STATE OF MICHIGAN

COURT OF APPEALS

BETTY JO TAGLE,

Plaintiff,

v

MACDONALDS INDUSTRIAL PRODUCTS, INC.,

Defendant,

and

BUCHANAN, SILVER & BECKERING, P.L.C. and ROPER BAUER, P.C.,

Intervenors-Appellants,

v

JOHN D. TALLMAN,

Appellee.

UNPUBLISHED
May 9, 2000

No. 208508
Kent Circuit Court
LC No. 95-000964 NP

Before: Saad, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Intervenors, the law firms Buchanan, Silver & Beckering, P.L.C., and Roper Bauer, P.C., appeal by right from the trial court's order granting them $37,130.74 quantum meruit attorney fees out of a contingency fee that attorney John Tallman, appellee, collected from a settlement he negotiated for plaintiff. Intervenors contend that the trial court erred in not awarding them a greater portion of Tallman's contingency fee. We affirm.

I. FACTS AND PROCEEDINGS

Plaintiff Betty Tagle retained intervenor law firms on a contingency fee basis to represent her in a personal injury action against her employer, defendant MacDonalds Industrial Products. In the course of her employment, plaintiff had sustained serious injury to her hands when they were crushed in a press she was operating. There is evidence that the press malfunctioned because defendant improperly fabricated a "pull back system" for the press. Intervenors agreed to represent plaintiff in a tort action against defendant, although they were skeptical that plaintiff would be able to prove an intentional tort.[1]

Intervenors knew that at the same time they were handling plaintiff's case, Tallman was representing one Hank Miles in a similar lawsuit against the same defendant. Like plaintiff, Miles suffered injury to his hands in a press that defendant had modified with its own fabricated pull back system. Both cases were assigned to the same trial judge. Intervenors and Tallman agreed to exchange information, such as discovery materials and deposition transcripts. However, Tallman discontinued the exchange because he believed that intervenors were not reciprocating.

Intervenors performed some preliminary investigative work on plaintiff's case, consulted with other attorneys that they considered experts in the field, and filed a complaint. Intervenors decided the best strategy was to await the outcome of the Supreme Court's decision in its review of *Travis v Dreis & Krump Mfg Co*, 207 Mich App 1; 523 NW2d 818 (1994) and *Golec v Metal Exchange Corporation*, 208 Mich App 380; 528 NW2d 756 (1994). Intervenors also wanted Tallman to proceed with Miles' case first. On February 5, 1996, intervenors and defense counsel David Gass stipulated to administratively close the case without prejudice.

Plaintiff became discouraged with the lack of progress on her case, and began to search for a new attorney. An attorney she contacted in response to a telephone directory advertisement told her that Tallman was handling a similar case against the same defendant. Plaintiff either did not know or had forgotten that Tallman had assisted intervenors with her case. Plaintiff was impressed by Tallman's work on the Miles case and by his knowledge of her own case. She decided to discharge intervenors and retain Tallman on a contingency fee basis. Tallman notified intervenors of plaintiff's decision, and intervenors filed an attorney's lien to protect their interest in any settlement or judgment for plaintiff.

On July 13, 1996, the Supreme Court issued its decision in *Travis v Dreis & Krump Mfg Co* and *Golec v Metal Exchange Corp*, 453 Mich 149; 551 NW2d 132 (1996). After the Supreme Court decided *Travis*, Tallman requested a status conference with the trial court. Meanwhile, in November 1996, the Miles trial ended in a hung jury, divided six to two in favor of plaintiff.

Tallman prepared settlement proposal documents for plaintiff and began negotiations with defense counsel Gass. In April 1997, following a facilitative mediation session, defendant and plaintiff settled the case. The terms of the settlement are confidential, but intervenors believe the case settled for an amount in excess of $1 million.[2]

Tallman never contacted intervenors about the settlement, but intervenors heard about it from plaintiff's stepmother. Intervenors petitioned the trial court for quantum meruit compensation for their work on plaintiff's case, to be distributed from Tallman's contingency fee. Intervenors argued that they had done the lion's share of the work necessary to bring plaintiff's case to settlement, and that they

were therefore entitled to a large portion of the contingency fee. Intervenors also accused Tallman of unethically luring away their client and ignoring their attorney's lien.

