NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0559

SUCCESSION OF MARY ANN JACOBS ULMARK

consolidated with

2015 CA 0560

MARY BETH SCHULTE AND JOANN PERKINS

VERSUS

SANDRA YEATER SMITH, PATRICIA JACOBS, GE LIFE AND ANNUITY ASSURANCE COMPANY, AND SALOMON SMITH BARNEY, INC.

Judgment Rendered: NOV 06 2015

* * * * *

On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 2007-30633 c/w 2008-10882

The Honorable William J. Knight, Judge Presiding

* * * * *

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* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

DRAKE, J.

The defendant-in-intervention, JoAnn Perkins, appeals a judgment of the trial court awarding attorney's fees in favor of plaintiff-in-intervention, James F. Willeford, APLC d/b/a Willeford Law Firm. For the following reasons, we reverse, in part, and affirm, in part, the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

The sisters-in-law of Ann Ulmark, JoAnn Perkins and Mary Beth Schulte, who are sisters, originally sought legal assistance after the death of Mrs. Ulmark on July 8, 2007. On July 18, 2007, Sandra Yeater Smith, Mrs. Ulmark's daughter,[1] filed a petition to open the succession of her mother as an intestate succession (succession case), but noted that a codicil indicated that a July 8, 1987 will had existed. However, only a portion of the 1987 will was ever located. On February 19, 2008, Mrs. Perkins and Mrs. Schulte filed a lawsuit against several defendants, claiming that Ms. Smith and other parties had distributed numerous annuities of which Mrs. Perkins and Mrs. Schulte were designated beneficiaries (the securities litigation). Mrs. Perkins and Mrs. Schulte originally procured the services of the law firm of Taggart, Morton, Ogden, Staub & O'Brien, L.L.C. (Taggart, Morton), to file the securities litigation. Mrs. Perkins and Mrs. Schulte eventually discontinued the services of Taggart, Morton due to the amount of attorney's fees the firm charged.[2] On October 9, 2008, an order was signed withdrawing the firm of Taggart, Morton and substituting James F. Willeford and Reagan Toledano of the Willeford Law Firm as counsel of record. On November 6, 2008, the trial court consolidated the succession case of Mrs. Ulmark with the damages case of Mrs. Perkins and Mrs. Schulte.

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[1] Sandra Yeater Smith is the natural daughter of Mrs. Ulmark born before her marriage to William Ulmark.

In retaining Willeford and the Willeford Law Firm (collectively referred to as "Willeford"), Mrs. Perkins and Mrs. Schulte entered into a contract for legal services effective September 26, 2008. The contract stated that "JoAnn Perkins and Mary Beth Schulte hereby retain and employ James F. Willeford and the Willeford Law Firm as the attorney to represent them in their claims against Sandra Yeater [Smith], Patricia Jacobs, GE Life and Annuity Assurance Company, and Salomon Smith Barney, Inc...." (Emphasis omitted). The contract listed the claims pending as both the succession case and the securities litigation.

On or about January, 2009, an original will of Mrs. Ulmark dated April 2, 1980, (1980 will) was found which left one-third of the Ulmark estate to Mrs. Perkins, one-third to Mrs. Schulte, and one-third to another person, who is not a party to this litigation. This will was executed in England while Mrs. Ulmark and her husband were living there. The 1980 will was filed for probate on February 26, 2009.

However, Willeford attempted to have the sisters settle their claims of the succession case for 25% each in July 2009. Mrs. Perkins refused to settle her portion of the succession for the amount suggested by Willeford. Willeford withdrew from representing Mrs. Perkins in the succession case on November 5, 2009, but continued representing Mrs. Schulte in the succession case until June 22, 2010. Neither the securities litigation nor the succession case was completed at the time Willeford withdrew, but Willeford continued to represent both sisters with regard to the securities litigation.[3] Attorney's fees related to the representation for

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[2] Taggart, Morton filed a suit on open account for attorney's fees, claiming it was owed for representing Mrs. Perkins and Mrs. Schulte from July 20, 2007, until September 18, 2008. Taggart, Morton claimed it was owed a total of $169,354.78 and had already been paid $47,424.74.

