

STATE OF MICHIGAN
COURT OF APPEALS

MARY ANNE HELVESTON,

Plaintiff-Appellee,

v

LINDA D. ASHFORD,

Defendant-Appellant.

UNPUBLISHED

August 4, 2000

No. 212068

Wayne Circuit Court

LC No. 92-226216-NO

Before: Meter, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant appeals the trial court's decision awarding plaintiff of \$40,354.13 and 12% interest as payment of plaintiff's attorney's lien. We affirm in part, reverse in part and remand for further proceedings.

First, there is no merit to defendant's claim that she was entitled to a jury trial. Although, as defendant argues, plaintiff and the trial court sometimes referred to this as a contract claim, their characterization does not make it so. The discharge of an attorney does not give rise to a breach of contract action, because the client has an absolute right to discharge the attorney. *Plunkett v Capitol Bancorp*, 212 Mich App 325, 330; 536 NW2d 886 (1995). The discharged attorney is entitled to the reasonable value of services rendered, however, under a quantum meruit basis. *Id.* An attorney's right to have the fees due for services secured from the judgment of the suit is an equitable right inherent in the judgment, *Mahesh v Mills*, 237 Mich App 359, 361 n1; 602 NW2d 618 (1999), and quantum meruit is an equitable doctrine. See. *US v Snider*, 779 F2d 1151, 1159 (6th Cir. 1985); *Petition of Rosenman & Colin*, 850 F2d 57, 60-61 (2d Cir. 1988). Where, as here, a plaintiff seeks only equitable relief, there is no right to a jury trial. *Anzaldua v Band*, 457 Mich 530, 539 n 6; 578 NW2d 306 (1998).

Nor did the trial court err in rejecting defendant's claim that equitable relief was barred in this case by the doctrine of unclean hands. Unless a discharged attorney engaged in disciplinable misconduct prejudicial to the client's case, or conduct contrary to public policy, fees should be awarded on a quantum meruit basis. *Reynolds v Polen*, 222 Mich App 20, 27; 564 NW2d 467 (1997). The doctrine of unclean hands will bar a person from seeking equitable relief only if there is evidence of

overreaching or unfairness on this person's part. *Royce v Duthler*, 209 Mich App 682, 688-689; 531 NW2d 817 (1995). Plaintiff engaged in no disciplinable conduct here and we find no error in the trial court's determination that there was no overreaching or unfairness. This Court gives special deference to the trial court's findings when, as in this case, they are based on its assessment of the witnesses' credibility. *Arco Ind v Amer Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995).

There is no merit to defendant's claim that the trial court abused its discretion in rendering its award in quantum meruit. In making its decision, the trial court appropriately considered the professional standing and experience of the attorney, the skill, time and labor involved, the amount in question and the results achieved, the difficulty of the case, the expenses incurred, and the nature and length of the professional relationship with the client. *Plunkett v Capitol Bancorp*, 212 Mich App 325, 331; 536 NW2d 886 (1995). Although, as defendant states, a quantum meruit award is generally determined by calculating the number of hours worked, the trial court is in the best position to determine the attorney's contribution and may consider that the parties originally agreed to a contingency basis. *Reynolds, supra* at 29-30; *Morris v Detroit*, 189 Mich App 271, 279; 472 NW2d 43 (1991). We find no abuse of discretion in the trial court's calculation of the fee award on the basis of the parties' contingency agreement, or in its determination of the reasonableness of the appropriate fee.

Finally, defendant argues that the trial court erred in awarding plaintiff 12% interest pursuant to MCL 600.6013(5); MSA 27A.6013(5). We agree. "Having sought and received equitable relief, plaintiffs are not entitled to interest pursuant to the judgment interest statute." *McPeak v McPeak*, 233 Mich App 483, 497; 593 NW2d 180 (1999); *Giannetti v Cornillie (On Remand)*, 209 Mich App 96; 530 NW2d 121 (1995). Accordingly, we remand to allow the trial court to reconsider what interest, if any, should be awarded. We note that the award of interest in an equity case lies in the sound discretion of the trial court, *Reigle v Reigle*, 189 Mich App 386, 393; 474 NW2d 297 (1991), and is "granted solely pursuant to the equitable powers of the court." *Thomas v Thomas*, 176 Mich App 90, 93; 439 NW2d 270 (1989). Appellate courts have recognized that the minimum 5% rate provided by MCL 438.31; MSA 19.15(1), may not always be adequate. *Giannetti, supra* at 101; *Thomas, supra*.

The trial court's award of attorney fees is affirmed. The trial court's award of 12% interest is reversed, and this matter is remanded to allow the trial court to determine what interest, if any, to assess. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Roman S. Gibbs
/s/ Richard Allen Griffin