The trial court held an evidentiary hearing to determine what, if any, amount was due to intervenors. After hearing testimony, the trial court decided that Tallman, and not intervenors, was chiefly responsible for obtaining the settlement. The court found:

- Tallman spent more than 1,000 hours on the Miles case, which produced for him substantial evidence that is "directly related and transferable to the Tagle case." This information put Tallman "in a position where he was almost ready for trial in Mrs. Tagle's case while Buchanan and Hicks were months, if not years, away from being ready." Whereas intervenors would have to garner information on the machine (when they had not yet employed an expert), Tallman would be completely ready for trial after a few depositions.

- It is doubtful that Buchanan and Hicks would have re-opened the case after the *Travis* decision, given that decision's "high and difficult standard of proof."

The court decided to compensate intervenors for their services by awarding them costs and a reasonable hourly rate for time spent on the case. This formula resulted in a $37,130.74 quantum meruit award for intervenors. Intervenors now appeal.

II. ANALYSIS

A

Intervenors argue that the trial court erred in compensating them only for the hours of work performed on plaintiff's case. They maintain that the court should have awarded them a proportional share of the contingency fee, based on their and Tallman's respective contributions to achieving the settlement for plaintiff. Intervenors further argue that the trial court relied on erroneous and irrelevant factual considerations that caused the court to overvalue Tallman's contributions to the case and undervalue intervenors' work.

A trial court's findings of fact pertaining to a discharged attorney's petition for attorney fees is reviewed by the clearly erroneous standard. *Morris v Detroit*, 189 Mich App 271, 278; 472 NW2d 43 (1991). A finding is clearly erroneous when, although evidence supports it, this Court is left with a firm conviction that the trial court made a mistake. *Featherston v Steinhoff*, 226 Mich App 584, 587; 575 NW2d 6 (1997). The trial court's award of attorney fees will be upheld on appeal unless the trial court's determination of the fee's "reasonableness" was an abuse of discretion. *Morris*, 279.

Michigan law presumes that "[t]he law creates a lien of an attorney upon the judgment or fund resulting from his services." *Reynolds v Polen*, 222 Mich App 20, 23; 564 NW2d 467 (1997), quoting *Ambrose v Detroit Edison Co*, 65 Mich App 484, 487-488; 237 NW2d 520 (1975). When a client discharges an attorney before the client's case is completed, the attorney is entitled to a quantum meruit recovery of attorney fees for work performed unless the discharged attorney engaged in

"disciplinable misconduct prejudicial to the client's case or conduct contrary to public policy that would disqualify any quantum meruit award." *Id.*, 27.

Generally, a trial court determines quantum meruit by multiplying the number of hours worked by a reasonable hourly fee. *Id.*, 28. However, in *Morris, supra,* this Court established a modified approach when the attorney and client entered into a contingency fee agreement:

> We recognize that there is no precise formula for assessing the reasonableness of an attorney's fee. Nevertheless, in *Crawley v Schick*, 48 Mich App. 728, 737; 211 NW2d 217 (1973), this Court enumerated several nonexclusive factors appropriately considered for such a determination, including:
>
> > (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.
>
> While the trial court should consider these factors, its decision need not be limited to these guidelines. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982); *Smolen v Dahlmann Apartments, Ltd*, 186 Mich App 292, 296; 463 NW2d 261 (1990). We believe that the trial court may also properly consider that the attorney originally agreed to render services on a contingency basis. Such a consideration would allow the court to consider the degree of risk undertaken by an attorney who was prematurely discharged. Accordingly, it would be appropriate for the court to award the attorney a larger fee, provided that the fee was not in excess of that permitted under MCR 8.121. [*Morris*, 278-279.]

The *Morris* Court concluded that the trial court abused its discretion when it awarded the discharged attorney the entire one-third contingency fee. *Id.*, 279. However, the Court concluded that the attorney was "entitled to the lion's share of the fee" based on the contributions he made to the plaintiff's ultimate success in his action:

> The record discloses that the trial court carefully considered a variety of factors regarding the quality of Jasmer's [the discharged attorney] representation and the magnitude of his success. The court noted that Jasmer filed an appellate brief in which he addressed and argued the ultimate issue upon which this Court reinstated the jury verdict in plaintiff's favor. We are aware that the plaintiff's subsequent attorney, Hoekenga, obtained a Supreme Court remand that directed this Court to reconsider the issue upon which it had previously reversed and granted a new trial. However, the remand was not based on a new argument developed and pursued by Hoekenga, but, rather, was based on the argument raised by Jasmer in his original appellate brief. On the basis of the record before us, we conclude that the trial court's finding that Jasmer had completed 99 44/100 percent of the services contemplated by the contingency fee

> agreement was not clearly erroneous. We find, therefore, that the trial court should have awarded Jasmer 99 44/100 percent of the one-third contingency fee. [*Id.*, 279-280.]

This Court followed the *Morris* approach in *Reynolds, supra*. There, after the plaintiff's substitute counsel negotiated a settlement on the plaintiff's behalf, the trial court compensated the discharged law firm for costs, but denied the firm attorney fees because it found that the plaintiff had good cause to discharge the firm. *Id.*, 22, 28. This Court reversed because the discharged firm had not engaged in disciplinable conduct, and remanded with directions for the trial court "to follow *Morris* and determine the percentage of the one-third fee that represents [the discharged firm's] overall contribution to the settlement." *Id.*, 30-31.

Here, intervenors challenge the trial court's attorney fee award on two grounds: First, they contend that the court erred in basing the award on a reasonable fee for hours performed rather than awarding a percentage of the award based on a pro-rata share of intervenors' contribution to the total number of hours all attorneys worked on the case. Second, they challenge several of the trial court's considerations as factually erroneous or legally irrelevant.

Intervenors' first argument misconstrues *Morris*. The *Morris* Court did not *require* a trial court to determine a percentage of the predecessor and successor attorneys' contributions; rather it stated in permissive language that a "trial court *may* also properly consider that the attorney originally agreed to render services on a contingency basis." *Id.*, 278, emphasis added. Moreover, the following statement from the *Reynolds* Court implies that the trial court should utilize a flexible approach in determining the amount due to a discharged attorney:

> We believe that a trial court is in the best position to assess an attorney's contribution to a case because trial courts are aware of the strengths and weaknesses of cases before them, the time and effort expended by the attorneys, and changes in the parties' leverage resulting from changes in counsel (e.g., due to attorneys' skill or reputation). We believe that the *Morris* approach to quantum meruit--one compensates an attorney for completed work *on the basis of evaluating as closely as possible the actual deal struck between the client and the attorney rather than an assessment of reasonable compensation in the abstract*--is also the proper means of evaluating quantum meruit in cases such as the instant one. [*Id.*, 30.]

The language that the trial court's attorney fee award should come "as close[] as possible" to the contingency fee agreement recognizes that the pro-rata percentage approach used in *Morris* will not be as easy to apply in some cases as in others. The *Reynolds* Court did not preclude the possibility that in some cases, it will be best for the trial court to base the quantum meruit award on hours worked even when the attorney worked pursuant to a contingency agreement. Rather, the *Reynolds* Court proscribed attorney fee awards that are based on "reasonable compensation in the abstract"—a proscription that does not categorically bar compensation based on hours worked.

The trial court here decided, in essence, to allow Tallman to keep the entire contingency fee minus costs incurred by intervenors and compensation for the intervenors' hours (similar to the *Morris* Court's determination that one attorney was entitled to 99 44/100 percent of the fee). This was based on the trial court's finding that intervenors' contribution to the settlement deal was negligible, and that Tallman did all the work that led to the settlement. This finding is not clearly erroneous. Although intervenors tolled the statute of limitations by filing the complaint and did some preliminary investigation work on the facts and law, the record supports the court's finding that plaintiff's case stalled under intervenors' guidance. Intervenors adopted a wait-and-see approach, allowing Tallman to test the waters with the Miles case and refraining from further action in hopes that the Supreme Court would provide clearer guidance on the intentional tort exception in the *Travis* case. Evidently, intervenors felt that plaintiff's case was too risky to pursue without greater assurance that plaintiff's claim was potentially valuable. Intervenors' reluctance to bear this risk may have been an appropriate strategy, but it was also was an appropriate consideration by the trial court. *Morris*, 279.

