

STATE OF MICHIGAN
COURT OF APPEALS

GIARMARCO, MULLINS & HORTON, PC,

Plaintiff-Appellant,

v

CLARK HILL, PLC,

Defendant-Appellee.

UNPUBLISHED
September 1, 2009

No. 286073
Oakland Circuit Court
LC No. 2008-089465-CK

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

In this dispute over the division of attorney fees, plaintiff Giarmarco, Mullins & Horton, PC (Giarmarco), appeals as of right the trial court's judgment setting the fee to which it was entitled for the services it rendered in an underlying malpractice case before being replaced by defendant Clark Hill, PLC, which firm ultimately settled the matter. We conclude that the trial court abused its discretion when it determined the fee without considering all of the relevant factors. For that reason, we reverse and remand for a determination of a reasonable fee considering all of the appropriate factors. We have decided this appeal without oral argument under MCR 7.214(E).

This Court reviews a trial court's award of attorney fees for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). A trial court abuses its discretion when it selects an outcome that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Generally, when an attorney in a contingent fee case is discharged or rightfully withdraws, the attorney is entitled to recover fees based on quantum meruit and not on the contingent fee contract. *Ambrose v Detroit Edison Co*, 65 Mich App 484, 491, 492; 237 NW2d 520 (1976). In considering an appropriate fee under quantum meruit, the trial court may consider several factors: "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Morris v Detroit*, 189 Mich App 271, 278-279; 472 NW2d 43 (1991), quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). The Court in *Morris* stated that the trial court should consider these factors, but was not limited to them; and could also properly consider that the original agreement was for recovery on a contingency basis, as this allows "the court to consider the degree of risk undertaken by an attorney who was

prematurely discharged.” *Morris*, 189 Mich App at 279. In *Reynolds v Polen*, 222 Mich App 20, 30; 564 NW2d 467 (1997), this Court approved the approach outlined in *Morris* as between law firms concerning attorney fees arising out of an underlying medical malpractice action. This Court instructed the trial court “to follow *Morris* and determine the percentage of the one-third fee that represents [intervening plaintiff’s] overall contribution to the settlement.” *Id.* at 30-31.

In this case, the trial court indicated that it would consider “the risk factors.” However, the court did not consider the amount in question and results achieved, *Morris*, 189 Mich App at 279, or the relative contributions of Giarmarco and Clark Hill to the result achieved, *Reynolds*, 222 Mich App at 30-31. We believe that the trial court could not meaningfully consider the risk factors in setting a reasonable hourly rate for Giarmarco’s services without taking into consideration the actual outcome of the case. Because the trial court purported to consider risk factors in setting a reasonable fee for Giarmarco, but declined to require Clark Hill to disclose the amount of the ultimate settlement, its decision cannot represent a principled outcome. Therefore, we must conclude that the trial court abused its discretion. *Maldonado*, 476 Mich at 388.

Clark Hill asserts on appeal that the approach that considers multiple factors in setting a reasonable fee applies as between a client and the client’s attorney, but does not apply to the division of a reasonable fee between attorneys. This distinction is not found in the caselaw. Notably, *Reynolds*, 222 Mich App at 30-31, addresses the proper division of a one-third contingency fee recovery as between two law firms.

We reverse the trial court’s judgment and remand this matter for determination of a reasonable fee, taking into consideration the amount recovered in the malpractice action and the relative contributions of the parties.

Reversed and remanded. We do not retain jurisdiction. As the prevailing party, Giarmarco may tax costs under MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro