009, with her counter offer of $142,500, including all subrogation expenses from PIP and Medicare. Ms. Stuart then set up a meeting to discuss settlement negotiations with Ms. Butler on August 4, 2009, at Ms. Stuart's office.

Ms. Butler had begun communicating with Cindy Crocker of Crocker Law Offices on or about July 29, 2009, when they exchanged emails. This is before KACo made its counter offer of $142,500. Ms. Butler complained to Ms. Crocker that Leeann Darling, the paralegal, had "raised her voice" to Ms. Butler and that she and Ms. Darling had "clashed." This conflicts somewhat with the prior correspondence; however, this Court has no doubt that tensions and emotions began to run high at this point because of the natural pressure of settlement negotiations and of having to make ultimate decisions regarding the disposition of the case.

At the August 4th meeting between Ms. Butler, Ms. Stuart and her paralegal, Ms. Darling, Ms. Stuart summarized how the negotiations had progressed, the offers and counter offers made, and the option of filing a lawsuit if the matter could not be settled. Also at this meeting, it appears Ms. Butler was given a lien estimate of approximately $30,000 in order to estimate the "walk away" amount Ms. Butler would receive after attorney fees and liens were paid. Ms. Pearson's testimony was credible that she prepared the calculations for this meeting on July 15, 2009, on a handwritten sheet that was given to a secretary to prepare for the client meeting. Though Ms. Pearson did not attend that meeting, it strains belief that the estimate would not have been presented to Ms. Butler or used. Though Ms. Butler denied in her testimony that she ever got an estimate in any format, this Court believes she was advised of the

lien estimate of $30,000. Ms. Butler also, during that meeting, wanted to pursue punitive damages, but Ms. Stuart legitimately told her that it was unlikely such could be obtained. Apparently, it was also discussed that her prior injuries would lessen the value of the claim, and Ms. Butler took offense to Ms. Stuart's somewhat tactless statement that "the fact is that I was damaged goods." Ms. Butler testified that this statement upset her and was a blow to her self esteem. Ms. Butler's primary complaints in her testimony seem to be about the rudeness of Ms. Stuart and her paralegal, and her feeling as though they "did not have time for me." Much of Ms. Butler's testimony at trial conveyed vague recollections and conflicting memories and complaints. She stated that Ms. Stuart and Ms. Darling told her that $112,000 "was as good as you're going to get." However, the offer of $142,500 was already clearly on the table. In her email dated August 4, 2009, to Cindy Crocker describing her meeting with Ms. Stuart, she does not seem to complain about lacking an accurate estimate of the Medicare lien, which seems to confirm her testimony, prior to a break in the trial, that rudeness and the lower-than-expected amount were Ms. Stuart's primary offenses. After the break in her testimony, she added that the failure to get a specific figure of what she would get under the offer was the main reason.

Furthermore, some handwritten notations on Defendant's Exhibit #7 seem to reflect that Ms. Butler was told at the meeting by Ms. Stuart of the outstanding offer of KACo of $142,500 and of the $30,000 medical expense estimate, which Ms. Pearson had produced two weeks earlier.

Moreover, Ms. Butler's August 4th email to Cindy Crocker reflects her complaint that "they expect me to take about $40,000," an amount that seems to result from a total net figure of approximately $60,000, with $20,000 deducted from that to repay a loan for living expenses.

In any case, it appears that the meeting ended with Ms. Stuart suggesting a counter offer to KACo in the sum of $180,000, plus PIP. Ms. Butler, testified that Ms. Stuart

and Ms. Darling attempted to "bully" her into agreeing to a low settlement offer, and that they yelled at her during the meeting. Ms. Stuart and Ms. Darling deny this, but the Court suspects and finds that Ms. Stuart and her paralegal probably addressed Ms. Butler in an aggressively frank manner that could reasonably be considered and interpreted as rude. The Court believes that in this case, as in many cases at this stage of settlement negotiations, the realities of what a client might have expected and what amount of settlement is now possible clash and produce tense, difficult communications. It appears to the Court that neither attorney, nor client, handled it particularly well, and that voices and emotions were heightened, though "yelling" might exaggerate the intensity of the discussion.

On August 11, 2009, Ms. Butler formally retained Crocker Law Offices to represent her in the same case, signing a new contingency fee agreement similar to the one with the Law Firm of Flora Templeton Stuart that provided for an attorney fee of 1/3 of the recovery. Crocker Law Offices then requested Flora Stuart's file on the claim, following that up with two more requests over the next week. The plaintiff's file was delivered to the defendant on August 24, 2009, but, apparently, was incomplete and not organized. Some of the correspondence was missing as well as the "Needles" notes. Crocker Law Offices presented convincing evidence at trial that a number of the documents, correspondence and medical records contained in the plaintiff's file were not produced. Crocker Law Offices also requested information from KACo and informed the adjuster that they were taking over the case. Undoubtedly, the defendant had to redo much of the same work as had been done by the plaintiff to educate itself on the claim, but it did not have "to start almost from scratch . . .." Much of its efforts were the natural work that any subsequent lawyer taking over another lawyer's case would have to do to inform himself of the details and validity of the claim in order to continue to prosecute it.

Crocker Law Offices met with Ms. Butler on September 30, 2009 to discuss potential settlement and obtained authority to make a demand to settle the case. The defendant did so on October 2, 2009, with a demand of $200,000.

On October 20, 2009, KACo rejected the demand, but counter-offered with $165,000, to which the plaintiff authorized a new demand of $175,000. The case soon settled for $170,000 (plus KACo's payment of the $10,000 PIP amount).

Crocker Law Offices then received the settlement check, prepared a settlement statement for Ms. Butler, dealt with Medicare to satisfy its lien and the remaining outstanding medical bills, and made final distributions of the settlement amounts.

The testimony of Karen Lasch, the KACo adjuster with whom Ms. Stuart negotiated, was revealing. She was "surprised" when she heard that Ms. Stuart's representation had been terminated by Ms. Butler because Ms. Lasch believed that the case was proceeding through normal negotiations toward a resolution. She further testified that KACo would have been in a position at the time Ms. Stuart's representation ended to settle the case at the $175,000 level that ultimately was achieved.

Furthermore, it appears that Ms. Butler authorized Mr. Crocker to settle the case for "anywhere between where they are now and $200,000," which apparently meant, according to Mr. Crocker's testimony, between the $142,500 offer that KACo had made to Ms. Stuart before termination. Mr. Crocker also agreed in his testimony that KACo was willing to negotiate this claim further at the time of Ms. Stuart's dismissal. In other words, the case had not hit a dead end. Moreover, the defendant's presentation of claims and damages to KACo did not significantly differ from Ms. Stuart's, though the defendant did include approximately $1,300 in lost wages and some additional medical expenses of between $2,000 and $5,000. Interestingly, no claim for punitive damages or a different cause of action, such as negligent

entrustment, was presented on Ms. Butler's behalf. The defendant did include a Kentucky Trial Court Review to bolster the value of the case, but the KACo adjuster handling the matter at the end, Mr. Dolan, testified that the document played no role in KACo's settlement decision.

This is not to say that Crocker Law Offices failed to skillfully, efficiently, and effectively conclude settlement negotiations and achieve a result with which Ms. Butler was pleased. It did just that. The rapid resolution of the claim with several phone calls on October 19 and 20, 2009, after the initial contact two or three weeks earlier, reflects as much the legal abilities of the defendant as it does the plaintiff's preparation of the insurance company for the claim. The fact is, both law firms added value to the case, and either firm handling the case from start to finish would have ultimately achieved a settlement in this approximate range of $170,000, plus PIP. Crocker Law Offices performed important and substantial work after the settlement in concluding the claim and assuring Medicare and other medical liens were extinguished, but this Court has no reason to believe the plaintiff would have failed to do the same, considering its extensive experience in these very types of cases and having performed this work successfully numerous times before.

With regard to the experience, reputation and ability of the plaintiff, she had over 30 years of experience at the time Ms. Butler brought this claim to her, and most of her work in recent years (she estimates 80%) involves car and truck accidents. The Court finds that her reputation among the public is, and must be, one of competent handling of these types of cases, reflected by the simple fact that her practice doing it is so substantial over a long period of time. Her office appears to be organized in a usual fashion for one or two lawyers, with eight to nine support staff, including four to five paralegals. The KACo adjuster on this case, Ms. Lasch, testified in her deposition that she had handled approximately 10 other personal injury cases with Ms. Stuart and had never had a problem working with her. Ms. Lasch had worked with many other attorneys, and testified that Ms. Stuart was

"as good as any," and "as ethical as they are." Ms. Stuart's retained expert, Brian Cook, was asked by Mr. Crocker about Ms. Stuart's character and reputation, and he responded that, through his own dealings and communications with other attorneys, he understood Ms. Stuart to be a well-respected lawyer in Bowling Green. There was really no actual evidence from the defendant to rebut this position, and the Court is, therefore, left to conclude that Ms. Stuart is reasonably competent to handle the type of case Ms. Butler brought to her, is experienced in doing so, and is reputed to be competent to provide adequate representation in Ms. Butler's claim.