Furthermore, the trial court implicitly found that intervenors would have been unlikely to reopen the case after the Supreme Court decided *Travis*. This finding is not clearly erroneous. Intervenors' testimony at the hearing clearly reveals their skepticism from the outset of the case that plaintiff would be able to meet the standard of proof for establishing an intentional tort. The intervenors were concerned that this Court's varying opinions on the intentional tort exception made the law too unpredictable, and hoped that *Travis* would provide clearer guidance. Ultimately, the *Travis* Court's guidance established a high standard for plaintiffs to satisfy.[3] It is likely that intervenors would not have found the Supreme Court's decision in *Travis* encouraging.

In contrast, Tallman incurred the risk of taking plaintiff's case before the Supreme Court decided *Travis*. He was willing to put time into negotiating a settlement for this uncertain case even after the *Travis* decision darkened plaintiff's prospects. Under these circumstances, we cannot say that the trial court abused its discretion in awarding Tallman the lion's share of the contingency fee.

Intervenors argue that the trial court took into consideration factors that were either legally irrelevant or factually erroneous. They protest that the court should not have credited Tallman for the 1,000 plus hours he expended on the Miles case. This argument is based on a misunderstanding of the trial court's decision. Contrary to intervenors' suggestion, the trial court did not add up Tallman's hours, including the Miles hours, compare this sum to the aggregate of intervenors' hours, and pro-rate the contingency fee on this basis. Rather, the trial court observed that Tallman's experience on the Miles case gave him a strategic advantage over the intervenors in negotiating a settlement. This finding was not clearly erroneous. Defense counsel Gass testified that Tallman's work on the Miles case was a significant factor in defendant's decision to settle. Even if the settlement negotiations failed, and Tallman had to prepare for trial by re-deposing every witness from the Miles case who had knowledge of plaintiff's case, Tallman would still have a unique advantage. Additionally, it is highly probable that Tallman's performance in the Miles case—especially his near-victory in trial—gave defendant an incentive to settle the case for a large amount rather than risk trial. The *Morris* Court stated that a trial court deciding a quantum meruit attorney fee should take into consideration the attorney's experience and skill. *Id.*, 279. Thus, it was not improper for the trial court to compare Tallman's experience to

intervenors', and determine that the settlement was largely attributable to Tallman's advantage. This is particularly true where, as here, the trial judge had the opportunity to observe Tallman in both cases.

Intervenors also contend that the trial court gave undue consideration to Tallman's trial preparedness. They suggest that the trial court erroneously assumed that intervenors, lacking Tallman's experience on the Miles trial, would have had to perform substantially more work than Tallman would to prepare for trial. However, the trial court's finding on this point is not clearly erroneous. Even if Tallman had to duplicate all his efforts from the Miles case, he still would have had a significant advantage over intervenors, who would have had to interview and depose witnesses, initiate expert investigations, and plan a trial strategy from scratch.

Intervenors further argue that Tallman's trial preparedness was the wrong "benchmark" for the trial court to use in dividing the contingency fee because this case was never tried. However, the trial court did not err in crediting Tallman's trial preparedness as a major factor contributing to the settlement. Obviously, the better prepared an attorney is to try a case, the greater incentive the opposition has to settle. Tallman's preparedness and experience in nearly winning a similar case against the same defendant before the same trial judge presumably gave him unique leverage in negotiating a settlement with defendant.

Intervenors also argue that the trial court erroneously found that intervenors relied heavily on Tallman's knowledge of the pull-back system on the defective press. The trial court made this finding based on a July 15, 1995 file memorandum in which Robert Buchanan recounted a conversation with Tallman. Robert Buchanan learned from Tallman that defendant fabricated the pull-back system, and that Ruth Poole of MIOSHA testified in a deposition that she fined defendant for using the pull-back devices. Although Robert Buchanan's memo does not directly state that Tallman gave him this information, this can be inferred from the context of the memo. Thus, the trial court's finding is not clearly erroneous.

