

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0427**

In the Matter of the Appointment of Trustee  
for the Next of Kin of Kim Marie Caswell (Decedent).

**Filed December 11, 2017  
Affirmed  
Halbrooks, Judge**

Dakota County District Court  
File No. 19HA-CV-16-93

L. Kathleen Harrell-Latham, Loop Legal PLLC, Minneapolis, Minnesota (for appellant Jonathan Albert Caswell)

J. Mark Catron, Hansen Dordell Bradt Odlaug & Bradt, PLLP, St. Paul, Minnesota (for respondent Palmer Law Firm)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

**S Y L L A B U S**

When a valid contract exists between a client and an attorney and the attorney completes the work under the terms of the contract and achieves a settlement or recovery, the attorney is entitled to fees under the terms of the contract and does not release his attorney lien under Minn. Stat. § 481.13, subd. 1 (2016), by returning the settlement check to the insurance company pending resolution of a fee dispute.

**O P I N I O N**

**HALBROOKS, Judge**

Appellant challenges the district court's judgment granting respondent one-third of appellant's uninsured-motorist settlement for attorney fees. Appellant argues that the

retainer agreement is unenforceable or void and that respondent released his attorney lien by returning the settlement check to the insurance company, as instructed by appellant, when a fee dispute arose. We affirm.

## **FACTS**

Appellant Jonathan Caswell retained attorney Craig Erickson to represent the estate of his wife, Kimberly Caswell, after she died in a motor-vehicle accident. Because Erickson did not have experience handling personal-injury claims, he referred Caswell to Palmer Law Firm to handle potential personal-injury claims arising from his wife's death. Caswell met with Erickson, Erickson's paralegal, and two attorneys from Palmer Law Firm—Eric Palmer (Palmer) and Ralph Palmer. During the meeting, Palmer discussed potential personal-injury claims with Caswell. At some point, Caswell asked Palmer whether anything would come off his "end." Palmer replied, "No," and stated that Caswell did not have to pay any fees because the representation agreement was on a contingency basis. Palmer sat next to Caswell and went line by line through the retainer agreement, which stated, "Sources of recovery may include, but are not limited to, insurance policies (including liability, uninsured and underinsured motorist, no-fault, and homeowner's coverage) . . . ." Caswell signed the retainer agreement at the end of the meeting. The signed agreement, which is part of the record, shows that Palmer circled "33.333%" and underlined relevant portions of the "possible sources of recovery" section.

After exploring possible claims and discovering that the driver who hit Caswell's wife's vehicle was uninsured, Palmer Law Firm asserted an uninsured-motorist claim with Caswell's insurer that was ultimately settled for \$250,000—the policy limit. Palmer Law

Firm notified Caswell upon receiving the settlement check and explained that, pursuant to the retainer agreement, the firm was entitled to attorney fees of one-third of the insurance proceeds in addition to costs. Caswell became upset about the fees and ordered Palmer Law Firm to return the check to his insurance company and terminated his attorney-client relationship with Palmer Law Firm. As instructed, Palmer Law Firm returned the check to the insurance company and filed a notice of withdrawal and notice of attorney lien. Caswell petitioned the district court to distribute insurance proceeds and asked the district court to allocate the \$250,000 among himself and his three children.

As an interim step, the district court ordered Caswell's insurance company to distribute two-thirds of the proceeds on a pro rata basis to Caswell and his three children and to hold one-third plus costs in a trust account pending the resolution of the motion for attorney fees. The district court held a hearing and heard testimony from Caswell, Palmer, Ralph Palmer, Craig Erickson, and William Sherry, the criminal defense attorney who represented the at-fault driver. Among other exhibits, the district court received into evidence the retainer agreement and affidavits from Erickson, Sherry, and Palmer. Following the hearing, the district court ordered Caswell to pay Palmer Law Firm one-third of the settlement proceeds plus costs of \$492. This appeal follows.

## **ISSUES**

- I. Is the retainer agreement unenforceable because of a mutual or unilateral mistake of the parties?
- II. Did Palmer Law Firm release its lien by returning the settlement proceeds to the insurance company after it achieved a settlement?

## ANALYSIS

### I.

Caswell argues that the district court erred because it did not find the retainer agreement unenforceable based on either a mutual or unilateral mistake. Rescission of a contract is an equitable remedy and is within the sound discretion of the court. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 779 N.W.2d 865, 872 (Minn. App. 2010), *aff'd*, 795 N.W.2d 855 (Minn. 2011). We will only reverse if the district court clearly abused its discretion. *Id.*

Caswell first asserts that the retainer agreement is unenforceable because the parties were mutually mistaken as to the contract's terms regarding attorney fees. A contract may be rescinded if "both parties were mistaken with respect to facts material to the agreement." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011) (quotation omitted). Caswell must clearly show that both parties misunderstood a term or subject matter of the contract. *See Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. App. 1987). The district court determined that no mutual mistake occurred here. The district court further found that Palmer considered Caswell's uninsured-motorist coverage one of the sources of recovery. Caswell does not cite any factual support in the record to demonstrate that Palmer Law Firm was mistaken as to the contract's terms. Therefore, Caswell's argument is unfounded.

