AFFIRM in Part, REVERSE in Part, and REMAND; and Opinion Filed April 2, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00269-CV

SAM W. PETTIGREW, JR., Appellant
V.
CEDAR SPRINGS ALEXANDRE'S BAR, L.P., Appellee

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-14-02340-A

MEMORANDUM OPINION

Before Justices Francis, Evans, and Boatright
Opinion by Justice Boatright

Multiple parties joined as plaintiffs in this dram shop lawsuit alleging that Cedar Springs Alexandre's Bar, L.P. was responsible for the actions of one of its customers. Following mediation, the parties agreed to settle their claims. In its final judgment, the trial court described how claims by the various plaintiffs had been resolved, dismissed, or severed, and stated "this Final Judgment addresses the claims of minor, [J. G-H], which is the only remaining claim."

Attorney Sam W. Pettigrew, Jr. intervened in the case below, seeking to recover attorney's fees for representing plaintiff Gina Bell individually, on behalf of the estate of her daughter, Kellilynne Seaman, and as next friend of her grandson, J. G-H. On appeal, Pettigrew challenges the final judgment, specifically the court's allocation of settlement proceeds for J. G-H, asserting that because he had a valid contingency fee agreement for 40% of the proceeds, the trial court

erred by awarding $7,500 in full satisfaction of his attorney's fees, costs, and expenses. He contends the trial court abused its discretion by allowing Bell to represent her daughter's estate pro se after terminating Pettigrew. He also complains that the trial court abused its discretion by failing to recuse the trial judge in this case. We affirm in part, reverse in part, and remand to the trial court for further proceedings in accordance with this opinion.

BACKGROUND

On May 23, 2012, Matthew Moore ran a red light and collided with a vehicle being driven by Jeremy Price. Kellilynne Seaman and her minor son, J. G-H., were passengers in Price's car. Price was killed, Seaman suffered a brain injury and later died, and J. G-H was seriously injured. Gina Bell, Seaman's mother and J. G-H's grandmother, hired Pettigrew and entered into an agreement titled Attorney Retainer Agreement–Contingency Fee, which she signed "for Kellilynne E. Seamon as attorney in fact and individually." In consideration for Pettigrew's legal services, Bell agreed to assign and grant Pettigrew 33 1/3% of her claims if the parties settled prior to a lawsuit being filed, and 40% if recovery was made after suit was filed.

On May 14, 2014, plaintiffs, Patty Carter, individually and on behalf of the estate of Jeremy Price, John Seaman, individually and on behalf of the estate of Kellilynne Seaman, and Gina Bell, individually and on behalf of the estate of Kellilynne Seaman and as next friend of J. G-H, a minor child, filed suit against Cedar Springs Alexandre's Bar, L.P., alleging that Moore was driving while intoxicated at the time of the collision. They alleged that on the day of the incident, Moore had been served alcohol at defendant Alexandre's Bar even though he was obviously intoxicated. Alexandre's Bar L.P. filed a third-party claim against Dallas Woody's Corporation d/b/a Woody's Sports & Video Bar.

On January 12, 2015, Bell terminated Pettigrew's services. Pettigrew withdrew as her attorney in the litigation and filed a plea in intervention for his attorney's fees, asserting entitlement

to 40% of the settlement recovery for all claims pertaining to Kellilynne Seaman and J. G-H. In the alternative, Pettigrew sought to recover quantum meruit for services provided to Bell individually, on behalf of the estate of Kellilynne Seaman, and as next friend of J. G-H.

On January 20, 2015, the parties participated in court-ordered mediation and agreed to a total settlement of $700,000 for all plaintiffs. Shortly thereafter, the trial court appointed Melodee Armstrong, as guardian ad litem to represent the interests of the minor child.

In May 2015, the trial court conducted a hearing on the proposed settlement for J. G-H. Bell testified that she agreed to settle her claims, individually and on behalf of J. G-H, for $375,000, with J. G-H receiving $225,000, and Bell receiving $150,000. Bell testified that J. G-H's settlement proceeds would be used to pay off his Medicaid lien, establish a trust account for his care, invest in a structured settlement annuity, and pay attorney's fees. Armstrong submitted a guardian ad litem report recommending approval of the settlement; she also summarized her efforts to compromise the amount of Pettigrew's attorney's fees for services provided to the minor. The trial judge told Pettigrew that for purposes of approving the minor's settlement, she needed to see documentation supporting his proposed fee.

