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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-473**

Carla B. Paul,  
Appellant,

vs.

James J. Kretsch, Jr., et al.,  
Defendants,

and

Felix J. Sahlin, Esq., intervenor,  
Respondent.

**Filed September 6, 2011  
Affirmed  
Halbrooks, Judge**

Ramsey County District Court  
File No. 62-CV-10-1427

Carla B. Paul, Winnipeg, Manitoba (pro se appellant)

Felix J. Sahlin, St. Paul, Minnesota (attorney pro se)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Pro se appellant Carla B. Paul<sup>1</sup> challenges the district court's award of an attorney's lien and costs to pro se attorney respondent Felix J. Sahlin. By notice of related appeal, Sahlin challenges the district court's determination of the amount of his lien. Because we conclude that the district court did not err by declining to consider Paul's breach-of-fiduciary-duty claims before imposing the lien or in the calculation of the lien, we affirm.

### FACTS

Sahlin represented Paul in her attempt to recover attorney fees from various law-firm and attorney defendants for whom Paul did legal work as an independent contractor. Sahlin and Paul originally entered into a contingent-fee arrangement. Paul's claims against the defendants were settled through mediation in October 2010. During the mediation, in an effort to get Paul to agree to settle her claims, Sahlin agreed to reduce his contingency fee from 33% to 20%. Paul agreed to settle her claims in exchange for \$25,000, which the defendants agreed to pay in two installments. Sahlin agreed to take his fee of \$5,000 from the second payment.

After the terms of the settlement were memorialized in a memorandum of understanding, Paul and Sahlin's relationship began to deteriorate. Sahlin contends that Paul wanted to pursue a course of action that he was not comfortable with—namely,

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<sup>1</sup> Paul is a practicing attorney in Winnipeg, Canada, and is on voluntary restricted status in Minnesota.

refusing to sign the release proposed by the defendants and inquiring about repudiating the settlement agreement. Paul agrees that she was discussing the release and possible repudiation of the settlement agreement with Sahlin, but also alleges that Sahlin misrepresented discussions he had with the defendants and did not protect Paul's interests in the discussions. At some point during this time period, Sahlin told Paul that he was no longer willing to wait until the end of December for his fee and that he wanted at least some portion of it from the first installment payment. Paul claims that she tried several times to communicate with Sahlin about this change in their agreement, but that Sahlin cut off communication with her.

On November 16, 2010, Paul terminated Sahlin's services. Sahlin filed a notice of an attorney's lien that same day. Attached to Sahlin's notice was an affidavit that Paul alleges contains privileged and confidential attorney-client communications. Sahlin moved to enforce the lien. Paul objected to the lien, claiming that Sahlin had forfeited his right to his attorney fees by breaching his ethical duty to her—both because of his alleged misrepresentations to her about his conversations with the defendants and because of his unethical disclosure of privileged and confidential information. Regarding the amount of the lien, Sahlin argued that he was entitled to a reasonable hourly rate for the services he rendered, which he calculated to be more than \$26,000.

The district court awarded Sahlin a lien in the amount of \$5,000 and did not address Paul's allegations of Sahlin's unethical behavior. This appeal follows.

## DECISION

### I.

Interpretation of the attorney-lien statute is a question of law, which we review de novo. *Dorsey & Whitney, LLP v. Grossman*, 749 N.W.2d 409, 420 (Minn. App. 2008). “An attorney lien is an equitable lien created to prevent a client from benefiting from an attorney’s services without paying for those services. An attorney, therefore, has a lien for compensation whether the agreement for compensation is expressed or implied.” *Id.* (quotation and citation omitted). Minn. Stat. § 481.13, subd. 1(c) (2010), provides that an attorney’s lien “may be established, and the amount of the lien may be determined, summarily by the court . . . on the application of the lien claimant.”

