STATE OF MICHIGAN

COURT OF APPEALS

DAILEY & STEARN LAW FIRM, P.L.C.,

Plaintiff-Appellant,

v

KATRINA IVANAY, JOSEPH DEDVUKAJ, JOSEPH DEDVUKAJ FIRM, P.C., and CNA INSURANCE COMPANY, d/b/a TRANSPORTATION INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
April 16, 2013

No. 306527
Wayne Circuit Court
LC No. 10-011011-CK

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

This case arises from plaintiff's claim that defendants failed to honor an attorney's lien on settlement funds totaling $240,000 issued by defendant CNA Insurance Company and obtained by defendant Katrina Ivanay in first-party and third-party actions under the no-fault act, which were filed by Ivanay's retained law firm, defendant Joseph Dedvukaj Firm, P.C., through defendant Joseph Dedvukaj. Plaintiff appeals by right, challenging the trial court's orders granting summary disposition in favor of all defendants. We affirm.

CNA Insurance is the insurer of a taxi cab that struck Ivanay in a pedestrian walkway on September 27, 2005. Ivanay is plaintiff's former client pursuant to a contingency fee agreement for legal services related to the accident. In April 2006, Ivanay terminated plaintiff's legal representation and retained defendant Joseph Dedvukaj and his law firm to represent her. In May 2006, plaintiff filed an action in the Wayne Circuit Court against Dedvukaj and his law firm (hereafter collectively referred to as the "Dedvukaj defendants"), seeking both declaratory relief and damages. Plaintiff sought determinations regarding the amount it was entitled to for its legal services and recognition of an attorney's lien against any recovery obtained by Ivanay in connection with the September 2005 accident. In September 2006, plaintiff's action was dismissed with prejudice pursuant to an order requiring the defendants in that action to notify plaintiff if and when Ivanay's claims were resolved by settlement or other means. The order also specified that "defendants acknowledge that the plaintiffs [sic] have asserted a claim of an attorney's lien on the proceeds of any settlement[.]"

The Dedvukaj defendants thereafter filed two lawsuits on behalf of Ivanay that were resolved through binding arbitration and settlement in 2008. In 2010, plaintiff filed this action, seeking to have Ivanay, the Dedvukaj defendants, and CNA Insurance honor plaintiff's alleged attorney lien against settlement funds of $240,000 paid by CNA Insurance in checks issued to Ivanay and the Joseph Dedvukaj Firm, P.C. Ivanay and the Dedvukaj defendants subsequently filed a joint motion for summary disposition, seeking dismissal of all of plaintiff's claims pursuant to MCR 2.116(C)(7) (res judicata), (C)(8) (failure to state a claim), and (C)(10) (no genuine issue of material fact). On August 5, 2011, the trial court denied summary disposition under MCR 2.116(C)(7) and (8), but granted summary disposition pursuant to MCR 2.116(C)(10) with respect to all claims against the Dedvukaj defendants and all claims against Ivanay, except for plaintiff's conversion claim against Ivanay. CNA Insurance thereafter moved for summary disposition under MCR 2.116(C)(10) with respect to plaintiff's claims. Following a hearing on September 21, 2011, the trial court granted CNA Insurance's motion and dismissed the case with prejudice.

On appeal, plaintiff generally asserts that it is entitled to damages for the defendants' failure to honor its attorney's lien and their conversion of the settlement money. Plaintiff argues that Ivanay and the Dedvukaj defendants were not entitled to summary disposition under MCR 2.116(C)(7) and (8), and that CNA Insurance was not entitled to summary disposition under MCR 2.116(C)(10).

Plaintiff has not established any basis for appellate relief with respect to its claims against Ivanay and the Dedvukaj defendants, because it completely fails to address the basis for the trial court's decision dismissing those claims. An appellant must "adequately prime the [appellate] pump" to invoke appellate review. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Plaintiff's argument is directed at explaining why Ivanay and the Dedvukaj defendants were not entitled to summary disposition under MCR 2.116(C)(7) (res judicata) and (C)(8) (failure to state a claim). However, the trial court expressly found that "disposition is not proper under (C)(7) and (C)(8)" with respect to the claims against Ivanay and the Dedvukaj defendants. The trial court instead granted summary disposition in favor of these defendants pursuant to MCR 2.116(C)(10), which plaintiff fails to acknowledge or address. A party's failure to address the basis for a trial court's decision precludes appellate relief. See *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987); see also *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004).

Furthermore, a review of the record fails to disclose that the trial court erred in granting summary disposition under MCR 2.116(C)(10). The appellate courts review de novo a trial court's decision on a motion for summary disposition. *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011). A motion under MCR 2.116(C)(10) tests the factual support for a claim based on substantively admissible evidence. MCR 2.116(G)(6); *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Summary disposition is appropriate if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Although the initial burden is on the moving party to support its position with affidavits, depositions, admissions, or other documentary evidence, once that burden is met, the burden shifts to the nonmoving party to establish a genuine issue for trial. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App

466, 475; 776 NW2d 398 (2009). "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden*, 461 Mich at 121.

