STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0814

Dexter Branwall,
Respondent,

Eline Branwall,
Respondent,

vs.

Faye A. Hilgart,
Defendant,

Craig S. Hunter,
Appellant,

Thomas W. Reed,
Appellant.

Filed April 8, 2008
Reversed and remanded; motion denied
Toussaint, Chief Judge
Dissenting, Klaphake, Judge

St. Louis County District Court
File No. 69VI-CV-05-523

Dexter Branwall, Post Office Box 142, Soudan, MN 55782 (pro se respondent)

Eline Branwall, Post Office Box 142, Soudan, MN 55782 (pro se respondent)

Craig S. Hunter, Northland Law, 11 East Superior Street, Suite 328, Duluth, MN 55802 (attorney pro se)

Thomas W. Reed, Reed Law Office, LLC, 11 East Superior Street, Suite 562, Duluth, MN 55802 (attorney pro se)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellants Craig S. Hunter and Thomas W. Reed applied to the district court for attorney liens and an award of attorney fees in the amount of $123,000, based on contingent-fee agreements signed by respondent Dexter Branwall and his mother in which they agreed to pay 20% of the agreed-upon value of the property recovered. The district court found the contingent-fee agreements unreasonable and instead calculated the fee on an hourly basis, determining that the reasonable value of attorney fees for both attorneys was $25,000, which Branwall's mother had already paid. It denied the application for the attorney liens. Because contingent-fee agreements are valid unless procured by fraud, of which there is no evidence; because, although Branwall has cognitive disabilities, he has never been adjudicated incapacitated or deemed incompetent; and because Branwall's mother, who was his attorney-in-fact, also signed the agreements, we reverse and remand for an award of attorney fees pursuant to the contingent-fee agreements and for the imposition of attorney liens. The motion of Hunter and Reed to supplement the record is denied.

FACTS

In 1992, Branwall's mother deeded the family home to Branwall and to his sister as joint tenants. It is undisputed that Branwall has cognitive disabilities and is dependent

on his elderly mother for his day-to-day needs. On January 26, 1999, Branwall signed a power-of-attorney form, appointing his mother and his sister to act as his attorneys-in-fact. The form specifically provided that it continued to be effective if Branwall became incapacitated or incompetent. On August 11, 1999, Branwall, apparently represented by an attorney, conveyed his interest in the property to his sister by quit-claim deed for less than $500, allegedly based on a promise, later repudiated, that she would take care of him during his lifetime.

With the assistance of his cousin and mother, Branwall sought legal counsel to obtain the return of his share of the property from his sister. On October 25, 2004, Branwall entered into an attorney-client relationship with Hunter and Reed to represent him in his claim against his sister to set aside the property transfer. The initial retainer agreement was signed by Branwall and approved by his mother on October 25, 2004. It provided that the attorneys "shall receive 20% of the value of all property recovered."

A complaint was served on Branwall's sister in July 2005, in which Branwall sought either restoration of his one-half interest in the property as a tenant in common or, in the alternative, the grant of a constructive lien against the property in an amount equal to one-half of its present value and permission to then foreclose the constructive lien. His sister served an answer in August 2005.

On October 12, 2005, in documents drafted by Reed, Branwall revoked his sister's existing power of attorney and executed a new power of attorney, retaining his mother as his attorney-in-fact and adding his cousin as successor attorney-in-fact. On the same date, Branwall's mother also revoked the power of attorney previously given her

daughter, Branwall's sister, and instead named Branwall as her attorney-in-fact and Branwall's cousin as her successor attorney-in-fact, in documents also drafted by Reed. On the same date, Reed drafted wills for Branwall and his mother, in which both intentionally omitted Branwall's sister from the provisions of their will, named each other as personal representatives with Branwall's cousin as the successor personal representative, and left the residue of their estates to the other.

On April 2, 2006, both Branwall and his mother signed an amended fee agreement clarifying "that the attorneys shall receive 20% of the present value of the real estate recovered in the action by Dexter Branwall" against his sister, who had agreed to deed the property to their mother in settlement of the case. A few days later, the parties stipulated to dismiss the lawsuit, and judgment was entered on April 11, 2006. Title was transferred back to Branwall's mother shortly thereafter.

On September 11, 2006, Reed and Hunter filed notice of attorney liens with the county registrar's office, and on October 25, 2006, Reed and Hunter gave notice of their application to the district court for attorney lien judgments. On October 26, Branwall and his mother stipulated with Hunter and Reed that, based on the successful recovery of the property, the retainer agreement and the amended retainer agreement, the attorneys were to receive 20% of the value of the property recovered, at an appraised value of $615,000, leading to total attorney fees of $123,000. On October 31, Branwall's mother paid the attorneys $25,000 toward the fees.

