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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-32-1109

FILED

2013 MAY 20 A 11:3?

Adele J. Pope	Gloria P. Corley, et al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	BETH A. CARRIGG CLERK OF COURT LEXINGTON	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See attached formal order. This case shall be set for a non-jury term for purposes of a damages hearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: **Title abstractors and researchers should refer to the official court order for judgment details.**

[signature]	2159	5-14-13
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the — day of —, 20 — and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of May, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Adam Silvernail	Bru Pender, Desa Ballard, Stephanie Weissenstein
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	Beth Carrigg /MH.
	CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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2013 MAY 20 A 11:36

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) Case No. 2011-CP-32-1109

FILED
2013 MAY 20 A 11:36

Adele J. Pope,	)	
Plaintiff,	)	
Vs.	)	ORDER DENYING MOTION FOR RECONSIDERATION
Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust,	)	
Defendants.	)	

THIS MATTER CAME BEFORE THE COURT on timely motion of Defendant Gloria P. Corley (Defendant) for reconsideration of this court's February 13, 2013, order granting Plaintiff Adele J. Pope's (Plaintiff) motion for summary judgment on all causes of action and denying Defendant's motion for summary judgment on all defenses and counterclaims. I find as follows:

FACTS

In 1997 Defendant engaged Plaintiff on an hourly basis to represent her in relation to the estate of Defendant's third husband, M. L. Corley (Decedent), who had recently died. The matter was both factually and legally complex. In addition to other assets, Decedent owned over 10 acres on Lake Murray, and a number of large tracts along Highway 378 between Columbia and Lexington. His first wife, to whom he had been married for many years, had predeceased him. Defendant did not have a close relationship with Decedent's children. One of Decedent's children, Sam (Trustee), is the trustee of the trust established by Decedent's will. Trustee and Theron Peace, Decedent's accountant, were Decedent's personal representatives. Decedent's fiduciaries

were represented by litigator Keith Babcock, Esuire, and tax attorneys Robert Young, Esquire and David Siddons, Esquire. Plaintiff was Defendant's sole attorney.

At the time of the engagement, Plaintiff held an LLM in Estate Planning from the University of Miami and had practiced law for more than 20 years. The fee agreement provided for attorney's fees and costs of collection. It also provided that Plaintiff could speak freely about the matter with Defendant's daughter Angie or son Hoyt (Son), an attorney. The fee agreement included an acknowledgement that Son served as Defendant's personal attorney and approved the Agreement. Although the record does not contain a copy of this document signed by Son, both Defendant and her Attorney-in-Fact acknowledged that fact by signing the agreement.

Defendant's goal was to receive regular income "beginning as soon as possible," but there were substantial impediments to this goal. Although Plaintiff worked vigorously, attempts to speed up this process met with considerable resistance from Decedent's fiduciaries and their attorneys. Plaintiff kept Defendant and Son informed of what actions she was taking and the resistance with which it was being met.

In July 1998, with hearings scheduled, Defendant notified Plaintiff that she was too ill to continue the litigation and that her doctor directed that she immediately withdraw. Plaintiff immediately notified the court and other parties of Defendant's illness, withdrew the actions filed on behalf of Defendant, and notified the parties of Plaintiff's termination. Approximately three weeks later Plaintiff learned that Defendant's doctor had not directed her to stop the litigation, but that Defendant had decided to negotiate with the trust on her own.

By August 1998, Son was in contact with Plaintiff regarding Defendant's failed negotiations

and requesting that Plaintiff take Defendant back as a client.[1] Plaintiff, in light of Defendant's unwillingness or inability to bear the ongoing and substantial costs of a full representation on an hourly basis, proposed at least two alternatives. She offered to be engaged on a limited basis as a consultant to Son, who would act as Defendant's attorney. Alternatively, she was willing to work under a contingency-fee agreement. Defendant elected the contingency fee agreement. Although Defendant had not secured any agreement for herself after terminating Plaintiff, the contingency fee relates only to amounts over $90,000 per year Plaintiff was able to secure for Defendant.

Plaintiff then engaged in negotiations with counsel over fiduciary income and trust concepts and the best way to make Decedent's multi-million dollar estate and trust work for Defendant and Decedent's children. In January 1999, a detailed agreement was reached, presented to the court, and approved. The settlement, which was thoroughly reviewed by Defendant and her family, provided Defendant with a guaranteed income of $145,000 for the rest of her life provided she take no active role in the trust except to allow her own accountant to review the annual reports. $90,000 was disbursed directly to Defendant each year, in monthly installments. The other $55,000 was paid directly to Plaintiff's office, as the irrevocably designated agent to receive and disburse, and was intended to be the source of the payment of Plaintiff's fees.[2]

After the approval of the settlement, the estate was wound up and closed within a couple of years. On a few occasions, Trustee made the check out directly to Defendant rather than to Plaintiff as agent for Defendant. Aside from these minor mistakes, Trustee fully complied with the

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[1] All parties seem to agree that Defendant's *pro se* efforts obtained no results.

[2] The agreement contained other clauses, specifically a clause relating to some of Decedent's lake property. While not important to the enforceability of the fee agreement, this other clauses do indicate that Plaintiff obtained a favorable result for Defendant.

agreement until after this suit was filed. On those instances where the check was improperly made out, Defendant signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Defendant -- after payments to Plaintiff -- retained at least $125,000 per year. Plaintiff received annual payments of approximately $18,333. The contingency fee paid to Plaintiff each year was less than 15% of the $145,000 she secured for Defendant.