[3] Mrs. Schulte received a judgment in her favor against GE Life and Annuity Life and Assurance Company on June 17, 2013, which was satisfied. After a compromise, Mrs. Perkins dismissed her claims against Genworth Life Annuity Insurance Company, f/k/a GE Life and Annuity Assurance Company and Morgan Stanley, f/k/a Morgan Stanley Smith Barney on October 9, 2013.

the securities litigation is not the subject of this appeal, as Willeford was paid a one-third contingency fee for his work on that matter.

Beginning May 24, 2010, Willeford began representing the succession, through the administratix, Mrs. Smith. Over the objection of Mrs. Perkins and Mrs. Schulte, the trial court ruled on August 26, 2010, to permit Willeford to represent the succession on the securities issues involved. Apparently, the trial court permitted Willeford to represent the succession to recover possible assets from claims existing against several brokers, which it determined would actually benefit the succession, and ultimately, Mrs. Perkins.

The current counsel began representing Mrs. Perkins on the succession case on January 5, 2010, and Mrs. Schulte on July 1, 2010. Mrs. Schulte entered into a settlement agreement on January 3, 2013, with Willeford, whereby she agreed to pay Willeford $40,000.00 for attorney's fees contingent upon her receiving funds from the succession of Mrs. Ulmark, either by settlement or judicial determination. Willeford intervened in the succession case on November 27, 2013,[4] claiming that Mrs. Perkins and Mrs. Schulte were liable "jointly, severally, and *in solido*" for legal fees and costs. Willeford asserted that the defendants-in-intervention failed to cooperate and made unreasonable demands upon him, justifying his withdrawal from representation.

Willeford and Schulte eventually entered into a stipulated judgment on August 25, 2014, whereby he did obtain $19,642.42 from Mrs. Schulte for attorney's fees in the succession case, with the contingency that she pay up to $40,000 should she receive funds from the succession case. The current counsel was able to obtain a stipulated judgment with Yeater and the succession, the succession representative, and others on December 27, 2013, whereby the sisters

[4] This court notes that although the judgment is in favor "Intervenors, James F. Willeford, APLC and James F. Willeford", only one party filed the intervention, James F. Willeford, APLC d/b/a Willeford Law Firm.

each received 50% of the entire estate. However, the record does not contain what amount, if any, the sisters received from the succession.

Willeford proceeded to trial against Mrs. Perkins, and the trial court signed a judgment on October 14, 2014, awarding Willeford $49,267.50 in attorney's fees plus $3,665.34 in costs. Willeford admitted at trial that he did not keep a separate billing account for Mrs. Schulte, and his exhibit showing the total hours spent was for both clients. The evidence at trial was that the total hours charged by Willeford between March 9, 2009, and December 10, 2009, was 250.50 hours. The trial court held that Willeford was entitled to $300 per hour for the 215.20 hours he worked on the matter.[5] The 215.20 hours included time on the entire Ulmark succession for both Mrs. Schulte and Mrs. Perkins. This appeal followed.

ERRORS

On appeal, Mrs. Perkins assigns four errors as follows:

(1) That the trial court erred in ruling that Willeford was entitled to any fee from Mrs. Perkins after his withdrawal from her representation in November, 2009;

(2) That the trial court erred, after having ruled there only existed one contract between the parties, in refusing to rule that Mrs. Perkins was only liable for her virile share of the amount awarded;

(3) That the trial court erred in allowing Willeford to represent the Succession Administratrix over the objections of Mrs. Perkins and Mrs. Schulte;

(4) That the trial court erred in awarding excessive attorney's fees.

[5] The trial court deducted 35.3 hours from the 250.5 hours claimed by Willeford, which represented the hours Willeford claimed between the time he informed Mrs. Perkins he was withdrawing from the case and the time he actually filed the motion to withdraw.