Regarding the time and labor required, Ms. Stuart estimates that she, herself, spent 80-90 hours on the case; her associate attorney spent approximately 5-10 hours; and her support staff spent approximately 370 hours. Though the Court believes that Ms. Stuart and her office did spend a significant amount of time and effort in pursuit of the claim, these figures do not seem representative of the work reflected in her notes, files, and testimony.[3]

The Court finds that a more representative amount of time for the work in this case by Ms. Stuart would be approximately 40 hours, her associate attorney approximately 5 hours, and her paralegal staff approximately 200 hours. A rate of $200 per hour for Ms. Stuart's time reasonably reflects the novelty and difficulty of the questions presented and the skill requisite to perform these legal services, as does $150 per hour for her associate attorney, and $75 per hour for her paralegal. On a calculation by hours alone, the following would apply:

Stuart	40 hours x $200	$8,000

[3] In its brief, the Stuart Firm notes that the circuit court "reduced the hours calculation provided by Ms. Stuart," but the Stuart Firm does not argue it was improper for the circuit court to do so. Instead, the Stuart Firm asserts that the amount of hours it expended litigating this matter "is not a reliable indicator of the reasonable value of the services provided." However, we agree with the circuit court, as detailed in its judgment, that hourly monetary rates charged by attorneys and other professionals, by necessity, contemplate and are a reflection of competence, skill, and efficiency.

Associate	5 hours x $150	750
Paralegals	200 hours x $75	15,000

> The fee customarily charged in this area for such a case is a 1/3 contingency fee. One third of the settlement offer at the time of Ms. Stuart's termination ($142,500, less PIP reimbursement) would be approximately $44,000.
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> The Court is aware that this is now a quantum meruit determination of an appropriate fee and not based on the contingent fee. It merely makes this finding of fact insofar as it informs and contrasts with the quantum meruit evaluation, since virtually all such cases are reasonably on a contingency fee basis; and because plaintiff notes it in its briefs and suggests a quantum meruit fee quite close to it.
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> Regarding the nature and length of the professional relationship with the client, Ms. Butler's relationship with the plaintiff extended several years, even before this case, to other automobile accidents. There was some value in this long relationship because Ms. Stuart would know details of the prior injuries and disabilities of the plaintiff, a fact that must be considered in representing her. In this particular case, the relationship began in 2007, and terminated over two years later in 2009, a significant amount of time, but one that is also reflected in the hours the plaintiff committed to the case, just as the hourly rates roughly reflect the difficulty of the questions involved, the skill required to do them, and the experience, reputation, and ability of the lawyer performing the services.
>
> Ms. Butler's case was settled for a gross amount of $170,000, and the 1/3 attorney fee withheld and at dispute in this case is $56,666.67.

With the above in mind, that circuit court concluded that Butler had terminated the legal services of the Stuart Firm due to "personality issues," but had not terminated it for any ground that qualified as "good cause." Thus, pursuant to

the Kentucky Supreme Court's holding in *Baker v. Shapiro*, 203 S.W.3d 697 (Ky. 2006), the circuit court held that the Stuart firm was entitled to fee recovery on a quantum meruit basis. This point is not contested.

What is contested in this appeal is how the circuit court determined the Stuart Firm's quantum meruit fee. As an aside, where equity permits an attorney's fee, the question of how much that award should be is left to the discretion of the circuit court and will depend upon the facts and circumstances of each case. *Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762, 766 (Ky. App. 2005) (citing *Dorman v. Baumlisberger*, 113 S.W.2d 432, 433 (Ky. 1938)). Thus, we review the circuit court's award of costs and actual and reasonable attorney's fees for an abuse of discretion, which is a deferential standard. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Stated differently, we will reverse only if confronted with an award that was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

As the circuit court indicated in its order and judgment, the Stuart Firm argued below that it was entitled to a fee approximating what it otherwise would have recovered under its contingent fee agreement, had it not been fired. This is also the Stuart Firm's argument on appeal. Upon review, however, we find the circuit court's determination of the Stuart Firm's fee properly addressed the Stuart Firm's argument, resolved this matter, and constitutes a sound application of Kentucky law. We therefore adopt it as follows:

The Kentucky Supreme Court, in Baker v. Shapiro, 203 S.W.3d 697 (Ky. 2006), held that:

> When an attorney employed under a contingency fee contract is discharged without cause before completion of the contract, he or she is entitled to fee recovery on a quantum meruit basis only, and not on the terms of the contract.

The Supreme Court later further defined quantum meruit, with reference to Black's Law Dictionary, as follows:

> 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 is harmed to be reimbursed to reasonable market value of the services or benefit conferred.

Lofton v. Fairmont Specialty Insurance Managers, Inc., 367 S.W.3d 593 (Ky. 2012).

SCR 3.130-1.5 sets forth a non-inclusive list of factors for a court to use in determining a reasonable attorney fee, which are as follows:

> (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
>
> (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
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> (4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

Neither party in this case presents the Court with a reasonable resolution of the quantum meruit evaluation. The plaintiff claims it should receive $55,443 of the total fee of $56,666.67. This effectively would not be a quantum meruit equitable determination, but, rather, it would just give the plaintiff the benefit of her contingency fee bargain with Ms. Butler without closing the deal.

