IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ANDREW A. COATES, ET AL.	:	NO. 2018-16878
	:	Superior Court No.: 365 EDA 2021
vs.	:	
	:	
WILLIAM SALMON, JR.	:	

OPINION

SALTZ, J. **June 23, 2021**

I. STATEMENT OF THE CASE

Defendant William Salmon, Jr., Esquire, engaged Plaintiffs Andrew A. Coates, Esquire, and his law firm, Coates & Coates, P.C., to handle an appeal from the denial of Medicaid coverage for the nursing home fees of Defendant's father, William Salmon, Sr. (To avoid confusion, Defendant William Salmon, Jr., is referred to as "Mr. Salmon" and William Salmon, Sr., as "Father.") After achieving a successful result, Plaintiffs sent Mr. Salmon a bill for legal services, which Mr. Salmon has refused to pay. At a nonjury trial, Mr. Salmon contended, among other defenses, that Father, and not Mr. Salmon, is solely liable for payment for Plaintiffs' legal services. Plaintiffs countered that under the doctrine of filial responsibility, which would have rendered Mr. Salmon personally liable for payment of Father's nursing home fees, Mr. Salmon was the beneficiary of Plaintiffs' legal services and would therefore be unjustly enriched if not held liable for payment. The Court rendered a Decision in favor of Plaintiffs and against Mr. Salmon for $7,606.64. Mr. Salmon has appealed, prompting this Opinion.

The evidence showed that Father was admitted to Silver Lake Nursing Home ("the Nursing Home") in Bristol, Bucks County, on September 17, 2014. Because Father was indigent, the Nursing Home sought payment through the Medical Assistance (Medicaid) Long

Term Care program. Mr. Salmon, who held a written Power of Attorney for Father, dealt with the Bucks County Assistance Office of the Department of Human Services ("the County Assistance Office") in its investigation of Father's eligibility for Medicaid coverage. The County Assistance Office raised the concern that during the applicable 60-month lookback period, Father had transferred substantial sums of money to his two sons, including Mr. Salmon, and it inquired whether any fair consideration had been provided for these transfers. Mr. Salmon responded that the transfers represented loan repayments and payment for legal services that Mr. Salmon had provided to his Father. The County Assistance Office found Mr. Salmon's response and supporting documentation to be inadequate, and in September 2015, it assessed a penalty of $86,786 for assets transferred without fair consideration. This penalty resulted in a denial of reimbursement for 296 days of Nursing Home fees.

Following this ruling, counsel for the Nursing Home contacted Mr. Salmon to urge him to engage an attorney practicing in the field of Medicaid long-term care eligibility, and she recommended Mr. Coates. On or about October 16, 2015, Mr. Salmon met with Mr. Coates, and Mr. Salmon engaged Mr. Coates to pursue appeals from the penalty. During the meeting, Mr. Coates explained to Mr. Salmon that if the penalty was upheld, Mr. Salmon could be held personally liable to the Nursing Home for the shortfall in payment pursuant to the legal doctrine of filial responsibility. (Tr. at 68.) He advised Mr. Salmon to obtain a letter from Father's physician, stating that at the time of the transfers by Father, he was in reasonably good health and it was not foreseeable that he would require nursing home care. This letter, Mr. Coates advised, could be used to show that the transfers were not made in anticipation of applying for Medicaid. (Tr. at 33-34.) Mr. Salmon signed a Limited Power of Attorney and Authorization, in the name of "William Salmon, Jr., Agent for William Salmon," authorizing Mr. Coates to

proceed. (Ex. P-1.) He also gave Mr. Coates a check, drawn on "William Salmon, Esquire / Attorney at Law," for a $500 consultation fee. (Ex. P-1 (capitalization altered).)

Mr. Coates did not, either at the initial meeting or thereafter, provide to Mr. Salmon a written statement of the basis or rate of the fees he would charge. At trial, Mr. Coates acknowledged that he was required to provide such a statement but testified that he neglected to do so, in view of Mr. Salmon's status as a lawyer and the imminence of the deadline for filing the appeals. (Tr. at 21-22.)

On the same day as their initial meeting, Mr. Coates completed and filed the required appeal forms with the Department of Human Services, listing Mr. Salmon as the appealing party. (Ex. P-3 to P-5.) After receiving the requested physician letter, Mr. Coates entered into extensive negotiation with the County Assistance Office. Mr. Coates and Mr. Salmon remained in touch, to provide Mr. Coates with additional information and to discuss potential settlement of the matter. There was no direct contact between Mr. Coates and Father.

With Mr. Salmon's approval, Mr. Coates ultimately reached a settlement agreement with the County Assistance Office to reduce the penalty from $86,786 to $18,380, thus achieving a savings of $68,406. Mr. Coates drafted two Stipulations to implement the settlement and submitted them to the Administrative Law Judge assigned to hear the appeals. (Ex. P-10.) The chief ALJ approved the settlement by Order dated February 4, 2016. (Ex. P-11.)

