

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000797-MR

CHRISTIAN CAUDILL, INDIVIDUALLY;  
CHRISTIAN CAUDILL, AS NEXT FRIEND OF  
KRISTEN A. CAUDILL; CHRISTIAN CAUDILL,  
AS NEXT FRIEND OF LUKE CAUDILL;  
AND CHRISTIAN CAUDILL, AS  
ADMINISTRATOR OF THE ESTATE  
OF BEAU ZACHARIAH CAUDILL

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE STEVEN D. COMBS, JUDGE  
ACTION NOS. 09-CI-00033 AND 09-CI-01269

WILLIAM R. JOHNSON; AND  
JOHNSON LAW FIRM, P.S.C

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: ACREE, CHIEF JUDGE, COMBS AND MAZE, JUDGES.

MAZE, JUDGE: Christian Caudill, individually, as next friend of Kristen A.

Caudill and Luke Caudill and as administrator of the Estate of Beau Zachariah

Caudill, appeals from a judgment of the Pike Circuit Court awarding attorney fees to his former counsel, William R. Johnson and Johnson Law Firm, P.S.C., arising out of Johnson's representation in personal injury and declaratory judgment actions. Caudill argues that the trial court erred by finding that Johnson was discharged without good cause, and that the award of fees was clearly erroneous. However, we find that the trial court's factual findings and award of attorney fees were supported by substantial evidence. Hence, we affirm.

On December 9, 2008, Christian Caudill (Caudill) and his three children were passengers in a vehicle driven by Ernest Johnson. Another vehicle, driven by Elizabeth Stacy and owned by Robert Shelton, struck that vehicle. Ernest Johnson and one of the children, Beau Caudill, were killed in the accident. The other passengers suffered significant injuries. The following day, Caudill retained the services of William Johnson (Johnson) to pursue the claims.

Stacy's vehicle was uninsured. Johnson identified three potential sources from which to recover damages. Ernest Johnson's vehicle was covered by a policy with GEICO with a \$300,000 limit. Caudill was covered by two policies through Kentucky Farm Bureau (KFB). One of these policies was a personal policy and the other one was issued to Caudill's business, Phoenix Consultants. Both policies provided underinsured (UIM) and uninsured (UM) motorist coverage.

Caudill was appointed as administrator of the estate of Beau Caudill, and as guardian for the minor children, Kristen and Luke Caudill. Thereafter, on

January 8, 2009, Johnson filed a complaint on Caudill's behalf. (Action No. 09-CI-00033). An amended complaint was filed on February 6, 2009. The complaints asserted claims against Stacy, Shelton, GEICO, and KFB. However, the complaints did not assert any claims against Ernest Johnson's estate.

Discovery then proceeded on the claims. KFB conceded coverage under Caudill's personal policy, which had limits of \$25,000 per person/\$50,000 per accident. However, KFB took the position that the larger policy in the name of Phoenix Consultants did not apply. Stacy did not respond to the complaint or to Johnson's motion seeking to take her deposition.

On June 19, 2009, the trial court issued an order setting the case for trial. The court also directed that the parties were to participate in mediation prior to the scheduled trial. Johnson continued to seek discovery and conducted negotiations with both KFB and GEICO. KFB offered to settle for the \$50,000 limits of the smaller policy, but insisted on a release of any claims under the larger policy. Johnson, on Caudill's behalf, turned down KFB's offer.

On October 29, 2009, Johnson, on Caudill's behalf, filed an action for declaratory relief against KFB (Action No. 09-CI-001269), regarding the applicability of the policy issued to Phoenix Consultants. Following KFB's answer to the petition, the trial court consolidated the two actions. Thereafter, Johnson sent out notices to take the depositions of the corporate representatives of KFB and GEICO.

Shortly before the mediation scheduled for October 21, 2009, GEICO agreed to pay its policy limits of \$300,000, with \$40,000 paid to the Estate of Ernest Johnson and \$260,000 paid to be divided between Caudill and the children. The parties entered into a mediation agreement reflecting that settlement. KFB also agreed to pay the policy limits of \$50,000 on the personal policy issued to Caudill, and the parties executed a limited release of the claims under that policy alone.