Paul argues that the district court erred by declining to consider her argument that Sahlin forfeited his fee as a result of his alleged unethical behavior. But the district court was not required to consider these arguments in the summary proceeding to establish Sahlin’s lien. The summary nature of an attorney-lien proceeding is limited to developing facts regarding the attorney fees, such as the time spent on the case and the validity of charges. *Gaughan v. Gaughan*, 450 N.W.2d 338, 343 (Minn. App. 1990), review denied (Minn. Mar. 16, 1990); *Boline v. Doty*, 345 N.W.2d 285, 289 (Minn. App. 1984). Paul admits that she and Sahlin had a valid agreement for a flat fee of \$5,000. And Paul does not argue that the value of Sahlin’s services was less than this amount.

In *Thomas A. Foster & Assocs., Ltd. v. Paulson*, this court concluded that a district court did not err by declining to consider allegations of legal malpractice and breach of fiduciary duty in an attorney-lien proceeding. 699 N.W.2d 1, 7 (Minn. App. 2005).

Instead, we stated that “the practicalities of a summary proceeding do not support the notion that a district court must transform an attorney-lien proceeding into a legal-malpractice trial.” *Id.* Ultimately, this court held that

[b]ecause neither section 481.13 nor Minnesota caselaw compels the district court to consider a breach-of-fiduciary-duty or legal-malpractice defense in an attorney-lien action, the district court did not err when it declined to entertain the legal-malpractice and breach-of-fiduciary-duty claims and instead determined the amount of the attorney lien based on the uncontested retainer agreement.

*Id.* at 8.

Paul is free to sue Sahlin for his alleged breach of fiduciary duty, and if she is successful, Sahlin may be required to forfeit his fee.<sup>2</sup> *See Rice v. Perl*, 320 N.W.2d 407, 411 (Minn. 1982) (“[A]n attorney at law who is unfaithful in the performance of his duties forfeits his right to compensation.” (quotation omitted)). Because there is another more appropriate forum for Paul to litigate her claim, the district court did not err by declining to address it as part of the summary attorney-lien proceeding. *See Paulson*, 699 N.W.2d at 8 (“[W]hen another process to litigate defenses or counterclaims is available, it is preferable to litigate those matters outside a summary proceeding.”).

## II.

Sahlin argues by notice of related appeal that the district court erred because it calculated his fee based on the terminated contract instead of a theory of quantum meruit.

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<sup>2</sup> Sahlin asserts that because the district court granted his petition for a lien, the district court implicitly found no breach of fiduciary duty by him. We disagree. As discussed *supra*, defenses that are unrelated to establishing the value of the attorney’s services or the validity of the written fee agreement are not appropriately considered in a summary proceeding.

The district court's calculation of the amount of attorney fees is a question of fact. *Id.* at 4. But whether the district court used the proper method to calculate attorney fees is a legal question, which we review de novo. *Id.*

“The value of the lien ordinarily is determined based on the terms of the fee provisions of a retainer agreement. When such an agreement does not exist, the amount of the lien is determined by the reasonable value of the services rendered.” *Id.* at 6 (citation omitted). Here, the district court found that there was an agreement between Paul and Sahlin for a fee of \$5,000. This finding is supported by the record and is not clearly erroneous. The existence of an express contract between the parties precludes recovery under the theory of quantum meruit. *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 126 (Minn. App. 1998).

Sahlin relies on *Lawler v. Dunn* in support of his argument that he is entitled to fees based on an hourly rate rather than the contract. 145 Minn. 281, 176 N.W. 989 (1920). *Lawler* stands for the proposition that a client must pay his or her attorney for services rendered even after the client discharges the attorney but that a discharged attorney is not entitled to recover damages for breach of contract based on a terminated contingency agreement. *Id.* at 285, 176 N.W.2d at 990. Instead, a discharged attorney is entitled to “the reasonable value of services on the theory of quantum meruit.” *Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. v. Nartnik*, 439 N.W.2d 418, 420 (Minn. App. 1989) (citing *Lawler*, 145 Minn. at 284-85, 176 N.W. at 990), *review denied* (Minn. July 12, 1989). But *Lawler* does not stand for Sahlin's contention

that the reasonable value of his services must be calculated using an hourly rate rather than the agreed-upon fee.

Because the district court did not err by declining to consider Paul's allegations of unethical conduct or by basing the amount of the lien on the amount of the terminated contract, we affirm.

**Affirmed.**