DISCUSSION

Mrs. Perkins contends the trial court erred in deciding that Willeford was not entitled to any compensation after he withdrew from representing Mrs. Perkins on November 5, 2009. In both the oral reasons and written reasons, the trial court indicated that it was deducting the attorney's fees billed after November 5, 2009, the date Willeford withdrew. However, in brief, Mrs. Perkins argues that Willeford breached the contract or that he is entitled to no compensation based on the language of the contract since he withdrew from representation. From the invoices submitted, the written reasons, and the judgment, the trial court awarded Willeford attorney's fees from March, 2009-November 5, 2009. While the judgment does not award attorney's fees after November 5, 2009, this court will address the argument that Willeford is not entitled to any fee pursuant to the contract as argued by Mrs. Perkins.

At issue is the language of the Contract for Legal Services (contract). The pertinent language with regard to attorney's fees states:

> This is a contingent fee contract....Attorney may withdraw upon reasonable notice at any time without cause by waiving compensation. Attorney may withdraw if clients fail to cooperate or otherwise violate the provisions of this agreement, or should the clients decide to discontinue the prosecution of this matter for any reason and attorney shall receive full compensation for services rendered if clients [furnish] attorney false information. Said fees shall be calculated on the bases of actual work hours expended by the attorney, at the applicable hourly rate of $400.

It is undisputed that Mrs. Perkins did not discontinue the prosecution of the matter. The trial court stated in its oral reasons that the contract was not the "most artfully worded," but found that Willeford was entitled to compensation in the event that the client failed to cooperate, violated the provisions of the agreement, or furnished false information. The trial court did not specify which of these acts it found Mrs. Perkins committed, but nonetheless awarded hourly fees to Willeford

after reducing the hourly fee from $400 per hour for Mr. Willeford and $150 per hour for the associates.

It is well recognized that the Louisiana Supreme Court has full and exclusive authority to regulate all aspects of the practice of law, including the client-attorney relationship. *See Chittenden v. State Farm Mut. Auto Ins. Co.,* 2000-0414 (La. 5/15/01), 788 So. 2d 1140, 1148. Further, "[c]ourts are vested with the responsibility of both monitoring and analyzing the attorney-client relationship, even when it is based on a written contract between the parties." *In re Interdiction of DeMarco,* 2009-1791 (La. App. 1 Cir. 4/7/10), 38 So. 3d 417, 427. However, that responsibility must be carried out with restraint, especially when the parties have signed a contract that sets the terms of the attorney-client relationship. *Id.* Part of any attorney-client relationship is the fee the attorney may charge the client for professional services. Any court-ordered reduction in an attorney's fee must rest upon a factual finding that the excessive fee amount was never earned. *Id.* Absent a showing that the fee charged was clearly excessive, a contractual relationship between an attorney and client should not be altered. *Id.* Specifically, unless the attorney-client contract produces an excessive, unearned, or incommensurate fee when measured by the factors in Rule 1.5(a) of the Louisiana State Bar Association Rules of Professional Conduct, the fee charged must be considered reasonable and enforceable. *Id.*

Further, an appellate court must use the "clearly wrong" or "manifestly erroneous" standard of review in considering a trial court's factual findings relating to the reasonableness of a contractual attorney fee. *Id.* at 428. The "abuse of discretion" standard of review would applies to appellate review of an amount awarded by a trial court as a reasonable fee after a finding that a contractual fee was clearly excessive. *Id.*

Contracts have the effect of law between the parties and parties are obliged to perform contractual obligations in good faith. *See* La. C.C. art. 1983. Under Louisiana law, where the words of a contract are clear and unambiguous, interpretation of the contract is a question of law and subject to the *de novo* standard of review on appeal. *Guest House of Slidell v. Hills,* 2010-1949 (La. App. 1 Cir. 8/17/11), 76 So. 3d 497, 499. Where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed absent manifest error. *Id.* A contract is considered ambiguous on the issue of intent when it lacks a provision bearing on the issue, its written terms are susceptible to more than one interpretation, there is uncertainty as to the provisions, or the parties' intent cannot be ascertained. *Campbell v. Melton,* 2001-2578 (La. 5/14/02), 817 So. 2d 69, 75; *Guest House of Slidell,* 76 So. 3d at 499-500. However, a provision is not considered ambiguous merely because one party creates a dispute about it. *See Campbell,* 817 So. 2d at 76.

