

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA HIRT,

Plaintiff-Appellant,

v

GLENN HIRT,

Defendant,

and

THE LAW OFFICES OF BARBARA B SMITH,
PLLC and PAUL L NINE & ASSOCIATES, PC,

Appellees.

UNPUBLISHED

August 21, 2012

No. 300047

Leelanau Circuit Court

LC No. 09-8110-DO

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order granting a charging attorney's lien in favor of appellees for attorney fees owed to appellees by plaintiff. Plaintiff argues that the lien was improperly granted because she does not owe appellees any fees, and that the trial court erred by refusing to hear evidence that appellees overcharged her on previous bills. We affirm in part but reverse and remand because there is a genuine issue of fact regarding whether appellees overcharged plaintiff on the bills she had already paid.

Plaintiff hired appellee Barbara Smith to represent her during her divorce. On Smith's advice, plaintiff also hired appellee, Paul Nine because Nine has expertise in business valuation, and plaintiff was worried that her husband would try to hide some of his assets during the divorce. Plaintiff signed retainer agreements with both appellees that specified the hourly rates for the attorneys' services. Both appellees are based in the Detroit area, and plaintiff was aware that she would have to pay for their travel to Traverse City for hearings.

Appellees billed plaintiff monthly. Plaintiff's sister paid plaintiff's legal expenses until February 1, 2010. She paid a total of around \$78,000. After February 2010, no further payments were made by plaintiff or her sister. Plaintiff alleges that she began objecting to the amount of fees charged by appellees prior to February 1, 2010. On May 28, 2010, appellees filed a Motion to Foreclose Judicial Lien for Attorney Fees, seeking over \$30,000 in unpaid fees.

The trial court held an evidentiary hearing on July 20, 2010. At the hearing, the court considered the propriety of fees billed after February 1, 2010, but not prior to that date. The court declined to consider whether appellees overbilled plaintiff on previous bills because those bills were already paid. However, the court did order slight reductions in the amount of fees owed by plaintiff after February 1, 2010. Plaintiff now appeals, arguing that she should be allowed to argue that appellees overcharged her prior to February 1, 2010. We agree.

The parties misstate the standard of review. Both parties cite the abuse of discretion standard for a trial court's grant of attorney fees. However, the trial court in this case did not grant attorney fees as a sanction or pursuant to a statute. Rather, the issue here is the amount of fees owed by plaintiff under her contracts with the appellees. Appellees claimed that plaintiff owes them over \$30,000, and plaintiff asserted as a defense that appellees previously overcharged her enough to cover her unpaid bills. The trial court, by refusing to consider plaintiff's defense, essentially granted summary disposition on the point to appellees. We review a grant of summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). We review for clear error the trial court's factual findings on the propriety of the bills dated after February 1, 2010. MCR 2.613(C); *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). Legal issues are reviewed de novo. *Reed*, 265 Mich App at 164.

There is some question as to the appropriate legal framework to apply to the facts in this case. Both parties discuss the facts within the framework of open accounts and accounts stated. However, in 2009 our Supreme Court decided *Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, PC v Bakshi*, 483 Mich 345; 771 NW2d 411 (2009), which requires the application of a different analytical framework. The *Seyburn* Court discussed open accounts, but noted that "the existence of a contract rules out the existence of a mutual and open account 'where the dealings of the parties relate entirely to and are governed by a special contract for the payment of money.'" 483 Mich at 357 (quoting *Goodsole v Jeffery*, 202 Mich 201, 203; 168 NW 461 (1918)). The *Seyburn* Court continued:

In the present case, it is undisputed that plaintiff and defendant entered into a signed contract containing specific terms. The contract stated that plaintiff agreed to provide legal services to defendant and, in turn, defendant would make payments of money to plaintiff. Specifically, the contract provided for plaintiff to send a billing statement by the 20th of each month, using hourly billing at an established rate, and also required defendant to pay within 10 days of the date of the statement. In addition, the contract defined the liabilities of both parties. Because it is clear that a contract existed between the parties, we do not conclude that there is a mutual and open account in the present situation. [*Seyburn*, 483 Mich at 357.]

The Supreme Court thus concluded that a lawyer-client relationship governed by a fee agreement was not subject to analysis under the open account framework. Instead, a general contract analysis would be applied.

Under a general contract analysis, plaintiff must be given an opportunity to show that certain charges constituted breaches of contract that could be set off against appellees' claims.

The bills prior to February 1, 2010 were still within the statute of limitations for plaintiff's lawsuit. The fact that those bills were paid, while relevant, does not conclusively prove that the bills were proper. The trial court erred by refusing to consider whether the earlier bills contained any overcharges in breach of the contract between the parties.

Plaintiff also argues that the trial court erred in its consideration of the fees billed after February 1, 2010. However, review of the record does not reveal that the court clearly erred in its factual findings or committed legal error with regard to the bills that it actually considered. We therefore uphold that portion of the trial court's decision.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck