

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM FISCHEL,

Plaintiff-Appellee,

v

ROBERT GOODMAN and GOODMAN,  
POESZAT & KRAUSE, PLLC,

Defendants-Appellants.

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UNPUBLISHED

October 14, 2003

No. 240461

Oakland Circuit Court

LC No. 01-034687-CB

Before: Donofrio, P.J., and Fort Hood and Schuette, JJ.

PER CURIAM.

Plaintiff is an attorney who seeks payment based on a contingent fee agreement for his work on an underlying case. His client was awarded damages in the underlying case, but before she could collect her award, the case was dismissed for lack of progress due to plaintiff's emotional breakdown. Defendant, also an attorney, then began to represent the client and helped her to collect her award. Defendant took 1/3 of the award as a contingent fee and plaintiff received no money. Plaintiff now seeks to recover from defendant the amount of attorneys fees in the underlying action based on quantum meruit. Defendant filed two motions for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim upon which relief could be granted) and MCR 2.116(C)(10) (no genuine issue of material fact). Defendant now appeals by leave granted the Oakland circuit court's May 17, 2002 denial of those motions. We reverse and remand.

**I. FACTS**

This case stems from a dispute between two attorneys over the collection of an award in an underlying handicap discrimination/ wrongful termination case. On October 16, 1987, Karen Lowe employed plaintiff William Fischel, an attorney with Turner & Turner, P.C., to represent her in a discrimination/ wrongful termination claim against the City of Highland Park. Lowe and plaintiff entered into a contingency fee agreement. Plaintiff separated from Turner & Turner, P.C. and took the client with him. However some costs were advanced by Turner & Turner, P.C. In April 1993, Lowe's case went to trial and she received a judgment against Highland Park in the amount of \$11,520.00. On behalf of Lowe, plaintiff moved for mediation sanctions in the amount of \$22,000.00. However, the court awarded less than half of that amount. Lowe appealed the award for sanctions and this Court remanded for determination of the proper

amount of sanctions. At the evidentiary hearing, the circuit court determined that \$17,000.00 was appropriate. There was an additional dispute about whether the interest on the mediation sanctions would relate back to 1993 when they were originally ordered, or 1997 when the court decided on the \$17,000.00 amount. The circuit judge ordered that the interest relate back to 1993, and plaintiff was required to submit an order.

Shortly thereafter, plaintiff suffered a psychological breakdown and failed to submit the orders regarding the interest on the mediation sanctions. On August 13, 1997, Lowe's action was dismissed for lack of progress. Lowe filed a grievance with the Attorney Grievance Commission because her case was languishing. The State of Michigan attorney discipline board suspended plaintiff's law license for 180 days because he failed to collect the judgment and communicate with his client. His license has since been reinstated.

Lowe then attempted to find a collection attorney and hired defendant, an attorney with Goodman, Poeszat & Krause. Defendant began representing Lowe on October 19, 1999. Lowe terminated plaintiff on October 19, 1999, without paying him, but offered to reimburse him for photocopies.

On March 22, 2000, defendant filed a motion to reinstate the underlying handicap discrimination/ wrongful termination matter including the jury verdict, the mediation sanctions, and the accumulated interest. Defendant served a writ of garnishment on Comerica Bank to attach the funds from the City of Highland Park's account. The court ordered the release of the funds to Lowe as her award from the lawsuit and the sanctions. Before defendant began representing Lowe, the Wayne circuit court issued an order giving Turner & Turner, P.C. a lien in the case. No portion of Lowe's award was ever paid to plaintiff, despite the lien.

Plaintiff filed a complaint on September 2001, to recover the fee kept by defendant, and for the costs plaintiff expended on Lowe's case. On January 20, 2002, defendant moved for summary disposition arguing that plaintiff was barred from recovery because his representation of Lowe was terminated due to professional misconduct. The lower court denied defendant's motion stating that plaintiff might be able to receive quantum meruit. Defendant appeals the decision.

## II. STANDARD OF REVIEW

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

## III. ANALYSIS

Defendants argue that the trial court erred in denying defendant's motion for summary disposition based on MCR 2.116(C)(10) because case law found in *Reynolds v Polen*, 222 Mich

App 20, 26; 564 NW2d 467 (1997)<sup>1</sup>, clearly bars plaintiff's recovery of legal fees on the basis of quantum meruit. We agree.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The purpose of summary disposition is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law. *American Community Mutual Ins Co v Comm'r of Ins*, 195 Mich App 351, 362; 491 NW2d 597 (1992).

In denying defendants' motion for summary disposition the trial court stated:

All right. The Court will rule. This matter stems from a dispute between the Plaintiff and Defendant regarding attorney fees arising out of an underlying lawsuit. The issue before the Court is whether Plaintiff's professional misconduct bars him from any recovery in this matter.