All parties were satisfied with this settlement, including the Nursing Home. If the appeals had been unsuccessful, counsel for the Nursing Home, in accordance with her usual practice, would have consulted with the Nursing Home about pursuing payment of the denied reimbursement from Mr. Salmon on a claim of filial responsibility. In view of the 79% reduction in the penalty achieved by Mr. Coates and the small amount of penalty remaining, the Nursing

Home elected not to pursue the matter further. As its attorney testified: "[T]he lowering of the penalty was a huge factor in my client not having me do any more." (Tr. at 120.)[1]

On May 4, 2016, Mr. Coates sent to Mr. Salmon a bill for fees in the amount of $7,605.00, reflecting an hourly rate of $325, together with costs in the amount of $1.64, for a total of $7,606.64. (Ex. P-14.)[2] This amount, together with the $500 consulting fee, was less than 12% of the $68,406 in savings obtained by Mr. Coates. The bill then applied a 15% discount on the fees as a "Professional Courtesy," leaving a balance due of $6,465.89. Mr. Salmon responded by letter dated May 6, 2016, refusing to pay the amount billed and asserting that Mr. Coates had never advised him of his hourly rate, that the rate of $325 was excessive, and that Mr. Coates's services had been defective in certain respects. The letter concluded: "I must request that you reconsider your request and modify it to something much more reasonable." (Ex. P-15.) At no point in the letter did Mr. Salmon state that the bill should have been rendered to his Father and not to Mr. Salmon himself. Nor did he state that Mr. Coates had been fully compensated for his services by the $500 consultation fee.

The parties failed to resolve the dispute, and on May 2, 2018, Plaintiffs commenced suit against Mr. Salmon before a Magisterial District Judge. From an adverse judgment, Mr. Salmon appealed to this Court. Plaintiffs' Complaint asserted two counts — Count I, "Contract," and Count II, "Quantum Meruit/Unjust Enrichment" (capitalization altered). The matter was heard by a panel of arbitrators, and Mr. Salmon again appealed from an award against him. Nonjury

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[1] At some point in this process, Father passed away — apparently soon after the Medicaid settlement was reached. The only evidence on the date of death was that it was "shortly after the conclusion of this." (Tr. at 91.)

[2] For reasons that were not explained, the bill showed the sum of $7,605.00 plus $1.64 to be $7,931.64. Plaintiffs' Complaint, however, demanded judgment for the correct total, $7,606.64, and their counsel confirmed at trial that this was the amount Plaintiffs were seeking (Tr. at 9, 186).

trial was held by videoconference on January 12, 2021. Throughout the proceedings, Mr. Salmon appeared pro se.

On January 14, 2021, the Court rendered a Decision in favor of Mr. Salmon on Count I and in favor of Plaintiffs and against Mr. Salmon on Count II in the amount of $7,606.64. Mr. Salmon appealed to the Superior Court,[3] and on February 2, 2021, he filed "Defendant's Concise Statement of Errors Complained of Pursuant to Order of Hon. Jeffrey S. Saltz, J.C.C.P. of Montgomery County, PA of 01/25/2021" ("Statement of Errors").

II. BASIS OF THE COURT'S DECISION

A. Failure to Disclose Fees in Advance

The Court found that the hourly rate charged by Mr. Coates and the number of hours expended were reasonable — findings that Mr. Salmon does not contest on appeal. Mr. Coates did not, however, disclose in advance the basis for the fees he would charge. This failure was a violation of Rule 1.5(b) of the Pennsylvania Rules of Professional Conduct, which provides: "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." Plaintiffs did not deny the violation but rather asserted that the violation did not preclude the recovery of reasonable fees otherwise due for legal services provided. The Court agreed.

[3] On January 22, 2021, the same day as he filed his Notice of Appeal, Mr. Salmon also filed two motions — "Defendant's Motion for Reconsideration of Court Order of January 14, 2021 Entered by Honorable Jeffrey S. Saltz" and "Motion for Entry of Judgment Notwithstanding the Verdict of Hon. Jeffrey S. Saltz on January 14, 2021 or for a New Trial." Because of an administrative error, no action was taken on these motions. By Order of June 3, 2021, the Superior Court held that although the filing of the appeal was premature, the post-trial motions were now deemed denied, and it directed Mr. Salmon to perfect the appeal by filing a praecipe with this Court for entry of judgment on the Decision. Mr. Salmon filed that praecipe on June 4, 2021.

The Rules of Professional Conduct are explicitly designed as ethical, not legal, standards, which serve as the basis for disciplinary action against lawyers. They do not address the civil rights and obligations between lawyer and client. As the Preamble to the Rules states:

> Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such a duty.

Pa. R. Prof. Cond., Preamble & Scope, para. [19]; *see In re Est. of Pedrick*, 482 A.2d 215, 221 (Pa. 1984).

The limited case law on the issue is in accord. In *Loeffler Thomas P.C. v. Fishman*, No. CV 15-5194, 2016 WL 1457895 (E.D. Pa. Apr. 12, 2016), the federal district court refused to dismiss a law firm's claim against its clients for recovery of legal fees on the basis of the firm's failure to provide a written fee letter in accordance with Rule 1.5(b). Quoting from the language of the Preamble set forth above, the court held that the clients' argument "fails as a matter of law because compliance with the Pennsylvania Rules of Professional Conduct merely gives rise to disciplinary action against an attorney. It does not create separate claims or defenses to claims." *Id.* at *9. In *Levit v. Kutcher*, 28 Pa. D. & C.4th 14 (C.C.P. Phila. 1996), the court, assessing a similar defense, stated: "Preliminarily, we note that the rules in the Code of Professional Responsibility are 'not mandatory laws,' rather, the rules regulating fees, like other rules in the

code, represent 'ethical considerations . . . .'" *Id.* at 21 (quoting *Eckell v. Wilson*, 597 A.2d 696, 698 n.3 (Pa. Super. 1991)).[4]

Although there is no binding precedent on this specific issue, this Court agrees with these persuasive opinions. Plaintiffs' violation of Rule 1.5(b) is therefore not a basis for denying recovery of reasonable charges for their legal services.