Plaintiff correctly observes that an attorney's lien may be enforced against a third party with actual knowledge of the lien. *Munro v Munro*, 168 Mich App 138, 141; 424 NW2d 16 (1988). A charging lien, such as was claimed by plaintiff in this case, "is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993). But the judgment, settlement or other money recovered must result from the attorney's services. *Id.*; see also *Reynolds v Polen*, 222 Mich App 20, 23; 564 NW2d 467 (1997).

Here, the trial court found that plaintiff failed to demonstrate factual support for its claim that the Dedvukaj defendants had a duty to honor plaintiff's alleged attorney's lien. In addition to finding no evidence that the Dedvukaj defendants agreed to an attorney's lien, the trial court found no evidence that plaintiff performed compensable services that could support a lien. The court determined that plaintiff could only proceed under a quantum meruit theory of recovery, but that there was no evidence to support such a claim.

Because a client has an absolute right to discharge an attorney, the trial court did not err in determining that plaintiff could only proceed if it could establish a basis for an attorney's lien under a quantum meruit theory of recovery. *Reynolds*, 222 Mich App at 24; *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 330; 536 NW2d 886 (1995). The phrase "quantum meruit" means "as much as deserved." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 359; 657 NW2d 759 (2002), quoting Black's Law Dictionary (6th ed, 1990), p 1243. Here, plaintiff's failure to address the trial court's decision under MCR 2.116(C)(10) is fatal to its request for appellate relief. Plaintiff has not identified any evidence that establishes factual support for a recovery in quantum meruit, and thus has not shown that the trial court erred in granting summary disposition under MCR 2.116(C)(10) with respect to either the Dedvukaj defendants or Ivanay.

Plaintiff has also failed to establish any basis for disturbing the trial court's grant of summary disposition under MCR 2.116(C)(10) with respect to plaintiff's conversion claim against the Dedvukaj defendants. There can be no conversion of money unless the defendant is obligated to deliver specific money to the plaintiff. *Garras v Bekiares*, 315 Mich 141, 148; 23 NW2d 239 (1946); see also *Warren Tool Co v Stephenson*, 11 Mich App 274, 299; 161 NW2d 133 (1968). The specific money in this case was provided by CNA Insurance, without any obligation that it be paid to plaintiff. Contrary to plaintiff's argument on appeal, the alleged attorney's lien would not create a property right in CNA Insurance's money. *Aetna Cas & Surety Co v Starkey*, 116 Mich App 640, 645; 323 NW2d 325 (1982) (attorney's lien does not create a property right in the client's recovery); see also *George*, 201 Mich App at 477 (charging lien is an equitable right to secure the fees and costs due from the client out of the judgment or recovery).

Plaintiff does not specifically discuss its conversion claim against Ivanay. As indicated previously, the trial court originally denied summary disposition with respect to plaintiff's conversion claim against Ivanay. However, following a hearing on September 21, 2011, the court dismissed the case with prejudice. Plaintiff's failure to address its conversion claim against

Ivanay alone precludes relief. *Derderian*, 263 Mich App at 381; *Roberts & Son Contracting, Inc*, 163 Mich App at 113.

Furthermore, plaintiff has failed to provide a transcript of the September 21, 2011, hearing, despite a request from this Court. The appellant is responsible for securing the complete transcript of all proceedings unless excused by court order or the parties' stipulation. MCR 7.210(B)(1). If a transcript cannot be obtained from the court reporter or recorder, the appellant must take steps to provide this Court with a settled statement of facts in place of the transcript. MCR 7.210(B)(2): *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). Plaintiff's failure to provide the pertinent transcript forecloses appellate review of its claim that the trial court erred in dismissing the case with respect to Ivanay. *McLemore v Detroit Receiving Hosp & Univ Med Ctr*, 196 Mich App 391, 401-402, 493 NW2d 441 (1992); *Brown v JoJo-Ab, Inc*, 191 Mich App 208, 210; 477 NW2d 121 (1991).

The trial court dismissed plaintiff's claims against CNA Insurance after the hearing on September 21, 2011. Although plaintiff argues that its claims against CNA Insurance were not barred by collateral estoppel, it has not shown that the trial court relied on collateral estoppel as a basis for granting summary disposition. Indeed, CNA Insurance's motion also sought summary disposition for the same reason that summary disposition was previously granted to Ivanay and the Dedvukaj defendants, i.e., because plaintiff had not presented any evidence showing that it rendered compensable services. Because plaintiff has failed to provide the transcript of the September 21, 2011, summary disposition hearing, we are not able to determine the basis for the trial court's decision. Accordingly, plaintiff is not entitled to appellate relief. *McLemore*, 196 Mich App at 401-402; *Brown*, 191 Mich App at 210. We note that while plaintiff argues on appeal that the trial court should have at least conducted an evidentiary hearing to determine the time it spent on Ivanay's case, it was incumbent upon plaintiff to submit admissible evidence showing a genuine issue of material fact with respect to whether it performed services that contributed to the settlements. Plaintiff has not identified any such evidence, and its mere pledge that such evidence could have been submitted at an evidentiary hearing or a trial is insufficient to avoid summary disposition under MCR 2.116(C)(10). *Maiden*, 461 Mich at 121.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood