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NO. COA14-376
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

DEPARTMENT OF TRANSPORTATION,
Plaintiff

v.

Cumberland County
No. 11 CVS 3044

PETER R. EVANS, JR. and wife, DELORES
L. EVANS,
Defendants

Appeal by defendants from order entered 30 October 2013 by
Judge James Gregory Bell in Cumberland County Superior Court.
Heard in the Court of Appeals 8 September 2014.

*Attorney Roy Cooper, by Assistant Attorney General Gaines
M. Weaver, for Plaintiff.*

Spurgeon Fields, III, for Defendants.

*Yarborough, Winters & Neville, P.A., by Garris Neil
Yarborough, pro se, amicus curiae.*

ERVIN, Judge.

Defendants Peter Evans and his wife, Delores Evans, appeal from an order allowing a motion filed by Garris Neil Yarborough seeking an award of attorney's fees. On appeal, Defendants contend that the trial court lacked the authority to award attorney's fees to Mr. Yarborough in this case. After careful

consideration of Defendants' challenge to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

On 1 April 2011, Plaintiff North Carolina Department of Transportation filed a complaint and declaration of taking, along with a deposit of \$15,231, for the purpose of obtaining a fee simple interest in and certain easement authorizing the use of a tract of real property owned by Defendants. On 15 February 2012, Defendants hired Mr. Yarborough to represent them in this condemnation proceeding. At that time, Defendants signed a contingency fee agreement under which they agreed to pay Mr. Yarborough an amount equal to one-third of any monies that Defendants received from Plaintiff in excess of the \$15,231 deposit that was made simultaneously with the filing of the complaint.

On 16 February 2012, Mr. Yarborough filed an answer on behalf of Defendants alleging that the State had not offered just compensation to Defendants for the loss of their property and asserting Defendants' right to a trial by jury. At the conclusion of a mediation conference, the parties entered into a mediated settlement agreement under which Plaintiff agreed to pay Defendants an additional \$25,769 over and above the amount

of the initial deposit, resulting in a total compensation payment of \$41,000. After reaching this agreement with Plaintiff, Defendants became dissatisfied with the representation that they had received from Mr. Yarborough and questioned the fairness of the mediated settlement agreement. The parties never completed the process of implementing the mediated settlement agreement given that Plaintiff subsequently determined that the scope of the taking needed to be expanded to include an additional 11/100ths of an acre of Defendant's property.

Although this case was calendared for trial on 17 December 2012, Defendants sought a continuance and requested that Mr. Yarborough withdraw as their counsel of record. After Mr. Yarborough complied with Defendants' request, Judge Richard T. Brown entered an order granting the requested continuance and Mr. Yarborough's withdrawal motion on 17 December 2012. On the same date, Mr. Yarborough sent a copy of Judge Brown's order to Defendants and requested payment for his services.

On 26 April 2013, Spurgeon Fields, III, filed a notice that he was appearing on Defendants' behalf in lieu of Mr. Yarborough. On 3 May 2013, Mr. Yarborough filed a motion seeking an award of attorney's fees relating to the services that he had provided to Defendants in this case. On 17 June

2013, Judge Claire V. Hill entered a consent judgment that reflected an agreement between Plaintiff and Defendants under which Plaintiff took certain property interests previously owned by Defendants, including the additional 11/100ths of an acre that had been identified after the parties entered into the mediated settlement agreement; Plaintiff was required to pay \$1,000 in compensation over and above the amount agreed to during the mediated settlement conference, resulting in a total compensation payment of \$42,000; and the additional deposit of \$26,769 was to "be disbursed pursuant to further order of the Court after determination of what portion of the additional deposit, if any, should be paid as attorney's fees."

On 15 July 2013, Defendants filed a response to Mr. Yarborough's motion for an award of attorney's fees in which they requested, among other things, that Mr. Yarborough's motion be dismissed. On 16 July 2013, Mr. Yarborough sent a letter to Defendants in which he suggested that the attorney's fee controversy be resolved on the basis of either (1) an agreement as to the amount of fair attorney's fee; (2) a fee arbitration proceeding initiated by Defendants; or (3) a judicial determination following a hearing on his motion. After Defendants failed to respond to this communication, Mr. Yarborough wrote Defendants on 11 October 2013 asking for a

response to his 16 July 2013 letter. On the same day, Defendants responded by indicating that the only way in which the attorney's fee controversy could be resolved would be by having Mr. Yarborough's motion heard and decided. As a result, Mr. Yarborough's motion was set for hearing on 28 October 2013.

At the 28 October 2013 hearing, neither Defendants nor their counsel were present.¹ After expressing his readiness to proceed, Mr. Yarborough informed the trial court that he had not heard anything from Defendants indicating that they were unable to appear on the scheduled date.² After the presentation of Mr. Yarborough's evidence, the trial court entered an order on 30 October 2013 in which it made findings of fact concerning Mr. Yarborough's credentials, the work that Mr. Yarborough performed for Defendants, and the results that Mr. Yarborough had obtained for Defendants in this case; determined that Defendants owed Mr. Yarborough \$8,589 for the services that he had provided to them in this case; and ordered that the attorney's fee amount specified in the 30 October 2013 order be paid to Mr. Yarborough

¹Although Plaintiff was present at the 28 October 2013 hearing, it indicated that it had no interest in the outcome of the attorney's fee dispute and elected not to actively participate in the hearing.