At one point shortly after the settlement, Defendant wrote Trustee and directed him to pay the annual check directly to her. Plaintiff engaged John Freeman, Esquire to assist her; Professor Freeman contacted Son and the matter was corrected. However, in March 2011 Defendant's attorney-in-fact took the check from Plaintiff and announced that she was now in charge and that she would pay Plaintiff what she felt like paying. Plaintiff filed this suit the following week.[3]

Plaintiff and Defendant filed cross-motions for summary judgment. The court denied Defendants motions and granted Plaintiff's in a form 4 order dated February 13, 2012. Defendant now seeks reconsideration of the court's order on the grounds that the Court erred in finding the fee agreement reasonable and enforceable.

LAW/ANALYSIS

I. The Fee Agreement is neither unconscionable nor void as against public policy.

Generally, South Carolina courts will not enforce a contract that violates public policy. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758

[3] After this action was commenced, Defendant and the trust entered into an agreement to terminate Defendant's interest in the trust. The court makes no ruling on the propriety of this agreement at this time, as this issue is best resolved in the context of a future damages hearing.

(2004). Unconscionability is defined as the "absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* (citing *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996)). Defendant asserts that she suffered a lack of meaningful choice in entering into the Fee Agreement as a result of her age and unsophistication. The court disagrees.[4]

The evidence shows that Defendant had previously engaged Plaintiff on an hourly basis; subsequently fired Plaintiff and independently undertook negotiations regarding her interest in Decedent's estate and trust during the period after she terminated Plaintiff. Further, Son was kept up to date on the proceedings and corresponded with Plaintiff regarding issues related to the estate and trust.[5]

Defendant had the choice to engage Plaintiff on the limited consultation-only basis if she wished to limit the fees paid to Plaintiff (and if she and Son wished to assume most of the responsibility Plaintiff eventually undertook in the negotiations). Instead, Defendant chose a contingency fee agreement.[6] Finally, Defendant could have consulted with or hired an attorney other than Plaintiff on terms other than those on which the two agreed. Therefore, Defendant did not lack meaningful choice in entering into the fee agreement.

Defendant further asserts that the amounts paid to Plaintiff under the Fee Agreement

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[4] In support of her contention that the Fee Agreement was unconscionable, Defendant offered the 2-page affidavit of expert Ken Wingate, Esquire. However, the court has not considered the affidavit as it contains expert testimony on issues of law that are generally inadmissible *See Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003).

[5] The parties dispute whether Son acted as Defendant's personal attorney during this time. However, from the evidence submitted, it appears that he at least had some involvement in the decision to re-engage Plaintiff on a contingency basis.

[6] The court notes that contingency fee agreements are common in probate representation.

support voiding the contract as unconscionable. The evidence shows that Defendant has received more than $1.5 million from the trust since the settlement. Plaintiff has received less than $225,000. This contingency fee amounts to less than 15% of the amounts Defendant has received as a result of the settlement. Thus, this agreement is not unreasonable based solely on the amount of compensation Plaintiff received. *See Beattie v. DeLong*, 164 A.D.2d 104 (Supreme Court, Appellate Division, First Department, New York 1990) (holding that a contingent fee agreement which resulted in the attorney receiving a 30% interest in copyright royalties was reasonable).[7]

Ultimately, the court finds that the fee agreement is reasonable when analyzed under the applicable factors. In *Glasscock v. Glasscock*, 304 S.C. 158, 403, S.E.2d 313 (1991) our Supreme Court held that, in determining the reasonableness of an attorney's fee, the court should consider (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Furthermore, when evaluating attorney's fees in the context of a dispute with a client, "all of the circumstances surrounding the attorney-client relationship must be considered when determining a reasonable fee to be paid by a client." *Weatherford*, 340 S.C. at 581, 532 S.E.2d at 315.

The court finds that the fee would be reasonable under the *Glasscock* factors, but, moreover, that the fee is unquestionably reasonable in light of the circumstances surrounding this attorney-client relationship, including the results obtained for Defendant. Plaintiff was faced with a legally and factually complex matter as well as a client who was interested in securing regular income for herself right away. Plaintiff's representation produced a comprehensive settlement

[7] Defendant also argues that Plaintiff's fee was unreasonable under *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000). That case dealt with the award of *quantum meruit* fees to an attorney where no written fee agreement existed. *Weatherford* is inapposite to the case at bar, where the fee agreement has been in effect and honored for more than a decade.

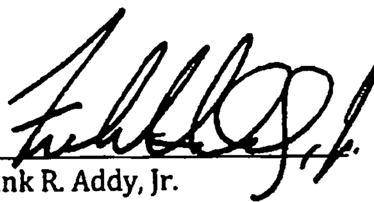
which provided Defendant with a generous life income, as she desired. Therefore, the fee agreement is neither unreasonable nor unconscionable.

CONCLUSION

WHEREFORE, IT IS ORDERED that Defendant's motion for reconsideration is **DENIED**. Summary judgment is granted on Plaintiff's cause of action. However, the question of damages is complicated by factors that have developed since the filing of this action, and a hearing on this issue is required

THEREFORE, IT IS FURTHER ORDERED that the Clerk of Court set this matter for a hearing on the amount of damages.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge

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May 14, 2013
Greenwood, South Carolina