2018 IL App (3d) 170793-U

Order filed October 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

PURYEAR LAW, P.C.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellant,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-17-0793
	)	Circuit No. 16-SC-2146
CHRISTOPHER FARRIS and BRANDY FARRIS,	)	
	)	
	)	Honorable Carol M. Pentuic,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Former counsel may pursue an independent breach of contract action while the underlying case is still pending; such claim need not be decided by the trial judge overseeing the underlying case. (2) The trial court erred in denying plaintiff's claim for attorney fees against one defendant where the evidence shows that she intended to cosign an agreement for legal services for her son who shared an attorney-client relationship with plaintiff.

¶ 2 Plaintiff, Puryear Law, P.C., filed a small claims complaint seeking damages from defendants, Christopher Farris and his mother Brandy Farris, for unpaid legal services.

Following a hearing and subsequent briefing, the trial court denied plaintiff's claim for fees against Brandy and found that section 508 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508 (West 2016)) precluded plaintiff's independent breach of contract claim against Christopher. We reverse and remand.

¶ 3 FACTS

¶ 4 In December 2016, plaintiff filed a small claims complaint against defendants seeking damages for unpaid legal services.

¶ 5 At the April 2017 hearing on the matter, the following evidence was elicited. In February 2016, defendants retained plaintiff to handle Christopher's dissolution of marriage. At that time, defendants signed separate contracts for legal services with plaintiff that included an hourly rate of $250 for attorney time and $95 for paralegal time. In June 2016, defendants signed additional contracts regarding legal services for an order of protection with the same hourly rates. The contracts signed by Brandy are essentially the same as those signed by Christopher, except Brandy's contracts state, "Brandy Farris for Christopher Farris, hereby retains and employ Puryear Law P.C. as counsel." Plaintiff and Brandy both testified that Brandy signed the contracts as a cosignor for Christopher. Defendants paid all invoices until September 2016 when Christopher alleged that plaintiff was dragging on the case and that the assessed fees were "ridiculous and outrageous." Following these allegations, plaintiff filed a motion to withdraw as counsel.

¶ 6 Following the hearing and at the request of the trial court, plaintiff submitted an additional brief addressing whether: (1) section 508 of the Marriage Act (*id.*) prohibited plaintiff from bringing a common law breach of contract action against a former client; (2) plaintiff could enforce an attorney fees contract against a nonclient; and (3) plaintiff's fees and the time it

expended on the dissolution case were just and reasonable. Defendants did not file a responsive brief.

¶ 7 In June 2017, the trial court issued its written order. The court denied plaintiff's claim for fees against Brandy because (1) she "was not a client and received no [legal] services" and (2) the document signed by Brandy failed to indicate that she signed as a cosigner for Christopher. The court also found that plaintiff's independent breach of contract action against Christopher could not stand because (1) section 508 of the Marriage Act precluded it and (2) only the judge who "actually observed" the dissolution proceedings could determine whether plaintiff's fees were reasonable and the services necessary. Accordingly, the court directed plaintiff to file its action against Christopher in the pending dissolution case. Plaintiff filed a posttrial motion to reconsider, which the court denied following a hearing.

¶ 8 Plaintiff appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, plaintiff argues that (1) section 508 of the Marriage Act does not (a) prevent an attorney from bringing a common law breach of contract claim against a former client while a dissolution of marriage action is still pending or (b) preclude the trial court from making a determination as to whether the fees charged and services rendered were reasonable and (2) Brandy is liable for his attorney fees because she cosigned for Christopher. Defendants did not file a brief in this court.

¶ 11 A. Recovery of Fees from a Former Client in a Dissolution Matter

¶ 12 Plaintiff first challenges the trial court's findings that (1) section 508 of the Marriage Act precluded plaintiff from bringing an independent breach of contract action claim and (2) only the

judge presiding over the pending dissolution case could determine the reasonableness of the fees charged and the services rendered.

¶ 13 The issue before us concerns the construction of a statute which we review *de novo*. *In re Marriage of Goesel*, 2017 IL 122046, ¶ 13. "The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature." *Id.* The best indicator of the legislature's intent is the plain and ordinary language of the statute. *Id.* We may not read into the statute exceptions, limitations, or conditions that conflict with the legislature's intent. *Id.* "Where statutory language is clear and unambiguous, it will be given effect without resort to other aids of construction." *Id.*

¶ 14 Section 508(a) of the Marriage Act provides, in relevant part:

> "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** Fees and costs may be awarded in any proceeding to counsel from a former client in accordance with subsection (c) of this Section." 750 ILCS 5/508(a) (West 2016).

Under the prior Divorce Act (Ill.Rev.Stat.1975, ch. 40, repealed Oct. 1, 1977), an attorney could not initiate an action to collect fees from his or her own client in a divorce proceeding. *In re Marriage of Baltzer*, 150 Ill. App. 3d 890, 894 (1986); *Myers v. Brantley*, 204 Ill. App. 3d 832, 833 (1990). However, in *Seniuta v. Seniuta*, 49 Ill. App. 3d 329, 331 (1977), the court held that an attorney could initiate an action to collect fees from his or her own client in a divorce proceeding because the Illinois Constitution of 1970 (Ill. Const. 1970) "abolished the distinction between law and equity and gave the circuit court original jurisdiction over all justiciable

matters." *Baltzer*, 150 Ill. App. 3d at 894 (citing *Seniuta*, 49 Ill. App. 3d at 331). The legislature codified the *Seniuta* decision by enacting section 508(a). *Id.*

¶ 15 Following the enactment of section 508(a) of the Marriage Act, the appellate court consistently held that an action for fees initiated by an attorney against his or her current or former client *while dissolution proceedings were pending* must be brought in the underlying case. *Id.* at 895-96; *Gitlin v. Hartmann*, 175 Ill. App. 3d 805 (1988); *Myers v. Brantley*, 204 Ill. App. 3d 832.

¶ 16 In 1996, the Illinois Supreme Court considered whether section 508(a) of the Marriage Act precluded an attorney from bringing an independent breach of contract action to recover attorney fees *after the conclusion of the underling case*. *Nottage v. Jeka*, 172 Ill. 2d 386, 392 (1996). Ultimately, the court found "nothing in the plain language of the statute to indicate that the legislature intended that the remedy provided by section 508(a) would be an attorney's sole avenue of recourse against a client, precluding any subsequent remedy brought after the termination of the underlying case." *Id.*

¶ 17 In June 1997, the legislature codified a modified version of the decision in *Nottage* by adding subsection (e) of the Act which provides:

> "Counsel may pursue an award and judgment against a former client for legal fees and costs in an independent proceeding in the following circumstances:
>
> (1) *While a case under this Act is still pending, a former counsel may pursue such an award and judgment at any time subsequent to 90 days after the entry of an order granting counsel leave to withdraw*; and

> (2) After the close of the period during which a petition (or praecipe) may be filed under subdivision (c)(5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue such an award and judgment in an independent proceeding.
>
> In an independent proceeding, the prior applicability of this Section shall in no way be deemed to have diminished any other right of any counsel (or former counsel) to pursue an award and judgment for legal fees and costs on the basis of remedies that may otherwise exist under applicable law; and the limitations period for breach of contract shall apply." (Emphasis added.) 750 ILCS 5/508(e) (West 2016).

Essentially, in enacting subsection (e), the legislature removed any inference in *Nottage* that would require the underlying case be resolved before an attorney may file an independent action for fees.

¶ 18 Here, the trial court erroneously relied on cases predating the enactment of subsection (e) of the Marriage Act to find that the Act precluded plaintiff's independent common law breach of contract action. This is contrary to the plain and ordinary language expressed by the legislature. As indicated, subsection (e) expressly provides that, even while a case is still pending, former counsel may pursue an award and judgment against a former client in an independent action any time subsequent to 90 days after the entry of the order granting counsel leave to withdraw. *Id.*

¶ 19 Further, while we generally agree that a finding regarding the reasonableness of fees assessed and services rendered in a dissolution proceeding might be best determined by the trial judge who oversaw the proceedings, we reject the trial court's holding that "[t]he only judge who

can determine if the fees are reasonable and that services were necessary *** is the judge who has actually OBSERVED those services." In fact, our supreme court considered this issue in *Nottage* and found the appellate court's concern regarding the failure to calculate fees under section 508 guidelines misplaced. *Nottage*, 172 Ill. 2d at 397. The court noted that a claim for fees made under either section 508 or in a separate common law action must satisfy Rule 1.5 of the Illinois Rules of Professional Conduct which requires fees and services to be reasonable and provides a list of eight factors to be considered in determining reasonableness. *Id.* (citing 134 Ill. 2d R. 1.5). Moreover, the court stated, "We have every confidence that judges who do not normally handle domestic relations matters are fully capable of resolving fee disputes involving representation in those cases." *Id.* at 398.

