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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001945-MR

JOHN S. ROBERTS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 13-CI-00105

WOODHILL PARK, INC.; AND
MARIA RAIDER

APPELLEES

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, JONES, AND NICKELL, JUDGES.

JONES, JUDGE: This appeal concerns an order for an attorney fee following the settlement of a dispute between Woodhill Park, Inc. (“Woodhill”), a homeowner’s association, and Maria Raider, one of the property owners. The Appellant, John S. Roberts, was Woodhill’s former counsel. Roberts filed an attorney’s lien after Woodhill terminated him seeking an award of \$4,339.70 in attorney’s fees. Based

primarily on its finding of a contingency relationship between Roberts and Woodhill, the trial court awarded Roberts \$287.00 in attorney's fees. This appeal followed. Upon the facts before us, we conclude that if Roberts was terminated without just cause, *quantum meruit* is the proper calculation of fees. Therefore, we vacate the order of the Fayette Circuit Court and remand for additional proceedings.

I. Background

Roberts is an attorney licensed to practice law in this Commonwealth. In April of 2011, Roberts sent a letter to Woodhill proposing that it engage him to collect past due maintenance fees from its homeowners. The letter provides:

I propose to take over the job of collecting the maintenance fees due to Woodhill Park, Inc. My fee will be \$500.00 to set up and get started, to be paid when I am able to collect the fees at the rate of 10% of the first five thousand collected until the \$500 has been paid. My goal is to first collect the amounts that exceed \$1,000 due.

The charge to the owners is as follows, First letter \$60.00, second letter \$45.00. File lien and send third letter advising of lien filed \$85.00. Once a lien is filed, if the owner fails to respond and the amount grows to over two thousand then a suit will be filed seeking to foreclose the property. The two thousand number will be modified in the future to a lower number. I would propose when the amount is \$350.00 - \$400.00 past due.

I believe you should notify the owners that a new attorney is taking over and that the fees will be charged against the property as set out above. I also believe that we should make some accommodation for investors that have multiple properties. We will have to look at that going forward.

Please call if you have any questions.

Sincerely,
John S. Roberts

Apparently Woodhill agreed to this arrangement, or something similar; however, there is no signed fee agreement in the record. On January 9, 2013, Roberts, acting on Woodhill's behalf, filed a complaint against Raider in Fayette Circuit Court. Woodhill asserted that Raider had failed to comply with the Woodhill Association Covenants and Restrictions in relation to various homeowner's association fees and related maintenance expenses. Woodhill asserted that it had filed a lien against the property as related to those expenses. Through its action, Woodhill requested a judgment in its favor, the property be sold to satisfy its judgment, and its reasonable attorneys' fees.

Acting with the assistance of counsel, Raider filed an answer to Woodhill's complaint. Raider's answer denied that she was liable to Woodhill. Moreover, Raider asserted a counterclaim against Woodhill alleging that Woodhill failed to comply with its obligations thereby preventing her from being able to rent her property. The following day, February 26, 2013, Roberts filed a three-paragraph answer to Raider's counterclaim denying that Woodhill caused any harm to Raider. On May 13, 2013, Woodhill, through different counsel, Michael P. Casey, filed a second answer to Raider's counterclaim. This answer was sufficiently more detailed than the prior answer filed by Roberts.

Thereafter, the parties engaged in written discovery for a period of time. In April of 2014, Raider filed a motion with the court asking for an order directing Woodhill to release its lien in exchange for her agreement to pay the disputed sums into the court's registry. Raider explained that she had found a buyer for the property and the lien was impeding her ability to close the deal. The court granted Raider's motion. It directed Woodhill to release the lien in exchange for Raider's agreement to pay \$7,000.00 into the court's registry after the property sold.

After Raider paid the \$7,000.00 to the court, Woodhill, with Roberts as its counsel, moved for judgment on the pleadings. In turn, Raider moved the court to order the parties to mediation. After taking both motions under submission, the trial court ordered the case to mediation. Before the mediation, Woodhill filed a notice of substitution of counsel with the trial court in which it indicated that it had engaged attorney John N. Billings to replace Roberts as its counsel.

