[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10817
Non-Argument Calendar

D.C. Docket No. 8:15-cv-00407-VMC-TBM

JAMES SHACKLEFORD,
individually, and as subrogee of the
Continental Insurance Company/Boat Owners Association
of the United States,

Plaintiff,

CRAIG LEWIS BERMAN,

Interested Party - Appellant,

versus

SAILOR'S WHARF, INC.,
in personam,

Defendant - Appellee,

FRANK D. BUTLER, et al.,

Interested Parties - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 25, 2019)

Before MARCUS, MARTIN and HULL, Circuit Judges.

PER CURIAM:

Craig Berman, successor counsel to the plaintiff James Shackleford in his underlying suit regarding boat repairs, appeals the district court's order awarding Shackleford's initial counsel Frank Butler a quantum meruit recovery of attorney's fees totaling $13,037.67. After careful review, we affirm.

"We review a district court's award of attorney['s] fees for abuse of discretion." Waters v. Int'l Precious Metals Corp., 190 F.3d 1291, 1293 (11th Cir. 1999). We also review the denial of a motion to reconsider under the abuse-of-discretion standard. Smith v. Casey, 741 F.3d 1236, 1241 (11th Cir. 2014).

The relevant facts are these. Shackleford retained Butler as counsel in 2014 on a contingency fee basis to represent him in Shackleford's negligence, breach of contract, and subrogation suit against Sailor's Wharf, Inc., for damage to Shackleford's boat while Sailor's Wharf was storing the boat for repairs.[1]

[1] The district court had jurisdiction over the underlying suit in admiralty under 28 U.S.C. § 1333, U.S. Const. art. 3 § 2, and Fed. R. Civ. P. 9(h). "A contract to repair a vessel invokes admiralty jurisdiction." Diesel "Repower", Inc. v. Islander Investments Ltd., 271 F.3d 1318, 1322–23 (11th Cir. 2001) (citing Hatteras of Lauderdale, Inc., v. Gemini Lady, 853 F.2d 848, 849–850

Pursuant to the contingency fee agreement, Shackleford agreed to pay for the out-of-pocket costs of the suit and acknowledged that Butler and his firm, Frank D. Butler, P.A., could advance the costs as they deemed appropriate. The contingency fee agreement specified the types of costs that could be charged and advanced to Shackleford, including expert witness fees, court costs and filing fees, deposition expenses, investigative expenses, and general business expenses.

While Butler was still retained by Shackleford, he incurred costs totaling $19,925.17. During his representation, Butler received a settlement offer from Sailor's Wharf for $35,000, but Shackleford rejected that offer. Butler represented Shackleford until August 2016, when Shackleford discharged Butler. Shackleford alleged that he lost faith in Butler's representation because Butler tried to strong arm Shackleford into accepting the $35,000 offer, Butler was not performing enough work on the case, and Shackleford was not happy with the experts retained by Butler. When he was discharged, Butler asserted a charging lien for 140.8 hours of legal work, costs, and numerous expert witness fees.

In October 2016, Berman appeared on behalf of Shackleford in the underlying suit against Sailor's Wharf. Berman and Shackleford agreed orally that Berman would be paid hourly with a small retainer. Once the retainer was

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(11th Cir. 1988)). The district court had supplemental jurisdiction over the attorney's fees issue under 28 U.S.C. § 1367(a). We have appellate jurisdiction under 28 U.S.C. § 1291.

exhausted, Berman and Shackleford agreed that the balance of hourly fees and costs from that point forward would be paid to Berman out of any recovery against Sailor's Wharf. Shackleford's suit against Sailor's Wharf settled on the second day of trial in March 2017, when Sailor's Wharf agreed to pay Shackleford $30,000. At this point Berman had incurred $35,354.24 in fees and costs.

After the settlement, Shackleford filed a motion to quash Butler's charging lien, Butler responded in opposition to that motion to quash, and Berman filed a motion to enforce his own charging lien. The district court held an evidentiary hearing on the issue on August 18, 2017, and issued an order regarding attorney's fees on January 19, 2018. The court found that Butler could only recover in quantum meruit and that Butler had been discharged for cause because Shackleford demonstrated that he had a "reasonable subjective belief that he no longer had faith or confidence in Butler and could not proceed with Butler as counsel." The court held that Butler was entitled to a quantum meruit award of $19,925.17 but reduced that award by $6,887.50 because, the court held, it was unfair for Shackleford to be responsible for the "significant amount of expert fees incurred by both Butler and Berman." Thus, Butler's quantum meruit award was reduced to $13,037.67.

The district court also found that Butler's charging lien was superior to Berman's because Butler's lien was undisputedly first in time, and Berman's arguments "d[id] not compel a different result." The district court then ordered

that the Butler's quantum meruit award of $13,037.67 be paid out of the proceeds from the settlement between Shackleford and Sailor's Wharf, with the remainder of the proceeds to go to Berman. Berman's motion to reconsider that order was denied, and Berman has timely appealed the district court's order awarding Butler's quantum meruit payment and the denial of his motion to reconsider.