¶ 20 "In an action for attorney fees based on a breach of contract or *quantum meruit* theory, the plaintiff-attorney's prima facie case includes proof of the following: (1) the existence of an attorney-client relationship, (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client." *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 598 (2000) (citing *Greenbaum & Browne, Ltd. v. Braun*, 88 Ill. App. 3d 210, 213-14 (1980). "A plaintiff-attorney must also furnish sufficient facts and computations to establish, by a preponderance of the evidence, that the services rendered were necessary and that the amount of fees sought is fair, just and reasonable." *Id.*

¶ 21 In this case, plaintiff established the existence of an attorney-client relationship. Counsel for plaintiff also testified to the amount of work it performed and submitted exhibits containing invoices for its work in accordance with the fee amounts stated in the contracts. Accordingly, we find that the trial court had sufficient evidence to determine the reasonableness of the fees assessed and the services rendered by plaintiff.

¶ 22 B. Propriety of the Trial Court's Denial of Plaintiff's Claim for Fees Against Brandy

¶ 23 Plaintiff also challenges the trial court's denial of its claims for fees against Brandy on the bases that (1) plaintiff failed to establish an attorney-client relationship with her and (2) the document signed by Brandy failed to indicate that she signed as a cosigner for Christopher.

¶ 24 It is well settled that the primary objective in construing a contract is to give effect to the intent of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). "The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract." *Id.* Rather, a court looks to the language of the contract itself, construing the contract as a whole and viewing each provision in light of all other provisions. *Id.* "If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning." *Id.* Only if the language of a contract is ambiguous will a court consider parol evidence. *Id.*

¶ 25 In this case, the first contract signed by Brandy states:

> "Brandy R. Farris For Christopher Farris hereby retain and employ Puryear Law P.C. as counsel in the following matter: 2015D442 in Rock Island, IL and agree to pay legal fees as follows:
>
> $250/hour for all attorney time expended in connection with this matter.
>
> $95/hour for all paralegal time expended in connection with this matter.
>
> $1.00 per page for all copying, scanning, printing, and faxing."

The second contract Brandy signed is identical except that plaintiff's services were retained to "Seek OP in Rock Island, IL[.]" At the bottom of both contracts, Brandy provided her address, phone number, signature and date. In addition, both contracts signed by Brandy state, in relevant part, "I FURTHER AGREE that in addition to the above attorney fees, ALL COSTS incurred in

investigation or litigation *** SHALL BE PRE-PAID BY THE UNDERSIGNED CLIENT(S)" and "I FURTHER AGREE that in addition to the above attorney fees, ALL COSTS incurred in any collection action, non-judicial collections efforts, or in-house attempts to encourage client to satisfy financial obligations *** will also be due and owing."

¶ 26 After reviewing the contracts at issue as a whole, considering each provision in light of the others, we find that the parties clearly intended for Brandy to sign the contracts as a cosigner for Christopher. Even if we were to find the contract language ambiguous—we do not—we note Brandy herself testified that she intended to sign as a cosigner. At trial, the following colloquy between counsel for plaintiff and Brandy occurred:

"Q. Okay. Why did you sign those documents?

A. Chris was retaining a lawyer, trying to retain a lawyer for his divorce.

Q. But why did you sign the documents?

A. He was told that he couldn't have it unless he had a cosigner.

Q. Okay. Did you understand that you were a cosigner?

A. Yes.

Q. And did you understand that—well, what did that mean to you?

A. Well, we've helped him pay his court costs since, throughout, to help him keep up, but I was not aware that it was going to cost me $17,000—

Q. Right.

A. —for this divorce.

Q. Were any guarantees about overall costs made to you?

A. No, but we were open with you about the fees.

"Q. You said you've paid—you've helped him pay for the fees throughout the case?

A. Yes, we've helped him pay.

Q. What amount was paid by you?

A. The majority of it, between myself and his grandmother.

Q. Did you believe that you were bound by this document to pay?

A. I wasn't sure.

Q. Have you ever signed a contract that you didn't think you were bound by?

A. No."

Based on the above, we find the trial court erred in finding Brandy did not sign as a cosigner for Christopher.

¶ 27 Finally, the trial court held that Brandy could not be liable to plaintiff because she "was not a client [of plaintiff] and received no [legal] services." In support, the court cited to *Gaylord* for the proposition that, in an action for attorney fees based on a breach of contract, counsel must prove the existence of an attorney-client relationship. *Gaylord,* 317 Ill. App. 3d at 598. While it is certainly true that an attorney-client relationship must exist for an attorney to recover fees, our research revealed no authority that holds the attorney-client relationship must be between counsel and the party liable for the attorney fees. Here, an attorney-client relationship clearly existed between plaintiff and Christopher. Brandy intended to cosign for Christopher so that he could retain plaintiff's legal services. Thus, the trial court erred in finding Brandy could not be liable to plaintiff on this basis.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, we reverse the judgment of the circuit court of Rock Island County and remand for further proceedings in which the trial court shall determine the reasonableness of the assessed attorney fees.

¶ 30 Reversed and remanded.