

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002449-MR

CECIL O. SEAMAN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
ACTION NO. 91-CI-00230

K.A.S.P. a/k/a  
Kentucky Auto Salvage

APPELLEE

**AND**

NO. 1998-CA-002552-MR

ERIC V. EVANS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
ACTION NO. 91-CI-00230

WILLIAM A. DYKEMAN and  
SARAH M. NIMS

APPELLEES

AND

NO. 1998-CA-002625-MR

SARAH M. NIMS

CROSS-APPELLANT

v. CROSS-APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
ACTION NO. 91-CI-00230

ERIC V. EVANS

CROSS-APPELLEE

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: BUCKINGHAM, HUDDLESTON, and KNOPF, Judges.

BUCKINGHAM, JUDGE. The appeals in this case involve the division of \$500,000 in attorney fees. Having reviewed the record, the arguments of counsel, and the applicable law, we conclude that the trial court made factual determinations that were supported by substantial evidence and correctly applied the law. We therefore affirm.

In January 1991, Eric V. Evans, an attorney, filed suit in the Fayette Circuit Court on behalf of Cecil O. Seaman against Kentucky Auto Salvage Pool (K.A.S.P.) alleging that two guard dogs owned by K.A.S.P. had attacked seventeen of Seaman's weanling horses over a six-week period, resulting in death or injury to Seaman's entire 1990 foal crop. To memorialize the oral contract agreed upon by Evans and Seaman in November 1990, Seaman entered into a contingency fee agreement with Evans on August 15, 1991, under which Evans would receive 33% of all funds

recovered in the lawsuit, after expenses of up to \$15,000 were deducted.

In November 1991, Seaman contacted Sarah M. Nims, an attorney and thoroughbred breeder, for a second opinion regarding the progression of the case. In January 1992, Evans and Nims began to work together on the case. At a pretrial conference on March 15, 1992, Evans introduced Nims to the trial court as his co-counsel. On April 14, 1992, Nims formally entered her appearance of record as one of Seaman's attorneys on a form prepared by Evans's office. Nims claimed she had an agreement with Seaman that she would receive one-third of Evans's fee. Evans, however, apparently had no knowledge of this agreement.

In the two months immediately following Nims's appearance of record, differences of opinion between Seaman, Evans, and Nims arose. In early May 1992, with the trial set for June 1, Evans informed Nims and Seaman that he wanted to hire Margaret Kannensohn to be lead trial counsel. Seaman was not agreeable to this and, fortunately for Seaman and his attorneys, K.A.S.P. filed a motion for a continuance of the trial which was granted.

On June 8, 1992, Evans sent Seaman a letter stating that he would continue as Seaman's counsel only if Nims withdrew as counsel, all deposition costs were immediately paid, and Seaman allowed Kannensohn to be co-counsel at the trial. The letter stated that unless there was strict compliance with his conditions, Evans would withdraw from the case and would file an attorney's lien for fee in the circuit court. When it became

apparent that the matter was not going to be resolved, Evans withdrew as counsel for Seaman and filed an attorney's lien for 33⅓% of the proceeds recovered in the case.

Nims, who apparently continued to have an amicable relationship with Seaman, remained as counsel of record following Evans's withdrawal. Due to her lack of trial experience, however, Nims sought, with Seaman's approval, another attorney to try the case. In August 1992, William Dykeman agreed to become Nims's co-counsel. Dykeman and Seaman entered into a fee agreement whereby Dykeman would be entitled to 16.66% of the money recovered in the case as his fee. Dykeman and Evans thereafter apparently agreed that they would share equally in one-third of any recovery.

Summary judgment was subsequently granted in favor of K.A.S.P., but the summary judgment was reversed by this court and the case was remanded for trial. After the recusal of the judge who had ruled on the summary judgment motion, the case was tried before a jury over a two-week period in late October 1996. At the conclusion of the trial, the jury rendered a unanimous verdict in favor of Seaman and against K.A.S.P. in the amount of \$1,950,000. A judgment was entered for Seaman in that amount, and K.A.S.P. filed an appeal to this court after the trial court denied its motion for a new trial.

