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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1877**

Vene Lor, as conservator and natural mother of Ricky Yang,
and Vene Lor, individually,
Respondents,

vs.

Michael Lee Hewitt, et al.,
Defendants,

Gregory J. Walsh, et al.,
Appellants,

Walsh & Gaertner, P.A.,
Co-appellant.

**Filed June 19, 2017
Affirmed
Kirk, Judge**

Redwood County District Court
File No. 64-CV-15-428

Sharon L. Van Dyck, Van Dyck Law Firm, PLLC, Minneapolis, Minnesota; and Mark R. Kosieradzki, Andrew D. Gross, Kosieradzki Smith Law Firm, LLC, Plymouth, Minnesota (for respondents)

Scott Wilson, Minneapolis, Minnesota; and Gregory J. Walsh, Walsh & Gaertner, P.A., St. Paul, Minnesota (for appellants Gregory J. Walsh, et al., and co-appellant Walsh & Gaertner, P.A.)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant-attorney challenges the district court's denial of his petition for a portion of the attorney fees approved in connection with the settlement of a minor's personal-injury action arising from a motor-vehicle collision. Appellant argues that he represented the minor in a separate personal-injury action arising from the same collision and, therefore, is entitled to recover attorney fees in quantum meruit. We affirm.

FACTS

Ricky Yang was born in 2001 and is the son of Khamtane Yang (Khamtane) and respondent Vene Lor. Following Khamtane and Lor's 2005 divorce, they shared joint custody of Yang. Khamtane subsequently married Kia Xiong, and the couple had two sons. Yang lived with Khamtane, Xiong, and his two half-brothers until October 19, 2014, when Khamtane's vehicle, in which Yang and his two half-brothers were passengers, collided with a semi-truck. As a result of this tragic collision, Khamtane died and his three sons were injured. Yang's injuries were serious and required hospitalization. Following his release from the hospital, Yang moved to Iowa to live with Lor.

On April 28, 2015, an Iowa district court appointed Lor as Yang's conservator and authorized, empowered, and directed her to bring a personal injury action for Yang's injuries arising from the collision. Lor retained Iowa-based attorney Fred J. Haas to bring a personal-injury action on Yang's behalf. Lor also retained Minnesota-based Kosieradzki Smith Law Firm LLC to serve as local counsel in the action. On June 18, Lor's attorneys

filed an action on Yang's behalf in Redwood County District Court, which was assigned court file number 64-CV-15-428 (the 428 case).

Following the collision, Xiong retained appellant-attorney Gregory J. Walsh to bring a personal-injury action on behalf of Yang and his two half-brothers. On August 5, Walsh filed an action on the children's behalf in Redwood County District Court, which was assigned court file number 64-CV-15-570 (the 570 case). After learning that Xiong was Yang's stepmother and lacked authority to serve as Yang's litigation representative, Walsh petitioned the district court to appoint J.M. to serve as Yang's guardian ad litem (GAL) in the 570 case. On August 13, the district court granted Walsh's petition and appointed J.M. to serve as Yang's GAL.

On August 14, Lor moved to intervene in the 570 case and to vacate the district court's August 13 order appointing J.M. as Yang's GAL. On October 22, the district court granted Lor's motion to intervene in the 570 case but denied her motion to vacate the August 13 order. Shortly thereafter, J.M. executed a retainer agreement with Walsh on Yang's behalf. Lor then filed an appeal in the 570 case to challenge the district court's August 13 order (appointing J.M. as Yang's GAL) and its October 22 order (denying Lor's motion to vacate the August 13 order). This court dismissed the appeal without reaching its merits because it was taken from interlocutory, nonappealable orders. Following this court's dismissal, the district court filed an order in both the 428 and 570 cases in which it: (1) determined that Lor was the real party in interest to prosecute Yang's personal-injury claims, (2) dismissed the claims brought on Yang's behalf in the 570 case, and (3) terminated J.M.'s GAL appointment.

On July 20, 2016, Lor petitioned the district court in the 428 case for approval of a settlement of Yang's claims in the amount of \$987,500, which included attorney fees in the amount of \$329,166.33. Shortly thereafter, Walsh petitioned the district court in the 428 case for a determination of his entitlement to \$150,000 in attorney fees and an entry of judgment on such fees. The district court issued orders approving the proposed settlement in the 428 case and denying Walsh's attorney-fees petition. In denying Walsh's petition, the district court found that Walsh lacked a contractual basis to request attorney fees in the 428 case and rejected Walsh's request for fees in quantum meruit.

This appeal follows.

D E C I S I O N

I. The district court clearly erred by finding that Walsh did not have an attorney-client relationship with Yang.

In denying Walsh's petition for attorney fees, the district court found that Walsh had never represented any party to the 428 case. Walsh challenges this finding, arguing that he had an attorney-client relationship with Yang through J.M.

