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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0846**

Faricy Law Firm, PA,
Appellant,

vs.

API, Inc. Asbestos Settlement Trust, Respondent.

**Filed December 2, 2019
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CV-15-4245

John H. Faricy, Jr., Faricy Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Justin P. Weinberg, Adam G. Chandler, Briggs and Morgan, P.A., Minneapolis, Minnesota
(for respondent)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this appeal from judgment on an attorney lien following a previous remand, appellant-law firm challenges the district court's award of attorney fees recoverable under a theory of quantum meruit. We affirm.

FACTS

This appeal arises out of an attorney-fee dispute between appellant-law-firm Faricy Law Firm PA (Faricy)¹ and respondent API Inc. Asbestos Settlement Trust (the API Trust). The API Trust's predecessor, API, retained Faricy to represent it in asbestos-related litigation in 2002. Faricy represented API and the API Trust on various matters between 2002 and 2012, including a civil action against Home Insurance Company and, later, the Home liquidator. A full description of the facts may be found in *Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652 (Minn. 2018). In August 2012, the API Trust terminated Faricy's legal services and paid Faricy for all work completed through the spring of 2012, pursuant to the terms of the parties' contingent-fee retainer agreement. In November 2012, the API Trust reached a final, binding settlement with the Home liquidator for \$21,500,000. Faricy demanded a contingency-fee payment of one-third of the API Trust's settlement with the Home liquidator. The API Trust declined to pay Faricy the requested contingency fee.

Faricy filed an attorney-lien petition seeking to recover one-third of the payment from the Home liquidator to the API Trust. The district court dismissed the petition on the ground that Faricy failed to prove the value of the services provided. The Minnesota Supreme Court accepted Faricy's petition for further review. *Id.* at 653-54. The Minnesota Supreme Court held that a contingent-fee attorney may not receive a contingency fee as a contract remedy following discharge, but may recover "compensation for the reasonable

¹ Faricy Law Firm P.A. was previously known as Faricy & Roen P.A.

value of the services under the equitable theory of quantum meruit.” *Id.* at 657. The supreme court remanded to the district court with instructions to consider eight factors “to determine the quantum meruit value of a discharged contingent-fee attorney’s services.” *Id.* at 658. On remand, the district court carefully analyzed the eight factors and concluded that the reasonable value of Faricy’s services under a quantum-meruit theory was \$84,000. This appeal follows.

D E C I S I O N

I. Standard of Review

The reasonable value of attorney fees is a question of fact. *Thomas A. Foster & Assocs. v. Paulson, Ltd.*, 699 N.W.2d 1, 4 (Minn. App. 2005). Findings of fact shall not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01. “When determining whether a finding is clearly erroneous we view the evidence in the light most favorable to the district court’s findings, and examine the record to see if there is reasonable evidence to support the findings.” *In re Distrib. of Attorney’s Fees*, 870 N.W.2d 755, 759 (Minn. 2015). A finding of fact is clearly erroneous if the reviewing court is “left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). We review de novo the district court’s application of the law to those facts. *Id.*

II. The District Court’s Factual Findings Are Not Clearly Erroneous.

a. Application of the *Faricy* Factors

Quantum meruit is “restitution for the value of a benefit conferred in the absence of a contract under a theory of unjust enrichment.” *Faricy Law Firm*, 912 N.W.2d at 657-58 (citation omitted). Quantum meruit is equitable relief that is “within the sound discretion

of the [district] court.” *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) (citation omitted). “To prove a claim in quantum meruit, the discharged attorney must prove (1) that the services were rendered; (2) under circumstances from which a promise to pay for them should be implied; and (3) their value.” *Faricy Law Firm*, 912 N.W.2d at 658 (citation omitted).