On June 24, 2015, Alexandre's Bar filed a motion to sever, stating that all claims in the case had settled except for Pettigrew's claim for attorney's fees against Bell's settlement recovery. The motion averred that all parties requested that the trial court sever Pettigrew's claim so the remainder of the case could become final. Pettigrew filed a response, stating that his claim for attorney's fees from the minor's recovery had not been settled. He further stated that he had not been afforded an opportunity to be heard and demanded a trial on his claim for fees. At a hearing on the motion, the trial judge agreed that 40% of the settlement proceeds allocated to Bell individually would be paid into the registry of the court pending resolution of the dispute between Bell and Pettigrew as to his attorney's fees. The judge stated that with respect to the minor child,

Pettigrew's attorney's fees had already been determined to be $7,500. The trial court granted the motion, severing Pettigrew's claims against Bell into separate cause number CC-16-00030-A.

Pettigrew then filed a motion to recuse the trial judge. The trial judge referred the matter to the presiding judge of the administrative judicial district, who assigned a different judge to hear the motion to recuse. After a hearing, the visiting judge denied the motion to recuse.

In December 2015, the trial court rendered final judgment in the original case, disposing of all remaining claims and parties. Among other things, the judgment allocated J. G-H's settlement proceeds, including an award to Pettigrew of $7,500 in full satisfaction of his attorney's fees, costs, and expenses associated with his representation of J. G-H. Pettigrew filed a motion for new trial complaining that he was denied the right to a trial on his attorney's fees. After his motion was overruled by operation of law, Pettigrew filed this appeal

DISCUSSION

Attorney's Fees

Pettigrew challenges the allocation of J. G-H's settlement proceeds, specifically as it relates to his attorney's fees. In his first and second issues, he argues that he had a valid contingent fee agreement with Bell for the recovery of J. G-H's settlement and that Bell terminated the agreement without good cause. In his fifth issue, he complains that the trial court erred by allowing the guardian ad litem to make recommendations regarding his attorney's fees. We begin our discussion with his third issue, in which he argues the trial court erred by not granting a trial on his claim for attorney's fees.

If an attorney hired on a contingent-fee basis is discharged without good cause before completion of the representation, the attorney may seek compensation in quantum meruit or in a suit to enforce the contract by collecting the fee from any damages the client subsequently recovers. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell &*

Wright v. Thomas, 441 S.W.2d 841, 847 (Tex. 1969)). If the former client pleads and proves good cause for discharging the attorney, the attorney is not entitled to recover under the contract and may attempt to recover a fee for services rendered under quantum meruit. *Rocha v. Ahmad*, 676 S.W.2d 149, 156 (Tex. App.—San Antonio 1984, writ dism'd). After being discharged by Bell, Pettigrew filed a plea in intervention in the underlying suit and asserted a claim for breach of contract, or alternatively, quantum meruit against Bell individually, on behalf of the estate of Kellilynne Seaman, and as next friend of J. G-H. "A plea in intervention in the principal suit is an appropriate vehicle by which a discharged attorney may recover fees for services rendered." *Serna v. Webster*, 908 S.W.2d 487, 491 (Tex. App.—San Antonio 1995, no writ). Any party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party. TEX. R. CIV. P. 60. The record contains no motions of opposition to Pettigrew's intervention. Therefore, Pettigrew was a party in the suit for all purposes. *Serna*, 908 S.W.2d at 491.

Both remedies—enforcement of the contract and quantum meruit—are subject to the prohibition against charging or collecting an unconscionable fee. *Hoover Slovacek*, 206 S.W.3d at 561 (citing TEX. DISCIPLINARY R. PROF'L CONDUCT 1.04(a), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art X, § 9)). A determination of unconscionability involves both questions of law and fact. *Id*. at 561–62. Whether a particular fee amount or contingency percentage is unconscionable under the circumstances is an issue for the factfinder. *Id*. at 561. Whether a contract, including a contingent-fee agreement between an attorney and a client, is contrary to public policy and unconscionable at the time it was formed is a question of law. *Id*. at 562.

During the hearing to approve the proposed settlement for minor J. G-H, Armstrong made recommendations for how J. G-H's settlement proceeds should be allocated and raised the issue

of Pettigrew's attorney's fees. Pettigrew informed the court that based on his discussions with Armstrong, he thought they had reached agreement that he would receive $40,000 in attorney's fees. He stated that if there was no agreement as to his fees, he needed additional time to take the deposition of Bell in preparation for a contested hearing on his fees. When the trial judge asked if he kept a detailed list of his activities on the case, he responded that he did not keep a contemporaneous list of work performed because he had a contingent-fee contract. Pettigrew attempted to explain that Bell had terminated him five days before the mediation, but the judge stated:

> I'm not dealing with the facts – or the disputed facts at this point in time. I just want some documentation from which to make some evaluations. And if there – you know, if we need to talk about the facts, then we'll have to do that in an appropriate time and hearing, but this is not that. This is just an effort to try and justify or to document what work has been done and whether or not the fee that's proposed is appropriate to apportion to the minor for purposes of . . . for the purposes of making a decision as to whether or not to approve the minor's settlement.

