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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-847**

Kaler Doeling Law Office,
Respondent,

vs.

Rozanne Rector,
Appellant.

**Filed December 27, 2011
Affirmed
Stauber, Judge**

Marshall County District Court
File No. 45CV10150; 35CV1046

Ronald H. McLean, Peter W. Zuger, Serkland Law Firm, Fargo, North Dakota (for respondent)

Zenas Baer, Zenas Baer Law Office, Hawley, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant, a former client of respondent law office, appeals summary judgment establishing and enforcing an attorney lien under Minn. Stat. § 481.13 (2010). Appellant argues that the district court erred by granting summary judgment in favor of respondent because (1) the current version of Minn. Stat. § 481.13 does not allow a district court to

establish and enforce an attorney lien in the same summary proceeding; (2) the summary enforcement of the lien deprived her of due process; (3) the calculation of the amount of the lien was erroneous; and (4) respondent released the lien when appellant's subsequent attorneys made an agreement with respondent regarding respondent's fees and expenses. Appellant also argues that the district court erred by denying her motion for a continuance to engage in discovery. We affirm.

FACTS

Appellant Rozanne Rector and her husband Cal Rector operate an equine business. In 2003, the Rectors brought suit against Karlstad Farmers Elevator (Karlstad) alleging that Karlstad had been selling contaminated grain to them for several years. To represent them in their claim against Karlstad, appellant retained Kip M. Kaler of respondent Kaler Law Office.¹ The retainer agreement provided that representation was on "a contingent fee basis" with respondent entitled to "one-third of any recovery made if [the case was] resolved without appeal." The agreement also provided that "[i]f there is an appeal, [respondent's] fee will be 40% of the gross recovery." Appellant further agreed to pay for any out-of-pocket expenses incurred by the law office.

Appellant terminated the legal services of respondent in June 2006. Appellant and her husband then retained William D. Mahler of Rochester, Minnesota, and Bernt J. Hammarback of Wisconsin to replace respondent as the attorneys in the Karlstad lawsuit.

On September 7, 2006, respondent filed a notice of intent to claim a lien for its fees and costs. According to respondent, 560.5 hours had been expended in

¹ The retainer agreement was signed only by appellant and not Cal Rector.

representation of appellant in the action at Kaler's regular hourly rate of \$150 per hour. In addition, respondent claimed \$42,266.23 in costs associated with the action.

The case against Karlstad proceeded to trial with subsequent counsel, and a jury awarded damages of approximately \$1,400,000 in favor of the Rectors. On appeal, this court reduced the verdict to \$714,000, plus costs and disbursements. *Rector v. Karlstad Farmers Elevator*, No. A07-693, 2008 WL 3287910, at *3 (Minn. App. Aug. 12, 2008).

After the judgment proceeds were paid, subsequent counsel sent the Rectors a letter "summariz[ing] the conclusion of [their] case, disbursements, and status of outstanding claims." The letter stated that the "gross amount recovered on the Judgment was . . . \$775,000." The letter then itemized the fees, costs, and disbursements to be deducted from this amount. The deductions included: (1) Hammarback and Mahler's attorney fees, which consisted of 50% of the amount recovered;² (2) Hammarback and Mahler's expenses; (3) outstanding expert witness fees; and (4) \$40,780.87 in costs to respondent as agreed upon by appellant. Based upon these deductions, the Rectors were left with a net recovery of \$178,178.62. The letter further stated that an agreement was reached regarding respondent's lien. Although the Rectors objected to any settlement agreement with respondent, the terms of the agreement provided that Hammarback would hold in his trust account the following sums: (1) \$1,485.36 to cover costs incurred by respondent but disputed by appellant and (2) \$100,000 to cover the attorney's lien claimed by respondent. These fees and costs further reduced the amount of the Rectors' recovery in the lawsuit against Karlstad to only \$76,693.26.

² Hammerback and Mahler agreed to reduce their fees by \$6,078.54.

Appellant objected to respondent's attorney fees and the remainder of respondent's costs being paid from the Rectors' recovery. Instead, appellant took the position that respondent's attorney fees should be paid from the attorney fees paid to subsequent counsel, Hammarback and Mahler. Consequently, respondent brought suit against appellant seeking an order determining that respondent "be paid Attorneys fees and expenses held by Rector's attorney."

In September 2010, respondent moved for summary judgment requesting that the district court establish and enforce the attorney lien under Minn. Stat. § 481.13. At oral argument on the summary-judgment motion, appellant indicated that a continuance was necessary to allow for discovery. Without addressing the request for a continuance, the district court granted respondent's motion for summary judgment, holding that respondent has established an attorney's lien and that the "lien attaches to the funds in the principal amount of \$101,485.36, plus any interest accrued thereon." Thus, the court ordered that Hammarback "forward the \$101,485.36 presently held in trust, along with any accrued interest thereon," to respondent. This appeal followed.

D E C I S I O N

I.

When reviewing a grant of summary judgment, an appellate court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriately granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). The reviewing court views the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *Id.* at 77.

