

STATE OF MICHIGAN
COURT OF APPEALS

JACK C. CHILINGIRIAN,

Plaintiff-Appellant,

v

RITA LORDEN,

Defendant-Appellee.

UNPUBLISHED

March 18, 1997

No. 187119

Oakland Circuit Court

LC No. 95-497235-CZ

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a July 10, 1995, order of the circuit court granting summary disposition in favor of defendant. We affirm.

Plaintiff is a lawyer who was hired to represent defendant in a lawsuit brought against her former employer. The parties entered into a contingency fee agreement on March 13, 1992. That agreement provides in relevant part:

- b. The Client will not be required to compensate for any appeal that may be required to be taken or responded to.

Plaintiff proceeded to represent defendant in her underlying lawsuit in the Wayne Circuit Court. Defendant had filed a five-count complaint and the trial court ultimately granted summary disposition in favor of defendant's employer. Defendant then filed a claim of appeal in this Court. This Court affirmed the trial court's grant of summary disposition in favor of the employer. *Lorden v Greenfield Diversified Health Services*, unpublished opinion per curiam of the Court of Appeals, issued April 10, 1995 (Docket No. 157700). Defendant then filed an application for leave to appeal in the Supreme Court, but the Supreme Court denied the application for leave to appeal. 451 Mich 907 (1996).

The parties disputed whether defendant was obligated to provide plaintiff with a fee for the appeal to the Supreme Court. Defendant contended that under the contingency fee agreement, she was

* Circuit judge, sitting on the Court of Appeals by assignment.

not required to pay for an appeal to the Supreme Court. Plaintiff then filed this declaratory judgment action on May 10, 1995 to determine the rights of the parties. Shortly thereafter the trial court entered an order denying plaintiff's motion for declaratory judgment and granting defendant's motion for summary disposition.

On appeal, plaintiff claims that the trial court erred in finding that plaintiff had an obligation to represent defendant regarding the appeal to the Supreme Court. Plaintiff argues that an attorney's obligation under a contingency fee agreement is fulfilled when the time for an appeal of right has passed. Therefore, because there was no appeal of right to the Supreme Court, plaintiff maintains that he is entitled to additional compensation. Plaintiff also argues that requiring an attorney to continue representing a client in filing an application for leave to appeal to the Supreme Court would be burdensome, and that continued representation under the terms of the contingency agreement would result in unjust enrichment for defendant. Defendant, on the other hand, maintains that the contingency fee agreement is clear and unambiguous and that under the agreement, she is not liable to pay any additional compensation for the appeal to the Supreme Court.¹ We agree with defendant's position.

The contingency fee agreement is clear and unambiguous and must be accorded its plain and ordinary meaning. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). The agreement clearly states that the client (defendant) "will not be required to compensate for *any* appeal that may be required to be taken or responded to." (Emphasis added). Therefore, under the contingency fee agreement, defendant is not obligated to compensate plaintiff for services done regarding the appeal to the Supreme Court. Accordingly, the trial court did not err in granting summary disposition in favor of defendant.

Affirmed. Defendant being the prevailing party, she may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz

¹ We do not know the exact reasons for the trial court's grant of summary disposition in favor of defendant because appellant has failed to ensure that the transcript of June 26, 1995, where the trial court stated its reasons for its ruling, has been filed with this Court. It is the appellant's duty to secure the filing of the transcript, MCR 7.210(B)(1)(a), and failure to comply with the court rules can lead to dismissal of the appeal. MCR 7.217(A). However, since the parties have not complained and we find the language of the contingency fee agreement to be controlling, we will decide the appeal on its merits.