After receiving notice that Woodhill had terminated him, Roberts filed a notice of lien for attorney's fee with the court pursuant to Kentucky Revised Statute ("KRS") 376.460. In his notice, Roberts asserted that he was owed \$4,339.70 for his work on the Raider dispute. Roberts attached an invoice to the lien detailing the work he did on the case and the amount due for each item.¹

¹ It is somewhat difficult to determine the methodology used to generate the total amount owed. Roberts's exhibit contains over fifty entries only nine of which list the amount of time spent on the task.

The following day, August 5, 2014, Raider and Woodhill met at the Mediation Center of Kentucky as ordered by the trial court. Roberts was not allowed to attend the mediation. The mediation was successful with the parties reaching an agreement as follows:

Defendant [Raider] shall pay the sum of \$2,868.00 for accrued homeowners' association fee due from 2011-2014. Said sum shall be paid from the \$7,000.00 currently held in escrow. Plaintiff [Woodhill] has waived their [sic] claim for penalty and interest accrued.

Former counsel for Plaintiff [Woodhill], John Roberts, has filed a lien against the escrowed proceeds for his fees in the sum of \$4,339.70. The parties agree that those fees are not reasonable and will submit that issue to the Court for determination.

The parties waive all further claims against each other and agree to dismiss their claims with prejudice, subject to the determination regarding attorney fees.

The following day, August 6, 2014, Woodhill filed a motion with the trial court for an order: 1) distributing the funds deposited in escrow in accordance with the parties' settlement; 2) determining the amount of reasonable attorney's fees due to Roberts; and 3) distributing the remaining money in the escrow account to Raider. In its motion, Woodhill asserted that the amount Roberts claimed he was due, \$4,339.70, was totally unreasonable. It maintained that Roberts failed to present it with any invoices during the dispute and unilaterally refused Raider's settlement offer made prior to suit being filed without ever communicating it to

Woodhill. In short, Woodhill maintained that Roberts' failure to communicate with it resulted in the needless expenditure of time and money.

Roberts responded to Woodhill's motion asserting that he was due the entire \$4,339.70 from Raider because attorney's fees were provided in Woodhill's by-laws. Raider responded that she agreed with Woodhill's motion with the exception that she believed any fee due Roberts should come out of the settlement monies due to Woodhill as opposed to the remaining money in escrow.

Initially, the trial court refused to order any fee be paid to Roberts on the basis that he was not a party in the case. Roberts filed a motion to set aside that order, which the trial court granted. Ultimately, by order entered December 8, 2014, the trial court ordered that Roberts was due \$287.00 in attorney's fees from the settlement proceeds Raider paid to Woodhill. The trial court apparently based this amount on the "contingency" provision set out in Roberts' letter to Woodhill. This appeal by Roberts followed.

II. Analysis

As an initial matter, we reject the notion that Raider owes any fee directly to Roberts. There is no contract between Raider and Roberts. Roberts did not perform work on Raider's behalf. His client was Woodhill, Raider's adversary. There was no fee arrangement between Raider and Roberts. Likewise, we do not agree with Roberts that he can rely on Woodhill's By-Laws to create a duty for Raider to pay his fees directly. The By-Laws allow Woodhill to recover its attorney's fees in disputes with homeowners. They do not create a contract

between the homeowner and Woodhill's counsel. Woodhill still owes its counsel irrespective and independent of the By-Laws. The By-Laws simply allow Woodhill to recover its attorney's fees from the homeowners. The intended beneficiary of this provision is Woodhill, not its attorney. *See Sexton v. Taylor Cty.*, 692 S.W.2d 808, 810 (Ky. App. 1985); *Jenkins v. Best*, 250 S.W.3d 680, 696 (Ky. App. 2007). Therefore, Roberts has no right to enforce his lien against the residual monies in escrow. The fee must come out of the settlement Raider agreed to pay to Woodhill.

