REL: March 26, 2021

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190615

Anthony Ifediba

v.

Melissa Renee Staffney

Appeal from Bibb Circuit Court
(CV-14-900087)

PER CURIAM.

Anthony Ifediba, an attorney, appeals from a judgment of the Bibb Circuit Court awarding an attorney's fee of $5,000 and expenses of

$974.64 under a quantum meruit theory out of funds recovered by Melissa Renee Staffney, the custodial parent of a child (B.E.H., "the child") concerning whose death she and Robert Lee Hudson, Jr. (the child's father), had jointly brought a wrongful-death action against several defendants while represented by Ifediba, after which Staffney retained alternate counsel in lieu of Ifediba and successfully demonstrated that she was the sole party with standing to sue. We reverse and remand.

The fee dispute made the basis of this appeal stems from an action (case no. CV-14-900078) originally commenced in the trial court on September 24, 2014, by Ifediba on behalf of Staffney, who was identified in the complaint as mother of the child, and Hudson, who was identified as the personal representative of the child's estate. The complaint in that action, which was filed along with a first request for production of documents, asserted, in pertinent part, that the child had drowned at Brierfield Historical State Park during a birthday party because of the wrongful conduct of the public corporation that maintains the park and several workers employed at the park. Although the complaint was

transmitted by certified mail to the four named defendants, none was actually served.

On October 17, 2014, attorneys from the law firm of Farris, Riley & Pitt, L.L.P., filed a notice of appearance in case no. CV-14-900078 on behalf of Staffney "as [m]other of" the child and moved for the dismissal of the wrongful-death action, averring that Staffney, who had had sole custody of the child at the time of the child's death, had the exclusive right to maintain a wrongful-death action as to the child under Miller v. Dismukes, 624 So. 2d 1038 (Ala. 1993), and that she had terminated Ifediba's representation of her; she sought leave to bring the wrongful-death action solely on her own behalf (which she did in a new case that was also commenced in the Bibb Circuit Court and that was assigned case no. CV-14-900087). Ifediba, on behalf of Hudson, filed a response in opposition to Staffney's motion to dismiss in case no. CV-14-900078 and took an adversarial stance against his former client, contending that Hudson had also been a custodial parent of the child at the time of his death. Staffney filed a reply to that response in which she demonstrated not only that Hudson had not lived with her and the child at the time of

the child's death, but also that he had been the subject of a protection-from-abuse order entered in favor of Staffney in May 2014. The trial court, noting the adversarial filings by Staffney and Hudson, directed Staffney and Hudson to submit additional authority in case no. CV-14-900078 and stayed proceedings in case no. CV-14-900087, and Ifediba, representing Hudson's interests, filed a number of affidavits tending to impugn Staffney's right to maintain the wrongful-death action solely on her own behalf, which affidavits were themselves the subject of motions to strike and objections thereto.

The trial court ultimately dismissed case no. CV-14-900078 but declared that Ifediba had a lien against any recovery obtained by Staffney and retained jurisdiction to resolve his fee. The trial court, at Staffney's request, lifted its stay in case no. CV-14-900087, and the defendants answered the complaint in that action; Staffney's replacement counsel thereafter filed further pleadings and conducted discovery, which included interrogatories propounded to the defendants and depositions of the defendants. Ifediba moved to intervene in case no. CV-14-900087 to enforce the lien declared in case no. CV-14-900078, which motion the trial

court granted, directing Ifediba to submit a fee bill. Ifediba filed in the trial court a copy of a notice of lien he had previously filed in the probate records in Jefferson County claiming $38,650 for claimed work and case expenses.

In May 2019, replacement counsel for Staffney and counsel for the defendants filed a joint stipulation for dismissal of the claims asserted by Staffney in case no. CV-14-900087. Ifediba moved to stay that dismissal, asserting that his fee claim remained outstanding. Ifediba and Staffney's replacement counsel appeared at a hearing in the trial court on March 11, 2020, at which Staffney's replacement counsel argued not only that the fees and expenses claimed by Ifediba incurred during his representation of Staffney through October 2014 were excessive, but also that no fees or expenses were properly awardable after that date. After that hearing, the parties filed proposed form orders for the trial court's consideration; perhaps because the proposed order supplied by replacement counsel for Staffney on March 17, 2020, had referred to evidentiary insufficiencies as to Ifediba's claim, Ifediba filed an evidentiary submission on March 25, 2020, in support of his fee and expense claim (which, by that point, had

grown to over $60,000), which submission consisted of his own affidavit, his contract of representation, a supplemental and revised invoice, a summary of claimed case expenses, an affidavit of another attorney (Adedapo Tailuo Agbola), and a copy of the order entered in case no. CV-14-900078 recognizing his lien against any recovery. Notwithstanding that March 25, 2020, submission, the trial court rendered and entered an order on March 31, 2020, incorporating the proposed order submitted by Staffney's replacement counsel on March 17, 2020, which provided, in pertinent part:

> "On July 23, 2014, ... Ifediba was retained by ... Hudson and ... Staffney to represent them for the death of their son, [B.E.H.]. Ifediba filed suit on behalf of [both plaintiffs] on September 24, 2014. On October 17, 2014, ... Staffney terminated her agreement with Mr. Ifediba and retained ... Farris, Riley and Pitt, LLP, to represent her.
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> "It is undisputed that ... Hudson[] was the non-custodial parent of the deceased and did not have standing to go forward with the lawsuit after October 17, [2014]. See Miller v, Dismukes, 624 So. 2d 1038 (Ala. 1993). As such, any hours claimed by Mr. Ifediba after that date are not subject to his quantum meruit claim.
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> "Mr. Ifediba has submitted ... a printout showing total hours of 235.59, with a requested billing rate of $250.00 per hour, the hourly rate [that] is reflected in his fee agreement

> with Mr. Hudson and Ms. Staffney. Addit[i]onally, Mr. Ifediba submitted expenses totaling $3,474.64. Collectively, these items total [over $60,000].[1] The [trial court] was provided with an attorney's lien filed by Mr. Ifediba dated June 12, 2017, with a claimed amount of $38,650.00 inclusive of fees and expenses. According to the printout provided by Mr. Ifediba, the last work he claims to have performed on the case for which he seeks compensation is July 1, 2015, well before the lien was filed. There has been no explanation offered ... by Mr. Ifediba in his filing or during the hearing for this inconsistency.
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> "Unfortunately, there have been no documents produced, such as source data, billing records or receipts, to support the hours claimed on the printout or the attorney's fee lien. Similarly, there have been no supporting documents for the expenses claimed. Additionally, there has been no[] sworn testimony in the form of an affidavit or testimony during the hearing in support of his claim. The only testimony provided comes in the form[] of an affidavit from Ms. Staffney contesting Mr. Ifediba's claimed fees and expenses. The law in Alabama is clear as to quantum meruit claims for lawyers who are discharged[;] a lawyer discharged is 'entitled to be reasonably compensated only for services rendered before discharge.' Hall v. Gunter, 157 Ala. 375, 47 So. 155 [(1908)]. This law was reaffirmed in Gaines, Gaines & Gaines, P.C. v. Hare[,] Wynn, Newell & Newton, 554 So. 2d 445 [(Ala. Civ. App. 1989)]. It is the burden of the asserting party to produce competent and admissible evidence to support his claim, that

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[1]The trial court's judgment states a figure of $65,846.78; however, the mathematical product of 253.59 (Ifediba's claimed hours) and $250 (Ifediba's claimed rate) is $58,897.50, which yields a sum of only $62,372.14 when Ifediba's total claimed expenses of $3,474.64 are added.

> the charges alleged are 'reasonable' and were in fact performed 'before discharge.' While there is certainly evidence from which [the trial court] can infer some time and expense such as the filing of the lawsuit and the fee agreement between Mr. Ifediba and the [p]laintiffs, that evidence is limited.
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> "Based upon the foregoing the [trial court] finds that Mr. Ifediba is entitled to attorney[']s fees of $5,000.00 (five thousand dollars) and expenses [of] $974.64 (nine hundred and seventy four dollars and sixty-four cents) for a total of $5,974.64 to be paid in full ... within 30 days...."