Louisiana Civil Code articles 2045-2057 govern the interpretation of contracts. Courts are obligated to give legal effect to a contract according to the common intent of the parties. *See* La. C.C. art. 2045. When the words of the contract are clear and explicit and lead to no absurd consequences, then we may not make any further interpretation in search of the parties' intent. *See* La. C.C. art. 2046. In such cases, the meaning and intent of the parties to the written contract must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. *See* La. C.C. art. 1848; *Guest House of Slidell,* 76 So. 3d at 499. However, when the contract is ambiguous, it shall be construed according to the intent of the parties, which is an issue of fact to be inferred from all of the surrounding circumstances. *Guest House of Slidell,* 76 So. 3d at 499.

A doubtful provision must be determined in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and other contracts of a like nature between the same parties. La. C.C. art. 2053; *Guest House of Slidell,* 76 So. 3d at 499. We note further that interpretation of ambiguous terms in a contract requires construction against the drafter of the contract. La. C.C. art. 2056; *Guest House of Slidell,* 76 So. 3d at 499. Furthermore, a court can only give effect to the contract entered by the parties; it cannot re-write the contract for them. *Paddison Builders, Inc. v. Turncliff,* 1995-1753 (La. App. 1 Cir. 4/4/96), 672 So. 2d 1133, 1137, *writ denied,* 1996-1675 (La. 10/4/96), 679 So. 2d 1386.

With all of these contract interpretation principles in mind, we must determine if Willeford is entitled to an hourly fee and whether the trial court abused its discretion. The contract clearly states, "Attorney may withdraw upon reasonable notice at any time without cause by waiving compensation." It is undisputed that Willeford withdrew from representing Mrs. Perkins. An attorney may withdraw from representing a client if the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client. State Bar Articles of Incorporation, Art. 16, Rules of Professional Conduct, Rule 1.16(b)(6). Additionally, an attorney may withdraw if it can be accomplished without material adverse effect on the interests of the client. Rule 1.16(b)(1). *See Verges v. Dimension Development Co., Inc.,* 2008-1336 (La. App. 4 Cir. 2/10/10), 32 So. 3d 310, 314. We find no evidence in the record that the withdrawal of Willeford had an adverse effect on Mrs. Perkins. The issue is whether Willeford is entitled to any fee after he made the decision to withdraw. Based on the plain language of the contract drafted by Willeford, he waived compensation when he withdrew. It was his burden of proof to show that he withdrew for cause.

Mrs. Perkins argues that the contract only permits the conversion to an hourly fee if she provided false information to the attorney. Willeford argues that the contract began as a contingency fee contract, but it also contained a clause converting the fee to an hourly rate if the employment terminated because Mrs. Perkins refused to cooperate, gave false information, or otherwise breached the contract. We do not need to decide the issue of whether the contract converted from a contingency to an hourly fee contract, because we find that on the showing made at the trial there was not sufficient proof that Mrs. Perkins failed to cooperate, otherwise violated the provisions of the agreement, or supplied false information.[6]

Mrs. Perkins argues that "fail to cooperate" is not defined by the contract. Furthermore, she claims that the contract violates the Rules of Professional Conduct, which state with regard to the allocation of authority between an attorney and client:

> (a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.

Louisiana State Bar Association Article 16, Rules of Professional Conduct Rule 1.2.

