IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM P. INGRAM and MARGARET ANNE INGRAM,	§	
	§	No. 472, 1999
Defendants Below-Appellants,	§	
	§	Court Below— Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
HEIMAN, ABER & GOLDLUST,	§	C.A. No. 96C-05-047
Plaintiff Below-Appellee.	§	

Submitted: February 9, 2000
Decided: March 22, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

O R D E R

This 22nd day of March 2000, upon consideration of the appellants' opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendants-appellants, William P. Ingram and Margaret Anne Ingram (the "Ingrams"), filed this appeal from a Superior Court judgment following trial and the denial of their motion for a new trial. The plaintiff-appellee, Heiman, Aber & Goldlust (the "law firm"), has moved to affirm the judgment of the Superior Court on the ground that it is manifest on

the face of the Ingrams' opening brief that the appeal is without merit.[1] We agree and AFFIRM.

(2) The law firm brought a breach of contract/quantum meruit action against the Ingrams for outstanding attorney's fees.[2] Following a bench trial, the Superior Court decided in favor of the law firm and against the Ingrams, concluding that, although the law firm had not proven the existence of a contract to provide legal services, it was entitled to $50,000 from the Ingrams based on quantum meruit. Subsequently, the Superior Court denied the Ingrams' motion for a new trial with a jury.

(3) In this appeal the Ingrams claim the Superior Court abused its discretion by: 1) entering judgment jointly and severally against them and the defendant entities; 2) awarding the law firm $50,000; and 3) denying their motion for a new trial with a jury.

(4) The law firm represented the Ingrams and the defendant entities in approximately 24 cases between December 1991 and April 1996. There was no written contract for legal services. Both the law firm and the Ingrams

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[1]Supr. Ct. R. 25(a).

[2]Stoney Creek Associates, L.P., Stoney Creek, Inc. and 1101 Stone Associates, Inc. (the "defendant entities") were also named as defendants. The record indicates these entities were real estate investment vehicles for the Ingrams.

acknowledged they had an oral agreement, but disagreed concerning its terms. The law firm's position was that it had agreed to protect the marital assets of the Ingrams in various lawsuits for a fee. The Ingrams' position was that they had agreed to provide real estate settlements and client referrals to the law firm in exchange for legal services.

(5) The record indicates this case initially went to mandatory arbitration in the Superior Court. At that time all of the defendants were represented by counsel. After the arbitrator decided against them, the defendants filed a request for a trial de novo. Their attorney subsequently withdrew from the case. At a hearing on June 13, 1997, the law firm, among other things, presented a motion to dismiss the request for a trial de novo by the defendant entities on the ground that they were not represented by counsel. The hearing transcript reflects that the Ingrams acknowledged they needed to obtain legal representation for the defendant entities in order to avoid the entry of default judgments against them.

(6) The Superior Court reserved decision on the law firm's motion to dismiss until a scheduling conference by telephone on June 20, 1997. There is no record of a telephone conference on that date. Moreover, the

record does not indicate the Ingrams ever obtained counsel for the defendant entities. Nor does the record reflect any judicial action on the motion for dismissal of/ entry of default against the defendant entities prior to trial.[3] The pretrial stipulation does note that it was filed only on behalf of the Ingrams, indicating that the defendant entities were no longer participating in the lawsuit.

(7) The Ingrams claim the Superior Court abused its discretion in entering judgment jointly and severally against them and the defendant entities. Their fundamental complaint appears to be that the bulk of the damages should have been apportioned to the defendant entities, thereby reducing the damages assessed against them personally. This claim is unavailing. In an appeal to this Court all parties are "to include in their appendix those portions of the record which are relevant to any claims."[4] The burden is on the appellant to produce "such portions of the trial transcript

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[3]This case was originally assigned to the Honorable N. Maxson Terry, Jr. At the pretrial conference on May 18, 1998, the parties agreed to a non-jury trial. Trial began on June 23, 1998 and proceeded for several days, but had to be re-scheduled due to Judge Terry's untimely death. The Honorable Henry duPont Ridgely began a non-jury trial de novo in the case on May 10, 1999. It appears that certain testimony from the previous trial was transcribed and incorporated into the trial record.

[4]Supr. Ct. R. 9(e) (ii); Supr. Ct. R. 14(e); *Tricoche v. State*, Del. Supr., 525 A.2d 151, 154 (1987).

as are necessary to give this Court a fair and accurate account of the context in which the claim of error occurred."[5] The Ingrams have failed to provide those portions of the trial transcript that allegedly support their claim of error.[6] As such, this Court has no adequate basis for evaluating the merits of the claim, precluding appellate review.[7]

(8) The Ingrams next claim that the Superior Court abused its discretion in awarding the law firm $50,000. Their fundamental complaint appears to be that there was insufficient evidence to support an award of attorney's fees in that amount. This claim is unavailing. In an appeal from a Superior Court judgment in a non-jury case, this Court accepts the Superior Court's findings of fact if they are sufficiently supported by the record and are the product of an orderly, logical and deductive process.[8] Based on the record

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[5]Id.

[6]The transcript of the June 13, 1997 hearing on, among other things, the law firm's motion to dismiss the defendant entities does not support their claim, since the Superior Court reserved decision on the motion.

[7]The Superior Court's written decision indicates the law firm presented evidence at trial that the Ingrams were individually responsible as guarantors of the debts of the defendant entities.

[8]*Marta v. Nepa*, Del. Supr., 385 A.2d 727, 729 (1978) (citing *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671(1972)); see also *Delmarva Poultry Corp. v. Showell Poultry Corp.*, Del. Supr., 179 A.2d 796 (1962).

available to us,[9] we conclude that the Superior Court's decision to award the law firm $50,000 for legal services was supported by the record, utilized the proper standard for reasonable attorney's fees based on quantum meruit[10] and was the product of an orderly, logical and deductive process.

(9) Finally, the Ingrams claim that the Superior Court abused its discretion in denying their motion for a new trial with a jury. This claim is without merit. This Court applies an abuse of discretion standard of review with respect to the Superior Court's grant or denial of a new trial.[11] In this case, the Ingrams' motion for a new trial was based on their alleged entitlement to a jury trial following the replacement of the first judge and their disagreement with the weighing of the trial evidence by the second judge. Neither of these reasons constitutes a sufficient basis for the granting of a new trial.[12] Even if the motion for a new trial was timely,[13] the Superior Court did

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[9]Again, the Ingrams have failed to provide those portions of the trial transcript supporting their claim.

[10]*Nepa v. Marta*, Del. Supr., 415 A.2d 470, 472 (1980).

[11]*Wilmington Country Club v. Cowee*, Del. Supr., No. 51, 1999, Hartnett, J., 2000 WL 136821 (Jan. 21, 2000) (ORDER).

[12]*Id.*

[13]Super. Ct. Civ. R. 59(b). It appears that the motion was timely filed, but may (continued…)

not abuse its discretion in denying a new trial with a jury under the circumstances presented here.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

[13](…continued)
not have been timely served.