

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBRA HALLMARK, SPECIAL
ADMINISTRATRIX OF THE ESTATE
OF CARRIE HALLMARK,
Appellant,
vs.
CHRISTENSEN LAW OFFICES, LLC,
Respondent.

No. 54641

FILED

OCT 04 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order adjudicating an attorney's lien. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant is the special administratrix for the estate of Carrie Hallmark. Prior to her death, Carrie Hallmark retained respondent Christensen Law Offices ("Christensen") to pursue a personal injury claim that arose from a parking lot accident on April 4, 2002. She executed a retainer agreement on June 13, 2002, that provided

[f]ees shall be paid to law firm only if there is a recovery herein, or an offer of settlement, and shall be equal to 33 1/3% of all monies so recovered, or so offered, if prior to the filing of a lawsuit herein, and shall be equal to 40% of all monies so recovered, or offered, after the filing of a lawsuit.

It also stated that if Christensen was discharged prior to final settlement, recovery, or offer, Christensen would be granted a lien on the "file and any

subsequent settlement or recovery thereunder in an amount equal to the reasonable value of Lawyers' services plus costs and advances, together with interest at the rate of 12% per annum."

Approximately two and a half years into the litigation, Hallmark terminated her attorney-client relationship with Christensen and retained Caruso Law Offices. Caruso Law Offices paid Christensen \$9,762.99 for costs when Christensen transferred Hallmark's file. The case proceeded to a jury trial, and on appeal this court remanded for a new trial on damages. Prior to the new trial, the personal injury claim was settled for \$500,000.

After the case was settled, Christensen filed a motion to enforce its attorney's lien and argued that it was entitled to the contractual rate of 40 percent of the settlement, plus costs and interest, which totaled \$209,762.99 plus interest at a rate of 12 percent per annum. After a hearing, the district court stayed its ruling on Christensen's motion to enforce and ordered Christensen to supplement its motion with supporting documentation of the actual work performed.

Pursuant to the district court's order, Christensen filed a supplement to its motion to enforce with over 300 pages of supporting documents. The documents included a 21-page hourly billing statement, telephone notes, deposition records, expert reports and letters to various medical providers, experts, and the opposing party.

Hallmark opposed the motion and argued that Christensen was only entitled to quantum meruit, not to 40 percent of the settlement. Hallmark also claimed the documentation supporting the amount of the lien was fraudulent and inaccurate, and that it did not provide the court

with a reasonable basis to determine the amount of attorney fees due. She contended specifically that Christensen's billing statement

- (1) claimed costs of \$9,762.99 that were already paid by Caruso;
- (2) billed for work that never occurred;
- (3) overcharged for work that did occur;
- (4) contained double billing;
- (5) billed for work that was done on other clients' files;
- (6) billed for services that were rendered by Christensen for their own benefit;
- (7) billed for work that was done before Christensen was retained;
- (8) billed for work that was supposedly done by attorney Maria Milano when she was no longer an employee of the firm; and
- (9) billed for work by the office manager at an attorney's rate.

Hallmark also argued that the statement contained billings for Thomas Christensen, Esq., and office manager Tammy Harless, but neither of them worked on the case. Additionally, she claimed that Christensen had billed one hour to prepare a notice of intent to enter default before a complaint was even filed, and billed an additional four hours to prepare the default again. Finally, she noted that Christensen billed three hours of travel time for a deposition that took place at its office.

After argument, the district court granted Christensen's motion in a two-page order, and found Christensen was entitled to the contractual amount of \$200,000 plus interest at 12 percent per annum. However, the district court reduced the award to \$50,000 plus interest at 12 percent per annum. Hallmark appealed.

Discussion

This court generally reviews an attorney fees award under an abuse of discretion standard but will review purely legal issues de novo. Settelmeyer & Sons v. Smith & Harmer, 124 Nev. 1206, 1215, 197 P.3d 1051, 1057 (2008). In resolving attorney fee disputes, the district court must make findings of reasonableness on awards of attorney fees under Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33-34 (1969). Argentina Consol. Min. Co. v. Jolley Urga, 125 Nev. 527, 540 n.2, 216 P.3d 779, 787 n.2 (2009) (stating failure of district court to enter findings concerning attorney fees constitutes an abuse of discretion). When determining the reasonable value of an attorney's services, a district court is to consider "the qualities of the advocate[,] . . . the character of the work to be done[,] . . . the work actually performed by the lawyer[, and] . . . the result." Brunzell, 85 Nev. at 349, 455 P.2d at 33 (1969) (quoting Schwartz v. Schwerin, 336 P.2d 144, 146 (Ariz. 1956)). The trier of fact is to consider each factor and no one element should predominate. Id. at 350, 455 P.2d at 33.

In this case, the district court found, without explaining its findings, that Christensen had an "attorney's lien in the contractual amount of \$200,000.00 plus 12% per annum." This conclusion is not supported by the record. The retainer agreement stated Christensen would be entitled only to the predefined percentage of the settlement or recovery if there was a final settlement, a recovery, or an offer of settlement made while Christensen was Hallmark's attorney. While Christensen handled the case, there was no final settlement or recovery, and nothing in the record demonstrates that an offer of settlement was

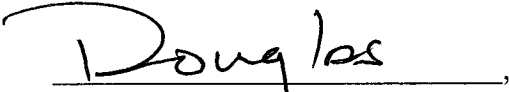
made. Accordingly, Christensen is not entitled to the contractual rate of 40 percent of the recovery. Instead, Christensen has a lien on the recovery for an amount "equal to the reasonable value of Lawyers' services plus costs and advances, together with interest at the rate of 12% per annum." That amount, however, remains to be proven because the district court did not conduct an evidentiary hearing, after a demand, to determine the nature, extent and duration of the work performed by Christensen while it was serving as Hallmark's counsel.


The district court also ordered that the \$200,000 award be reduced to \$50,000, but it offered no explanation as to how it arrived at this amount. Moreover, there were disputes regarding what work was actually performed, whether an assistant or attorney had performed the work, whether the work was reasonably necessary, and whether the amount of time billed for the work was reasonable. The district court, however, did not address any of these disputes and summarily concluded that Christensen was entitled to \$50,000 in fees.

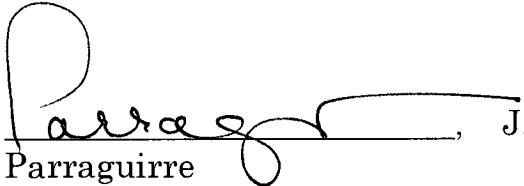
We conclude that the district court abused its discretion in awarding \$50,000 in attorney fees because the district court relied on an inapplicable provision of the retainer agreement and reduced the award without any explanation. Accordingly, we reverse the district court's judgment and remand this matter for further proceedings consistent with Brunzell or Argentina Consol. Min. Co. Upon remand, the district court is directed to conduct an evidentiary hearing to determine the issue of quantum meruit and other allegations, including the allegations of billing

fraud.¹ The district court is also instructed to make detailed findings of fact to support its award or denial of attorney fees.

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Carolyn Ellsworth, District Judge
Howard Roitman, Settlement Judge
Caruso Law Offices
Christensen Law Offices, LLC
Eighth District Court Clerk

¹In light of the lack of a record as to the submitted billing statement, we decline to consider Hallmark's request, presented for the first time on appeal, that we refer Christensen to the State Bar for discipline.