STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0378

Law Offices of Otten & Associates, P. A.,
Appellant,

vs.

Soucie & Bolt, P. A.,
Respondent.

Filed April 14, 2009
Affirmed
Peterson, Judge

Anoka County District Court
File No. 02-C2-07-001142

W. Paul Otten, Otten & Seymour, 108 Professional Plaza, 1601 East Highway 13, Burnsville, MN 55337 (for appellant)

Christopher J. Hoffer, Soucie & Bolt, 100 Anoka Office Center, 2150 Third Avenue North, Anoka, MN 55303 (for respondent)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Crippen, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from a summary judgment in an action for attorney fees, appellant law firm argues that genuine issues of material fact exist as to whether respondent law firm collected attorney fees from appellant's former client and whether appellant is entitled to a share of those fees. We affirm.

FACTS

While bicycling in October 2000, Scott Nelson was struck by a car and injured. Nelson, by his mother as natural guardian and special conservator, sued the car's driver and the driver's employer. Respondent Soucie & Bolt, P.A., was hired to replace Nelson's first attorney.

The Minnesota Department of Human Services (DHS) paid $509,551.65 toward Nelson's medical expenses. In September 2002, appellant Law Offices of Otten & Associates, P.A., through attorney W. Paul Otten, entered into an agreement with DHS, under which appellant was appointed to act as a special attorney for DHS. The agreement authorized appellant to provide legal services to DHS with respect to claims and lawsuits relating to DHS's right to payment under state and federal medical-assistance assignment statutes. The agreement provided for attorney fees at the rate of 33 1/3% of any amount recovered, plus costs and disbursements.

Although the agreement does not refer to the Nelson case, Otten stated in an affidavit that he represented DHS in the Nelson case. Otten stated that he attended motion hearings and a mediation session; reviewed documents, discovery responses, and

deposition testimony; and spoke with Nelson's family, defense attorneys, Nelson's first attorney, respondent, and DHS.

In July 2004, respondent entered into an agreement with DHS regarding the Nelson case. The agreement states that DHS "would like to appoint [respondent] as counsel to represent [DHS's] interests" in the Nelson case. The agreement states that DHS would agree to determine the parties' respective reimbursement amounts using one of two formulas, whichever turned out to be more generous to Nelson, and that "DHS would agree to reduce its recovery by one-third for its share of attorney's fees" and also "reduce its recovery by its pro rata share of the costs of litigation."

Nelson's suit was settled for $3,100,000. Of that amount, DHS received $300,000 as full satisfaction of its lien for medical-services payments, and respondent received $1,033,333.33 for attorney fees and $135,045.68 for costs and disbursements.

Appellant brought this action against respondent, alleging that respondent received $150,000 in attorney fees for representing DHS. Appellant seeks to recover appellant's share of that amount. Respondent's answer admits that DHS retained respondent "to represent it in connection with its claim for recovery of payments made on behalf of Scott Nelson." But in an affidavit, Fred Soucie, an attorney with respondent, described the agreement between respondent and DHS as a negotiation in which DHS agreed to a discounted amount of its lien. Soucie denied that DHS paid respondent attorney fees.

The parties filed cross-motions for summary judgment. In granting summary judgment for respondent, the district court concluded that there was no evidence that respondent conducted any legal work for or received any attorney fees from DHS. The

district court also determined that even if appellant was entitled to attorney fees from DHS, appellant had failed to establish any right to recover those fees from respondent.

D E C I S I O N

On appeal from summary judgment, we review the record to "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). A genuine issue of material fact exists if the evidence would "permit reasonable persons to draw different conclusions." *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). No genuine issue of material fact exists if the evidence "merely creat[es] a metaphysical doubt as to a factual issue." *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 886-87 (Minn. 2006). We view the evidence in the record "in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Appellant argues that the district court erred in determining as a matter of law that the agreement between respondent and DHS was a settlement agreement. We agree. The language of the agreement raises at least a fact issue as to whether an attorney-client relationship existed between respondent and DHS. *See Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (stating rules of contract interpretation).

But to recover attorney fees from respondent, it is not sufficient for appellant to show that respondent acted as DHS's attorney and received attorney fees from DHS. Appellant must establish a relationship between appellant and respondent that entitles appellant to recover attorney fees from respondent. Appellant presented no evidence of

any referral or other contractual agreement between appellant and respondent. Rather, appellant sought to recover from respondent under the theory of quantum meruit.

The basis of a recovery in quantum meruit is that "the defendant has received a benefit from plaintiff which it is unjust for [the defendant] to retain without paying for it." *Ylijarvi v. Brockphaler*, 213 Minn. 385, 393, 7 N.W.2d 314, 319 (1942). The only evidence that appellant presented regarding the services it performed in representing DHS in the Nelson case is the statement in Otten's affidavit that he attended motion hearings and a mediation session; reviewed documents, discovery responses, and deposition testimony; and spoke with Nelson's family, defense attorneys, Nelson's first attorney, respondent, and DHS. There is no evidence in the record that respondent directed appellant to perform any of those services or that respondent benefitted in any way by them. Accordingly, the district court properly granted summary judgment for respondent. *Cf. Ashford v. Interstate Trucking Corp. of Am.*, 524 N.W.2d 500 (Minn. App. 1994) (addressing attorney-lien statute and affirming district court's division of contingency-fee award between two law firms under theory of quantum meruit when evidence showed that each firm benefitted from the other's contribution); *Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. v. Nartnik*, 439 N.W.2d 418, 420-21 (Minn. App. 1989) (addressing law firm's right to recover reasonable value of services from client when client discharges firm retained under contingency-fee agreement), *review denied* (Minn. July 12, 1989).

Affirmed.