B. Recovery in Quantum Meruit

While the violation of Rule 1.5(b) did not bar a recovery by Plaintiffs, the absence of any agreement on the amount of compensation did affect the form of action under which Plaintiffs could recover. As our Supreme Court has explained: "When one contracts for the services of another and receives and accepts those services, but without specifying what the compensation shall be, a recovery for the value of the services must be by an action on a quantum meruit." *Lach v. Fleth*, 64 A.2d 821, 825 (Pa. 1949), *quoted in Shafer Elec. & Const. v. Mantia*, 96 A.3d 989, 992 n.3 (Pa. 2014). That is precisely what happened in this case. Mr. Salmon engaged Mr. Coates to file and pursue appeals from the penalty that had been imposed by the County Assistance Office, and Mr. Coates rendered the services for which Mr. Salmon had engaged him. But the engagement was entered "without specifying what the compensation shall be." *Id.* Under these circumstances, as held in *Lath*, Plaintiffs' recovery must be "by an action on a quantum meruit." *Id.* For this reason, the Court ruled in Mr. Salmon's favor on Count I, for breach of contract, but against him on Count II, for quantum meruit.

Mr. Salmon contended, however, that any claim in quantum meruit could be asserted only against his Father, and not against Mr. Salmon personally. The argument was that Father

[4] The *Levit* court ultimately disposed of the issue by holding that even if noncompliance with Rule 1.5(b) could be asserted as a defense to the recovery of legal fees, the lawyer in that case had substantially complied with Rule 1.5(b).

was liable to the Nursing Home for any services not reimbursed by Medicaid and Father was therefore the sole beneficiary of the substantial reduction in the penalty. It is true that to establish a claim in quantum meruit against Mr. Salmon, Plaintiffs were required to show that he benefited from Mr. Coates's services. "A cause of action in quasi-contract for *quantum meruit,* a form of restitution, is made out [only] where one person has been unjustly enriched at the expense of another." *Mitchell v. Moore*, 729 A.2d 1200, 1202 n.2 (Pa. Super. 1999), *quoted in Shafer Elec. & Const. v. Mantia*, 96 A.3d 989, 992 n.3 (Pa. 2014). Plaintiffs clearly met that requirement, however, because Mr. Salmon himself would have been liable to the Nursing Home for the $86,786 penalty if it had not been successfully diminished by Mr. Coates.

The doctrine of filial responsibility is codified in section 4603(a)(1)(ii) of the Domestic Relations Code, 23 Pa. C.S. § 4603(a)(1)(ii). Section 4603(a)(1) provides:

> Except as set forth in paragraph (2) [not applicable here], all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge:
>
> . . . .
>
> (ii) A child of the indigent person. . . .

23 Pa. C.S. § 4603(a)(1).

This provision and its predecessor statute[5] have been repeatedly cited as authorizing a suit by a nursing home or other medical provider to recover fees for the care of an indigent patient from the patient's adult child with the means to make payment. *See Health Care & Ret. Corp. of Am. v. Pittas*, 46 A.3d 719 (Pa. Super. 2012); *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066 (Pa. Super. 2003); *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181 (Pa. Super. 1968); *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 118 A.2d 271 (Pa. Super. 1955). It

[5] Section 4603 substantially recodified section 3 of the former Support Law, 62 P.S. § 1973 (repealed 2005).

is thus clear that without the reduction of the penalty to a relatively trivial sum, Mr. Salmon would have been liable for — or, at the least, substantially at risk of liability for — the amount of Nursing Home fees denied by Medicaid.

Further, the imposition of liability on Mr. Salmon in quantum meruit is fully consistent with principles of equity. The evidence clearly showed that Mr. Salmon, in engaging Plaintiffs' services, understood his obligation to pay for those services. There is no question that Father was indigent: that is why Mr. Salmon sought Medical Assistance for him in the first place. Mr. Salmon paid the $500 consultation fee to Mr. Coates from his own funds, not his Father's.[6] During the initial consultation, Mr. Coates explained to him his likely liability under the principle of filial responsibility. (Tr. at 68.) And, most significantly, in Mr. Salmon's letter of May 6, 2016, responding to Plaintiffs' bill, he disputed the reasonableness of Mr. Coates's fees and the quality of his services, but he never suggested that Plaintiffs were billing the wrong person. (Ex. P-15.) To be clear, the Court did not consider the failure to mention this issue in the letter to constitute a waiver by Mr. Salmon. But it was compelling evidence that Mr. Salmon understood his responsibility to pay Plaintiffs' legal fees and that his later contention that only his Father was responsible was a *post hoc* excuse for his unwillingness to pay.[7]

[6] As noted, the $500 check identified the account as "William Salmon, Esquire / Attorney at Law." (Ex. P-1.) Nothing on the check indicated that it was a fiduciary account, nor did Mr. Salmon testify that it was such an account. During closing argument, Mr. Salmon asserted, without any evidentiary basis, that the account consisted solely of his parents' funds. The Court foreclosed further explanation, as the evidentiary record had been closed. (Tr. at 194-95.)

[7] The Court also determined that in view of Mr. Salmon's refusal to pay the bill, the 15% discount for "Professional Courtesy" was not applicable. Mr. Salmon has not challenged this determination as a basis for appeal.

III. ERRORS ASSERTED ON APPEAL

With this background, the numerous issues set forth in Mr. Salmon's Statement of Errors — eighteen numbered paragraphs in all — need be only briefly addressed. Most of the issues are stated in a highly prolix and often incoherent manner. They are quoted verbatim below.