On the other hand, the defendant suggests that a $1,000 fee of quantum meruit is all that is due to the plaintiff, which can in no way represent under any circumstances the work done and value to Ms. Butler, and instead would impose a de facto determination of dismissal with good cause. The defendant argues that it did not get copies, at least in an organized fashion, of all of Ms. Butler's files from the plaintiff and, therefore, the work by Crocker Law Offices had to start over, making the plaintiff's work of no value. The value of the plaintiff's work, however, is to the client, not the Crocker Law Offices; and it is the effect that the plaintiff's efforts had upon the insurance company that was valuable here. Apparently, Ms. Stuart's work was well enough organized and compelling to produce the desired result of a legitimate settlement offer of $142,500 (including the PIP reimbursement), and that is the real measure of the worth of a lawyer's efforts. This Court does not in any way condone Ms. Stuart's incomplete transmission of the file to a successor attorney, because all attorneys' first obligation is to their clients during and after

representation. Perhaps it is understandable that the defendant feels that *it* "started from scratch;" but the client's case, in the mind of KACo, did not start over, but picked up where it left off at $142,500. There was value to the plaintiff's efforts, however allegedly disorganized or haphazard. KACo did not offer this amount—and it appears would not have—without the efforts of the Law Firm of Flora Templeton Stuart. The defendant might argue that any attorney could have gotten that amount, but the plaintiff could likewise argue that KACo was headed toward $170,000, plus $10,000 more for PIP, even with the plaintiff's efforts: KACo just needed a more reasonable offer, or some significant movement on the demands.

The fact is both law firms added value to the case. Either firm handling the case from start to finish would have probably ultimately achieved this settlement. The Law Firm of Flora Templeton Stuart did not achieve that amount because its abruptness and personality conflict intervened. Defendant Crocker Law Offices took over and competently and expeditiously wrapped up the case.

A layman could be tempted simply to say that the plaintiff should get 1/3 of the settlement offer she had obtained ($133,500) at the time of her discharge; however, the quantum meruit evaluation recognizes that a settlement offer is not enough: closing the deal is the ultimate goal and the ultimate success. Giving Ms. Stuart $44,000 would falsely conflate the concept of getting an offer with getting a check. The quantum meruit evaluation is not intended to reward the attorney in the usual fashion that the contingency fee benefits counsel's good efforts. Instead, it is meant merely to end a failed relationship and avoid the unfairness of an attorney putting forth efforts and getting no fee at all for work in a case where the attorney-client relationship is broken. It is more of a patch, a way to avoid a totally inequitable result to the attorney, so the parties can move on.

Though this Court largely calculates its fee to the plaintiff based on time expended by attorneys and paralegals multiplied by their hourly rate, those factors

> adequately encompass most, if not all, of the factors contemplated in SCR 3.130(1.5). The time involved, of course, is reflected by the number of hours in the calculation. The difficulty of the case and the skill required, as well as the experience, reputation, and ability of the lawyer and staff, is adequately reflected in the recognized hourly rates.
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> This amount, as described in the findings of fact, totals $23,750. Though this resolution may appear to the plaintiff to give a windfall to the defendant when the money ultimately achieved already appeared to be there, the fact is that the plaintiff did not close the deal, for whatever reason, and then deal with the post-judgment issues. On the other hand, the defendant may feel that it did not get the reasonable benefit of its 1/3 contingency fee contract, especially in light of the fact that its job was made more difficult by the incomplete and disorganized file that it received from the plaintiff. However, the plaintiff did not do its work for Crocker Law Offices; and this case was not thrust upon the defendant, but willingly accepted by it, knowing an attorney lien existed.
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> Ultimately, a quantum meruit determination is an attempt to be fair and equitable. Neither party in this case could reasonably expect the full benefit of its 1/3 contingency fee contract. The plantiff, however, under this determination has received equitable remuneration in a broken client relationship. It is an amount intended to avoid patent unfairness and to encourage lawyers to pursue cases aggressively, speak candidly and bluntly with their clients, and let their clients go when the relationship breaks down without fear of a substantial financial loss in time and money. The balance, then, under the Baker case, goes to the attorney who finished the case, even if that results in a windfall to some degree.

One third of Butler's settlement with KACo was ultimately an approximate amount of $56,500. As noted, the Warren Circuit Court determined that the attorney's fee due to the Stuart Firm amounted to $23,750, plus judgment

interest thereon from the date of judgment until paid in full; and, that the attorney's fee due to the Crocker Firm amounted to what remained of the approximate amount of $56,500 after the Stuart Firm's fees were deducted from it. Having reviewed the circuit court's findings of fact and conclusions of law underpinning these determinations, we cannot say they are the product of arbitrariness, unreasonableness, unfairness, or unsound legal principles. Accordingly, we AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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