Pettigrew then asked the judge if she was "going quantum meruit," and she said no, she was trying to ascertain whether the fee being suggested was appropriate. She told Pettigrew that he still had to justify his fee and she would give him two weeks to provide an itemized list of activities with the amount of time spent on each activity.

Later in the hearing, Bell attempted to provide testimony that she had good cause for terminating Pettigrew. The judge informed Bell that Pettigrew's termination was not before the court at that time. The judge stated, "[w]hat I want right now is just some documentation, and we'll have a hearing later on. And at that time, you can discuss those issues." Thus, according to her own statements, the trial judge did not consider the hearing on the minor's settlement to be an evidentiary hearing on the issue of Pettigrew's attorney's fees.

Pettigrew provided the court with a log of work he had performed on behalf of J. G-H. He listed the date and a description of each activity, but did not provide detail on the amount of time

spent. Pettigrew's attorney's fees were apparently discussed at a subsequent status conference in chambers; however, there is no record of that conference.

On October 8, 2015, the trial court conducted a hearing on Alexandre's Bar's motion to sever. In his filed response to Alexandre's Bar's motion to sever, and also at the hearing, Pettigrew argued that his claim for attorney's fees from the minor's recovery had not been settled, and he requested a trial on his attorney's fees. The trial court found that 40% of the settlement proceeds allocated to Bell individually should be paid into the registry of the court pending resolution of the attorney's fee dispute between Bell and Pettigrew. The judge stated that with respect to the minor, Pettigrew's attorney's fees had already been determined to be $7,500. The trial court signed an order granting the motion and severing Pettigrew's claims against Bell into separate cause number CC-16-00030-A.

Pettigrew continued to request a hearing or trial on his fees. He filed a motion to recuse the trial judge for depriving him of property and contractual rights (his attorney's fees) and testified at the hearing on his motion. He filed an objection to the final judgment as it pertained to his attorney's fees. And in his motion for new trial, Pettigrew argued that he was denied the right to a trial on his attorney's fees.

According to the record, the trial judge and all of the parties knew that Pettigrew had a contingent-fee contract and had filed an intervention claim for his attorney's fees under that agreement. The record also makes clear that there were disputes as to whether Pettigrew's contingent-fee agreement was enforceable, whether Bell discharged Pettigrew for good cause, and whether Pettigrew's claimed fees were reasonable and necessary. Pettigrew repeatedly asked for a hearing or trial on his fees, and the trial judge stated there would be a later hearing. But there is nothing in the record to show that such a hearing or trial ever took place. The trial court entered a judgment awarding Pettigrew $7,500 in full satisfaction of his attorney's fees for representing the

minor, but there is nothing in the record to show what the court considered in determining whether Pettigrew was entitled to recover his attorney's fees and the amount to be awarded.

The trial court erred by not granting Pettigrew a hearing or trial on his claim for attorney's fees. *See Schwartz v. Taheny*, 846 S.W.2d 621, 623 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (trial court erred by entering final judgment that disposed of intervention claim without first hearing the claim). Furthermore, the trial court abused its discretion by awarding Pettigrew $7,500 in attorney's fees. *See North Star Water Logic, LLC v. Ecolotron, Inc*., 486 S.W.3d 102, 105 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("We generally review a trial court's award of attorney's fees for an abuse of discretion."). A trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to any guiding rules or principles. *Celmer v. McGarry*, 412 S.W.3d 691, 705 (Tex. App.—Dallas 2013, pet. denied). We sustain Pettigrew's third issue. We reverse the trial court's judgment as to Pettigrew's attorney's fees and remand for a trial on the merits of Pettigrew's claim for attorney's fees associated with his representation of J. G-H. Since we are remanding this case for a trial on the issue of attorney's fees, we do not reach Pettigrew's first, second, and fifth issues.

Bell's Pro Se Representation

In his fourth issue, Pettigrew argues that the trial court abused its discretion by allowing Bell to represent the estate of her daughter, Kellilynne Seaman, pro se. After Bell discharged Pettigrew, she attended the mediation pro se and agreed to settle her claims individually, on behalf of her daughter's estate, and as next friend for her grandson, J. G-H. On appeal, Pettigrew argues Bell did not have the authority to enter into the settlement agreement on behalf of her daughter's estate. However, there is nothing in the record to show that Pettigrew made this objection to the trial court. To preserve a complaint for appellate review, a party must make a timely, specific objection or motion to the trial court that states the grounds for the ruling sought with sufficient

specificity, obtain a ruling on the objection, and comply with the rules of evidence or procedure. *Blackstone Medical, Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 651 (Tex. App.—Dallas 2015, no pet.). Because Pettigrew did not raise this issue below, it was not preserved for our review. Pettigrew's fourth issue is overruled.