An attorney has a lien for compensation on the client’s interest in money or property involved in any action or proceeding in which the attorney was employed. *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. *Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 5 (Minn. App. 2005). If a client recovers money as a result of an attorney’s services, the attorney lien acts as security to enable the attorney to recover fees owed by the client. *Id.*

Attorney liens are governed by Minn. Stat. § 481.13. Procedurally, Minn. Stat. § 481.13, subd. 1(c), provides that an attorney lien “may be established, and the amount of the lien may be determined, summarily by the court . . . on the application of the lien claimant.” “[W]hen a lien claimant petitions the district court under section 481.13, subdivision 1(c), the district court must determine (1) the lienholder; (2) the subject of the lien as defined by the attorney-lien statute; and (3) the amount due.” *Grossman*, 749 N.W.2d at 422 (citing Minn. Stat. § 481.13, subd. 1(c)).

Here, the district court determined that respondent had a contingent-fee agreement with appellant, that respondent performed substantial work on the case prior to his discharge, and that respondent perfected the lien under section 481.13. Therefore, the court determined that respondent had a valid attorney lien. The court also determined that appellant received a \$775,000 judgment in the case, and that the judgment amount is the subject of the lien. The court further determined that based upon the one-third contingency fee agreement between respondent and appellant, respondent is entitled to \$238,000 of the judgment proceeds. But the court determined that \$101,485.36 is the “amount due” under the lien because respondent “is willing to accept [that amount] (plus accrued interest, if any) held in Attorney Hammarback’s trust fund as satisfaction of the disputed attorney’s lien.” The court then ordered that the \$101,485.36 held in the Hammarback trust be forwarded to respondent. On appeal, appellant challenges the district court’s grant of summary judgment relating to the establishment and enforcement of respondent’s lien.

A. Enforcement of the lien

Appellant’s primary point of contention is that the amount due under respondent’s lien should be deducted from attorney fees claimed by appellant’s subsequent attorneys Hammarback and Mahler. To support her claim, appellant challenges the enforcement of the lien in a summary proceeding. Appellant argues that under the current version of Minn. Stat. § 481.13, and recent caselaw, the district court’s enforcement of the lien in a summary proceeding is erroneous.

In 2002, the legislature amended Minn. Stat. § 481.13. 2002 Minn. Laws ch. 403, § 2 at 1707-08. Before it was amended, the statute provided: “The liens . . . may be established, and the amount thereof determined, by the [district] court, summarily, in the action or proceeding . . . or such liens may be enforced, and the amount thereof determined by the [district] court, in an action for equitable relief brought for that purpose.” Minn. Stat. § 481.13(3) (2000). Thus,

[u]nder the prior version of the statute, an attorney seeking to collect unpaid legal fees could petition the district court in the action or proceeding in which the attorney was representing the client to summarily establish an attorney lien; or the attorney could initiate an equitable action and request establishment and enforcement of the attorney lien.

Grossman, 749 N.W.2d at 421 (emphasis omitted).

However, when it amended the statute in 2002, the legislature removed the language permitting an enforcement proceeding under the statute but maintained the establishment proceeding. 2002 Minn. Laws ch. 403, § 2, at 1707–08. As this court recognized in *Grossman*, Minn. Stat. § 481.13 now “authorizes the district court only to *summarily establish* the lien. It no longer authorizes the district court to *enforce* the lien in the summary proceeding.” *Grossman*, 749 N.W.2d at 422 (citation omitted) (emphasis added). Instead, the statute “is silent as to the proper means for enforcing the lien.” *Id.*; *but see Paulson*, 699 N.W.2d at 8 (stating in dictum that the statute provides for “a summary proceeding to establish and enforce a lien”).

Here, the action brought by respondent sought to establish the attorney lien under section 481.13, as well as to enforce the lien. The district court summarily granted

respondent's request in its entirety. Under the current version of section 481.13, the established lien cannot, ordinarily, be enforced in the summary proceeding. *See Grossman*, 749 N.W.2d at 422. But this is a unique case in which the corpus is already being held in Hammarback's trust account, and we are not dealing with the statutory requirements of real-estate foreclosure. Because the corpus already exists, and the lien has attached, there is no need to initiate a separate lien foreclosure proceeding. In other words, because the corpus is being held in Hammarback's trust account, there is nothing to foreclose. Therefore, we conclude that under the unique situation here, the district court did not err by both establishing and enforcing the attorney lien in the same summary proceeding.

B. Due process

Appellant also claims that the district court's summary enforcement of the lien deprived her of due process. We disagree. In *Boline v. Doty*, this court recognized that an attorney lien is a claim against an interest in property that may result in the deprivation of that property. 345 N.W.2d 285, 289 (Minn. App. 1984). It is well settled that when deprivation of property is at issue, minimal due process requires a meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S. 371, 377–38, 91 S. Ct. 780, 785–86 (1971); *Boline*, 345 N.W.2d at 289. Thus, in a proceeding to determine the amount of an attorney lien, “the clients must be given an adequate opportunity to contest the facts regarding the attorney’s fees.” *Boline*, 345 N.W.2d at 289–90 (holding that the “amount of an attorney lien must be fairly litigated, either in the summary action or proceeding or in the equitable action”).

