

[Cite as *Engelwood Forest v. Eclipse Resources*, 2015-Ohio-2336.]

STATE OF OHIO, MONROE COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

ENGELWOOD FOREST, LLC)
c/o FRANK J. ENGELMANN,)
)
PLAINTIFF-APPELLANT,)
)
V.)
)
ECLIPSE RESOURCES – OHIO, LLC)
fka THE OXFORD OIL COMPANY,)
)
DEFENDANT-APPELLEE.)

CASE NO. 14 MO 8

OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Monroe County, Ohio Case No. 2013-384

JUDGMENT: Affirmed

APPEARANCES:
For Plaintiff-Appellant Attorney J. Randall Nye
7941 Ravenna Road
Hudson, Ohio 44236

For Defendant-Appellee Attorney Ethan Vessels
309 Second St.
Marietta, Ohio 45750

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: June 11, 2015

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DONOFRIO, P.J.

{¶1} Plaintiff-Appellant, Engelwood Forest, LLC, appeals from a Monroe County Common Pleas Court judgment ordering the disbursement of attorney's fees to appellee, Attorney Ethan Vessels.

{¶2} Appellant hired appellee's law firm to void an oil and gas lease with defendant, Eclipse Resources-Ohio, LLC (Eclipse), formerly the Oxford Oil Company, or to otherwise clear title to its property in Monroe and Noble counties so that it could re-lease the oil and gas rights. Appellant signed a contingency fee contract with appellee. The contingency fee contract provided appellee would receive one-third of any bonus recovered. The case between appellant and Eclipse settled with a bonus of \$199,965.56 plus \$2,000 for tree reimbursement.

{¶3} Appellant disputed appellee's fee. It hired new attorneys to dispute the payment of appellee's fee. The new attorneys consented to having the funds placed in appellee's IOLTA account.

{¶4} Appellee filed a motion to intervene in order to enforce the contingency fee contract. Appellee also filed a motion to approve the disbursement of attorney fees and expenses.

{¶5} The trial court held a hearing on the motions. Following the hearing, the trial court granted appellee's motion to intervene and ordered that the funds be disbursed pursuant to the contingency fee contract, which resulted in a \$66,715.52 disbursement to appellee's law firm.

{¶6} Appellant filed a timely notice of appeal on June 12, 2014.

{¶7} Appellant now raises a single assignment of error that states:

THE TRIAL COURT ERRED IN ORDERING DISBURSEMENT
OF ATTORNEY FEES FROM ESCROW.

{¶8} Appellant argues that it is entitled to have the opportunity to litigate the issues in this matter. It states that it wishes to introduce evidence to support its position. Appellant points out that prior to the disbursement order, the funds were in escrow. It asserts that absent an agreed settlement, either it or appellee would have

to file a lawsuit in order to establish entitlement to the disputed funds. Appellant asserts that the trial court ordered the disbursement of fees without affording it the chance to litigate the factual and legal issues involved. It claims this violated its right to due process.

{¶9} We review a trial court's decision to disburse funds for payment of attorney fees for abuse of discretion. *Ranft v. Shaffer*, 5th Dist. No. 2000CA00014, 2000 WL 1745149, at *2 (Nov. 20, 2000). Abuse of discretion connotes more than an error of law or judgment; it implies the trial court's judgment was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} Appellee relies on this court's decision in *Hurst v. Cavanaugh*, 7th Dist. No. 90-J-7, 1992 WL 208918 (Aug. 21, 1992), in support of his position. In that case, this court was faced with whether the trial court had the authority to order distribution of attorney fees from an appropriation action based on a contingency fee agreement. We analyzed the issue:

If the fee agreement merely provides that the attorney is to receive a flat fee or that the client will be billed by the hour, then the attorney's fee is not directly related to the amount which the jury awards. Under such circumstances, there is usually no indication that the fee must be paid from any award, even though it probably will.

However, if the fee is contingent upon recovery, the situation is completely different. The attorney's fee is now directly related to any amount which may be awarded by the jury. As a result, certain courts have held that a contingent fee agreement constituted an assignment of an equitable interest in the judgment to the attorney. See, e.g., *High Point Casket Co. v. Wheeler* (N.C.1921), 109 S.E. 378. Since the attorney had an equitable interest in the judgment, as compared to a mere lien, it follows that a trial court would have ancillary jurisdiction to distribute the proceeds pursuant to the agreement.

On the other hand, this court would note that other courts have held that a contingent fee agreement does not assign an equitable interest unless the agreement had express language stating such. See, *In Re: Purman's Estate* (Pa.1948), 56 A.2d 86. However, this holding conflicts with the very nature of a contingent fee agreement. If the parties provide that the fee will be based upon a percentage of the award, it follows that the parties' intention was for the fee to be deducted from the award itself. Accordingly, this court concludes that a trial court does have the authority to enforce a contingent fee agreement as part of the main action, since the attorney had an equitable interest in the judgment.

Hurst, at *6.

{¶11} Thus, pursuant to our holding in *Hurst*, the trial court had the authority to enforce the contingency fee agreement in this case.

{¶12} Appellant argues that it never received its day in court to present facts and arguments relating to why the contingency fee should not be enforced. But the trial court held a hearing in this case prior to ordering the disbursement.

{¶13} The extent of the hearing, however, is uncertain. Appellant failed to file a transcript of the hearing. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings and affirm." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). Given that appellant did not file a transcript of the hearing, we can presume the trial court gave appellant the opportunity to present any relevant evidence and arguments before it proceeded to judgment.

{¶14} Accordingly, appellant's sole assignment of error is without merit.

{¶15} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.