SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3275-22

THE PLATT LAW GROUP, P.C.,

Plaintiff-Appellant,

v.

JAMES TRICOLLI and
JACQUELYN TRICOLLI,

Defendants-Respondents.

Submitted May 14, 2024 – Decided May 28, 2024

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. DC-001313-23.

The Platt Law Group PC, appellant pro se (Stuart A. Platt, on the briefs).

James Tricolli and Jacquelyn Tricolli, respondents pro se.

PER CURIAM

In this dispute over legal fees, plaintiff The Platt Law Group, PC appeals from the Special Civil Part's June 6, 2023 order entering judgment in favor of defendants James and Jacquelyn Tricolli[1] after a bench trial. We affirm.

I.

This attorney's fees dispute stems from plaintiff's legal representation of defendants in a Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 to -30, and New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -228, lawsuit resulting in final judgment by default against Shamrock Moving and Storage, Inc. The underlying litigation involved Shamrock's damage to defendants' furniture and home.

After receiving no redress from Shamrock, defendants sought representation from Eric Riso, a partner at the law firm Platt & Riso, PC. At the time, Riso and Stuart Platt were partners. Riso represented defendants and filed suit on their behalf. After a proof hearing in the underlying action, a trial judge entered final judgment for defendants awarding $23,298.39, including $8,591.34 in attorney's fees. To support the attorney's fee award, Riso submitted an

[1] Because defendants share the same surname, intending no disrespect, we use their first names in this opinion.

amended certification of services, attesting to his hours, billable rate, and costs. Collection of the award proved futile because Shamrock ceased operation.

In May 2021, plaintiff became the successor firm to Platt & Riso and filed an amended certificate of incorporation. Platt brought this collection action on behalf of plaintiff because defendants had not paid attorney's fees. Riso was no longer associated with the firm. In February 2023, plaintiff filed a one-count complaint seeking $9,666.34 and costs for legal services rendered to defendants between June 2018 and October 2020. Defendants timely answered the complaint.

On June 6, 2023, a different judge presided over a one-day bench trial during which Platt and James testified. Platt admitted "[he] could not find any fee agreement," but believed "there was an understanding" for an hourly agreement. He testified Riso's attorney's fees certification in the underlying action included the billable litigation hours and rate, which allegedly demonstrated an hourly fee agreement existed. It was undisputed Riso used Platt & Riso's letterhead, worked with the firm's secretaries, and "paid money out of the firm's coffers . . . in the normal course of the business." Platt conceded Riso "was a partner [and] . . . if . . . Riso wanted to represent . . . his best friend for free," he could have. Further, Platt acknowledged that "without a contingency

fee agreement in writing," any fee collection would be through quantum meruit. He admitted there was no evidence defendants promised to pay for the legal services rendered, but argued the facts demonstrated plaintiff's entitlement to recover attorney's fees under quantum meruit for the services rendered.

James testified he had a verbal agreement with Riso for legal representation. James and Riso were best friends and college roommates. According to James, Riso agreed to represent defendants "free of charge" and to only collect compensation "if [they] g[o]t anything" from Shamrock. James "never signed a contract," "never once spoke" with Platt "about the case," and "[n]ever [received] a bill." He testified Riso "g[ave] me his time" and never requested reimbursement for costs. James posited quantum meruit was inapplicable because Platt had no "expectation of compensation," as Riso had agreed to "only get paid if [James] g[o]t paid." Because they "never recovered anything" from Shamrock, James maintained no money was owed.

At the conclusion of trial, the judge issued an oral decision and accompanying order finding "no cause of action" because plaintiff failed to satisfy its burden of proof. After acknowledging James and Platt each "gave credible testimony," the judge found an oral contingency fee agreement existed between James and Riso, which the judge found unenforceable because it was

required to be in writing. Further, the judge found pursuant to the oral agreement, Riso was only entitled to recover attorney's fees against Shamrock. He noted the parties failed to produce Riso at trial to clarify the existence of an agreement. Finally, the judge declined to award plaintiff fees under unjust enrichment or quantum meruit because defendants "received nothing" from the underlying litigation.

On appeal, plaintiff contends reversal is warranted because the judge erred in: analyzing its quantum meruit claim; finding no hourly fee agreement; and failing to award fees under a breach of contract, quantum meruit, or unjust enrichment.

II.

We begin with the established standard of review in an appeal from a bench trial. "The scope of appellate review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). We review final determinations made by the trial court "premised on the testimony of witnesses and written evidence at a bench trial, in accordance with a deferential standard." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). Our Supreme Court has recognized "an appellate court's review of a cold record is no substitute for the

trial court's opportunity to hear and see the witnesses who testified on the stand." Balducci v. Cige, 240 N.J. 574, 595 (2020). "[W]e defer to the trial court's credibility determinations, because it '"hears the case, sees and observes the witnesses, and hears them testify," affording it "a better perspective than a reviewing court in evaluating the veracity of a witness."'" City Council of Orange Twp. v. Edwards, 455 N.J. Super. 261, 272 (App. Div. 2018) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). "'Only when the trial court's conclusions are so "clearly mistaken" or "wide of the mark"' should we interfere to 'ensure that there is not a denial of justice.'" Gnall, 222 N.J. at 428 (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). We review de novo the "[trial] court's interpretation of the law and the legal consequences that flow from established facts." Accounteks.Net, Inc. v. CKR Law, LLP, 475 N.J. Super. 493, 503-04 (App. Div. 2023) (quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

A trial court's evidentiary ruling is reviewed "under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). We defer to "[a] trial court's evidentiary rulings" unless

"there has been a clear error of judgment." Grewal v. Greda, 463 N.J. Super. 489, 503 (App. Div. 2020) (quoting Belmont Condo. Ass'n v. Geibel, 432 N.J. Super. 52, 95 (App. Div. 2013)). The trial court has "broad discretion to determine both the relevance of the evidence presented and whether its probative value is substantially outweighed by its prejudicial nature." Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 57 (2019). "Factual findings premised upon evidence admitted in a bench trial 'are binding on appeal when supported by adequate, substantial, credible evidence.'" Potomac Ins. Co. of Ill. by OneBeacon Ins. Co. v. Pa. Mfrs.' Ass'n Ins. Co., 215 N.J. 409, 421 (2013) (quoting Cesare, 154 N.J. at 411-12).

"Because 'of the unique and special relationship between an attorney and a client, ordinary contract principles governing agreements between parties must give way to . . . higher ethical and professional standards.'" Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 529 (App. Div. 2009) (quoting Cohen v. Radio-Elecs. Officers Union, 275 N.J. Super. 241, 259 (App. Div. 1994), modified, 146 N.J. 140 (1996)). "Thus, '[a] contract for legal services is not like other contracts.'" Ibid. (alteration in original) (quoting Cohen, 275 N.J. Super. at 259). "Ultimately, '[an] attorney bears the burden of establishing the fairness and reasonableness of the transaction.'" Balducci, 240

N.J. at 594 (quoting Cohen, 146 N.J. at 156). "In the absence of a factual dispute, we review the interpretation of a contract de novo." Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 612 (2020) (quoting Serico v. Rothberg, 234 N.J. 168, 178 (2018)).

When contracting for a fee, a "lawyer must explain at the outset the basis and rate of the fee the lawyer intends to charge." Alpert, 410 N.J. Super. at 530. "Attorneys and clients can agree to fee arrangements of their choice, provided they do not violate the Rules of Professional Conduct [(RPC)]. The most conventional fee arrangement is for a client to pay an attorney on an hourly basis." Balducci, 240 N.J. at 597. A contingency fee arrangement "provide[s] incentives to lawyers to undertake the representation of clients who are unable or unwilling to pay an hourly rate." See ibid. The contingency fees rule provides:

> A fee may be contingent on the outcome of the matter for which the service is rendered. . . . A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.
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> [RPC 1.5(c) (emphasis added).]

