STATE OF MICHIGAN

COURT OF APPEALS

DAWN A. KLIDA and DAWN A. KLIDA, P.C.,

Plaintiffs-Counter-Defendants,

v

SKINNER, WILDEBOER & KLIDA,

Defendant,

and

DAVID R. SKINNER and DAVID R. SKINNER, P.C.,

Defendants-Counter-Plaintiffs-Third-Party Appellants,

and

JOHN L. WILDEBOER,

Defendant-Counter-Defendant-Counter-Plaintiff-Appellee,

and

WILDEBOER & KLIDA and SKINNER, WILDEBOER & OGDEN,

Third-Party Defendants-Appellees.

UNPUBLISHED
March 15, 2002

No. 225777
Bay Circuit Court
LC No. 98-003276-CZ

DAWN A. KLIDA and DAWN A. KLIDA, P.C.,

Plaintiffs-Counter-Defendants,

v

SKINNER, WILDEBOER & KLIDA,

Defendants,

and

DAVID R. SKINNER and DAVID R. SKINNER, P.C.,

Defendants-Counter-Plaintiffs-Third-Party Appellants,

and

JOHN L. WILDEBOER,

Defendant-Appellee,

and

WILDEBOER & KLIDA and SKINNER, WILDEBOER & OGDEN,

Third-Party Defendants-Appellees.[1]

No. 229258
Bay Circuit Court
LC No. 98-003276-CZ

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

In these consolidated cases, plaintiffs appeal as of right from circuit court orders entering judgment on an arbitration award and interpreting the award to include a contingency fee case know as the "Matuszewski" case. This case arises out of the dissolution of a law firm. Plaintiffs

[1] The only remaining parties to this appeal are David R. Skinner and David R. Skinner, PC., "plaintiffs," and John L. Wildeboer and Skinner, Wildeboer & Ogden, "defendants." We use the singular term defendant to apply to John L. Wildeboer.

seek to vacate the portion of the arbitration decision granting two-thirds of the Matuszewski contingency fee to the dissolved partnership. We affirm.

In 1996, Walter and Jacqueline Matuszewski, the parents of an adult, Mark Matuszewski, entered into a contingency fee agreement with the law firm of Skinner, Wildeboer & Ogden, L.L.P., to represent Mark Matuszewski regarding injuries he sustained in a fall in January 1996. On March 16, 1998, Skinner, Wildeboer & Ogden, L.L.P., later known as Skinner, Wildeboer & Klida, L.L.P., dissolved. Soon thereafter, on April 24, 1998, Mary Matuszewski, Mark Matuszewski's wife, was appointed conservator of his estate and, on the same day, signed a contingency fee agreement with David R. Skinner, P.C. regarding Mark's January 1996 injuries.

The partners of Skinner, Wildeboer & Klida, L.L.P. submitted the dissolution of the partnership to binding, statutory arbitration pursuant to the Rules of Arbitration of the State Bar of Michigan Standing Committee on Arbitration of Disputes Among Attorneys. In a consent order, the parties agreed that the arbitrator would allocate contingency fees paid after March 16, 1998 pursuant to agreements signed before that date, recognizing the property rights existing in the contingency fees as of March 16, 1998. The third partner, Dawn Klida, was dismissed before arbitration and is not a party to this appeal. The arbitrator's decision divided these contingency fees one-third to the attorney primarily working the case and two-thirds divided equally between Skinner and Wildeboer.

Plaintiffs first argue that the arbitrator's award of contingent fees to the dissolved partnership on a percentage, rather than a hourly quantum meruit basis constituted a clear error of law requiring modification or vacation of the arbitrator's decision. We disagree.

This Court will vacate an arbitration decision only in certain limited circumstances, including clear errors of law evident on the face of the arbitration decision. MCR 3.602(J)(1); *DAIIE v Gavin*, 416 Mich 407, 429, 433; 331 NW2d 418 (1982); *Rembert v Ryan's Steak Houses*, 235 Mich App 118, 163-164; 596 NW2d 208 (1999). To warrant vacation of an arbitration award, the error of law must be so serious or substantial that it governed the award and without which the award would have been substantially different. *DAIIE, supra* at 443.

It is well-settled that a law firm initiating a contingency fee case is entitled to recovery on a quantum meruit basis when a client wrongfully terminates the relationship or the firm rightfully withdraws from the matter. *Reynolds v Polen*, 222 Mich App 20, 24; 564 NW2d 467 (1997), citing *Ambrose v Detroit Edison Co*, 65 Mich App 484, 487-488; 237 NW2d 520 (1975). Applying that principle by analogy to this situation, plaintiffs contend that a quantum meruit award must be based on a reasonable hourly fee. We find no merit to that argument. To the contrary, a quantum meruit award is based on reasonableness, and no precise formula has been articulated to determine reasonableness. *Morris v Detroit*, 189 Mich App 271, 280; 472 NW2d 43 (1991); *Hartman v Associated Truck Lines*, 178 Mich App 426, 431; 444 NW2d 159 (1989). In fact, in the *Morris* case, this Court fashioned a reasonable attorney fee for a former attorney by using a percentage of the contingency fee—exactly the approach used by the arbitrator in dividing the partnership assets here. *Morris, supra* at 280. Consequently, we find no error of law in the arbitrator's decision.

Plaintiffs further allege that the Matuszewski case was not properly before the arbitrator and was not covered by the arbitrator's decision because the contingency fee agreement was not signed before March 16, 1998. Again, we disagree.

The arbitrability of an issue pursuant to an arbitration agreement is a question of law we review de novo. *Madison Dist Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). Arbitrators derive their authority from the arbitration agreement. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). Therefore, arbitrators are bound to act within those terms and exceed their authority when they act beyond the terms of the contract. *Id*., citing *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998). However, when there is any doubt regarding the arbitrability of an issue, the doubt should be resolved in favor of arbitration. *Madison Dist, supra* at 595, citing *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). An award is presumptively within the scope of the arbitrator's authority in the absence of express language to the contrary. *Gordon Sel-Way Inc v Spence Brothers, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991).

The parties' consent decree specifically submitted to arbitration the allocation of contingency fees paid pursuant to contingency fee agreements signed before March 16, 1998. There is no dispute that a contingency fee agreement existed before March 16, 1998 regarding injuries sustained by Mark Matuszewski in January 1996. There is no dispute that more than 474 hours were spent on the case before March 16, 1998. There is also no dispute that the dissolved firm is entitled to recovery in quantum meruit for the hours spent on the case. Plaintiffs' argument that the first contingency agreement is void is inconsistent with their admission that the partnership was entitled to recovery in quantum meruit for the work performed under that agreement. Although the unique factual circumstances cast some doubt on the arbitrability of the Matuszewski fee, we resolve the doubt in favor of arbitration. *Madison Dist, supra* at 595. Moreover, we find that it would be inequitable to exclude the Matuszewski fee from the arbitration decision based on the questionable circumstances surrounding the second fee agreement.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Joel P. Hoekstra