²In their brief, Defendants state that they failed to attend the 28 October 2013 hearing because their counsel misplaced the relevant calendaring notice. However, the record contains no support for this contention one way or the other.

from the additional payment that Defendants had received from Plaintiff and that the remaining \$18,180 amount be paid to Defendants and their current counsel. Defendants noted an appeal to this Court from the trial court's order.

II. Substantive Legal Analysis

In their brief, Defendants argue that the trial court erred by allowing Mr. Yarborough's request for an award of attorney's fees. More specifically, Defendants contend Mr. Yarborough's motion for an award of attorney's fees operated as a request for the enforcement of a charging lien and that a discharged attorney is not entitled to enforce a charging lien against funds that were obtained in the same proceeding in which the effort to enforce the charging lien is being made. Defendants' argument is devoid of any merit.

A. Standard of Review

The essential gist of the argument advanced in Defendants' brief is a contention that the trial court lacked the authority to award attorney's fees to Mr. Yarborough in this proceeding. As a result, the ultimate issue that Defendants have presented for our review is whether the trial court properly concluded as a matter of law that it had the power to award attorney's fees to Mr. Yarborough in this case. "Conclusions of law are reviewed *de novo* and are subject to full review." *State v.*

Biber, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)). We will now evaluate the validity of Defendants’ challenges to the trial court’s order utilizing the applicable standard of review.

B. Validity of Trial Court’s Order

“[A] charging lien is an equitable lien which gives an attorney the right to recover his [contracted-for] fees from a fund recovered by his aid.” *Covington v. Rhodes*, 38 N.C. App. 61, 67, 247 S.E.2d 305, 309 (1978) (quotation marks and citation omitted), *disc. review denied*, 296 N.C. 410, 251 S.E.2d 468 (1979). On the other hand, “[q]uantum meruit is a measure of recovery for the reasonable value of services rendered in order to prevent unjust enrichment.” *Pritchett & Burch, PLLC v. Boyd*, 169 N.C. App. 118, 124, 609 S.E.2d 439, 443 (quoting *Paul L. Whitfield, P.A. v. Gilchrist*, 348 N.C. 39, 42, 497 S.E.2d 412, 414-15 (1998)), *disc. review dismissed*, 359 N.C. 635, 616 S.E.2d 543 (2005). According to well-established North Carolina law, an attorney who has entered into a contingent fee contract with a client and is subsequently discharged by his or her client is

entitled to recover the reasonable value of the legal services that he or she rendered to the client and the expenses that he or she incurred for the benefit of the client on the basis of a *quantum meruit* theory. *Id.*

Although Defendants contend that the trial court improperly enforced a charging lien against the fund that was created by their settlement with Plaintiff on the grounds that the amount awarded to Mr. Yarborough equaled the amount that would have been owed under the contingent fee contract, we do not find this argument persuasive. Instead of simply awarding Mr. Yarborough one-third of the additional \$25,769 payment that Plaintiff agreed to pay to Defendants at the mediated settlement conference for the purpose of enforcing the contingent fee agreement, the trial court ordered Defendants to pay \$8,589 to Mr. Yarborough based upon findings of fact that focused upon Mr. Yarborough's experience, his expertise in the handling of condemnation proceedings, the amount of time that he spent working on Defendants' behalf, and the value of the services that he provided to Defendants in this case. As a result, the trial court's attorney's fee award was clearly based upon a *quantum meruit* theory and did not constitute the enforcement of a charging lien.

The fact that the trial court's order involves *quantum meruit* recovery rather than the enforcement of a charging lien establishes that the trial court properly considered Mr. Yarborough's attorney's fee application in the civil action in which the attorney's fees in question were allegedly earned rather than requiring Mr. Yarborough to assert his claim for attorney's fees in a separate proceeding. In *Guess v. Parrott*, 160 N.C. App. 325, 585 S.E.2d 464 (2003), the law firm of a discharged attorney filed a motion seeking an award of attorney's fees in the underlying civil action on the basis of a *quantum meruit* theory after the parties to that action entered into a mediated settlement agreement. *Id.* at 327, 585 S.E.2d at 466. In affirming the trial court's decision to grant the law firm's motion, we held that "a claim by an attorney who has provided legal service pursuant to a contingency fee agreement and then fired has a viable claim in North Carolina in quantum meruit against the former client or its subsequent representative," *id.* at 331, 585 S.E.2d at 468, and is entitled to assert that claim by means of a motion in the underlying civil action out of which the attorney's fee claim arose. Thus, the approach adopted by the trial court in addressing the issues raised in Mr. Yarborough's motion for an award of attorney's

fees is expressly authorized by *Parrott*. As a result, neither of Defendants' challenges to the trial court's order has merit.³

III. Conclusion

Thus, for the reasons set forth above, we conclude that Defendant's challenges to the trial court's order lack merit. As a result, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges MCCULLOUGH and BELL concur.

Report per Rule 30(e).

³Although Defendants' brief appears to suggest that the trial court should have sanctioned Mr. Yarborough for the filing of his request for an award of attorney's fees pursuant to N.C. Gen. Stat. § 1A-1, Rule 11, they have not challenged the trial court's failure to sanction Mr. Yarborough or expressly argued that such sanctions should have been imposed. Aside from the fact that our decision to affirm the trial court's order establishes that Mr. Yarborough, and not Defendants, correctly understood the applicable law, N.C. R. App. P. 10(a)(1) provides that, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." As a result, we conclude that Defendants have not properly presented any claim for relief pursuant to N.C. Gen. Stat. § 1A-1, Rule 11 for our review and that any sanctions claim that Defendants might have asserted would have been devoid of merit.