While the appeal was pending, Seaman exchanged part of his anticipated recovery for a cash advance from Judgment Purchase Corporation (JPC). JPC advanced Seaman \$150,000, \$50,000 of which was split equally between Nims and Dykeman as a

partial fee payment. During this pendency period, the case was settled for \$1,500,000. Evans filed a petition for the determination of the extent of his attorney's lien, and he, Nims, Dykeman, and Linda Sullivan<sup>1</sup> executed an agreement wherein they agreed to divide the fees, which had been placed in escrow, with interest, in accordance with the ruling of the trial court.

On April 2, 1998, the trial court entered an order concluding that Dykeman was entitled to a fee of 16.66% of the total recovery of \$1,500,000 based upon his written contract with Seaman. The trial court also noted that there was no opposition to an award of that fee to Dykeman. Evans also argued that he was entitled to a 16.66% fee based upon his agreement with Dykeman, but the trial court disagreed and held that Evans was only entitled to a fee based on a quantum meruit theory because he withdrew from the case before its completion. The trial court also held that Nims was entitled to a fee based on a quantum meruit theory.

Following an evidentiary hearing wherein Nims and Evans presented their claims, on September 4, 1998, the trial court entered an opinion awarding Nims and Evans each \$125,000 in fees. The trial court stated that the fee was divided "based on the legal principles set out in LaBach v. Hampton, Ky. App., 585 S.W.2d 434 (1979) and SCR 31.130, Rule 1.5 of the Code of Professional Responsibility." Concerning Evans, the court held that he was "constructively discharged" because Seaman had

---

<sup>1</sup> Sullivan was a divorce attorney for Shirley Seaman, Cecil Seaman's wife, whose claim for attorney fees was later ruled invalid. Sullivan is not a party to this appeal.

injected Sims into the case as counsel without Evans's consent. The court further found that Evans and his associate, Duane Osborne, did a substantial amount of work in investigating the case.

Concerning Nims, the court also found that she did substantial work in assisting Evans and developing the damage portion of the case, although the court refused to enforce the purported agreement she had with Seaman to receive one-third of Evans's fee. The court also noted that Nims made a significant contribution in trial preparation after Dykeman's entry into the case.

In accordance with the court's judgment entered on September 18, 1998, the \$500,000 attorney fee was divided as follows: Dykeman--\$250,000, Evans--\$125,000, Nims--\$125,000. Accrued interest was also divided in proportion to the awards. Evans appealed and Nims cross-appealed from the judgment dividing the fees, and Seaman appealed from an order of the court denying his motion to amend the judgment and require Evans to pay him \$15,000 pursuant to their fee contract.

We will address Evans's appeal first. His first argument is that the trial court erred by failing to honor his valid and enforceable fee contracts with Seaman and Dykeman. Concerning his agreement with Dykeman that he and Dykeman would split one-third of the recovery as a fee, the trial court correctly noted that any agreement between Evans and Dykeman was unenforceable because neither of them had the authority to contract for Seaman or for Nims. Concerning Evans's contingent

fee contract with Seaman, Evans likewise cannot rely upon this contract to collect a full fee. In LaBach, 585 S.W.2d 434, this court held that "the discharged attorney cannot rely upon the contract to collect a full fee but must deduct from the contract the reasonable cost of services of other attorneys required to complete the contract." Id. at 436. This method of computing the fee of a discharged attorney has been designated as "quantum meruit." Id., Henry v. Vance, 111 Ky. 72, 63 S.W. 273 (1901). In short, we agree that the trial court properly followed the principle of the LaBach case and did not set Evans's fee based on his contracts with Seaman and Dykeman.

Evans's second argument is that the trial court erred in ruling that Nims's fee should be paid entirely from Evans's contracted portion of the settlement proceeds. He argues that he did not have an agreement or a contract to compensate Nims and that Nims was Dykeman's co-counsel and employee for purposes of compensation. He thus maintains that any fee awarded to Nims should have been paid from Dykeman's fee rather than from his fee. Because no one contested that Dykeman be awarded his 16.66% fee pursuant to his contract with Seaman, we disagree.