Willeford argues that Mrs. Perkins failed to cooperate "by refusing to communicate directly" with him. He claims that the representation of Mrs. Perkins

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[6] Willeford argues that hybrid contracts, ones that contain both contingency and hourly rate language, are permissible and relies upon *Gilbert v. Evan,* 2001-1090 (La. App. 1 Cir. 6/21/02), 822 So. 2d 42, *writ denied,* 2002-1903 (La. 10/25/02), 827 So. 2d 1154 and *Anderson, Hawsey & Rainach v. Clean Land Air Water Corp.,* 489 So. 2d 928 (La. App. 5 Cir. 1986). Both of the cases relied upon by Willeford are distinguishable, as the attorneys were **discharged** in both of those cases, whereas in the present matter, Willeford **withdrew** from representation. Furthermore, the Louisiana Supreme Court noted that it has never "passed on the propriety of so-called hybrid contingency fee/hourly fee contracts..." and declined to do so based on the contractual provisions of the contract at issue. *In re Gaston,* 2011-0390 (La. 7/1/11), 65 So. 3d 1239, 1246 n.5. We also find that the contractual provisions at issue do not permit us to rule on these facts whether this hybrid contract was permissible.

was "significantly hindered and restricted because all decisions and communications were required to be directed through Ali Perkins." Therefore, Willeford asserts that Mrs. Perkins breached the contract by failing to cooperate. From the beginning of this attorney-client relationship, it was contemplated that Alissah Perkins-Hogan (Ali), the daughter of Mrs. Perkins, would be the attorney-in-fact for Mrs. Perkins. The contract states, "Clients authorize Attorney to discuss all matters subject to this mandate with Alissah Perkins." Louisiana law permits one person to act for another. A mandate is a contract by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal. La. C.C. art. 2989. On June 16, 2005, Mrs. Perkins signed a power of attorney in the state of Oklahoma, where she resided, authorizing Ali as her agent. On January 5, 2010, Mrs. Perkins signed another document entitled "Power of Attorney (Procuration under La. C.C. Art. 2985, et seq.)", authorizing Ali to act as her attorney-in-fact for all litigation including the present matter. Prior to his withdrawal on November 5, 2009, Willeford had demanded that Ali be removed as the attorney-in-fact for Mrs. Perkins. Mrs. Perkins refused to revoke the power of attorney for Ali and explained to Willeford that she was having health issues, which required Ali to act on her behalf. We do not find that using a mandate, a legal method authorized by our state, especially when it was made part of the contract, constitutes a "failure to cooperate."

We find no other evidence in the record that Mrs. Perkins violated any other provisions of the contract. The only support that Willeford offered at trial that Mrs. Perkins violated any other provisions of the contract were emails and correspondence sent between him and Ali. Mrs. Perkins argues that Willeford's complaints that Ali was not making good decisions for her was his own opinion. In fact, Ali ultimately obtained a settlement for twice what Willeford attempted to have Mrs. Perkins settle her succession claims. Mrs. Perkins and Mrs. Schulte

entered into a settlement with regards to the succession whereby each was entitled to 50% after certain items were paid. Mrs. Perkins argues that the differences in opinion between Willeford and her were not misrepresentations of fact or wrongful conduct. Mrs. Perkins also claims that one of Willeford's reasons for his withdrawal was his claim that Ali refused to state under what specific terms Mrs. Perkins would enter a settlement with the succession administratrix. However, Mrs. Perkins claims that she did not want to offer a settlement first and did give those parameters under which she would consider a settlement. While Mrs. Schulte did agree with Willeford and accepted an offer of 25% of the estate, Mrs. Perkins had no desire to do so.

A thorough review of all the email communication and correspondence reveals no breach of contract by Mrs. Perkins. Mrs. Perkins's refusal to settle her claim against the succession for what Willeford suggested is not a breach of contract. Instead, we agree that Willeford had a duty to abide by Mrs. Perkins's decision not to settle the matter. *See* Rules of Professional Conduct, Rule 1.2, which provides that the client has the right to determine whether to accept a settlement offer. Willeford also complained that Ali shared confidential information with her father, Norman Perkins, even though he was a material witness. While Willeford has a duty not to share attorney-client information, there is no such duty on a client. Rules of Professional Conduct Rule 1.6. A client has a privilege to refuse to disclose, and to prevent another person from disclosing, a confidential communication. La. C.E. art. 506(B). The attorney-client privilege is for the benefit of the client, and can be waived by the client. *Lalande v. Index Geophysical Survey Corp.*, 336 So. 2d 1054, 1057 (La. App. 3 Cir. 1976). The client is the holder of the privilege; therefore, the power to waive it is his alone. *Succession of Smith v. Kavanaugh, Pierson & Talley*, 513 So. 2d 1138, 1143 (La.

1987). Even if Ali sent attorney-client communication to her father, it was her privilege to waive and cannot be the basis of a breach of contract.

The final issue is whether Mrs. Perkins supplied false information to Willeford. Willeford argues that Ali "insisted upon pursing an objective that the attorneys considered repugnant and imprudent." Willeford points to the succession claims being dependent upon the probate of the 1980 will, which he felt could not be authenticated because it was dependent on the testimony of Norman Perkins, the husband of Mrs. Perkins, and will was found in the closet.[7] Willeford testified at trial that he thought the 1980 will lacked authenticity and that since Mrs. Perkins and her family provided the will, he considered the information as to the circumstances of the 1980 will as false information. The evidence in the record concerning the supplying of false information is very scant. Mr. Willeford testified:

> Q. Just to confirm your prior testimony, neither Jo Ann, Mary Beth, nor Ali provided you any false information, did they?
>
> A. Throughout the course of my representation, they provided me with a lot of information. I'm not so sure all of it was truthful and accurate.
>
> * * *
>
> Q. What was the occasion that came up that false information was involved?
>
> A. Well, we were always discussing the surprise, mysterious appearance of the 1980 will, and the circumstances behind the will.

[7] Willeford asserts in his brief that he believed the 1980 will could not be authenticated because it relied upon the testimony of Norman Perkins, an attorney who had been disbarred in Oklahoma. However, Willeford did not testify in the record as to this being a reason for his believing the 1980 will could not be authenticated, and it is not properly before the court. An appellate court cannot review evidence that is not in the record on appeal and cannot receive new evidence. *Tranum v. Hebert,* 581 So. 2d 1023, 1026 (La. App. 1 Cir.), *writ denied,* 584 So.2d 1169 (La. 1991). In particular, appellate briefs are not part of the record, and an appellate court has no authority to consider on appeal facts referred to in argument of counsel, in such briefs, or in exhibits containing matters that are not in the pleadings or evidence, and as such, are outside the record. *Niemann v. Crosby Development Company, L.L.C.,* 2011-1337 (La. App. 1 Cir. 5/3/12), 92 So.3d 1039, 1045.

Q. Was that in any way related to false information they provided to you?

A. As I testified earlier, I questioned the authenticity of that will.

Q. But that's not necessarily false information that they provided you, is it?

A. They provided me with the will.

We do not believe that Mr. Willeford's "feeling" that a will is not authentic satisfies his burden of proof that Mrs. Perkins provided false information. We have found no evidence in the record that the 1980 will was indeed false. Therefore, the contingency of the contract, *i.e.,* that Willeford would receive full compensation "if clients [furnish] attorney false information" was never satisfied.

Our review of the record convinces us that the trial court committed manifest error in finding that Mrs. Perkins failed to cooperate, otherwise violated the provisions of the contract, or provided false information to Willeford. Consequently, the contract mandated that should Willeford withdraw, he waived compensation. It is axiomatic that courts construe ambiguities of an agreement against the drafter of an agreement. *Robinson v. Robinson*, 1999-3097 (La. 1/17/01), 778 So. 2d 1105, 1122. Any ambiguities as to whether the contract converted to an hourly-fee contract must be construed against Willeford.

We further note that the contract contained a provision regarding conflicts of interests. The contract specifically stated,

> The clients acknowledge that this mandate is for representation on their joint interests and that there exists the possibility that their individual interests may conflict with the interests of the other. Attorney may not in any way represent one interest against the other. Should a conflict of interest arise Attorney may be compelled to withdraw from representation and under no circumstance shall Attorney represent one or the other client without the express written consent of both clients.

Mrs. Perkins claims that Willeford breached the contract by continuing to represent Mrs. Schulte even though a conflict of interest arose and by representing the succession administratrix after withdrawing from the representation of Mrs.

Schulte. The evidence in the record does establish that a conflict of interest arose between the sisters with the way the succession case was proceeding. Willeford testified that he did not obtain the express written consent of both clients to continue the representation of Mrs. Schulte. Therefore, we agree with Mrs. Perkins that Willeford did breach the contract.

Since we have found that the contract stated Willeford would receive no compensation under the facts presented and the contract language, we do not need to address the remainder of the assignments of error, including whether Mrs. Perkins was liable only for her virile share. We do note that the contract entered into by Willeford and Mrs. Schulte and Mrs. Perkins is one contract, which was signed at different times by each client. The trial court also found that although signed separately, only one contract existed. The contract refers to "clients" rather than "client" throughout the entire contract. Furthermore, it states that it is for the "joint interests" of the clients.

We also do not need to address whether the attorney-client contract produced an excessive, unearned, or incommensurate fee when measured by the factors in Rule 1.5(a).[8] The responsibility to monitor and analyze the attorney-client relationship, even when based on a contract, must be carried out with restraint when the parties have signed a contract. *DeMarco,* 386 So. 3d at 427. The contract began as a contingency fee. The parties contracted that should Willeford withdraw without cause, he would waive compensation. The contract only converted to an hourly contract if certain conditions were met. We do not find that any of those conditions were met based upon the evidence in the record.

The contract did provide, however:

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[8] We note from the record that Willeford substituted as counsel of record for Mrs. Perkins and Mrs. Schulte on October 9, 2008. On February 9, 2009, he filed a petition to probate the 1980 will and made one court appearance. The only other pleading filed by Willeford was a second supplemental and amending petition on July 2, 2009. If this court reached the issue of whether the attorney's fee was excessive, we would be required to apply the Rule 1.5(a) factors with these facts in mind.

> If there is no recovery, there shall be no fee owed by the client to the attorney for representation in this matter. Clients agree, however, that regardless of any recovery, the clients are responsible for, and will pay all costs....

The judgment awarded Willeford $3,665.24 in court costs, and we affirm that amount based upon the provisions of the contract.

Given the above opinion, we find that the rest of the errors assigned by Mrs. Perkins are moot.

ANSWER TO APPEAL

Willeford timely answered the appeal pursuant to Louisiana Code of Civil Procedure article 2133, seeking an increase in attorney's fees from the hourly rate of $300 awarded by the trial court to $400 as indicated in the contract with Mrs. Perkins. Given our above opinion reversing the trial court's award of attorney's fees, the issue present in the answer to the appeal is moot.

CONCLUSION

For the foregoing reasons, the portion of the October 14, 2014 judgment awarding attorney's fees in the amount of $49,267.50 to James F. Willeford and James F. Willeford APLC d/b/a Willeford Law Firm and granting a judicial lien on the proceeds and assets of the Succession of Mary Ann Jacobs Ulmark determined to be due JoAnn Perkins in that amount is hereby reversed. The portion of the October 14, 2014 judgment awarding $3,665.34 in court costs and a judicial lien in favor of James F. Willeford, individually, is also reversed. The portion of the judgment awarding costs and a judicial lien in the amount of $3,665.34 in court costs in favor of intervenor, James F. Willeford, APLC d/b/a Willeford Law Firm is affirmed. In all other respects, the judgment is affirmed. Costs of the appeal are assessed to James F. Willeford, APLC d/b/a Willeford Law Firm.

REVERSED IN PART, AND AFFIRMED IN PART, AS AMENDED.