Intervenors contend that the trial court unfairly penalized intervenors for administratively closing the case. Intervenors argue that the administrative closing was reasonable and should not be construed as indifference to plaintiff's case or fear of going to trial. We do not believe that the trial court penalized intervenors or deemed them indifferent to plaintiff's case. The trial court simply stated that "while petitioners were waiting the results of the Supreme Court's meditations in *Travis*, Mr. Tallman was pushing the Miles case forward through many difficulties." Though intervenors' conduct appears to be quite reasonable, the trial court reasonably concluded that Tallman's willingness to proceed with the litigation even in the face of difficult odds was a major factor in achieving the settlement.

Though we may not have ruled as the trial court ruled, we find nothing improper or erroneous in the trial court's rationale for awarding the bulk of the contingency fee to Tallman, subtracting only just compensation for intervenors' costs and hours. Although intervenors' cautious approach to this litigation was not unreasonable, it did not contribute to the settlement. We find no abuse of discretion.

B

Intervenors contend that Tallman "arguably" breached MRPC 4.2 when he met with plaintiff to discuss her case before she severed her attorney-client relationship with intervenors. They also argue that Tallman "arguably violated" MRPC 1.7 and 1.8(g) by failing to warn plaintiff that her interests may be adverse to the interests of his client Miles. Additionally, they protest Tallman's decision to ignore their attorney lien and not notify them of the settlement in plaintiff's favor. Although intervenors are somewhat vague as to the relief they seek for these alleged improprieties, they seem to argue that the trial court should have penalized Tallman by reducing or denying him his share of the contingency award.[4] In any event, intervenors fail to demonstrate that Tallman violated any professional conduct rules.

MRPC 4.2 provides

> In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Clearly, the phrase "[i]n representing a client" limits this rule's application to attorneys who are already representing a party in a given action. These attorneys are proscribed from communicating with other parties in the action if those parties are represented by counsel. The rule cannot reasonably be construed to prohibit attorneys who are not involved in a particular action from discussing that action with represented parties.

Intervenors protest that Tallman acted improperly when he discussed plaintiff's case with her and agreed to represent her before she terminated her relationship with intervenors—though it was plaintiff who initiated contact with Tallman.[5] Tallman, however, was free to discuss plaintiff's case with her and owed no obligation to consult intervenors before meeting with her. Clients have "an implied right to discharge an attorney." *Reynolds, supra* 27. An ethical rule that prohibits would-be successor attorneys from meeting with potential clients before those clients have discharged their current attorneys would infringe upon a client's right to discharge his attorney. A client who is unhappy with his present counsel should not have to incur the risk of discharging his attorney before searching for a new attorney. Such a rule would benefit attorneys only, and add nothing to the protections already in place against overreaching and solicitation. See MRPC 7.3.

Intervenors also maintain that Tallman was obligated, under MPRC 1.7 and 1.8(g), to warn plaintiff that her interests could be jeopardized if Tallman's other client, Miles, achieved a judgment or settlement against defendant. Intervenors contend that Miles' and plaintiff's interests were in conflict, because defendant might have been unable to satisfy judgments or settlements for both. MRPC 1.7 prohibits lawyers from representing different clients with adverse interests unless the lawyer reasonably believes the representation will not adversely affect the attorney-client relationship and each client consents after consultation.

Intervenors contend that Miles' and plaintiff's interests were in conflict because defendant might not have sufficient assets to pay settlements or judgments to both Miles and plaintiff.[6] These allegations

are too vague and speculative to establish a conflict of interest or violation of MRPC 1.7. Furthermore, when considered in a broad context, intervenors' position would preclude an attorney from representing different clients in different actions against the same defendant without first ascertaining that the defendant has sufficient assets or insurance coverage to satisfy any and all judgments and settlements. Intervenors cite no authority for this interpretation of MRPC 1.7, and have thus effectively abandoned the issue. *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benevolent and Protective Order of Elks of the United States of America*, 228 Mich App 20, 49; 577 NW2d 163 (1998).

Intervenors also rely on MRPC 1.8(g), which prohibits an attorney from making an aggregate settlement of the claims of two or more clients without the clients' consent. This rule is not implicated here, because Tallman did not make or attempt to make an aggregate settlement of plaintiff's and Miles' claims against defendant.