Evans's third argument is that the trial court erred in its assessment of the value of the work performed by Nims and thereby erred in awarding her as large a fee as it did. He contends that Nims's contribution to the advancement of the case while he was lead counsel was negligible. He also asserts that she violated Kentucky Supreme Court rules and committed other acts of professional misconduct.

"[F]or purposes of appellate review, a finding of fact of a trial judge ranks in equal dignity with the verdict of a properly instructed jury, i.e., if supported by substantial evidence, it will be upheld, otherwise, it will be set aside as 'clearly erroneous'." Owens-Corning Fiberglass Corp. v. Golightly, Ky., 976 S.W.2d 409, 414 (1998). "In this jurisdiction, 'substantial evidence' means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." Id. We conclude that there was substantial evidence to support the award of a \$125,000 fee to Nims based upon her work in assisting Evans and developing the damages portion of the case and her significant work with Dykeman in trial preparation and organization. Nims served as co-counsel in this case for over five years and contributed significantly to its outcome. There was substantial evidence in this regard.

Evans's last argument is that the trial court erred in failing to award interest to him on the attorney fees taken by Nims and Dykeman from the JPA transaction in advance of the case being final. The trial court denied interest to Evans on the grounds that "[u]nder no circumstances could Evans' potential fee exceed \$400,000, the amount currently in escrow. Thus, Nims' and Dykeman's previous payment did not prejudice Evans in any way." We conclude that the trial court did not err in this regard.

Nims's first argument in her cross-appeal is that the trial court erred in finding that Evans was discharged by Seaman as his attorney rather than finding that Evans voluntarily withdrew from the case without just cause. As we have noted, the



trial court found that Evans was "constructively discharged" when Seaman injected Nims into the case without Evans's consent although Evans had been retained pursuant to a contract between him and Seaman. Again, we note that, for purposes of our review, the trial court's finding of fact will be upheld if supported by substantial evidence. Golightly, 976 S.W.2d at 414. Because Evans was hired by Seaman as his attorney and Seaman thereafter hired Nims to assist with the case, we conclude that there was substantial evidence for the trial court to have found that Evans's withdrawal from the case amounted to a discharge without cause.

Nims, who has reciprocated Evans's allegations of professional misconduct with allegations of her own that Evans repeatedly lied to the court, also argues that the trial court clearly erred in dividing the remaining fee of \$250,000 equally between her and Evans. She asserts that the weight of the evidence clearly showed she should have been awarded a greater portion of the fee. She notes that she was in the case for over five years and alleges that Evans's acts to advance the case were negligible. The trial court found that "[t]here is no doubt that substantial work had been done which advanced the case and that both Evans and Nims contributed significantly to that work." We conclude there was substantial evidence to support this finding. Golightly, supra.

Finally, Seaman alleges in his appeal that the trial court erred by not requiring Evans to repay \$15,000 in expenses to him pursuant to their contract. The settlement agreement

contract contained a provision, however, which provided that Seaman and the attorneys released and discharged each other from further liability. Seaman therefore released Evans from any liability arising out of the lawsuit, including his claim for the \$15,000 reimbursement. For this reason, the trial court did not err in denying Seaman's motion to amend the court's judgment.

The judgment of the Fayette Circuit Court dividing the attorney fees and the order of the court denying Seaman's motion to amend the judgment are affirmed.

ALL CONCUR.

BRIEF FOR CECIL SEAMAN:

Cecil O. Seaman, Pro Se  
Lexington, KY

BRIEFS FOR K.A.S.P. and  
ERIC EVANS:

Eric V. Evans  
Lexington, KY

BRIEF FOR SARAH NIMS:

Sarah M. Nims  
Versailles, KY

BRIEF FOR WILLIAM DYKEMAN:

William A. Dykeman  
Winchester, KY