Summary proceedings under the attorney lien act were commenced. Ultimately, the district court stated that the contingency fee of $123,000 was not reasonable, citing

the possibility of overreaching, the questions as to the capacity of Branwall and his mother, and the fact that the lawsuit did not involve formal discovery, alternative dispute resolution, or novel or difficult issues. Applying the factors set out in Minn. R. Prof. Conduct 1.5, it ruled that a rate of $200 per hour was appropriate. Finding that Hunter spent approximately 60 hours on the file, and assuming that Reed also spent approximately 60 hours on the matter, it calculated that each was entitled to $12,000 in attorney fees. Branwall's mother had already paid Reed $25,000 in attorney fees, and the court then split the difference of the remaining $1,000 between the attorneys, and noted that Hunter was entitled to $12,500 of the amount already paid to Reed. It denied the request for attorney liens on the property at issue.

D E C I S I O N

An appellate court reviews the application of the attorney-lien statute as a question of law and reviews questions of the reasonable value of attorney fees as a question of fact. *Thomas A. Foster & Assocs., Ltd. v. Paulson*, 699 N.W.2d 1, 4 (Minn. App. 2005). Questions of law are subject to de novo review. *Id.* Questions of fact are reviewed under the clearly erroneous standard. *Ashford v. Interstate Trucking Corp. of Am., Inc.*, 524 N.W.2d 500, 502 (Minn. App. 1994).

An attorney has a lien for compensation on the interest of the attorney's client in property involved in the action or proceeding in which the attorney was employed. Minn. Stat. § 481.13, subd. 1(a) (2006). The lien is an equitable one and "protects against a successful party receiving a judgment secured by an attorney's services without paying for those services." *Foster*, 699 N.W.2d at 5. The attorney lien attaches to any recovery

of money or property of the client pursuant to a judgment in the proceeding in which the attorney represented the client. Minn. Stat. § 481.13, subd. 1(a), (b) (2006); *Foster*, 699 N.W.2d at 5. An attorney may apply to the district court for a lien, and "the amount of the lien may be determined, summarily by the court." Minn. Stat. § 481.13, subd. 1(c) (2006). "The value of the lien ordinarily is determined based on the terms of the fee provisions of a retainer agreement." *Foster*, 699 N.W.2d at 6. But where there is no retainer agreement, the court may determine the amount of the lien by the reasonable value of services rendered. *Id.*

A contract for attorney fees that is fairly entered into and does not involve fraud by the attorneys is valid and enforceable. *Kittler & Hedelson v. Sheehan Properties, Inc.*, 295 Minn. 232, 235, 203 N.W.2d 835, 838 (1973). Contingent-fee agreements are valid unless unreasonable or unconscionable. *Hollister v. Ulvi*, 199 Minn. 269, 276, 271 N.W. 493, 497 (1937). In fact, the supreme court also recognized that contingent fees may benefit one with a meritorious cause of action who has no other means to pay an attorney. *Id.* at 276-77, 271 N.W. at 497. Further, this is a proceeding that produced a res out of which the attorneys could be paid. *Cf. Thomton, Sperry & Jensen, Ltd. v. Anderson*, 352 N.W.2d 467, 469 (Minn. App. 1984) (noting that contingency fee in partition proceeding could be considered inappropriate because it produced no res out of which to pay the attorney).

Hunter and Reed dispute the district court's questions as to the capacity of Branwall and his mother to enter into the contingent-fee agreements. They also contend that the contingent-fee agreements were valid and reasonable under the circumstances

and that Branwall and his mother stipulated to the validity and amount of attorney fees submitted to the court for approval. No party or interested person has appeared in opposition to this appeal.

We agree with Hunter and Reed. Although Branwall suffered from cognitive disabilities, and his elderly mother apparently had some difficulties, there has been no judicial determination that either was incapacitated, and no guardians were appointed under Minn. Stat. § 524.5-310 (2006). Nor has there been any definitive finding that Branwall or his mother was incompetent to sign the contingent-fee agreement or the power of attorney forms. Persons are presumed to be competent to enter into contracts. *Fisher v. Schefers*, 656 N.W.2d 592, 595 (Minn. App. 2003). In any event, Branwall had appointed his mother as his attorney-in-fact as early as 1999. *See Younggren v. Younggren*, 556 N.W.2d 228, 232 (Minn. App. 1996) (holding that person was competent to sign power of attorney if person had enough mental capacity to understand to reasonable extent nature and effect of what person was doing). There has been no finding of fraud. The attorneys here obtained an excellent result for Branwall; instead of only obtaining the return of his half of the property from his sister, Branwall's sister agreed to return all of the property to their mother.

We note that at the same time Branwall and his mother revoked the power of attorney previously given to Branwall's sister, Reed prepared wills for Branwall and his mother to ensure that the problem of Branwall having no resources would not arise again in the future. Consequently, we uphold the contingent-fee agreements as valid and reasonable. We reverse the district court and remand for an award of attorney fees under

the contingent-fee agreements and imposition of attorney liens under the statute.

After oral argument, Hunter and Reed moved under Minn. R. Civ. App. P. 110.05 to supplement the record with documents that were not part of the record below. Rule 110.05 authorizes this court to consider documents that were filed and provided to the district court but not placed in the file due to a filing technicality. *Stanek v. A.P.I., Inc.*, 474 N.W.2d 829, 831-32 (Minn. App. 1991), *review denied* (Minn. Oct. 31, 1991). "The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because Hunter and Reed have not shown that the supplemental documents were presented to the district court, the record cannot be corrected to include those documents and their motion to supplement the record is denied.