Here, the amount of the attorney lien was fairly litigated. Appellant had notice and an opportunity to be heard on the issue of the amount of the lien, and appellant took advantage of her opportunity to be heard on the matter. Appellant was not denied due process with respect to the lien.

C. Amount of the lien

Appellant further contends that the district court erred by determining the amount due. Under Minnesota law, a client must pay his or her attorney for services rendered even after the client discharges the attorney. *Lawler v. Dunn*, 145 Minn. 281, 285, 176 N.W. 989, 990 (1920). But a discharged attorney is not entitled to recover damages for breach of contract based on a terminated contingency agreement. *Id.* 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), *review denied* (Minn. July 12, 1989).

Here, the agreement between appellant and respondent was a contingency-based fee agreement. As appellant points out, the contingency-fee agreement was terminated when appellant terminated her relationship with respondent. Nonetheless, in establishing the amount of the lien, the district court found that “[u]nder the terms of the written retainer agreement, [respondent] would be entitled to (at a minimum) one-third of [appellant’s] total recovery” that would “result in an award of \$238,000 in attorney’s fees to [respondent].” Although the district court recognized that respondent would accept the lesser amount of \$101,485.36, the district court’s decision was based upon the

contingency agreement. Because the contingency agreement was terminated, the district court erred by calculating the amount due based upon the contingency-fee agreement.

However, in a footnote, the district court also considered the “reasonable value of the legal services provided by [respondent] under a quantum meruit theory.”

Specifically, the district court found that respondent expended 560.5 hours related to the Karlstad lawsuit, and that respondent’s billable rate at the time was a “paltry” \$150 per hour. Adopting these figures, the court calculated the sum of \$84,075 under the quantum meruit theory. The court further determined that respondent would be entitled to interest on the amount due, which, after adding the \$1,485.36 in outstanding costs, plus interest at an annual rate of 6%, “would create a lien of \$98,077.20 under a quantum meruit theory.” Thus, the court noted that “even under a quantum meruit theory and analysis [an] attorney’s lien of \$101,485.36 . . . is more than reasonable.”

It is well settled that we may affirm summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996). Here, the district court calculated the amount of respondent’s attorney lien under a quantum meruit theory. The calculation is well reasoned and supported by the record. Accordingly, the district court did not abuse its discretion by establishing the amount of the lien.

D. Purported release of the lien

Appellant further argues that the district court erred by establishing and enforcing the lien because respondent released the lien when he made an agreement with the Rectors’ subsequent attorneys to pay expenses in the amount of \$40,780.87 and hold

\$100,000 in trust pending the resolution of respondent's claimed fees. Appellant claims that because respondent released the lien, "the remedy provided in Minn. Stat. § 481.13 evaporated." Thus, appellant argues that respondent's complaint failed to state a claim upon which relief can be granted because respondent no longer had a claim under section 481.13.

Appellant's argument is without merit. Although respondent reached an agreement with the Rectors' subsequent attorneys, the lien was not actually released for purposes of section 481.13. Rather, the agreement simply made enforcement of the lien more practical. Therefore, we conclude that the district court properly established and perfected respondent's attorney lien.

II.

Appellant challenges the district court's denial of her request for a continuance to engage in discovery. The district court has broad discretion in granting or denying discovery requests. *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987). "Absent a clear abuse of discretion, [the district] court's decision regarding discovery will not be disturbed." *Id.* In particular, whether to grant or deny a continuance is within the sound discretion of the district court, and its decision will not be reversed unless it has abused its discretion. *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Here, the record reflects that at the argument on the motion for summary judgment, appellant stated "[a] continuance is necessary to get the rest of the discovery." But the record also reflects that no formal motion for a continuance was made, and no

further mention of a continuance was made by anyone at the hearing. Appellant was acting pro se during the proceedings, and the request for a continuance was essentially made in passing in light of the proceedings as a whole. Moreover, appellant's claim is that additional discovery is necessary (1) "for production of a release purportedly signed by the Rectors releasing any further claims against . . . Karlstad . . . and their insurers" and (2) "to establish an unlawful and perhaps criminal agreement between two insurance companies and several attorneys, including [respondent's] former counsel." (quotations omitted). The information sought through additional discovery was irrelevant to the issue before the district court—whether respondent is entitled to a lien against appellant for his services rendered. Therefore, the district court did not abuse its discretion by denying appellant's request for a continuance. *See QBE Ins. Corp. v. Twin Homes of French Ridge Homeowner Ass'n*, 778 N.W.2d 393, 400 (Minn. App. 2010) ("When summary judgment is involved, if the discovery would not assist the district court or change the result of the summary judgment motion, the district court does not abuse its discretion by granting the summary judgment motion without granting the continuance.").

Affirmed.