The trial court's order adjudicated the last remaining claim in case no. CV-14-900087, thus giving rise to a final judgment (see, e.g., Faith Props., LLC v. First Com. Bank, 988 So. 2d 485, 491 (Ala. 2008)). Ifediba filed a postjudgment motion pursuant to Rule 59(e), Ala. R. Civ. P., that was denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P., after Ifediba had already timely filed a notice of appeal from the judgment (a practice that Rule 4(a)(5), Ala. R. App. P., allows).

The right of Ifediba to any recovery as to his fee claim stems from the principle recognized by this court in Gaines, Gaines & Gaines, P.C. v. Hare, Wynn, Newell & Newton, 554 So. 2d 445 (Ala. Civ. App. 1989), under which, notwithstanding the acknowledged power of a client, such as Staffney, to unilaterally revoke a retained attorney's authority to

represent the client's interests in a legal proceeding, "'an attorney discharged without cause, or otherwise prevented from full performance, is entitled to be reasonably compensated ... for services rendered before such discharge.'" 554 So. 2d at 448 (quoting Owens v. Bolt, 218 Ala. 344, 348, 118 So. 590, 594 (1928) (emphasis added)).[2] Gaines, Gaines & Gaines further teaches that the question of "reasonable" compensation triggers a duty on the part of a trial court considering the question to utilize 12 factors in determining a "reasonable" attorney-fee award on a quantum meruit basis (see 554 So. 2d at 449), which include:

> "(1) the nature and value of the subject matter of the employment; (2) the learning, skill, and labor requisite to its proper discharge; (3) the time consumed; (4) the professional experience and reputation of the attorney; (5) the weight of his

[2]Ifediba correctly notes that the trial court's judgment in case no. CV-14-900078 specified that he was "entitled to an attorney's lien" on proceeds obtained by Staffney in the wrongful-death action stemming from the child's death. However, in contending that he is entitled to the full amount of his claim, Ifediba reads too much into that inchoate determination, which effectively left for another day the resolution of the size of that lien ("the issues of reimbursement and attorney lien are held open for resolution by this court"). Neither that judgment nor Ifediba's own affidavit conclusively establish that Ifediba is entitled to recover for all of his claimed time at a $250-per-hour rate in contravention of the principles of quantum meruit set forth in Gaines, Gaines & Gaines, supra.

> responsibilities; (6) the measure of success achieved; (7) the reasonable expenses incurred; (8) whether a fee is fixed or contingent; (9) the nature and length of a professional relationship; (10) the fee customarily charged in the locality for similar legal services; (11) the likelihood that a particular employment may preclude other employment; and (12) the time limitations imposed by the client or by the circumstances."

Buckley v. Seymour, 679 So. 2d 220, 227 (Ala. 1996) (citing Peebles v. Miley, 439 So. 2d 137 (Ala. 1983)).

Ifediba argues, among other things, that the trial court failed to adequately specify findings of fact or conclusions of law in support of its fee and expense award. We agree. Since Peebles, supra, was decided, the principle has emerged in Alabama caselaw to the effect that an appellate court must be able to discern from the record the factors considered by the trial court in determining the amount of attorney's fees:

> "Although a trial court's judgment awarding an attorney fee based on ore tenus evidence is to be presumed correct, and although that court's findings will not be disturbed on appeal unless they are palpably wrong, manifestly unjust, or without supporting evidence, see Anderson v. Lee, 621 So. 2d 1305, 1307 (Ala. 1993), the Alabama Supreme Court has held that an appellate court '"must be able to discern from the record what factors the trial court considered in determining the amount of attorney fees."' Huntley v. Regions Bank, 807 So. 2d 512, 518

> (Ala. 2001) (quoting Lanier v. Moore-Handley, Inc., 575 So. 2d 83, 85 (Ala. 1991)) (emphasis added in Huntley)."

Love v. Hall, 940 So. 2d 297, 299 (Ala. Civ. App. 2006). In particular, our supreme court has stated that "a trial court's order regarding an attorney fee must allow for meaningful appellate review by articulating the decisions made, the reasons supporting those decisions, and how it calculated the attorney fee." Pharmacia Corp. v. McGowan, 915 So. 2d 549, 553 (Ala. 2004) (emphasis added).

In this case, the trial court's judgment awarded a flat $5,000 fee to Ifediba, an amount that is not referable to any rational combination of Ifediba's claimed hourly rate and hours expended before the termination of his representation that is readily identifiable in the record. Moreover, in doing so, the trial court incorporated a form judgment supplied by Staffney's successor counsel that, on the date that it was entered as the trial court's judgment, misstated the evidence that was then actually before the court to such an extent as to call into question the trial court's ultimate fee determination. The judgment stated, for example, that "there have been no documents produced ... to support the hours claimed on the

printout or the attorney's fee lien," that Ifediba had not submitted any "supporting documents for the expenses claimed," that "there ha[d] been [no] sworn testimony in the form of an affidavit or testimony during the hearing in support of his claim," and that "[t]he only testimony provided [had come] in the form[] of an affidavit from ... Staffney contesting ... Ifediba's claimed fees and expenses."

However, as of the date of the trial court's judgment, Ifediba had, with the trial court's permission, submitted evidence that included, among other things, his own affidavit, the affidavit of another attorney, a supplemental and revised invoice that listed by date the legal services he had performed along with the time billed for each entry, and a summary of case expenses that included invoices and copies of checks drawn on his law firm's operating and client-expense accounts. The judgment entered by the trial court does not reflect that that supplemental evidence was considered. On the authority of Love and Pharmacia, supra, therefore, we reverse the trial court's judgment, and we remand the cause in order for the trial court to enter, based upon the existing record, a new judgment

more clearly specifying the basis of any fee and expense award to Ifediba, taking into consideration the totality of the evidence before that court.

REVERSED AND REMANDED.

Thompson, P.J., and Moore and Edwards JJ., concur.

Hanson, J., concurs specially.

Fridy, J., concurs in part and concurs in the result, with writing.

HANSON, Judge, concurring specially.

Although I agree that the judgment under review is due to be reversed and the cause remanded for the trial court to explicitly state the factors upon which it bases any fee and expense award to Anthony Ifediba,[3] I write specially to emphasize that my vote to concur is not intended as indicating that an aggregate award to Ifediba of $5,974.64 would necessarily be erroneous if it were detailed in a manner consistent with the authorities cited in the court's per curiam opinion, even considering the additional evidence Ifediba submitted after the hearing on Ifediba's fee and expense request.

In this case, Ifediba submitted, after the hearing in the trial court in this case directed to the lien issue (and after Melissa Renee Staffney's replacement counsel had supplied a proposed form order based upon the

[3]I do so notwithstanding the fact that Rule 52(a), Ala. R. Civ. P., requires statements of findings of fact and conclusions of law only "when required by statute" and that, consistent with that rule, an appellate court will not generally require such statements unless statutes specifically require them. See McElheny v. Peplinski, 66 So. 3d 274, 280 (Ala. Civ. App. 2010).

events of that hearing),[4] an itemization of 233.15 hours of time expended with respect to his involvement in case no. CV-14-900078. A review of those claimed hours indicates that only 93.1 of those hours occurred before October 17, 2014, the date on which Staffney's motion to dismiss in case no. CV-14-900078 had informed the trial court that Ifediba's representation of Staffney had been "terminated." Even those time entries -- billed by Ifediba at a uniform rate of $250 per hour -- were not unchallenged[5] by Staffney at the hearing: her replacement counsel noted, for example, that Ifediba had claimed to have required 45 minutes on multiple occasions to request medical records; that Ifediba had claimed to have required over 20 hours of travel time to meet with Staffney and/or the child's father; and that Ifediba had claimed to have expended

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[4]"The trial court has discretion in deciding whether to permit a party to reopen a case and to offer additional evidence." Wheeler v. George, 39 So. 3d 1061, 1098 (Ala. 2009). Here, the trial court expressly addressed both Ifediba and Staffney's replacement counsel at the close of the hearing and granted leave to "let you supplement any way you want to."

[5]I note that, unlike in Freeman Wrecking Co. v. City of Prichard, 530 So. 2d 235, 238 (Ala. 1988), relied upon by Ifediba, the amount and reasonableness of the claimed fees of counsel were not the subject of a stipulation of the parties in this case.

