

STATE OF MICHIGAN  
COURT OF APPEALS

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ALLAN FALK PC,

Plaintiff-Appellant,

v

LINDA OLSON,

Defendant-Appellee.

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UNPUBLISHED  
December 7, 2010

No. 292855  
Wayne Circuit Court  
LC No. 08-102027-CK

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

O'CONNELL, P.J. (*dissenting*).

I respectfully dissent.

Plaintiff, an appellate attorney, entered into a valid contract for legal services with defendant. Plaintiff performed the services and is seeking compensation pursuant to the terms of the contract. Defendant admits entering into the contract and admits that plaintiff performed services for her, but claims that a third party, who is not a party to the contract, is responsible for a portion of the attorney fees.<sup>1</sup> I disagree. The proper process to resolve this dispute is for defendant to honor the terms and conditions of her contract with plaintiff and then to seek reimbursement from the third party for any portion of the services attributable to the third party.<sup>2</sup>

This is not a complicated case. I would remand this case to the trial court with instructions to determine the total number of hours plaintiff performed under the contract,

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<sup>1</sup> The convoluted process used by the trial court and the majority opinion to resolve this dispute is inapplicable to the facts of this case. This case involves a signed contract by the parties with a set hourly fee. This is not a case in which a trial court is required to determine reasonable attorney fees. Also, MCR 8.122 is inapplicable because this case was not commenced "on verified written complaint of a client."

<sup>2</sup> A third party's acceptance of responsibility for a portion of the contract does not relieve defendant of her responsibilities under the contract.

subtract the number of hours for which plaintiff has been paid, and multiply the remaining unpaid hours by the contractual rate. The resulting figure should be entered as the judgment.<sup>3</sup>

I would reverse and remand for further proceedings consistent with this opinion.

/s/ Peter D. O'Connell

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<sup>3</sup> I agree with the majority opinion that the figures used by the trial court to reach its conclusion in this matter do not make any accounting sense; the figures simply do not add up. But, I disagree with the majority opinion that using correct figures to arrive at a just solution is “immaterial” to a proper resolution of this case. While the majority’s concept of close may be appropriate if we were playing a game of horseshoes, it is not a concept commonly used in the legal system.