Alternatively, Caswell contends that the contract is unenforceable because he was unilaterally mistaken as to the contract's terms. The existence of a unilateral mistake "is not a basis for rescission unless there is ambiguity, fraud, [or] misrepresentation." *Speckel*

by *Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985). Caswell asserts that, when he asked at the initial meeting whether anything would be taken off of his “end,” Palmer replied, “No,” and stated that Caswell did not have to pay any fees because the representation agreement was on a contingency basis.

But the district court found credible Palmer’s testimony that he talked with Caswell about uninsured- and underinsured-motorist claims and that Palmer interpreted “[Caswell’s] question regarding taking nothing from his ‘end’ [to mean] that [Caswell] would not need to advance any fees or costs to the Palmer Law Firm.” The district court noted that Palmer’s testimony about the parties’ discussion concerning potential uninsured- and underinsured-motorist claims was corroborated by Erickson.

The district court determined that Caswell was unilaterally mistaken about the terms of the retainer agreement because Caswell believed that his uninsured-motorist coverage would not be a source of recovery but that this misunderstanding was not accompanied by any “fraud or misrepresentation on the part of the Palmer Law Firm” and that “there was no evidence presented that shows any threat of force or actual force was carried out against [Caswell] in order to gain his involuntary consent to the Retainer Agreement.” The district court noted that Palmer sat next to Caswell as Palmer went through the agreement with him paragraph by paragraph for ten minutes, explained all terms in the retainer agreement, and provided Caswell with a copy of the signed agreement before he left. The district court also discussed that after their initial meeting, Caswell mentioned to Palmer that he was unhappy with Erickson’s attorney-fee arrangement for the estate claims. Palmer used this

opportunity to again explain how their retainer agreement worked. Caswell did not discuss any concerns regarding Palmer Law Firm's fees during this conversation.

The district court's finding that no fraud or misrepresentation accompanied Caswell's unilateral mistake is well-supported by the record. Erickson, the attorney for the estate who attended the meeting, testified that he believed that Palmer's explanation of the attorney-fee agreement was "complete and very professional." Palmer testified that he "felt it was important to connect with [Caswell], sit down next to him, go through the retainer agreement on a paragraph by paragraph basis" and that Palmer "circled 33.333 percent . . . [and] discussed with him the contingency fee [they] were entering into on this representative relationship." The signed contract in the record includes these markings.

Although Caswell has not argued that the retainer agreement is ambiguous, we also conclude, based on the district court record, that Caswell's unilateral mistake was not a result of ambiguity. The second paragraph on the first page of the retainer agreement states, "ATTORNEY FEES . . . Palmer Law Firm's attorney fees shall be 33.333% of the total amount recovered on Client's behalf, plus any applicable state and federal taxes." The third paragraph states, "Sources of recovery may include, but are not limited to, insurance policies (including liability, uninsured and underinsured motorist . . . coverage) . . . ." This language clearly explains that Palmer Law Firm is entitled to 33.333% of Caswell's recovery from his uninsured-motorist claim. The district court also relied on Palmer's testimony that his goal in producing the retainer agreement was to use plain language and he included examples in the retainer agreement demonstrating how attorney fees, litigation costs, penalties, and net settlements would be calculated. And the district court noted that

Sherry testified that Palmer Law Firm used plain language in the retainer agreement and that the agreement was “thorough and complete.” Additionally, Erickson stated in his affidavit that Palmer’s explanation of the agreement to Caswell “was at least as detailed as any other explanation [he had] heard tort lawyers give under similar circumstances.” Therefore, the district court record demonstrates that Caswell’s unilateral mistake was not accompanied by ambiguity.

The parties were not mutually mistaken as to the contract’s terms, and Caswell’s unilateral mistake was not accompanied by ambiguity, fraud, or misrepresentation. The district court did not abuse its discretion by finding the retainer agreement to be enforceable.

## II.

We next address Caswell’s claim that the district court erred as a matter of law by determining that Palmer Law Firm did not release its attorney lien by returning the settlement check for uninsured-motorist benefits to Caswell’s insurer. The interpretation of an attorney-lien statute is a question of law that we review de novo. *Effrem v. Effrem*, 818 N.W.2d 546, 549 (Minn. App. 2012). Minnesota’s attorney-lien statute states that “[a]n attorney has a lien for compensation whether the agreement for compensation is expressed or implied . . . upon the . . . commencement of the proceeding.” Minn. Stat. § 481.13, subd. 1(a)(1) (2016); see *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 420 (Minn. App. 2008). An attorney lien attaches to “the interest of the attorney’s client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or

proceeding.” Minn. Stat. § 481.13, subd. 1(a)(2) (2016). Thus, the attorney has a lien on any recovery secured by a client resulting from the attorney’s services as security for attorney fees. *Thomas A. Foster & Assocs., LTD v. Paulson*, 699 N.W.2d 1, 5 (Minn. App. 2005). If an express, written agreement for the attorney-client relationship exists, the amount of the attorney lien is determined by interpreting that agreement. *Dorsey*, 749 N.W.2d at 418.

Here, the attorney lien was created on November 3, 2015, the date that Caswell and Palmer signed the retainer agreement. In the first two paragraphs, the agreement unequivocally states that Palmer Law Firm would represent Caswell for claims arising from the “[w]rongful [d]eath claim of Kimberly Caswell, resulting from [a] 10/24/15 motor vehicle accident” and that, in addition to litigation expenses, the attorney fees would equal “33.333% of the total amount recovered.” Palmer Law Firm recovered a \$250,000 settlement from Caswell’s uninsured-motorist policy, a claim arising out of the motor-vehicle accident. Based on the terms of the agreement, Palmer Law Firm had an attorney lien for 33.333% of \$250,000 and related litigation expenses.

As an alternative argument to his claim that the fee agreement is unenforceable, Caswell asserts that Palmer Law Firm released its lien when Caswell terminated the attorney-client relationship and ordered Palmer Law Firm to return the check to his insurer. A client may discharge an attorney with or without cause and employ new counsel. *Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. v. Nartnik*, 439 N.W.2d 418, 420 (Minn. App. 1989). But a client is liable for payment of services rendered upon discharging an attorney. *Id.* In *Trenti*, we held that a client who terminated his attorney-

client relationship *before* the attorney recovered anything for the client was responsible to pay the reasonable value of the attorney's services but was not liable for a contingent fee, reasoning that the contingency-fee agreement terminated when the client terminated the attorney-client relationship. *Id.* at 421. But this case is distinguishable from *Trenti*. Here, Caswell ordered Palmer Law Firm to return the settlement check and terminated the attorney-client relationship *after* the recovery had been achieved and the insurance company had issued the check for the policy limit of \$250,000.

Caswell cites no Minnesota authority in support of his argument that a law firm releases its lien by returning a settlement check. The district court found that Palmer Law Firm did not release its lien, reasoning that such a holding would end the incentive for attorneys to take contingency-fee cases in similar situations. The district court noted that, under Caswell's argument, a client could hire an attorney on a contingency-fee basis to achieve a settlement, terminate the attorney-client relationship just before the funds were distributed, and then hire an attorney on an hourly basis to distribute the funds. Meanwhile, the attorney who advanced expenses, worked on the client's case at the expense of other cases, and risked the possibility of no recovery for the client could end up being paid far less than the agreed-upon percentage of any money recovered. The district court concluded that this would "lead to an absurd result and would dramatically change the way attorneys take cases and receive payment for their time and expertise." We agree. When a valid attorney-fee contract exists between a client and an attorney and the attorney completes the work under the contract's terms and achieves a settlement or recovery, the attorney is entitled to recover a fee under those terms. This reasoning is consistent with the purpose

of attorney liens, which is to protect against “a successful party receiving a judgment secured by an attorney’s services without paying for those services.” *Paulson*, 699 N.W.2d at 5.

Here, Palmer Law Firm and Caswell signed a valid retainer agreement, and Palmer Law Firm successfully settled an uninsured-motorist claim with Caswell’s insurer before Caswell terminated the attorney-client relationship. Palmer Law Firm’s lien attached to any recovery from the uninsured-motorist claim when the agreement was signed. And Palmer Law Firm did not release its lien by returning the check post-settlement to the insurer upon Caswell’s request. Accordingly, pursuant to the terms of the retainer agreement, Palmer Law Firm is entitled to one-third of the uninsured-motorist settlement plus its costs of \$492.

## **D E C I S I O N**

Because the parties to this retainer agreement were not mutually mistaken as to its terms and because Caswell’s unilateral mistake was not accompanied by ambiguity, fraud, or misrepresentation, the district court did not err by determining that the agreement is enforceable. Further, Palmer Law Firm is entitled to recover under the terms of the retainer agreement because it did not release its lien when it returned the settlement check to the insurance company at Caswell’s request, pending resolution of the fee dispute.

**Affirmed.**