Having addressed that issue. We now turn to the attorney's lien statute, KRS 376.460. It provides:

Each attorney shall have a lien upon all claims, except those of the state, put into his hands for suit or collection or upon which suit has been instituted, for the amount of any fee agreed upon by the parties or, in the absence of such agreement, for a reasonable fee. If the action is prosecuted to a recovery of money or property, the attorney shall have a lien upon the judgment recovered, legal costs excepted, for his fee. If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien. If the parties in good faith and before judgment compromise or settle their controversy without the payment of money or other thing of value, the attorney for the plaintiff shall have no claim against the defendant for any part of his fee.

Id.

Throughout these proceedings the trial court expressed its reservation about deciding the attorney lien issue as part of the dispute between Raider and Woodhill. Although it ultimately agreed to decide the matter, it expressed the

opinion that the matter would be more appropriately decided in a separate action between Roberts and Woodhill. The trial court's reservations are unfounded.

“Under KRS 376.460, the existence of the lien causes the claim for a fee to be an integral part of the subject matter of the action.” *Exch. Bank of Kentucky v. Wells*, 860 S.W.2d 785, 787 (Ky. App. 1993). Once Roberts filed his notice of attorney's lien, the amount of the fee due Roberts became an “integral part” of this action; it was unnecessary for Roberts to file a separate action against Woodhill.

This brings us to the trial court's decision that Roberts was due \$287.00 in fees. A review of the record reveals that the trial court reached this amount based on the April 2011 letter Roberts sent to Woodhill wherein he stated: “My fee will be \$500.00 to set up and get started, to be paid when I am able to collect the fees at the rate of 10% of the first five thousand collected until the \$500 has been paid.” The trial court reasoned that this provision established a contingency fee arrangement between Roberts and Woodhill, and based its award accordingly.

We appreciate the difficult job the trial court had in determining the amount of Roberts' fee on such a sparse record. However, we cannot affirm its decision because it is counter to *Baker v. Shapero*, 203 S.W.3d 697, 699 (Ky. 2006). In *Baker*, the Kentucky Supreme Court held that “when an attorney employed under a contingency fee contract is discharged without cause before completion of the contract, he or she is entitled to fee recovery on a *quantum meruit* basis only, and not on the terms of the contract.” *Id.*

Under *Baker*, the trial court must first determine whether good cause existed for Woodhill to terminate Roberts. If Woodhill terminated Roberts for just cause then Roberts would not be entitled to any fee. If good cause did not exist, then Roberts would be entitled to a fee based on *quantum meruit*, not the purported contingency fee described in the letter. “*Quantum meruit* is an equitable remedy invoked to compensate for an unjust act, whether it is harm done to a person after services are rendered, or a benefit is conferred without proper reimbursement. It, therefore, entitles the one who was harmed to be reimbursed the reasonable market value of the services or benefit conferred.” *Lofton v. Fairmont Specialty Ins. Managers, Inc.*, 367 S.W.3d 593, 597 (Ky. 2012); *Quadrille Bus. Sys. v. Kentucky Cattlemen's Ass'n, Inc.*, 242 S.W.3d 359, 366 (Ky. App. 2007).

In no way can we determine that the amount the trial court awarded Roberts was based on a consideration of the “reasonable market value” of the services Roberts provided to Woodhill or the benefit conferred on it. Certainly, we can understand that an award greater than Woodhill’s recovery would not be reasonable. However, it is not the job of this court to make factual findings as to what a reasonable award based on market value is under these circumstances.

III. Conclusion

For the reasons set forth above, we VACATE the Fayette Circuit Court’s order on attorney’s fees and REMAND this action for additional proceedings consistent with the opinion expressed herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

John S. Roberts
Lexington, Kentucky

BRIEF FOR APPELLEE
MARIA RAIDER:

Donald D. Waggener
Lexington, Kentucky

BRIEF FOR APPELLEE
WOODHILL PARK, INC.:

John N. Billings
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