

STATE OF MICHIGAN  
COURT OF APPEALS

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GERALD R. SELLEKE,

Plaintiff-Appellee,

v

DEBRA K. SELLEKE,

Defendant-Appellee,

and

DAVID R. DAWSON and BOYER, DAWSON &  
ST. PIERRE, PLLC,

Appellants.

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UNPUBLISHED  
March 15, 2018

No. 338506  
Macomb Circuit Court  
LC No. 2006-004029-DO

Before: MURRAY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Appellants appeal as of right an order granting defendant's motion for substitution of counsel, but denying appellants' request for an attorney's charging lien for legal services provided to defendant pursuant to a retainer agreement.<sup>1</sup> We vacate in part and remand.

This case arises from defendant's motion to substitute a new attorney for appellant in a postjudgment divorce proceeding. At the hearing on defendant's motion, defendant's new attorney explained to the circuit court that appellant would not sign a stipulation to substitute counsel unless defendant either paid for his legal services or acknowledged that appellant had a lien for outstanding attorney fees. The trial court then stated as follows:

*The Court:* I'm sure [appellant] has no objections to being let out of the case if [defendant] doesn't want him to represent [her] anymore.

*Mr. Dawson* [appellant]: Absolutely, that's fine. I just want a lien for the outstanding attorney fees.

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<sup>1</sup> Our reference to "appellant" means David R. Dawson.

*The Court:* Well, that's something you and [defendant's new attorney] need to discuss. This court's not going to order a lien on property at this point.

*Mr. Dawson:* Well, she does - - I do have a - -

*The Court:* You may have a contract with her - -

*Mr. Dawson:* Yes, I do.

*The Court:* - - that allows you to do so. But that's not before this court.

So I'll grant the request for substitution of counsel.

That's a separate action. If you're going to pursue her for collection, it's a separate collection action.

Following the hearing, the trial court entered an order granting defendant's motion for substitution of counsel, but denying appellant's request for a charging lien. The order stated:

1. Gary Sanfield is substituted as attorney of record for Defendant in place of Attorney David Dawson. The funds in Attorney David Dawson's iolta account in the amount of approximately \$112,000 shall be forthwith transferred to Gary Sanfield for deposit into his iolta account.
2. That the attorney David Dawson's request for a lein [sic] against the said funds being transferred to Gary Sanfield's account is denied and Gary Sanfield and his firm/office are hereby held harmless for any disbursements from said account made by Court Order or by agreement of the current Parties. Any subsequent requests by Attorney David Dawson for an attorney's lein [sic] against said funds and said account shall be deemed void and of no effect.<sup>[2]</sup>

Appellant then filed a motion for reconsideration regarding his request for an attorney's charging lien, arguing that defendant signed a retainer agreement which provided for a lien against proceeds recovered for unpaid fees and costs. Further, itemized billings had been sent to defendant every month since she signed the retainer agreement and defendant never objected to those billings. Moreover, defendant discharged appellant simply because she did not want to appear for a deposition. Accordingly, appellant argued, he was entitled to a charging lien to protect his right to payment for services rendered. The court disagreed and denied the motion. This appeal followed.

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<sup>2</sup> Appellant states that an additional copy of the May 1, 2017 order was entered on May 2, 2017. The only change is that the second provision is crossed out with an ink pen. We note that the May 2, 2017 order was not entered in the register of actions, nor was it the order from which this appeal arises.

Appellant argues that the trial court abused its discretion by denying his request for an attorney's charging lien against defendant. We agree.

The circuit court's decision regarding the imposition of a charging lien is a matter that this Court reviews for an abuse of discretion. *Reynolds v Polen*, 222 Mich App 20, 24; 564 NW2d 467 (1997). An abuse of discretion occurs when the lower court chooses an outcome falling outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). However, "[w]hether a lien is authorized in a particular case is a question of law" that we review de novo. *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 281; 761 NW2d 761 (2008).

"Attorney charging liens are not recognized by statute but exist in the common law." *Souden v Souden*, 303 Mich App 406, 411; 844 NW2d 151 (2013). As this Court explained in *George v Sandor M Gelman, PC*, 201 Mich App 474; 506 NW2d 583 (1993):

An attorney's lien can be one of two kinds: (1) a general, retaining, or possessory lien, or (2) a special, particular, or charging lien. A general or retaining lien is the right to retain possession of all documents, money, or other property of the client until the fee for services is paid. The special or charging lien is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular case. [*Id.* at 476 (citations omitted).]

A charging lien creates a lien on "a judgment, settlement, or other money recovered as a result of the attorney's services." *Id.* Further, attorney charging "liens automatically attach to funds or a money judgment recovered through the attorney's services," but they generally do not attach to real property. *Id.* at 477-478.

In this case, defendant never disputed that she had retained appellant and that she signed a retainer agreement; rather, defendant merely did not want to pay appellant or grant him a lien for payment of appellant's legal services. In response to appellant's request for a charging lien, the circuit court held: "If you're going to pursue her for collection, it's a separate collection action." In other words, it appears the court did not recognize that an attorney's charging lien "automatically attach[es] to funds or a money judgment recovered through the attorney's services." *Id.* at 477. Accordingly, the circuit court abused its discretion when it denied appellant's request for an attorney's charging lien for legal services provided to defendant.

We vacate in part the portion of the circuit court's order denying appellant's request for a charging lien, and remand this matter for an evidentiary hearing to determine the amount of the charging lien to which appellant is entitled for legal services provided to defendant in the underlying case. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood