THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
COURT OF COMMON PLEAS

Honorable Maite' Murphy, Circuit Court Judge

CASE NO. 2014-CP-38-1603

Belinda Davis Branch and Ziporrah Sumpter Appellants,

v.

Elizabeth Jackson, Melvin Jackson individually and as parents of M , M and M Jackson..... RESPONDENTS

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRAIL JUDGE ERR IN AWARDING APPELLANTS THEIR CONTINGENCY FEE AS OPPOSED TO THEIR HOURLY RATE PURSUANT TO APPELLANTS' RETAINER AGREEMENT.

STATEMENT OF THE CASE

On January 10, 2006 Respondents (hereinafter "the Jacksons") entered into a contract for legal representation with Appellants for legal representation in regards to damages suffered by the Jacksons after they were exposed to lead paint. (SROA pp. 6-9). Appellants did file several lawsuits on behalf of the Jacksons against numerous Defendants but were not successful in the litigation. In fact the litigation resulted in a number of summary judgment orders against the Jacksons by all Defendants except Claflin Development. By June 11, 2010 the parties agreed to Terminate Legal Representation pursuant to an agreement dated June 11, 2010.

The Jacksons then retained Cynthia B. Berry to represent them in the only remaining case against Claflin Development. Mrs. Berry secured a settlement of $5,000.00 from Claflin Development around March, 2013 and all litigation was terminated. Correspondence ensued between the Appellants and Mrs. Berry regarding Appellants assertion of the placement of a lien on the Jackson's file (ROA p. 9). Appellants elected an hourly rate recovery which was set forth in their retainer agreement under the caption "Withdrawal by Attorney". (SROA pgs. 6 - 9)

On December 13, 2014 Appellants filed a complaint suing the Jacksons for breach of the retainer agreement for "their hours of completed work at their standard hourly rate." No amount was specified in the complaint and no invoices were produced in discovery. (ROA pp. 5-6 and ROA).

At the hearing for damages, Appellant's presented three invoices: one for their representation of the Jacksons in state court (SROA pp. 35-53); one for their representation of the Jacksons in federal court (Plaintiff's Exhibit 15); and one for one for their representation of the Jacksons in bankruptcy court (SROA pp. 44-47). Each of the invoices contained huge math errors.

Only Belinda Branch Davis testified as to the hours expended. No testimony was presented regarding the professional standing of counsel, the nature of the case, whether or not the fee of $2.2 million was customary in the area for similar services and no beneficial results were obtained for the Jacksons by Appellants.

FACTS

Appellants lost at every level of three separate lawsuits on behalf of the Jacksons. (SROA pp. 10- 34). The retainer agreement was terminated by consent of all parties on June 11, 2010. The only beneficial result obtained was obtained by subsequent counsel, Cynthia Berry, two and a half years after Appellants' services were terminated. Appellants never informed Cynthia Berry as to the amount of their lien on the file or their expenses. The Jacksons were never informed of the hourly charges allegedly incurred until the date of trial.

ARGUMENTS

I. THE TRIAL JUDGE APPROPRIATELY RULED IN THIS ATTORNEY FEE COLLECTION ACTION PURSUANT TO *WEATHERFORD v. PRICE*, 340 S.C. 572, 532 S.E.2d 310 (2000).

In the instant case Appellants are attempting to enrich themselves by billing their hourly rate rather than accepting the contingency fee arrangement. It was never disclosed to the Jacksons until the day of trial that they had run up a bill, according to Appellants, of 2.2 million dollars ($2,200,000.00) plus expenses. (SROA p. 2, lines 23 - p.). Appellants' invoices are completely inaccurate and do not reflect the amount they are demanding. (SROA p. 35 -43, p. 44-47, lines 1 - p.). This Honorable Court has heard this action before in *Tillman v. Grant,* unpublished opinion number 2006-UP-340. In *Tillman,* as in the instant case, the Jacksons were in default, and the attorney requested to be paid at the hourly rate.

Courts examine agreements between clients and attorneys very carefully. In the instant case, the retainer agreement appeared to be unconscionable in that there was no way in which the attorneys could possibly lose. If they prevailed they received a contingency of up to 40% and if they lost they could bill their clients, some four and half years later, for their hourly rate. (Plaintiff's Exhibit 1). Appellants retainer agreement is unconscionable pursuant to *Brenner v. Little Red School House, Limited*, 302 N.C. 207, 274 S.E.2d 206, appeal after remand, 59 N.C.App. 68, 295 S.E.2d 607, review denied, 307 N.C. 468, 299 S.E.2d 220 (1981), [282 S.C. 332] citing *Hume v. United States*, 132 U.S. 406, 10 S.Ct. 134, 33 L.Ed. 393 (1889).