1. *"The Court erred in deciding to award equitable relief when there existed an obvious, clear and comprehensive cause of action available to Plaintiff under contract and at law, admitted by the Court's order in favor of Defendant on County One sounding in contract, thereby depriving the Court of the discretion to award damages in equity as it did."*

It is difficult to understand the point that is being made. The Court held that Plaintiffs did *not* have a cause of action under Count I, because no agreement was reached on the basis of fees to be paid for Mr. Coates's services. That is why the Court found in favor of Mr. Salmon on Count I but held him liable in quantum meruit under Count II. As noted above, "When one contracts for the services of another and receives and accepts those services, but without specifying what the compensation shall be, a recovery for the value of the services must be by an action on a quantum meruit." *Lach v. Fleth*, 64 A.2d 821, 825 (Pa. 1949).

2. *"The Court erred by failing to find that the Plaintiff sued the wrong party, this Defendant, who at all material times admittedly by both parties acted solely upon the basis of his status as attorney in fact pursuant to the Power of Attorney given him by his now deceased father which the trial judge concluded in its findings of fact number 2."*

As discussed above, while Mr. Salmon held a Power of Attorney for his Father, he also benefited personally from the services provided by Mr. Coates.

3. *"The Court erroneously ignored clear Pennsylvania jurisprudence which contains a doctrine of the Election of Remedies. When a full and complete remedy at law is available to a litigant, there is no discretion which lies with the Court to instead make an award under the count sounding in equity to the litigant who failed to prove a contract, knew his legal rights by being represented by counsel, carried his case to a conclusion, and obtained a decision on the issues involved, a decision argued by Defendant to have been the wrong decision, as Plaintiff's adoption by an unequivocal act of one of two or more inconsistent remedial rights has the effect of precluding a result to others.* Wedgewood Diner, Inc. v. Good, *534 A.2d 537, Pa.Super.Ct. (1987)."*

Our Supreme Court has recently addressed the doctrine of election of remedies as follows:

> [O]ur Rules of Civil Procedure expressly allow the pleading of alternative causes of action, and further permit liberal amendment of pleadings in order to secure a proper determination of the merits. Accordingly, *a party may generally simultaneously plead and attempt to prove alternative causes of action seeking damages through inconsistent remedies supported by the same factual scenario. . . .*
>
> However, the substantive application of the election of remedies doctrine operates to bar windfall judgments or otherwise duplicative recoveries resulting from a single injury; although *such inconsistent remedies may be pleaded and pursued in litigation*, damages calculated pursuant to only one theory may be recovered.

Gamesa Energy USA, LLC v. Ten Penn Ctr. Assocs., L.P., 217 A.3d 1227, 1239 (Pa. 2019) (emphasis added) (citations omitted). Under these principles, Plaintiffs were permitted to plead and pursue the inconsistent remedies of breach of contract and quantum meruit, so long as they were not awarded "windfall judgments or other duplicative recoveries." *Id.* No such award was granted here.

Further, the case of *Wedgewood Diner, Inc. v. Good*, cited by Mr. Salmon, is inapt. As the Supreme Court explained, *Good* stands for the proposition that a "plaintiff recovering breach of contract damages against one defendant was barred from pursuing rescission of the same

contract against a second defendant." *Id.* (citing *Wedgewood Diner, Inc. v. Good*, 534 A.2d 537 (Pa. Super. 1987)).

> 4. *"The Court erroneously found that while it was of record and in the trial testimony, evidence, and the trial judge's conclusions of law at #1 and #2 that the Plaintiff was found by the Disciplinary Board of having failed to enter into representation with a simultaneous written agreement for representation with Defendant, for whom Plaintiff had never provided prior representation, that such finding did not in itself preclude the lawyer from recovering fees for services provided, erroneous, because that rule violation was never argued by Defendant to 'give rise to a cause of action against a lawyer ... ' and did not argue that it created 'any presumption in such a case that a legal duty has been breached.' Pa.R.Prof.C. Preamble, arguing to the contrary that Plaintiff sued the wrong party and, as found by the trial judge, failed to prove any form of contract."*

The law that failure to provide the client an advance written statement of the basis for a lawyer's fees does not in itself bar the lawyer from recovering reasonable fees is discussed above and requires no further elaboration. But Mr. Salmon's reference to the Disciplinary Board does warrant additional comment. During his testimony as a witness, Mr. Salmon stated: "And the absence of a fee agreement resulted in a complaint that I filed with the disciplinary board, which Mr. —." (Tr. at 133.) At this point, counsel for Plaintiffs objected. Mr. Salmon responded that evidence of action by the Disciplinary Board was relevant on the matter of unclean hands. The following colloquy then occurred:

> THE COURT: All right. It seems to me that if you have evidence of unclean — of conduct by the plaintiff that constitutes unclean hands that you can present that evidence. But I don't follow what your complaint to the disciplinary board has to do with that.
>
> [MR. SALMON]: They documented it and they found that it was true.
>
> [COUNSEL FOR PLAINTIFFS]: Objection, Your Honor.
>
> . . . .

[MR. SALMON]: . . . . I'm saying that there is a rule of professional responsibility, Rule 1.5. It requires that when an attorney is —

THE COURT: I understand what the rule is. We're focused now on your —

[MR. SALMON]: I'm just saying.

THE COURT: — disciplinary board.

[MR. SALMON]: *Forget the disciplinary board.* The fact is there was no fee agreement.

THE COURT: All right.

[MR. SALMON]: Any attorney could read that rule and see that it's been violated. It just didn't require any further action. *So I withdraw any mention of the — I don't think it's necessary for the Court to take into consideration anything they did.* [Tr. at 134-36 (emphasis added).]

Except for the brief statement quoted above, no evidence was offered at trial that the Disciplinary Board made any finding of a violation by Mr. Coates. Having expressly abandoned any reliance on any action by the Disciplinary Board — which was not proved in any event — Mr. Salmon is clearly out of line in attempting to raise the issue again on appeal.

5. *"The Court erroneously found as fact that Defendant had erred in its dealings with the Department of Human Services, by only rendering a 'lengthy handwritten list of alleged services, compiled long after the services were rendered which was contrary to the weight of evidence wherein offered and admitted into evidence was a photograph identified by witness, Barbara Salmon, who testified to being intimately familiar with Defendant's legal services to his parents, and that a photograph offered by Defendant was a fair and accurate representation of the piles of materials and file boxes containing a large amount of material evidencing services performed in multiple legal matters for which Defendant rendered fair market value services to his parents who wished to pay for said services."*

This asserted error refers to two documents. First, Plaintiffs offered in evidence the handwritten list of legal services that Mr. Salmon had submitted to the County Assistance Office,

prior to his representation by Mr. Coates, in an effort to show that he had rendered services to his Father that constituted fair consideration for the funds transferred to him. (Ex. P-16.) The document is laughable. It is a helter-skelter listing, not in chronological order (or any discernable order for that matter), of 274 alleged items of service going back to *1999* — some identified by date, some by just the month and year, and some with no date at all. It does not appear to be based on any contemporaneously kept time records or, indeed, any records at all. The descriptions of services are general and largely uninformative. There are no time entries for less than half an hour.

This is not to say that Mr. Salmon did not provide *any* legal services to his Father. Whether or not he did so is irrelevant. Rather, the relevance of the document is to show how utterly ineffective Mr. Salmon was in attempting to persuade the County Assistance Office that he had provided fair consideration, in the form of legal services, for the funds transferred by his Father. The suspect listing of services in this handwritten document surely was viewed by the County Assistance Office not only as unconvincing, but as affirmatively bolstering the concern that the funds transfer was *not* supported by consideration. It was only when Mr. Coates was engaged, and he took the alternative tack of establishing that the funds transfer was not made in anticipation of entering the Nursing Home, that the County Assistance Office was persuaded to reduce the penalty to a fraction of the amount originally assessed.

The second document was a set of two photographs shown to Barbara Salmon, Mr. Salmon's wife, who was called as a witness in the defense case. Ms. Salmon testified that she worked as her husband's "legal assistant/paralegal." (Tr. at 168.) She characterized the photographs as showing "the pile of paperwork that we accumulated over the years" in providing services to Father. (Tr. at 170.) The document was emailed to the Court by Mr. Salmon during

the trial, but it was not marked as an exhibit and was not offered in evidence.[8] In any event, the description of the photographs as showing "the pile of paperwork" was accurate. The photographs indeed showed piles of paper in several boxes, apparently assembled without any organizational principles. Mr. Salmon did not testify that the photographs were submitted to the County Assistance Office, and even if they had been, they would have been no more persuasive than the handwritten list on the issue of showing fair consideration for the funds transfer.

6. *"The aforesaid finding of fact was also irrelevant to the existence of any contract between the parties or entitlement of the Plaintiff for the fees demanded."*

The failings of Mr. Salmon in dealing with the County Assistance Office were relevant to the determination that Plaintiffs' services conferred a benefit on him, as Mr. Salmon showed himself to be ill equipped to contest the penalty on his own. Further, Mr. Salmon did not object to Plaintiffs' evidence relating to his handling of the matter, and he offered his own evidence on the subject as well.

7. *"While the trial judge found that Defendant's tally of services provided was produced after the rendition of services, the judge failed to find as well that the same thing was done by Plaintiff who never billed Defendant until long after the completion of the alleged services rendered."*

Unlike the handwritten list prepared by Mr. Salmon for the County Assistance Office, Plaintiffs' bill describes the services rendered in great detail, even breaking down the time separately for multiple tasks performed on the same day. Time is recorded in tenths of an hour. Most significantly, the time entries on the bill were recorded on time sheets kept

[8] It is acknowledged that the handling of exhibits during trials by videoconference has been awkward. But Plaintiffs formally moved their exhibits into evidence at the close of their case (Tr. at 121), and Mr. Salmon was thus on notice that he needed to do the same if he wanted the Court to consider his exhibits.

contemporaneously with the services performed. (Tr. at 52.) The bill was sent less than seven months after the earliest service provided and about six weeks after the conclusion of the matter.

By contrast, the handwritten list of services prepared by Mr. Salmon has none of these characteristics. The two documents are not comparable. "In this regard, Appellan[t] [is] simply comparing apples and oranges." *D'Adamo v. Erie Ins. Exch.*, 4 A.3d 1090, 1098 (Pa. Super. 2010); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) ("[T]he law does not require that the State equally treat apples and watermelons.") (Kagan, J. dissenting).

> 8. *"The Court erroneously concluded that equitable relief was proper to be awarded to the Plaintiff based upon a legal theory of unjust enrichment, when evidence to show unjust enrichment was never produced, and to the contrary, the witness of the Plaintiff, the attorney representing the nursing home where Defendant's father was residing, testified that at no time was the said nursing home directing her to take a position that Defendant had filial responsibility to pay the nursing home to house his father, and never asked her to sue Defendant on that basis or on any other, and the nursing home at all times during pendency of the deceased's residence in the nursing home was collecting money from the deceased via his Social Security, which was apparently not so deficient as to necessitate any exposure to liability for filial responsibility on the part of Defendant, a fact ignored by the trial judge who should have taken judicial notice of the fact that payment via social security benefits is the norm."*

The attorney for the Nursing Home made clear that her client was awaiting the outcome of the appeal before taking any action against Mr. Salmon under the doctrine of filial responsibility. If the appeal had been unsuccessful, she would have consulted with her client at that time to determine what action, if any, to take. Because the Nursing Home was satisfied with the sharp reduction in the penalty achieved by the appeal, that consultation was not necessary. (Tr. at 118-20.) She concluded: "[T]he lowering of the penalty was a huge factor in my client not having me do any more." (Tr. at 120.) The success achieved by Mr. Coates's legal services thus conferred a significant benefit on Mr. Salmon in avoiding a claim by the Nursing Home to

enforce his filial responsibility — or, at the very least, in significantly lowering the risk that such a claim would be brought.

Contrary to the Concise Statement, there was no testimony that the Nursing Home was collecting money from Father through his Social Security. Even if this was the case, such funds were insufficient to cover the Nursing Home's fees. Its attorney testified that "the balance [was] still growing to my client every month, I think to the tune of about approximately $10,000. The balance continued to grow because the Medicaid application was not approved." (Tr. at 111.) Further, the use of Social Security to pay such expenses is not an appropriate matter for judicial notice, and Mr. Salmon did not make any request at trial that the Court take judicial notice.

9. *"The court erred in accepting Plaintiffs iteration of the law of filial liability as fact in the absence of any evidence to show any factual exposure to such theory, and was thus speculation at best."*

In the absence of a successful appeal, the Nursing Home would have faced a shortfall of $86,786, with no realistic source of payment other than by enforcing filial responsibility for the Father's debts. As noted above, the Nursing Home's attorney testified that the successful appeal by Mr. Coates was a "huge factor" in the Nursing Home's decision not to pursue such a claim. (Tr. at 120.) The Court's determination that Plaintiffs thus conferred a benefit on Mr. Salmon was based not on speculation but on the evidence of record.

10. *"The Court erred in failing to recognize that the Plaintiff's pleadings alleged that it had sued the Defendant solely because his now deceased father was judgment-proof, with no evidence of same ever being introduced or offered, and not because it was legally proper to sue Defendant who acted only under a power of attorney."*

A review of Plaintiffs' pleadings does not reveal any allegation that Plaintiffs had sued Mr. Salmon solely because his now-deceased Father was judgment proof.[9] In any event, the fact of Father's indigency was not contested at trial. It was the very basis for Father's eligibility for Medicaid. Further, as discussed repeatedly above, Mr. Salmon received a personal benefit (not just a benefit as attorney-in-fact for Father) from Plaintiffs' services.

11. *"The Court erred in concluding that it was irrelevant that the Disciplinary Board found that the Plaintiff had violated R.P.C. No. 1.5(b) for several reasons:*
    a. *Defendant did not rely solely upon said violation as its defense; &*
    b. *Defendant never asserted that its defense rested solely upon a breach of a legal duty of the Plaintiff."*

The absence of evidence of a finding by the Disciplinary Board is addressed fully *supra*, pp. 12-13. All defenses asserted by Mr. Salmon, not just his defense under Rule 1.5(b), were considered by the Court and rejected.

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[9] Mr. Salmon is presumably referring to paragraph 4 of Plaintiffs' Answer to Defendant's Motion for Summary Judgment (Seq. 36), in which Plaintiffs stated:

> The judgment sought in this lawsuit is against Defendant Salmon personally, not in his capacity as agent for his father who was then and was at the time of his death indigent and therefore judgment proof. Thus, it was Defendant Salmon who has perhaps received the greatest benefit of Plaintiffs' services.

Mr. Salmon did not offer this statement in evidence at trial. Even if it had been offered, the statement does not assert that Plaintiffs sued Mr. Salmon "solely because" his father was judgment proof.

12. *"The trial judge also erred in concluding at conclusion of law #6 that the Plaintiff was not guilty of unclean hands that would preclude them from recovering in the equitable side of the court based upon quantum meruit, since the United States Supreme Court has held that unclean hands is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief. Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806 (1945), and the conclusion was contrary to relevant holdings by a multitude of Pennsylvania courts."*

In *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806 (1945), the United States Supreme Court upheld the trial court's refusal to enforce patents on the basis of the patent holder's unclean hands. In doing so, the Supreme Court emphasized the broad discretion given to the trial court in applying the doctrine of unclean hands: "This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is 'not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.'" *Id.* at 815 (quoting *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245-46 (1933)). The Supreme Court found that the patents and contracts sought to be enforced were "steeped in perjury and undisclosed knowledge of perjury." *Id.* at 816. It therefore concluded that the Circuit Court of Appeals had erred in reversing the trial court's denial of relief on grounds of unclean hands.

The statement of the unclean hands doctrine in *Precision Instrument* has been repeatedly invoked by the Appellate Courts of Pennsylvania. In doing so, the Courts have emphasized that the doctrine is not to be mechanically applied but rather is subject to the discretion of the trial court to reach an equitable result. "[I]n exercising his discretion, the chancellor is free to refuse to apply the doctrine if a consideration of the entire record convinces him that an inequitable result will be reached." *Shapiro v. Shapiro*, 204 A.2d 266, 268 (Pa. 1964); *see In re Bosley*, 26 A.3d 1104, 1114 (Pa. Super. 2011) ("The application of the doctrine to deny relief is within the

discretion of the chancellor, and in exercising his discretion the chancellor is free not to apply the doctrine if a consideration of the entire record convinces him that an inequitable result will be reached by applying it.") (quoting *Stauffer v. Stauffer*, 351 A.2d 236, 245 (Pa. 1976)).

The Pennsylvania Supreme Court addressed the applicability of lawyers' ethical rules to the doctrine of unclean hands in *In re Estate of Pedrick*, 482 A.2d 215 (Pa. 1984). In that case, a lawyer, visiting his dying client in the hospital, prepared a will under which the client left his entire estate to the lawyer and the lawyer's brother. Although the lawyer later claimed that he prepared the will at his client's insistence, the lawyer's conduct was found to be in violation of Ethical Consideration 5-5 of the then-applicable Code of Professional Responsibility (predecessor to the Rules of Professional Conduct). Nevertheless, the Supreme Court held that the lawyer's "failure to live up to that Code, standing alone, would not invalidate this will" because the Code "does not have the force of substantive law." *Id.* at 217. The Court held instead that the lawyer should be denied enforcement of the will, wholly apart from his violation of the ethical rules, under the doctrine of unclean hands. "We base our holding not on [the lawyer's] violation of an Ethical Consideration of the Code of Professional Responsibility; rather, we find that [the lawyer's] conduct in this matter, when viewed on the whole record, shocks the conscience of this Court." *Id.* at 223.

Thus, under *Pedrick*, Plaintiffs' claim is not barred because of their violation of Rule 1.5(b) of the Rules of Professional Conduct. Rather, to invoke the doctrine of unclean hands, Mr. Salmon must show conduct so "tainted with inequitableness or bad faith," *Precision Instrument*, 324 U.S. at 814, that equity requires the denial of any compensation to Plaintiffs for the valuable legal services that they rendered. That is plainly not the case. To the contrary, if there is any conduct in this matter that "shocks the conscience of this Court," *Pedrick*, 482 A.2d

at 223, it is the conduct of Mr. Salmon in refusing to pay Plaintiffs for legal representation that resulted in a benefit of more than $68,000.

13. *"It was erroneous for the trial court to make the conclusion that no unclean hands had been proven when it appeared from the evidence that the Plaintiff always intended to charge more money of the Defendant without communicating that to him in any manner whatsoever, indicating deceit, unconscionability or bad faith."*

The issue of unclean hands is fully addressed above. Mr. Salmon's testimony that the $500 payment was a flat fee to cover all of Mr. Coates's services (Tr. at 126) was wholly lacking in credibility. The sum of $500 would have been a gross underpayment for the extensive services provided by Mr. Coates, and Mr. Salmon, as a lawyer, could not have thought otherwise. Further, Mr. Salmon's letter contesting the Plaintiffs' bill did not assert that they had been fully compensated by the $500 payment. (Ex. P-15.)

14. *"The trial court erred in finding a judgment in equity against the Defendant while failing to name as a co-defendant an indispensable party, William R. Salmon, Sr., whose ability to remain in the nursing home benefitted him and therefore gave him an interest in the subject of the action."*

As noted above, section 4603(a)(ii) of the Domestic Relations Code authorizes a suit for services provided by a nursing home or medical provider against the adult child of an indigent parent. *See* cases cited *supra*, p. 8. In none of these cases was the parent (or, in the case of a deceased parent, the parent's estate) named as a party. If the indigent parent is not an indispensable party in a suit by a nursing home to recover for its services, there is no reason that the parent would be indispensable in a suit by counsel for his fees in obtaining Medicaid reimbursement for the nursing home services. More generally, there appears to be no reported

case holding that on a claim for quantum meruit, all persons who were unjustly enriched must be joined.

> *15. "The Court also erred in its conclusion of law #5 that Defendant benefitted by the service provided by Plaintiffs, not only because Plaintiff wrongly argued that the evidence showed only a speculative exposure to filial liability, but because the senior Mr. Salmon sadly passed away shortly after final rendition of Plaintiff's alleged services, thereby minimizing any potential for any party pursuing claims for filial liability coupled with the plaintiff's witness' testimony, the attorney for the nursing home, that she had never notified Defendant of any such claim and that no such claim has ever been raised to the present."*

As discussed *supra*, pp. 16-17, the prospect of a suit by the Nursing Home against Mr. Salmon was real, not speculative, and such a suit was avoided by Plaintiffs' successful appeal of the Medicaid penalty. Father remained alive at the conclusion of Mr. Coates's legal services and, thus, throughout the time that that his fees were earned. If the appeal pursued by Mr. Coates had been unsuccessful, the subsequent death of Father would not have prevented a suit by the Nursing Home against Mr. Salmon. Filial liability has been enforced after the death of the indigent parent. *See Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066 (Pa. Super. 2003).

> *16. "The court erred in its conclusion of law #4 wherein based upon the case of Lach v. Fleth, 64 A.2d 821 (Pa. 1949) it concluded that 'When one contracts [which was found to be untrue in the judgment for defendant on the cause in contract] for the services of another and receives and accepts those services, but without specifying what the compensation shall be, a recovery for the value of the services must be by an action on a quantum meruit.', but in the instant matter, the election of remedies doctrine repudiates the correctness of the trial court's decision to award quantum meruit."*

In *Lach v. Fleth*, 64 A.2d 821 (Pa. 1949), an elderly woman was cared for by her son until his death. The woman asked the stepfather of her son's fiancée to care for her in place of her deceased son, and in consideration she offered to "remember" the stepfather in her will. *Id.* at 823. The stepfather accepted the offer and cared for the woman as agreed. After the woman

died intestate, the stepfather sued her estate in quantum meruit for the value of his services. The Supreme Court held that the claim properly sounded in quantum meruit: "When one contracts for the services of another and receives and accepts those services, but without specifying what the compensation shall be, a recovery for the value of the services must be by an action on a quantum meruit." *Id.* at 825.

The fact pattern in the instant case is similar. Mr. Salmon contracted for the services of Mr. Coates and accepted those services, but without specifying what the compensation would be. Mr. Coates and his firm may therefore properly recover "for the value of the services . . . by an action on a quantum meruit." *Id.*

The inapplicability of the doctrine of election of remedies is addressed *supra*, pp. 11-12.

17. "The Court erred in concluding in finding of fact #6 that Defendant paid to Plaintiff what the Court found was a "consultation fee," as the record will show no evidence to substantiate that finding."

On cross-examination by Mr. Salmon, Mr. Coates testified as follows:

Q. . . . Isn't it true that in [our initial meeting] you requested a fee?

A. I requested a consultation fee of $500. That's correct.

Q. Do you remember specifically, sitting here today, that you called it a consultation fee?

A. It's always called a consultation fee. I tell everybody that comes in this office they have to bring a consultation fee of $500.

Q. Aside from that, do you have an independent recollection, as you sit here today, that you used that phraseology at that time?

A. That's what I always use, consultation fee.

Q. That's not answering the question, though. Do you remember that you specifically said that it was a consultation fee?

A. I can't remember exactly what I said. [Tr. at 64-65.]

This evidence was sufficient to persuade the Court that Mr. Coates requested $500 from Mr. Salmon as a "consultation fee" and that Mr. Salmon understood it as such. *See also supra*, p. 21.

18. *"The Court erred in accepting the testimony of the Plaintiff, Andrew Coates, Esquire as that of an expert since the only evidence that said Plaintiff was an expert was his self-serving testimony and was not in any manner bolstered by documentation or facts worthy of admission into evidence, the said testimony not being such that it would help the trier of fact in this bench trial to understand the evidence or to determine a fact in issue as required by 225 Pa. Code Rule 702, since the only question was whether there was a contract to which the Court answered, no, or whether the Plaintiff was to be allowed quantum meruit, making the alleged self-described expertise of the said Plaintiff incapable of assisting the trier of fact to understand the either the evidence or the facts in issue."*

At the outset of Mr. Coates's testimony, his counsel asked him questions about his legal experience on issues of eligibility for Medicaid long-term care benefits. Specifically, his counsel elicited testimony that he had been qualified as an expert witness by several courts and had given lectures in the field. The following colloquy ensued:

> THE COURT: . . . I assume that Mr. Coates is being offered as a fact witness here, not as an expert witness.
>
> [PLAINTIFFS' COUNSEL]: Both. Your Honor, he is uniquely qualified, if anyone, to discuss what the rules and regulations are, and I just wanted to buttress his extensive knowledge in this field. He is probably the premier expert in this field for this kind of work, Your Honor. It is precisely pertaining to the claim that you will soon hear about.
>
> THE COURT: Well, as a party to the case with knowledge of this field, he can testify to opinions without being qualified under the expert witness rules. But go ahead. I will let you proceed as you see fit.
>
> [PLAINTIFFS' COUNSEL]: That's fine. My next question would be to offer him in the field of Medicaid long-term care nursing home benefits and eligibility requirements.
>
> THE COURT: I don't think that it's either necessary or appropriate to qualify him as an expert as we would for an independent expert, which he is not.
>
> [PLAINTIFFS' COUNSEL]: Okay.

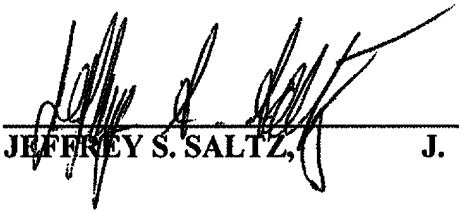
THE COURT: But I think you've laid a foundation that would permit him to explain the nature of the services that he provided. [Tr. at 16-17.]

It is therefore clear that the Court did not regard Mr. Coates as an expert witness under Rule 702 of the Pennsylvania Rules of Evidence. In any event, Mr. Coates testified to his extensive qualifications and experience in the field of Medicaid long-term care eligibility. (Tr. at 14-16.) Further, Mr. Salmon did not object to any of Mr. Coates's testimony on the ground that he was testifying to an opinion regarding Medicaid law that he was not qualified to give.[10]

IV. CONCLUSION

Mr. Salmon engaged the services of Mr. Coates and his firm to pursue an appeal of the Medicaid penalty assessed against Mr. Salmon's Father. As a result of Mr. Coates's legal services, the penalty was reduced by more than $68,000, and on this basis the Nursing Home did not assert a filial liability claim against Mr. Salmon. The Court therefore determined that Plaintiffs were entitled to recover the modest sum of $7,606.64 from Mr. Salmon for the services performed.

BY THE COURT:



JEFFREY S. SALTZ, J.

[10] In his own testimony, Mr. Salmon stated that he objected to any testimony of Mr. Coates regarding his hourly rate, since "he was not qualified as an expert on legal fees." (Tr. at 165.)

efiled on 6/23/21
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