When a contingency fee agreement is unenforceable, a trial court must consider whether an attorney "is entitled to recover the reasonable value of [the attorney's] services under a quantum meruit theory." See Starkey, Kelly, Blaney & White v. Est. of Nicolaysen, 172 N.J. 60, 67 (2002). Quantum meruit is a quasi-contractual form of recovery which "rests on the equitable principle that a person shall not be allowed to enrich himself [or herself] unjustly at the expense of another." Id. at 68 (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 437 (1992)). "Courts generally allow recovery in quasi-contract when one party has conferred a benefit on another, and the circumstances are such that to deny recovery would be unjust." Ibid. (quoting Weichert, 128 N.J. at 437). To establish a quantum meruit claim for counsel fees, a plaintiff must establish: "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." Ibid. (quoting Longo v. Shore & Reich, Ltd., 25 F.3d 94, 98 (2d Cir. 1994)).

III.

We address together plaintiff's contentions that reversal is warranted because the judge improperly analyzed quantum meruit and determined no hourly fee agreement existed. Plaintiff argues attorney's fees should have been

awarded under quantum meruit because an attorney performing legal services "without any agreement or understanding as to the remuneration" is entitled to "just and reasonable compensation." While plaintiff accurately states, in certain circumstances, an attorney without a written fee agreement may nonetheless be entitled to quantum meruit damages from a client, those circumstances do not exist here. The record amply supports the judge's finding that a contingency fee agreement existed with the condition that "if there was a recovery [from Shamrock,] the firm would get paid." Further, the record supports the judge's finding that "[Riso's] certification . . . does not establish" an hourly fee agreement.

While finding both Platt and James testified credibly, the judge recognized the burden of proof rested with plaintiff. Further, in finding plaintiff failed to establish a claim for attorney's fees, the judge soundly reasoned, "the conclusions made from the credible testimony is a different story." Platt had admitted there was no written agreement and Riso was entitled to represent his friend for free. James's uncontroverted testimony established Riso was his best friend, Riso agreed to collect his attorney's fees from Shamrock, and defendants never received a bill.

The judge correctly found the oral contingency fee agreement was unenforceable pursuant to RPC 1.5(c). Based on the contingency fee agreement's terms, attorney's fees were recoverable only from Shamrock; thus, plaintiff could have no "expectation" of an hourly fee award under quantum meruit. See Starkey, 172 N.J. at 68. Stated another way, plaintiff's quantum meruit claim failed because the oral contingency fee agreement was contractually unenforceable, and plaintiff was still bound by the agreement that attorney's fees were only recoverable from Shamrock. Thus, defendant had no reasonable expectation of payment. See Starkey, 172 N.J. at 68. We therefore find no merit in plaintiff's argument that defendants' "lack of recovery [wa]s not a basis for a finding of no cause of action for quantum meruit." Plaintiff could not derive a greater benefit than what was orally agreed upon between Riso and James.

For the same reasons, we conclude defendants were not unjustly enriched under these circumstances. See EnviroFinance Grp. v. Env't Barrier Co., 440 N.J. Super. 325, 350 (App. Div. 2015) ("To demonstrate unjust enrichment, 'a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust' and that the plaintiff 'expected

remuneration' and the failure to give remuneration enriched the defendant." (quoting VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994))).

Finally, we note our Supreme Court in Starkey explained the salutary purpose of RPC 1.5(b)'s contingency fee writing requirement was to "avoid misunderstandings," apprise the client of his or her financial responsibility, and "'to prevent . . . overcharging.'" 172 N.J. at 69 (alteration in original) (quoting DeGraaff v. Fusco, 282 N.J. Super. 315, 320 (App. Div. 1995)). The writing requirement's purpose to avoid misunderstanding is well illustrated here. As the judge found, the situation was "very unfortunate" for plaintiff and defendants, as both suffered "damages." Plaintiff, however, failed to meet its burden of substantiating the attorney's fees demanded against defendants under the breach of contract or quasi-contract theories. We discern no reason to disturb the judge's findings.

For the sake of completeness, we have considered plaintiff's argument that the judge erroneously found an oral contingency fee agreement existed "based completely upon a hearsay discussion" and conclude it is without merit. The judge was well within his discretion to consider James's testimony of his conversation with Riso, which was admissible as statements of a party opponent against plaintiff under N.J.R.E. 803(b)(4) because Riso was a partner

representing Platt & Riso. See Hassan v. Williams, 467 N.J. Super. 190, 207-08 (App. Div. 2021).

To the extent we have not addressed plaintiff's remaining contentions, it is because they lack sufficient merit to discuss in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.