> Unconscionability has generally been recognized as including the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

The Jacksons were not informed that they were incurring in excess of two million dollars in legal fees at their entry into the retainer agreement and more importantly at the termination of the retainer agreement. (SROA p. 2, lines 24 p., p. 2, lines 1 - p.)

Section 36-2-302 of the 1976 Code of Laws of South Carolina:

Unconscionable contract or clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

In *Tillman* this Court states:

> The courts examine agreements between attorneys and clients with the utmost care to avoid any improper advantage to the attorney. *Royal Crown Bottling Co. v. Chandler*, 226 S.C. 94, 105, 83 S.E.2d 745, 750 (1954). In the interest of the profession, the court has the jurisdiction "to see that an attorney will not lower his profession by cheapness, nor promote his own interest by extortion, as well as to the safeguarding of the trust relation which an attorney bears to the public." *Bank of Enoree v. Yarborough*, 120 S.C. 385, 393, 113 S.E. 313, 315 (1922). Therefore, the court will not allow attorneys to impose excessive charges on their clients because attorneys owe the public a duty of trust. *Coley v. Coley*, 94 S.C. 383, 386, 77 S.E. 49, 50 (1913). The factors a trial court should consider in determining reasonable attorney's fees are:
>
> (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained.
>
> *Blumberg v. Nealco Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).
>
> In the instant case there was no testimony as to the nature, extent and difficulty of the

legal services rendered, the professional standing of counsel, the fee customarily charged and other than a nuisance value settlement of $5,000.00 procured two years later by another attorney there were no beneficial results obtained.

As is clearly stated in *Weatherford V. Price*, 340 S.C. 572, 532 S.E.2d 310 (2000):

> An attorney/client relationship is by nature a fiduciary one. *Royal Crown Bottling Co v. Chandler.*, at 105-106, 83 S.E.2d at 751; *Hotz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991); *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987). The relationship of an attorney with his or her client is "highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring a high degree of fidelity and good faith." 7 AmJur 2d Attorneys at Law § 137 (1997). Historically, fee arrangements between an attorney and client are "examined with utmost care by the courts in order to avoid any improper advantage to the attorney." *Royal Crown Bottling Co.*, 226 S.C. at 105, 83 S.E.2d at 750; *Alexander v. Inman*, 903 S.W.2d 686 (Tenn.Ct.App.1995). As the Florida Supreme Court stated:
>
> > Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that; it brings the court into disrepute and destroys its power to perform adequately the function of its creation.
>
> *Baruch v. Giblin*, 122 Fla. 59, 164 So. 831, 833 (1935).

The instant case is a perfect reflection of what the Court and the legal profession wish to avoid, bringing the Court and the profession into disrepute. An award of the amount Appellants are demanding is not reflective of justice, but of injustice. Appellants achieved nothing on behalf of their clients, were justifiably terminated for cause after failings in three separate courts and now are suing their clients for compensation far in excess of any results obtained. Appellants' own invoices and testimony are reflective of incompetence, greed and avarice none of which

reflect well on Appellants or their pursuit of this appeal.

CONCLUSION

Affirmation of the Trial Court's order is the only logical conclusion in this case. A suit to recover attorney fees is an action at law. *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310 (2000). Judge Muphy committed no errors of law and in fact ruled consistently with *Weatherford.* Appellants had a duty to comply with the well established factors for the recovery of attorney fees and clearly failed to do so. Additionally, Appellants reliance upon their invoices which failed to accurately reflect the amount of time expended on behalf of the Jacksons essentially destroyed any credibility Appellants may have had regarding any of their testimony regarding their compliance with the factors a trial court should consider in determining reasonable attorney's fees .

Wherefore the Trial Court's order should be affirmed.

Respectfully submitted,

March 1, 2018

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CERTIFICATION OF COMPLIANCE WITH RULE 211(b)

I certify that Respondents' Final Brief complies with Rule 211(b)

March 1, 2018

Paul W. Owen, Jr.

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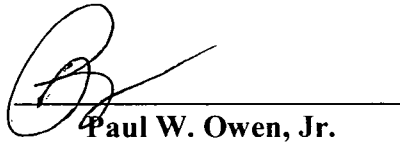
PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief on Belinda Branch Davis and Zipporah Sumpter by depositing a copy of same in the United States Mail, postage prepaid, addressed to their attorney of record, Thomas Ray Sims, Esquire, Post Office Box 2016, Oraneburg, S.C. 29116, on March 1, 2018.

March 1, 2018



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