Johnson and Caudill had discussions concerning the division of the gross proceeds of the settlement of \$310,000 (\$260,000 from GEICO and \$50,000 from KFB). Johnson proposed, and Caudill agreed, to submit the question to the mediator. On November 12, 2009, the mediator issued an Arbitration Award dividing the proceeds, including an allocation of attorney fees. The following day, Johnson, on Caudill's behalf, filed a motion requesting the court's approval of the settlement and division of the proceeds. By separate orders entered on November 16, 2009, the court approved the settlements. Johnson received his contingency fee of \$103,000 arising from this settlement.

After Johnson received the Arbitration Award, he filed motions with the circuit court and the probate court to make distributions pursuant to the settlement and Arbitration Award. But unknown to Johnson, Caudill filed motions in the guardianship proceedings for the two children. Pursuant to these motions, the probate court entered orders appointing Caudill and his mother, Nancye Yost, as co-guardians, and providing that the settlement checks were to be deposited in a

restricted account under their control. On November 30, 2009, Johnson filed a notice of his attorney's lien against the settlement proceeds.

A dispute arose between Johnson and Caudill over these orders. Eventually, the later-entered orders were modified to allow the settlement to proceed as originally established. On December 18, 2009, Caudill sent a letter terminating Johnson as counsel of record in both actions. Shortly thereafter, Johnson filed motions withdrawing as counsel.

Caudill did not retain new counsel, but attempted to negotiate directly with KFB. On April 6, 2010, Caudill sent an email to the customer service portion on KFB's website. In response to the inquiry, KFB's representative contacted Caudill and requested additional documentation regarding the policy issued to Phoenix Consultants. As a result of these discussions, KFB agreed to pay the \$300,000 limits of the policy issued to Phoenix Consultants. In exchange, Caudill agreed to dismiss any further claims against KFB, including a potential bad faith claim.

Upon learning of Caudill's settlement with KFB, Johnson filed a motion to enforce his attorney's lien against these settlement proceeds. He also argued that Caudill's actions in probate court amounted to a violation of the Arbitration Award which allocated attorney fees from the prior settlement. The trial court directed Caudill to deposit the \$300,000 from the most recent settlement with the court clerk, reserving the allocation of the funds and enforcement of Johnson's lien for later adjudication.

Following a period of discovery, the matter came before the trial court for an evidentiary hearing on the amount and enforceability of Johnson's attorney's lien against the \$300,000 proceeds from Caudill's settlement of the claims arising under the policy issued to Phoenix Consultants. After considering the evidence, the trial court entered findings of fact, conclusions of law and a judgment on June 27, 2013. In particular, the trial court made the following factual findings: (1) Johnson did not make any improper solicitation for representation following the accident; (2) Johnson took reasonable and timely steps to pursue the claims against GEICO and KFB in both the original action and in the declaratory judgment action; (3) Johnson made a reasonable decision to not include Ernest Johnson as a defendant in the first action; (4) Johnson did not take any action which improperly delayed the first settlement recovery and distribution; (5) Caudill and Yost caused the delay in receiving the first settlement recovery and distribution through their improper filings in probate court; (6) Johnson acted reasonably in filing the Attorney Lien Notice as a result of the actions taken by Caudill; (7) Johnson did not agree to release his attorney lien following the award of fees from the first settlement; (8) Caudill did not have good cause to discharge Johnson in December 2009; (9) Caudill's decision to engage in direct negotiations with KFB amounted to breaches of the Arbitration Agreement and his fiduciary duties to his children and the Estate of Beau Caudill; and (10) Caudill did not take any material steps to enhance the value of the recovery made from KFB. Based upon these findings, the trial court found that Johnson was entitled to a *quantum meruit* recovery of

attorney fees equal to one-third of the remaining \$300,000 gross settlement proceeds, or \$100,000.

Caudill filed a motion to alter, amend or vacate the judgment pursuant to CR<sup>1</sup> 59.05. The trial court denied the motion on April 29, 2014. This appeal followed.

As an initial matter, Caudill argues that the trial court lacked jurisdiction to enter a personal judgment against him for Johnson's attorney fees. He contends that the attorney fee dispute was an *in rem* proceeding and the trial court only had jurisdiction over the settlement proceeds held in escrow. We disagree. The trial court clearly had personal jurisdiction over Caudill, who was a party to the underlying action. The trial court also had jurisdiction over the settlement proceeds. Those proceeds were directly related to the underlying cause of action and to the validity of Johnson's attorney lien arising from that action. Under the circumstances, Caudill has shown no basis to question the jurisdiction for the trial court's judgment in this matter.

The central issue in this case concerns the trial court's enforcement of Johnson's attorney lien against the \$300,000 in settlement proceeds from the KFB commercial policy. In matters tried without a jury, the trial court's factual findings shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. CR 52.01.

Findings of fact are clearly erroneous only if they are manifestly against the weight

---

<sup>1</sup> Kentucky Rules of Civil Procedure.

of the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008). On appeal, this Court must examine whether the factual findings are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). However, the trial court's conclusions of law are subject to *de novo* review. *McClendon v. Hodges*, 272 S.W.3d 188, 190 (Ky. 2008)

In *Baker v. Shapero*, 203 S.W.3d 697 (Ky. 2006), the Kentucky Supreme Court held that when an attorney employed under a contingency fee contract is discharged without good cause before completion of the contract, he is entitled to fee recovery on a *quantum meruit* basis only. *Id.* at 699. Caudill first argues that the trial court erred in finding that Johnson was terminated without good cause. But as discussed above, the trial court made extensive factual findings concerning the acts which Johnson took to further Caudill's claims in both the personal injury and the declaratory judgment actions.

In addition to Johnson's testimony, the trial court considered the testimony of Johnson's expert witness, Graham Martin. Martin reviewed the file that Johnson maintained, including pleadings, motions, correspondence, medical records, District Court Probate files, investigative materials and other documents. Contrary to Caudill's assertions, there was abundant evidence to support the trial court's findings that Johnson acted reasonably and diligently in pursuing the claims in both actions up to the time he was discharged. Therefore, we find substantial evidence to support the trial court's conclusion that Caudill terminated Johnson without good cause.



Caudill primarily contests the amount of the trial court's award of attorney fees to Johnson. Under *Baker v. Shapero*, Johnson is not entitled to recover under the terms of a contingency fee contract, but may only receive *quantum meruit* value of the services which he provided prior to his termination. *Id.* Although the trial court stated that it was awarding Johnson under the proper standard, Caudill argues that the court improperly awarded Johnson's contingency fee under the contract.

*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 entitles the one who was harmed to be reimbursed the reasonable market value of the services or benefit conferred. *Lofton v. Fairmont Specialty Ins. Managers, Inc.*, 367 S.W.3d 593, 597 (Ky. 2012), *citing* Black's Law Dictionary (9<sup>th</sup> ed. 2009). The grant of recovery under *quantum meruit*, as well as the amount of fees awarded, turns on the merits of the reason given for withdrawing from representation. *Id.*

In the current case, the trial court not only found that Caudill discharged Johnson without good cause, but also found that Caudill did so in bad faith and in an attempt to violate his obligations under the Arbitration Agreement. The trial court further found that Johnson's representation led directly to the full recovery of the first settlement, and substantially to the second settlement. In addition, the Court found that Caudill provided very little additional value to the recovery of the second settlement. In fact, the court concluded that Caudill's

actions diminished the value of the case by agreeing to drop the bad faith claim against KFB.

Finally, the trial court accepted Martin's testimony concerning the value of the services which Johnson provided. Martin testified as to the risk factors surrounding Johnson's pursuit of a contingent fee case and the value of Johnson's expertise and qualifications in securing the settlement. Martin testified that one-third of the gross recovery is a reasonable fee based upon the time which Johnson spent, the risks which Johnson undertook in pursuing the claim, and the ultimate recoveries which Caudill obtained as a result of Johnson's representation. Given the evidence presented in this case, we conclude that the trial court's award of attorney fees to Johnson was not clearly erroneous.

Accordingly, we affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Lawrence R. Webster  
Pikeville, Kentucky

BRIEF FOR APPELLEES:

Peter L. Ostermiller  
Louisville, Kentucky