"The existence of an attorney-client relationship is a factual determination." *Gramling v. Mem'l Blood Ctrs. of Minn.*, 601 N.W.2d 457, 459 (Minn. App. 1999), *review denied* (Minn. Dec. 21, 1999). We review the district court's findings of fact under the clearly erroneous standard. Minn. R. Civ. P. 52.01. "When determining whether a finding is clearly erroneous we view the evidence in the light most favorable to the district court's findings, and examine the record to see if there is reasonable evidence to support the findings." *In re Distrib. of Attorney's Fees*, 870 N.W.2d 755, 759 (Minn. 2015). "A

finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Here, because Yang was a minor and not Xiong’s child, the district court appointed J.M. as his GAL so he would have a representative in the 570 case to “sue or defend” on his behalf under Minn. R. Civ. P. 17.02. Lor sought to vacate that appointment through a motion to the district court and, after that motion was denied, an appeal to this court. But Lor’s efforts were unsuccessful, and J.M. served as Yang’s GAL in the 570 case until May 20, 2016, when the district court dismissed the claims brought on Yang’s behalf in that action and terminated J.M.’s appointment. Lor did not file a timely appeal in the 570 case to vacate the district court’s order appointing J.M. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (“[A]n appeal may be taken from a judgment within 60 days after its entry, and from an appealable order within 60 days after service by any party of written notice of its filing.”).

Accordingly, we do not consider Lor’s arguments pertaining to the legitimacy of J.M.’s appointment and, for the purpose of deciding this appeal, consider J.M.’s GAL appointment valid. *See Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370, 147 N.W.2d 100, 103 (1966) (noting that a district court decision is final, even if incorrect, following expiration of the deadline to appeal).

In his capacity as Yang’s GAL, J.M. had the authority to retain Walsh on Yang’s behalf. *See Cook v. Connolly*, 366 N.W.2d 287, 290 (Minn. 1985) (“Because procedurally the child acts through its [representative] in retaining legal counsel and in maintaining the cause of action should not obscure the reality that the child is the attorney’s client.”). The

retainer J.M. executed on Yang's behalf created an attorney-client relationship between Walsh and Yang. *See id.* at 290 ("We hold that an attorney-client relationship existed between the minor child and [the attorney retained by the child's representative] in the handling of the minor's personal injury action."). Therefore, because Yang was a party in both the 428 and 570 cases, the district court's finding, that Walsh did not have an attorney-client relationship with any party to the 428 case, is clearly erroneous.

II. The district court did not abuse its discretion by denying Walsh's petition for attorney fees.

Walsh argues that he is entitled to recover attorney fees in quantum meruit because his efforts on Yang's behalf in the 570 case contributed to Yang's subsequent recovery in the 428 case. Walsh further argues that the district court's findings regarding his actions on Yang's behalf are clearly erroneous.

"We will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). "Under the abuse-of-discretion standard, we may overrule the district court when the court's ruling is based on an erroneous view of the law." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). We review questions of law de novo and questions of fact under the clearly erroneous standard. *In re Distrib. of Attorney's Fees*, 870 N.W.2d at 759.

Under the equitable theory of quantum meruit, a party may recover if the party "has conferred a benefit to another and has not received reasonable compensation for this act." *Busch v. Model Corp.*, 708 N.W.2d 546, 552 (Minn. App. 2006). "An attorney on a

contingent fee arrangement who is discharged . . . is entitled to compensation for the reasonable value of [the attorney's] services, based on quantum meruit, not on the contingent fee contract.” *Stall v. First Nat’l Bank of Buhl*, 375 N.W.2d 841, 845 (Minn. App. 1985).

Where a party seeks to recover in quantum meruit outside the context of an express or implied contract, such recovery is generally awarded when there is a viable unjust-enrichment claim. *See Sharp v. Laubersheimer*, 347 N.W.2d 268, 271 (Minn. 1984) (stating that recovery based on an unjust-enrichment theory was “in essence . . . an award in quantum meruit”); *Stemmer v. Estate of Sarazin*, 362 N.W.2d 406, 408 (Minn. App. 1985) (noting that quantum meruit “is used only when failure to do so would result in unjust enrichment”). A claim for “unjust enrichment does not lie simply because one party benefits from the efforts of others; instead, it must be shown that a party was unjustly enriched in the sense that the term ‘unjustly’ could mean illegally or unlawfully” or in the sense that the “conduct in retaining the benefit [was] morally wrong.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001) (quotation omitted).

Here, because Walsh concedes that his argument for recovery is not based in contract, any quantum meruit recovery requires a viable unjust-enrichment claim. In denying Walsh’s petition, the district court found that “Walsh’s actions as noted in his affidavit, consisted of telephone calls and letters. There is no showing that a similar resolution would not have occurred but for his actions.” The district court also found that Walsh’s “actions and efforts, as claimed in [his] affidavit, were made knowing of [Lor’s] competing claim, and with the knowledge that the issue [of who was the proper

representative to bring Yang's claims] would need to be addressed and could very well be determined in favor of [Lor].”

These findings are not clearly erroneous. The record establishes that Lor's attorneys initiated, litigated, and obtained a settlement on Yang's behalf in the 428 case. These efforts were taken independent of Walsh's actions in the 570 case. We agree with the district court's finding that Walsh has not demonstrated that a similar settlement would not have occurred absent Walsh's actions. As such, there is no indication that others have improperly derived any benefit from Walsh's actions. Given Walsh's actual knowledge of the 428 case at an early stage, we further agree with the district court's finding that Walsh's continued representation of Yang was “a known risk.” These facts directly contradict Walsh's assertion that he is entitled attorney fees under the equitable theory of quantum meruit.

Accordingly, because its rejection of Walsh's quantum meruit claim was not clearly erroneous, we conclude that the district court did not abuse its discretion by denying Walsh's petition for attorney fees.

Affirmed.