Recusal

In his sixth issue, Pettigrew argues that the visiting judge erred by denying his motion to recuse the trial judge. We review an order denying a motion to recuse for an abuse of discretion. *Drake v. Walker*, 529 S.W.3d 516, 528 (Tex. App.—Dallas 2017, no pet.).

Pettigrew filed a motion to recuse, alleging that the trial judge deprived him of property and contractual rights and showed such animosity toward him that to allow her to remain on the case would deny his right to receive due process. He claimed she had a personal bias or prejudice against him, and that there was "the appearance of racial and/or gender bias and prejudice." The trial judge referred the matter to the presiding judge of the administrative judicial district, who assigned a visiting judge to hear the motion to recuse. The judge denied the motion.

Under rules 18b(b)(1) and (2), Texas Rules of Civil Procedure, a judge shall recuse herself in any proceeding in which her impartiality "might reasonably be questioned" or in which she has "a personal bias or prejudice concerning the subject matter or a party." TEX. R. CIV. P. 18b(b)(1), (2). Bias by an adjudicator is not easily established. *In re City of Dallas*, 445 S.W.3d 456, 467 (Tex. App.—Dallas 2014, orig. proceeding). Pettigrew had the burden to prove recusal was warranted. Such burden is met only through a showing of bias or impartiality to such an extent that the movant was deprived of a fair trial. *In re H.M.S.*, 349 S.W.3d 250, 253 (Tex. App.—Dallas 2011, pet. denied). The test for recusal is whether a reasonable member of the public, knowing all the facts in the public domain concerning the judge's conduct, would have a reasonable doubt that

the judge is impartial. *Hansen v. JP Morgan Chase Bank, N.A.*, 346 S.W.3d 769, 776 (Tex. App.—Dallas 2011, no pet.).

Pettigrew claims the trial judge exhibited bias by reviewing his attorney's fees, telling him he would have to justify his fees, and requesting that he provide a log of work performed and time spent, despite the fact that he had a contingency fee contract. Pettigrew provides no authority to support this contention. Indeed, while a contingent fee agreement should be considered by the fact-finder, the fact-finder "must decide the question of attorney's fees specifically in light of the work performed in the very case for which the fee is sought." *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 819 (Tex. 1997).

Pettigrew claims the trial judge exhibited bias in her rulings with respect to Bell's deposition. When Bell failed to appear for a deposition related to her termination of Pettigrew and his attorney's fees, Pettigrew filed a motion to order Bell's appearance at a deposition, requesting that the trial court order that: (a) Bell appear for a deposition within 10 days, and (b) Bell reimburse Pettigrew for the court reporter fee for Bell's failure to appear as previously noticed. The trial court granted Pettigrew's motion ordering Bell to appear for a deposition, but ordered that the deposition take place within 30 days. Pettigrew also complains about the location and duration of Bell's deposition. Pettigrew contends that the trial court's orders with respect to Bell's deposition show that the trial court was advocating for Bell and was biased in favor of Bell and against him. Pettigrew cites no authority to support his contention that these types of discovery rulings constitute bias by the trial judge. Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. *Hansen*, 346 S.W.3d at 776. Further, trial courts have "inherent power to control the disposition of cases 'with economy of time and effort for itself, for counsel, and for litigants.'" *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001) (per curiam).

Pettigrew also claims that the trial judge's comments about him during the hearing to approve the minor's settlement and at the subsequent status conference reflected her bias against him. However, the record does not contain a reporter's record of the status conference and the judge's allegedly improper comments.

After carefully examining the record, we conclude that Pettigrew failed to show under the applicable law that the trial judge displayed bias or prejudice that would make a fair judgment impossible. We further conclude that a reasonable person, being aware of all the facts, would not doubt that the trial judge was impartial. *Hansen*, 346 S.W.3d at 776. The visiting judge did not abuse his discretion in denying Pettigrew's motion to recuse. Pettigrew's sixth issue is overruled.

CONCLUSION

We reverse the trial court's judgment in part as to the allocation of settlement proceeds in payment of Pettigrew's attorney's fees for representing J. G-H., and we remand for a trial on the merits of Pettigrew's intervention claim for attorney's fees associated with his representation of J. G-H. In all other respects, we affirm the trial court's judgment.

/Jason Boatright/
JASON BOATRIGHT
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SAM W. PETTIGREW, JR., Appellant	On Appeal from the County Court at Law No. 1, Dallas County, Texas
No. 05-16-00269-CV V.	Trial Court Cause No. CC-14-02340-A.
CEDAR SPRINGS ALEXANDRE'S BAR, L.P., Appellee	Opinion delivered by Justice Boatright. Justices Francis and Evans participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's judgment that allocates how settlement proceeds shall be disbursed, specifically with respect to the payment of attorney's fees to appellant. In all other respects, the trial court's judgment is **AFFIRMED**. We **REMAND** this cause to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 2nd day of April, 2018.