

**ROBERT A. ANDRAS** \* **NO. 2004-CA-0505**  
**VERSUS** \* **COURT OF APPEAL**  
**DONNA HICKS ANDRAS** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 94-16384, DIVISION “DRS-1-L”  
Honorable Kern A. Reese, Judge  
\* \* \* \* \*  
**CHIEF JUDGE JOAN BERNARD ARMSTRONG**  
\* \* \* \* \*

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Michael E. Kirby)

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**AFFIRMED**

This is an appeal from the judgment of the trial court granting attorney’s fees pursuant to a Petition For Intervention. For the reasons

assigned, we affirm.

On September 10, 1996, appellant, Donna Hicks Andras entered into a “Contingency Fee Contract for Community Property Partition and/or Community Property Settlement” for the legal services of intervenor/appellee, D. Douglas Howard, Jr. Ms. Andras sought to partition certain community assets and possibly to nullify a prior community property consent agreement entered into with her former husband. Ms. Andras paid Mr. Howard \$5,000 towards the fee ultimately due under the contract. During this period of time, Rachael Marinovich, an associate with Mr. Howard’s law firm, worked closely with Mr. Howard on the Andras case.

On September 18, 1996, Mr. Howard filed two pleadings on Ms. Andras’ behalf, a Petition For Specific Performance And For Damages, and a Petition For Supplemental Partition. Ms. Andras’ former husband thereafter filed a motion to have certain funds deposited into the registry of the court. A hearing on the matter was scheduled for November 4, 1996. Neither Mr. Howard nor Ms. Marinovich appeared at the hearing, and the disputed funds were deposited with the court. Mr. Howard admitted that he missed the court hearing, but testified that after having spoken with Ms. Andras, they agreed not to pursue the matter, as it would likely not change the result.

Ms. Marinovich left Mr. Howard's firm in December of 1996 to start her own law practice. In March of 1997, Ms. Andras discharged Mr. Howard and hired Ms. Marionvich. On April 9, 1997, Mr. Howard filed a Petition For Intervention seeking full payment of the 25% contingency fee due under the legal services contract.

Over the course of the litigation, Ms. Andras paid Ms. Marinovich approximately \$38,000.00 for her legal services, which are not in dispute here. After protracted litigation, the principal case was settled in October of 2003. The record, however, does not reveal the amount of the settlement received by Ms. Andras.

Mr. Howard's intervention claim was scheduled for trial on December 15, 2003. Ms. Andras thereafter filed a Motion For Summary Judgment seeking to have Mr. Howard's claim dismissed. The motion was originally set for December 3, 2003, but was reset for December 15, 2003 along with the trial on the merits.

On December 15, 2003, the trial court denied Ms. Andras' Motion For Summary Judgment and proceeded to trial on the intervention claim. Ms. Andras objected to trying the case on the same day that her motion was denied; however, the trial court proceeded with the trial after having noted the objection. Ms. Andras resides in Texas and was not present in court on

the day of trial.

On December 19, 2003, the trial court rendered judgment in favor of Mr. Howard awarding him \$25,000.00 in attorney's fees less a credit of \$5,000.00 that Ms. Andras initially paid to Mr. Howard. The trial court further ordered that Mr. Howard be paid an additional \$15,000.00 from funds held in the Registry of the Court. From this judgment, Ms. Andras appeals.

Ms. Andras contends that the fee awarded to Mr. Howard was excessive because he had been discharged for cause and had provided only minimal services. Ms. Andras submitted an affidavit wherein she stated that Howard met with her in person only one time, spoke with her on the telephone fewer than six times, propounded no discovery, failed to appear at the only scheduled court hearing, and prepared only two pleadings on her behalf. Ms. Andras suggests that Mr. Howard is not entitled to more than the fee deposit of \$5,000.

The trial court allowed Ms. Marinovich to testify at trial as to the value of her legal services rendered in the case. Ms. Marinovich testified that, given her familiarity with the Andras case while employed by Mr. Howard, she did not believe that Mr. Howard's time sheets accurately reflected the work that was done.

Mr. Howard submits that since there was a complete lack of evidence on behalf of Ms. Andras, the trial court properly accepted his testimony regarding his expertise and his representation of Ms. Andras. Mr. Howard testified that he kept time sheets for the work performed on the Andras case in spite of the fact that he had taken the case on a contingency basis. He introduced his time sheets into evidence and testified to the following: 1) at the time Ms. Andras retained him, and not Ms. Marinovich, as her attorney, he had been practicing for 26 years; 2) he was not sure of his hourly rate in 1996, but thought it was slightly less than his current hourly rate of \$250.00 per hour or \$325.00 per hour at trial; 3) he specializes in complex family law issues; 4) the Andras case was an extremely difficult case; 5) although he was retained formally in September of 1996, he actually performed services for Ms. Andras as early as July of 1996 in the form of consultations, legal research and correspondence; and 6) he formulated the plan of action for the Andras case, and that Ms. Marinovch was ultimately successful based on his work product.

At the outset, we note that much of the jurisprudence addressing fee disputes between attorneys involves situations in which one or more of the attorneys have been discharged by the client and the court is asked to allocate the contingency fee between the first attorney and the successor

attorney. That is not the situation involved in this case. In the present action, Ms. Marinovich charged, and was paid, on an hourly basis. Her fee was never questioned. The trial court was asked only to determine Mr. Howard's attorney's fee pursuant to his contingency fee contract.

A trial judge has much discretion in fixing an attorney's fee, and the award will not be modified on appeal absent a showing of an abuse of discretion. Gravolet v. Board of Comm'rs for Grand Prairie Levee District, 95-2477 (La. App. 4 Cir. 6/12/96), 676 So. 2d 199. Furthermore, our courts have consistently relied on the factors listed in Rule 1.5 of the Rules of Professional Conduct, in determining the reasonableness of attorney's fees.

Rule 1.5 enumerates the factors as follows:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the clients or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

In the present case, it is apparent from the written reasons for judgment that the trial court did consider the above factors in determining the reasonableness of Mr. Howard's fee. Specifically, the trial court was impressed by Mr. Howard's experience and reputation as well as the complexity and difficulty of the case. The trial court filed reasons for judgment in which he found that at the time Ms. Andras retained Mr. Howard, the attorney was "an attorney of appreciable renown and twenty-five years experience." Furthermore, the trial court found that the issue in the Andras case was "very novel and difficult." He also found that the decision to pursue the matter through a contingency fee was reasonable.

These factual findings are reviewed under the manifest error standard. We are instructed that before a fact-finder's verdict may be reversed, we must find from the record that a reasonable factual basis does not exist for the verdict, and that the record establishes the verdict is manifestly wrong. Lewis v. State through Dept. of Transp. and Development, 94-2370 (La. 4/21/95), 654 So. 2d 311, 314. Although we accord deference to the fact-finder, we are cognizant of our constitutional duty to review facts, not merely to decide if we, as a reviewing court, would have found the facts differently, but to determine whether the trial court's verdict was manifestly erroneous, clearly wrong based on the evidence, or clearly without

evidentiary support. Ambrose v. New Orleans Police Dept. Ambulance Service, 93-3099 (La. 7/5/94), 639 So. 2d 216, 221; Ferrell v. Fireman's Fund Ins. Co., 94-1252 (La. 2/20/95), 650 So. 2d 742, 745.

It is also clear from the record that the trial court did not find, as argued by Ms. Andras, that Mr. Howard was discharged for cause. Ascertaining whether termination was with or without cause is a factual determination and will be disturbed on appeal only upon a finding of manifest error. After a thorough review of the record in its entirety, we find that Ms. Andras presented no evidence to show that Mr. Howard was discharged for cause.

Having reviewed the record in its entirety, we find no manifest error on the part of the trial court in the award. Mr. Howard's testimony clearly supports the findings concerning not only his expertise, of which this Court is well aware, and the novelty and difficulty of obtaining a lesion-based nullification of a consent judgment partitioning the Andras community.

In support of her argument that the trial court erred in setting the hearing on her motion for summary judgment on the same day as trial on the merits, Ms. Andras relies on La. C.C.P. art. 966(D), which provides: "[T]he court shall hear and render judgment on the motion for summary judgment within a reasonable time, but in any event, judgment on the motion shall be



rendered at least ten days prior to trial.” Ms. Andras submits that because the trial court did not allow the mandatory ten days between the denial of the Motion For Summary Judgment and the trial, she was not present at trial and, therefore, did not testify regarding Mr. Howard’s claim.

Mr. Howard counters this argument by pointing out that the trial of the merits was set prior to the filing of the Motion For Summary Judgment, and Ms. Andras did not object to rescheduling the Motion For Summary Judgment to coincide with the trial date. Had Ms. Andras believed her appearance at the scheduled trial was unnecessary, that was her error, not the error of the trial court.

We find no merit in this assignment of error, nor do we find that La. C.C.P. art. 966(D) is controlling under these circumstances. Ms. Andras was fully aware that the trial on the merits and the Motion For Summary Judgment were set on the same date and the record contains no evidence of her objection to this procedure. Given this prior notice, we find no error on the part of the trial court in proceeding to trial after having disposed of the Motion For Summary Judgment.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**