We are unpersuaded by Berman's argument that the district court abused its discretion in calculating attorney's fees. It is undisputed that, under Florida law, an attorney retained on a contingency fee basis who is discharged before the contingency occurs can recover for the value of his services only in quantum meruit. Sohn v. Brockington, 371 So. 2d 1089, 1093 (Fla. Dist. Ct. App. 1979). If the attorney is discharged without cause, the attorney "can recover . . . the reasonable value of his services rendered prior to discharge," but not to exceed the maximum amount provided for in the fee agreement. Rosenberg v. Levin, 409 So. 2d 1016, 1021 (Fla. 1982). Where an attorney is discharged for cause, some or all of the attorney's quantum meruit award may be forfeited. Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Scheller, 629 So. 2d 947, 954–55 (Fla. Dist. Ct. App. 1993). If the attorney was discharged for cause, the quantum meruit award should be reduced by the amount of any damages of the client that resulted from the need to discharge the initial attorney. Id.

In calculating the quantum meruit value, the trial court must determine the reasonable value of the services rendered by the discharged attorney. See Kushner v. Engelberg, Cantor & Leone, P.A., 699 So. 2d 850, 851 (Fla. Dist. Ct. App. 1997). If the client's damages are not greater than the quantum meruit fee for the discharged attorney, "the court is then free to consider whether forfeiture of some or all of the quantum meruit fee as already reduced by the client's damages is appropriate." Scheller, 629 So. 2d at 955. The award should be fashioned considering the totality of the circumstances, to ensure what is fair to both the discharged attorney and the client. Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz, 652 So. 2d 366, 369 (Fla. 1995).

Here, the district court did not abuse its discretion in calculating attorney's fees. The district court began its thorough analysis by correctly concluding that Butler was discharged for cause. As the record reveals, Shackleford strongly believed that Butler tried to force a settlement and that Butler's performance did not meet his standards. No one disputes the district court's finding in this regard.

Nor can we say the district court abused its discretion by concluding that its starting point in its quantum meruit analysis was the reasonable value of Butler's services. The court held an evidentiary hearing, reviewed all of the supporting documentation Butler had submitted, and determined the total amount of fees and costs owed to Butler according to the fee arrangement for the services he

performed prior to his termination -- $19,925.17. The court noted that the contingency fee between Butler and Shackleford specifically provided that Shackleford could be responsible for costs advanced by Butler at his discretion. Berman has offered no convincing arguments, based on the record or the case law, that the district court abused its discretion by using, as a starting point for its analysis, the reasonable value of Butler's services. Scheller, 629 So. 2d at 954–55; Kushner, 699 So. 2d at 851.

As for whether Shackleford suffered damages due to Butler's for-cause termination, the court found that Shackleford did not quantify or specify the amount of his damages, nor did he provide expert testimony on damages. The court explained that "[o]n its own, Berman's argument that Butler's choice of experts and handling of expert opinions severely reduced the value of [Shackleford's] case and was responsible for the low settlement amount does not establish [Shackleford's] burden of proving damages stemming from Butler's termination." Based on the lack of evidentiary support offered by Shackleford or Berman, we cannot say the district court abused its discretion in holding that Berman did not prove that Butler's termination had damaged the case, nor in calculating the amount of Butler's total fees and costs.

As for Berman's claim that all of the legal costs Shackleford incurred after firing Butler -- i.e., all of Berman's fees as subsequent counsel -- constitute

Shackleford's damages, this proves too much. Shackleford would have had to pay legal fees going forward regardless of whether Butler, Berman, or other counsel represented him. Shackleford rejected a settlement while Butler was still his counsel, so he was the one who wanted to continue litigation and incur more legal costs. Thus, everything Berman charged Shackleford cannot be equal to damages.

We further conclude that the district court did not abuse its discretion in finding that $6,887.50 of Butler's quantum meruit award should be forfeited. The record reflects that the district court properly considered the totality of the circumstances when calculating a quantum meruit award that was fair to both the attorney and the client. Poletz, 652 So. 2d at 369. In so doing, the court determined that the amount forfeited was equal to the fee for an expert report obtained by Butler from AAC Marine Group, Inc., which was ultimately not used in the course of the litigation, and duplicative of expert costs incurred by Berman. The court explained "that equitable considerations dictate [Shackleford] not be charged with the cost of an expert that was not used and the other largely duplicative expert costs." In light of the numerous expert witness costs incurred by Butler, we can find no abuse of discretion by the district court in reducing Butler's quantum meruit award.

Finally, the district court did not abuse its discretion in denying Berman's motion to reconsider. "The only grounds for granting a Rule 59 motion are newly-

discovered evidence or manifest errors of law or fact. A Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) (quotations omitted) (alterations adopted).

Berman argued that the district court erred in two ways: (1) by not reducing Shackleford's damages incurred by having to find new counsel from Butler's quantum meruit award, and (2) by using as the starting point the contractual value of costs claimed by Butler, rather than the reasonable value of the costs and work performed. But, as we've already said, these arguments lack merit. We can find no newly discovered evidence or manifest errors of law in the district court's original order that would have warranted granting a Rule 59 motion. Accordingly, we also affirm the district court's order denying Berman's motion for reconsideration.

AFFIRMED.