In Polen, the Court held that, and I'm quoting:

"Quantum meruit recovery of attorneys fees is barred when an attorney engages in misconduct that results in representation that falls below the standard required of an attorney."

This Court would note that based on Exhibit 8, Notice of Suspension and Restitution with Conditions, there can be no dispute that Plaintiff's conduct as an attorney was in violation of several Michigan Court Rules of Professional Conduct.

Notwithstanding that, in review of the pleadings that the Court has reviewed all morning as well as oral argument of the respective parties, the Court is satisfied that there is a prima facie case for at least quantum meruit in this case. And, therefore, Defendant's Motion for summary Disposition is denied.

Typically, "an attorney on a contingent fee arrangement who is wrongfully discharged, or who rightfully withdraws, is entitled to compensation for the reasonable value of his services based upon *quantum meruit*, and not the contingent fee contract." *Plunkett & Cooney PC v Capitol Bancorp*, 212 Mich App 325, 329-330; 536 NW2d 886 (1995). Yet the present case does not present a case of an attorney who was wrongfully discharged or rightfully withdrew. The present case involves an attorney who committed professional misconduct. On that subject the *Polen* Court clearly stated:

[Q]uantum meruit recovery of attorney fees is barred when an attorney engages in misconduct that results in representation that falls below the standard required of

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<sup>1</sup> Defendants mistakenly refer to this case as *Polen v Melonakos* in their brief. However they provide the cite which corresponds to *Reynolds v Polen*, and quote extensively from it.

an attorney (e.g., disciplinable misconduct under the Michigan Rules of Professional Conduct) or when such recovery would otherwise be contrary to public policy. *Polen, supra* at 26.

Plaintiff argues that this Court should find that the present case is one classified by the *Polen* Court as an “in between” type case where quantum meruit should be allowed. The *Polen* Court stated:

These authorities, however, do not address the "in-between" situations in which a client terminates an attorney-client relationship for reasons that contain some justification but in which the attorney has not engaged in misconduct that makes it inappropriate to award quantum meruit recovery. While *Ambrose [v Detroit Edison Co, 65 Mich App 484, 237 NW2d 520 (1975)]* announced the rule that an attorney "who is wrongfully discharged, or who rightfully withdraws" is entitled to quantum meruit recovery of attorney fees, we note that in *Ambrose* and all the cases following it cited above, quantum meruit attorney fees awards were found appropriate. Nor did these cases establish any rule precluding a quantum meruit award of attorney fees under different circumstances. Because a client has an implied right to discharge an attorney, see *Plunkett & Cooney, supra*, it will frequently be the case that a client's termination of an attorney-client relationship will not be "wrongful" but that the attorney's conduct will also not be "wrongful" to the extent that it should bar quantum meruit recovery of attorney fees. In such circumstances, it would be unfair not to compensate the attorney for work completed before the discharge under the equitable doctrine of quantum meruit. Like other persons who provide services for a fee, an attorney who is discharged before completing contracted-for work is generally entitled to payment for valuable services rendered before the discharge. We conclude that as long as a discharged attorney does not engage in disciplinable misconduct prejudicial to the client's case or conduct contrary to public policy that would disqualify any quantum meruit award, a trial court should take into consideration the nature of the services rendered by an attorney before his discharge and award attorney fees on a quantum meruit basis. *Polen, supra*, at 26-27.

Plaintiff urges the Court to find that plaintiffs behavior in the underlying case was not wrongful to the extent that it should bar quantum meruit recovery of attorney fees. We reject this argument. We find that plaintiff did engage in disciplinable misconduct that was prejudicial to his client's case. Even though the client was ultimately able to recover the amount awarded her in the underlying case, the delay caused by plaintiffs unprofessional conduct caused her the inconvenience of having to seek out new attorneys. Instead of recovering her award in a timely fashion, the client had to wait additional years because of plaintiff's misconduct. Indeed the Attorney Grievance Commission found this conduct to be detrimental to the client. This is precisely the type of situation where quantum meruit should be barred. Consequently, the trial court erred in denying defendants' motion for summary disposition where case law clearly states that quantum meruit is not available to plaintiff where he committed disciplinable misconduct detrimental to his client. While our resolution of this case may seem harsh, there is no reasonable way to apportion the attorney fees in this case. As a result, any attempt by a trial court to do so would be inequitable. Plaintiff may have expended far more time and resources on

the resolution of this case than defendant, yet he failed to collect the judgment. His client would have received no money had it not been for the efforts of defendant.

Based on our resolution of defendants' first issue, resolution of defendants' second issue is unnecessary. We further note, on remand that the trial court is instructed address the issue of the lien of Turner & Turner, P.C. as to advanced costs.

Reversed and remanded, we do not retain jurisdiction.

/s/ Patrick M. Donofrio

/s/ Karen Fort Hood

/s/ Bill Schuette