

# Third District Court of Appeal

## State of Florida

Opinion filed July 8, 2020.  
Not final until disposition of timely filed motion for rehearing.

---

No. 3D19-1664  
Lower Tribunal No. 08-1484

---

**Miriam Hernandez, etc.,**  
Appellant/Cross-Appellee,

vs.

**Philip Morris USA, Inc., etc., et al.,**  
Appellees/Cross-Appellants.

An appeal from the Circuit Court for Miami-Dade County, David C. Miller,  
Judge.

Arthur J. Morburger, for appellant/cross-appellee.

Law Office of Carl Palomino, P.A. and Carl Palomino, for appellee/cross-  
appellant Law Offices of Carl Palomino, P.A.

Before EMAS, C.J., and MILLER and LOBREE, JJ.

MILLER, J.

Appellant, Miriam Hernandez, acting as personal representative of the Estate of Raul Berea, appeals a final judgment enforcing a charging lien asserted by her former attorney, appellee, Carl Palomino.<sup>1</sup> Following the death of her father from a smoking-related illness, Hernandez retained Palomino under a duly executed contingency fee contract, to litigate a wrongful death action against several tobacco manufacturers and distributors. After providing legal services for several years, Palomino filed a charging lien and withdrew, citing “ethical and professional obligations.” Successor counsel negotiated a settlement with the purported tortfeasors.

Palomino subsequently moved to enforce his charging lien, seeking a recovery of earned fees in quantum meruit. Following a protracted evidentiary hearing, the lower tribunal awarded Palomino a portion of the requested fees. The instant appeal ensued.

“The abuse of discretion standard governs the review of an award of attorney’s fees.” Spano v. Bruce, 62 So. 3d 2, 6 (Fla. 3d DCA 2011) (citing Bateman v. Serv. Ins. Co., 836 So. 2d 1109 (Fla. 3d DCA 2003)). The charging lien, recognized in

---

<sup>1</sup> Finding no abuse of discretion, we affirm the fee reduction issue raised by Palomino in his cross-appeal without further elaboration. See DiStefano Const., Inc. v. Fidelity & Deposit Co. of Maryland, 597 So. 2d 248, 250 (Fla. 1992) (“[T]he award of attorney’s fees is a matter committed to sound judicial discretion which will not be disturbed on appeal, absent a showing of clear abuse of discretion.”) (citations omitted).

Florida for more than a century, “is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit.” Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertrnik, P.A. v. Baucom, 428 So. 2d 1383, 1384 (Fla. 1983). Nonetheless, generally, “an attorney who voluntarily withdraws from representation prior to the contingency occurring that entitles him to his fee forfeits his right to compensation.” DePena v. Cruz, 884 So. 2d 1062, 1063 (Fla. 2d DCA 2004) (citation omitted). A narrow exception exists in those rare cases where “the client’s conduct makes the attorney’s continued performance of the contract either legally impossible or would cause the attorney to violate an ethical rule of the Rules Regulating The Florida Bar.” Faro v. Romani, 641 So. 2d 69, 71 (Fla. 1994).

Here, the record supports the conclusion that, after retaining Palomino, Hernandez embarked on a course of untoward conduct designed to undermine the integrity of the prosecution of the case and subvert the judicial process.<sup>2</sup> See Adkins v. Adkins, 650 So. 2d 61, 62 (Fla. 3d DCA 1994) (“[I]t is for the trial court who heard the testimony below, not this court, to evaluate and weigh credibility of witness testimony and other evidence adduced.”). Under these circumstances,

---

<sup>2</sup> The allegations implicated Rule 4–4.1(a) (knowingly making a false statement of material fact or law to a third person in the course of representing a client), 4–8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 4–8.4(d) (engaging in conduct that is prejudicial to the administration of justice) of the Florida Rules of Professional Conduct.

“withdrawal was not only mandated by ethical rules, but was also based on circumstances outside the attorney’s control.” Carbonic Consultants, Inc. v. Herzfeld & Rubin, Inc., 699 So. 2d 321, 324 (Fla. 3d DCA 1997) (citations omitted).

Thus, Palomino was entitled to recovery in quantum meruit.

Finding no abuse of discretion in the amount awarded, we discern no error and hereby affirm. See Pridgen v. Agoado, 901 So. 2d 961, 962 (Fla. 2d DCA 2005) (finding a trial court does not abuse its discretion when it supports “an award of attorney’s fees with specific findings as to a reasonable hourly rate and the hours reasonably expended litigating the issues”) (citation omitted).

Affirmed.