Intervenors argue that the trial court should have taken into consideration Tallman's failure to honor their attorney's lien. Tallman testified that he did not intend to notify intervenors of the settlement, but he averred that intervenors never served him a copy of the lien. The trial court did not make any findings of fact on this dispute. However, this Court has held that "[a]n attorney's lien is not enforceable against a third party unless the third party had actual notice of the lien, or *unless circumstances known to the third party are such that he should have inquired as to the claims of the attorney*. *Doxtader v Sivertsen*, 183 Mich App 812, 815; 455 NW2d 437 (1990), citing *Munro v Munro*, 168 Mich App 138, 141; 424 NW2d 16 (1988), emphasis added. The *Doxtader* Court further held that "parties have a duty to inquire into the terms of an attorney's lien." *Id.*, 816.

Here, Tallman knew about intervenors' prior representation of plaintiff and thus had a duty to inquire into any claims intervenors might have had pursuant to an attorney's lien even if he did not have actual notice of the lien. However, because intervenors learned about the settlement and took action to protect their interest, they were not harmed by Tallman's conduct. Intervenors suggest that a successor attorney who dishonors a discharged attorney's lien thereby forfeits all or part of his contingency fee to the discharged attorney, but we find no authority for this proposition. The discharged attorney in this scenario is not entitled to anything more than what is due as quantum meruit compensation. In *Munro v Munro*, 168 Mich App 138; 168 NW2d 138 (1988), a successor attorney knew of the discharged attorney's lien, but failed to satisfy the lien out of funds encumbered by the lien. *Id.*, 143. The trial court denied the discharged attorney's motion to enforce the lien on grounds that the discharged attorney had waived his right of enforcement. *Id.*, 142-143. This Court concluded that the trial court's denial of the motion was erroneous, and remanded the case to the circuit court with directions to enter judgment in favor of the discharged attorney. *Id.*, 143. However, this Court did not require the successor attorney to make any further recompense to the aggrieved intervenor. Accordingly, Tallman's failure to honor the lien does not entitle intervenors to a larger share of the contingency fee.[7]

Intervenors include among their complaints of Tallman's unethical conduct that they are entitled to damages for Tallman's alleged tortious interference in their business relationship with plaintiff. This issue is distinct from intervenors' claims of unethical conduct, but they failed to raise the issue in their statement of questions presented. Accordingly, the issue is not properly before this Court and we need not consider it. *Phinney v Perlmutter*, 222 Mich App 513, 564; 564 NW2d 532 (1997).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Michael J. Talbot

[1] Because plaintiff's injury arose out of her employment, her exclusive remedy was worker's compensation benefits unless she could prove that defendant committed an intentional tort. MCL MCL 418.131(1); MSA 17.237(131)(1). This requires proof that the employer "had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge."

[2] The settlement agreement was provided to this Court in a sealed envelope. This Court exercised its option to inspect the terms of the settlement.

[3] The *Travis* Court held that in order to prove an intentional tort under Section 131 of the worker's compensation statute, a plaintiff must show that the employer must had "*actual* knowledge," not merely constructive, implied, or imputed knowledge, that an injury was certain to occur. *Id.*, 173-174. With respect to the words "certain to occur", the Court stated that "[w]hen an injury is 'certain' to occur, no doubt exists with regard to whether it will occur. Thus, the laws of probability, which set forth the odds that something will occur, play no part in determining the certainty of injury." *Id.*, 174. It is not enough that the employer knows of the existence of a dangerous condition; the employer must be aware that injury is certain to occur. *Id.*, 176.

[4] It appears that intervenors have not filed a complaint against Tallman with the Attorney Grievance Commission.

[5] On appeal, intervenors have dropped their allegation that Tallman solicited plaintiff before she contacted him.

[6] Intervenors suggest that defendant's liability insurers would probably have denied coverage for both accidents under their policies' intentional injury exclusions. However, they offer no evidence to support their allegation that defendant's insurance policies would have denied coverage, nor can we assume that coverage would have been denied. In *Cavalier Mfg Co v Wausau (On Remand)*, 222 Mich App 89; 564 NW2d 68 (1997), this Court held that the term "intentional tort" as used in MCL 418.131 does not necessarily have the same meaning as the term "bodily injury intentionally caused" as used in the intentional tort exclusion of an employer's liability insurance policy. *Id.*, 95.

[7] We need not, and therefore do not, comment on the intervenors' possible recourse against Tallman before the Attorney Grievance Commission.