

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NATTALIA SHARINGER,

Appellant,

v.

CAROL KOPANSKY and “JOHN DOE”
KOPANSKY, and the marital community
composed thereof,

Respondents.

No. 38956-8-II

UNPUBLISHED OPINION

Bridgewater, P.J. — Nattalia Sharinger appeals, but did not assign error to, any findings of fact or conclusions of law in the trial court’s order that awarded Karen Koehler reasonable attorney fees after Koehler withdrew from representing Sharinger below. Because of this, we affirm. And we award reasonable attorney fees and costs to Kohler for Sharinger’s frivolous appeal.

FACTS

Sharinger retained Koehler to represent her in a personal injury suit against Carol Kopansky. The compensation agreement in the contract for hire provided a contingency fee arrangement for any amounts Koehler recovered on Sharinger’s behalf. It also provided for a reasonable fee if Koehler withdrew for good cause.

Although the first year of representation passed without incident, the involvement of Sharinger's then-boyfriend, Daniel Gellert, caused the situation to deteriorate. Through Gellert's influence, Sharinger resisted accepting Travelers Indemnity Company's (Travelers) stipulation of liability, demanded discovery on Kopansky's medical conditions and records after Koehler accepted the liability stipulation, and refused to submit to a deposition until Koehler made her discovery demands. Sharinger and Gellert demanded that Koehler engage in heavy litigation tactics and they persisted when she refused. Pretending to be Sharinger, Gellert made inappropriate demands of Koehler's office staff and sent e-mails to Koehler and her firm. On Gellert's advice, Sharinger had withheld information about her prior accident history in her interrogatory answers.

Gellert accused Koehler of recommending a \$200,000 settlement offer because Koehler was a "close personal friend" of defense counsel and called the offer a "backroom sweetheart deal[]." 2 CP at 300, 302. Sharinger and Gellert opposed a perpetuation deposition of Kopansky in New Mexico despite Kopansky's advanced age and poor medical condition. Sharinger also wrongly accused Koehler of violating the attorney/client privilege, refused to answer interrogatory questions, and refused to submit to a CR 35 examination.

On May 24, 2008, Koehler withdrew as Sharinger's counsel. Koehler explained that she withdrew because (1) Sharinger resisted accepting Travelers' liability stipulation; (2) Sharinger continued to resist complying with discovery requests; (3) Gellert continued to interfere with Koehler's legal handling of the case; (4) Sharinger rejected Koehler's explanation of the likely value of her case; and (5) Sharinger accused Koehler of violating the attorney/client privilege. In

a later letter, Koehler listed as another concern Sharinger's report of filing knowingly incomplete interrogatory answers. Koehler filed an attorney's lien on any judgment Sharinger obtained. In August 2008, Sharinger settled with Travelers on her own for \$225,000.

At trial on the attorney's lien, Koehler testified that she spent 144 hours working on the case. Lawyers at her firm work almost entirely on a contingency basis, so she could not easily determine their hourly fee. But the last time a court determined the firm's hourly fee, it was valued at \$700 (\$350 per hour multiplied by 2).

The trial court found good and reasonable cause existed for Koehler's withdrawal based upon Gellert's involvement, Sharinger and Gellert's lack of trust in Koehler's professional judgment, Sharinger's accusation that Koehler violated the attorney/client privilege, and deterioration of communication. The trial court also found that based upon the results achieved and Koehler's professional skills, \$400 per hour was a reasonable fee for services rendered. The trial court found that Koehler reasonably spent 144 hours on Sharinger's case and awarded Koehler \$57,600 in attorney fees.

ANALYSIS

I. Good Cause Withdrawal

Sharinger argues that the trial court erred by granting Koehler attorney fees because Sharinger did not fire Koehler and did not cause difficulties to avoid her (Sharinger's) obligation to pay contracted contingency fees. We disagree.

Determining an attorney fee award is a matter within the trial court's discretion. *Wheeler v. Catholic Archdiocese of Seattle*, 65 Wn. App. 552, 574, 829 P.2d 196 (1992), *rev'd on other*

grounds, 124 Wn.2d 634 (1994). The trial court abuses its discretion when its decision is manifestly unreasonable, or is based on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

An attorney who withdraws from a case with good cause may recover fees in quantum meruit. *Ausler v. Ramsey*, 73 Wn. App. 231, 236, 868 P.2d 877 (1994). Courts have found good cause where, among other reasons, the client is uncooperative, the attorney and client suffer a breakdown in communication, the client degrades the attorney, or ethical rules require the attorney to withdraw. *Ausler*, 73 Wn. App. at 236 n.4. It is not good cause that the client has, among other reasons, refused to accept a settlement offer. *Ausler*, 73 Wn. App. at 236 n.4.

We review findings of fact under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). We review conclusions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). Finally, we defer to the fact finder on issues of conflicting evidence, witness credibility, and persuasiveness of the evidence. *City of University Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001).

As Koehler notes, Sharinger failed to assign error to any findings of fact. We hold pro se litigants to the same standard and same rules of procedure on appeal as attorneys. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993) (“the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both

are subject to the same procedural and substantive laws”). An appellant must assign error to each finding of fact improperly made and include reference to the finding by number. RAP 10.3(g). An appellate court will review only a claimed error that is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto. RAP 10.3(g). Unchallenged findings are verities on appeal. *State v. O’Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (citations omitted); *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Sharinger did not assign error to any findings of fact in the assignment of error section of her brief, nor did she enumerate any erroneous findings of fact in her issue statements. The trial court’s findings of fact are therefore verities. *Hill*, 123 Wn.2d at 647.

In addition, Sharinger did not assign error to any conclusions of law. Her arguments are instead credibility challenges, which we do not review on appeal. *City of University Place*, 144 Wn.2d at 652-53. We reiterate that the trial court found good and reasonable cause for Koehler’s withdrawal, that \$400 per hour was a reasonable fee to charge, and that Koehler spent 144 hours in representation. The trial court did not abuse its discretion by finding Koehler had good cause to withdraw and granting her reasonable attorney fees.¹

II. Issues Raised for the First Time in Reply Brief

Sharinger raises several issues for the first time in her reply brief that we do not consider:

¹ Sharinger argues without explanation that the trial court intruded into a confidential attorney/client conversation and “trigger[ed] constitutional issues as to [a] client’s right to free speech.” Br. of Appellant at 21. She also argues that Gellert had a free speech right to criticize Koehler because clients must “speak their mind[s] to their attorney.” Br. of Appellant at 25. Sharinger does not explain how discussing attorney/client issues violates her right to free speech. Sharinger also asserts without explanation that the trial court denied her due process. Naked castings into the constitutional sea are insufficient to warrant review. *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992).

(1) that the trial court abused its discretion by allowing Koehler to rely on estimated and recreated time sheets when calculating compensation; (2) a challenge to the computation of Koehler's time; (3) that nine alleged errors by counsel should constitute "mail and wire fraud," Appellant's Reply Br. at 8; (4) that the trial court denied her due process below; and (5) that she is entitled to attorney fees on appeal. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration").

III. Attorney Fees on Appeal

Koehler requests attorney fees on appeal under RAP 18.9(a), arguing that Sharinger's appeal is frivolous. RAP 18.9(a) permits us to order a party or counsel who files a frivolous appeal to pay terms or compensatory damages to any other party. Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party. *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849, *review denied*, 164 Wn.2d 1037 (2008). An appeal is frivolous if, considering the entire record, we are convinced that the appeal presents no debatable issues on which reasonable minds might differ and that is so devoid of merit that there is no possibility of reversal. *Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009). We resolve all doubts as to whether an appeal is frivolous in favor of the appellant. *Kinney*, 150 Wn. App. at 195.

Here, Sharinger presented no debatable issues. She failed to assign error to any findings of fact and conclusions of law and her appeal consisted of credibility challenges that we do not review. There was no possibility of reversal. Sharinger's appeal is frivolous. *See In re*

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Settlement of A.G.M., 154 Wn. App. 58, 83-84, 223 P.3d 1276 (2010) (granting attorney fees for frivolous appeal where, among other failings, appellant presented no debatable issues of law and failed to illustrate how the trial court's decision lacked a factual basis). Koehler is entitled to attorney fees under RAP 18.9 and costs as the prevailing party under RAP 18.1. Sharinger is not entitled to fees because she is not the prevailing party.

We affirm and award attorney fees on appeal to Kohler.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, P.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.