"approximately 32 and a half hours for research on a wrongful death claim" so as to generate claimed fees of $8,112.50 (whereas Staffney's replacement counsel's firm "file[d] wrongful death suits fairly routinely ... in three or four hours of attorney time").

The points made by Staffney's replacement counsel directly touch and concern the first three factors set out in Peebles v. Miley, 439 So. 2d 137, 140-41 (Ala. 1983): the nature and value of Ifediba's engagement, the expertise reasonably required, and the time consumed. Assuming that the $250-per-hour rate specified in the records of Ifediba, a Birmingham-based attorney, could properly be deemed to be a reasonable rate in rural Bibb County (which is also a Peebles factor), the trial court is not bound to award Ifediba the full amount that he claims if the tasks he performed could, for example, have been performed in less time (and even, in some instances, by laypersons).[6] Further, as to the reasonableness of Ifediba's claimed expenses (the seventh Peebles factor), the record plainly indicates

[6]Although Ifediba argues that his expert, Adedapo Tailuo Agbola, testified that, in his expert opinion, Ifediba's claimed fees were reasonable, that opinion is not conclusive on the trial court. See Williams v. City of Northport, 557 So. 2d 1272, 1273 (Ala. Civ. App. 1989).

that Ifediba was not awarded (1) a $308.93 expense for Ifediba's own motion to intervene, in which he took an adversarial position against Staffney, and (2) a $2,500 expert-witness fee that would not have been recoverable as a cost item under Alabama law absent a specific statute authorizing it (see generally Hartley v. Alabama Nat'l Bank of Montgomery, 247 Ala. 651, 656, 25 So. 2d 680, 683 (1946)). Finally, it is well settled that "[t]he trial court may rely on its own knowledge and experience in determining the value of the legal services performed and in setting the fee," Rice v. Grove Hill Homeowners' Ass'n, Inc., 113 So. 3d 659, 663 (Ala. Civ. App. 2012) (citing Spafford v. Crescent Credit Corp., 497 So. 2d 160, 162 (Ala. Civ. App. 1986)), and that principle remains viable on remand from this court.

As a final point, I would note that, in a specially concurring opinion in which three other members of this court concurred, Judge Donaldson observed that, "[i]n certain types of cases, it is completely proper and, due to limited resources allocated to the judicial branch, at times essential for the trial court to ask an attorney for a party or attorneys for all parties to prepare and submit a proposed order or judgment." D.S.H. v. E.B.H., 248

So. 3d 973, 973 (Ala. Civ. App. 2015) (Donaldson, J., concurring specially) (emphasis added). Judge Donaldson further observed that " 'a trial court's adoption of [an] order prepared by one of the parties is appropriate, so long as opposing counsel are furnished with a copy of the proposed order prior to its entry.' " Id. (quoting General Motors Acceptance Corp. v. City of Red Bay, 825 So. 2d 746, 749 (Ala. 2002)) (emphasis added in D.S.H. removed). However, notwithstanding those observations about the general propriety of trial-court practices of soliciting and incorporating proposed orders and judgments, the facts and holding of this case send a clear message to the bar of this state that, when proposed orders and judgments are requested, a party's counsel ideally should withhold the submission of a proposed order or judgment to the trial court until after the evidentiary record upon which that court is to base its decision has been completely closed; if, however, that proves impossible, counsel should monitor all filings in a case following the submission of a proposed order or judgment and should be prepared to submit an amended proposed order or judgment in response to subsequent filings. The penalty that counsel's client might suffer as a result of any breach of such alternate duties of

perfect timing or constant vigilance could well be reversal on purely formal grounds, as has occurred here.

FRIDY, Judge, concurring in part and concurring in the result.

I concur in the court's reversal of the trial court's judgment. I agree with that part of the opinion that concludes that the trial court, in its judgment, misstates the evidence that was actually before it to such an extent as to call into question its ultimate determination. I am precluded from joining the remainder of the court's reasoning, however, by the plain language of Rule 52(a), Ala. R. Civ. P., which requires a trial court to issue findings of fact and conclusions of law only when a statute commands it to do so.