Reversed and remanded; motion denied.

KLAPHAKE, Judge (dissenting)

I respectfully dissent.

Both the validity and the amount of a lien to secure payment of attorney fees may be summarily established by the district court. Minn. Stat. § 481.13, subd. 1(c) (2006). The reasonable value of attorney fees, which the district court is empowered by this statute to establish, is a question of fact. *Thomas A. Foster & Assoc. v. Paulson*, 699

N.W.2d 1, 4 (Minn. App. 2005). We will not set aside the district court's findings of fact unless clearly erroneous. *Ashford v. Interstate Trucking Corp.*, 524 N.W.2d 500, 502 (Minn. App. 1994). Findings of fact are clearly erroneous only if contrary to the evidence or not reasonably supported by the weight of the evidence. *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The district court made detailed findings in this matter, which are supported by the record. Respondent Eline Branwall, an elderly widow, deeded her real property to her children, Dexter Branwall and Faye Hilgert. In 1999, Dexter Branwall deeded the property to his sister, assuming that she would care for him. When Hilgert stated that she would not, Dexter Branwall decided to recover his one-half share of the property. Respondent Dexter Branwall, a man who never advanced beyond kindergarten-level educational achievement, who has cognitive disabilities, and who lives with and is closely supervised by his 90-year old mother, agreed to pay a 20% contingency fee to appellants upon "the value of all property recovered," presumably by him, because this retainer agreement lists him as "client." Although Dexter Branwall is a 67-year-old man, the agreement was "approved" by his mother, Eline Branwell, suggesting that Dexter Branwall may have issues of competency.

This contingent fee agreement was signed October 25, 2004. A complaint seeking recovery of real property from Dexter Branwall's sister, Hilgert, was issued on July 21, 2005, alleging, among other things, that Dexter Branwall was a vulnerable adult and that Hilgert had used undue influence to acquire the property from him. Hilgert filed an answer on August 9, 2005; while denying the allegations of the complaint, Hilgert

acknowledged that Dexter Branwall had "some cognitive disabilities." The court file includes no depositions, no interrogatories, no discovery, and no activity except a scheduling order filed in November 2005. The next documents filed in the court record are a Release and Indemnification Agreement dated April 2, 2006, and a stipulated order for judgment dated April 11, 2005.

According to the Release and Indemnification Agreement, Dexter Branwall and Hilgert settled their differences by agreeing that Hilgert would deed the disputed property back to their mother, Eline Branwall. Dexter Branwall did not acquire an interest in the disputed property, which Hilgert deeded back to the sole ownership of Eline Branwall.

Appellant Craig Hunter, who claims a 10% contingent fee from the property worth $615,000, did not support his request for an attorney lien with time records. Appellant Thomas Reed supplied time records, recording a total of 76.7 hours. According to the time records, a significant number of these hours involved estate planning for Dexter and Eline Branwall, and research and preparation of the attorney lien.

Even more interesting is the fact that the settlement agreement and supporting documents were prepared prior to April 2, 2006. On that date, appellants had Eline Branwall sign an "Amendment to the Retainer Agreement," in which she agreed to base the contingent fee on property that she recovered through appellants' efforts. Thus, knowing that the matter was settled without Dexter Branwall actually recovering any property, appellants redrew the retainer agreement so that Eline Branwall would now be their client. By doing so, appellants now claim a contingent fee of $123,000 for recovery of this property.

An attorney lien is a well-established and important part of legal practice, designed to protect an attorney from a successful party who receives a judgment secured by an attorney, but who then refuses to pay the attorney for those services. *Thomas A. Foster*, 699 N.W.2d at 5. But Minn. R. Prof. Conduct 1.5(a) states, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee[.]" The comment to this rule states:

> Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Minn. R. Prof. Conduct 1.5 2005 cmt. [3]. The rule sets out a non-exclusive list of factors to consider, including novelty and difficulty of issues, the customary local fee for such services, the amount of the claim and the results achieved, the nature and length of the professional relationship, the experience and ability of the attorney, and the fee agreement itself. Minn. R. Prof. Conduct 1.5(a).

Ultimately, however, the district court is charged with summarily determining the amount of the attorney lien that may be placed against the client's property, which also necessarily involves a determination of the reasonableness of the fee, including a contingent fee. Here, the district court, based on factual findings supported by the record, determined that the $25,000 already paid by the Branwalls was reasonable in light of all the factors set forth in the rule governing attorney fees. On the record before us, we should not second-guess the district court.

An attorney lien is based on principles of equity. *Thomas A. Foster*, 699 N.W.2d at 5. Those who seek equity must do equity. *Peterson v. Holiday Recreational Indus.*, 726 N.W.2d 499, 505 (Minn. App. 2007). Given the circumstances here, which include a vulnerable adult, an elderly widow, a limited amount of legal work, and a quick settlement well short of trial, I am not persuaded that equity will be done by reversing the district court's order. I would affirm the district court.