The only issue presented on this appeal is the value of Faricy’s services. The Minnesota Supreme Court articulated the following factors to be considered when determining the appropriate amount of attorney fees recoverable under quantum meruit following the termination of an attorney-client relationship:

- (1) time and labor required;
- (2) nature and difficulty of the responsibility assumed;
- (3) amount involved and the results obtained;
- (4) fees customarily charged for similar legal services;
- (5) experience, reputation, and ability of counsel;
- (6) fee arrangement existing between counsel and the client;
- (7) contributions of others; and
- (8) timing of the termination.

Id. The district court applied the eight-factor test and found that the quantum-meruit value of Faricy’s legal services on behalf of the API Trust in connection with the Home liquidation claim was \$84,000.

i. Time and Labor

Faricy served as the API Trust's counsel in the Home liquidation matter from 2009 until August 2012. However, the district court found that Faricy failed to keep "case-specific time records in connection with its work on the Home Liquidator claim," resulting in an "incomplete" record. Based on the evidence in the record, the district court found that Faricy performed a "minimal" amount of labor on the post-2009 Home liquidator claim, totaling "something less than ten hours." The district court reasoned that this factor militated against a substantial fee award, and we discern no error in this determination.

ii. Nature and Difficulty of Responsibility

The district court found that Faricy defended numerous "asbestos claims" with "considerable" success. The district court noted that a successful attorney in this complex field "needs to be adept in understanding and applying the insurance policies, current case law from around the country," and the individual merits of the case. The district court found that "[t]his factor favors a larger fee than other types of litigation generally and other types of liability insurance coverage cases specifically." On appeal, Faricy argues that the district court should have gone further to fully appreciate the difficulty of representing the API Trust in this matter. However, Faricy does not claim that the court's factual findings on this factor are erroneous, and the record supports the district court's findings.

iii. Amount Involved and Results Obtained

The district court found that the amount involved and the results obtained weighed in favor of a large award. The district court noted that the Home claim "involved tens of millions of dollars" and resulted in a final settlement for \$21.5 million. The district court

found that the events leading up to this settlement supported “a reasonable inference that Faricy’s work product, advice, and recommended negotiation strategy led to the settlement in significant part.” The district court reiterated that “Faricy made a substantial contribution to the size of the settlement,” placing a greater value on the value of Faricy’s legal services. These factual findings are supported by the record.

Faricy claims that the Home liquidator offered to settle the suit with the API Trust for \$11 million in June 2012, before Faricy’s services were terminated. Faricy argues that if the API Trust had accepted that offer, Faricy would have received one-third of the settlement award under the then-existing contingency-fee agreement. Faricy argues that it should be entitled to one-third of \$11 million as a “minimum” award. However, Faricy has not cited to any caselaw supporting its argument that a discharged attorney is entitled to a contingent fee of a tentative settlement offer, and we are not persuaded by this argument.

iv. Customary Fees for Similar Services

With regard to the fees customarily charged for similar legal services, the district court noted that Faricy “offered no direct evidence regarding this factor.” The district court found that the record supported a customary hourly rate of \$200-465 for counsel, and that “Faricy’s contingent fee could range from \$0 to millions of dollars” in extensively-litigated asbestos cases such as this. Given the range of potential recovery amounts and the minimal number of hours worked in the present case, as found by the district court, the district court determined that this factor was neutral because the record evidence could have supported “virtually any quantum meruit fee valuation.” We discern no error in this analysis.

v. Experience, Reputation, and Ability of Counsel

The district court found that the fifth factor weighed in favor of Faricy. The district court found that the Faricy law firm and attorney John Faricy “have a great deal of complex insurance coverage experience and ability,” and that John Faricy successfully represented his clients in asbestos-related liability cases over a period of decades. The district court found that this factor justifies a greater fee value in favor of Faricy, and the record supports the district court’s finding.

vi. Existing Fee Arrangement

Faricy argues that it is entitled to the value of its full contingency fee, or one-third of the \$21.5 million settlement between the API Trust and the Home liquidator. The Minnesota Supreme Court has already rejected Faricy’s argument that a quantum-meruit analysis requires an award equivalent to the contingency fee. *See Faricy Law Firm*, 912 N.W.2d at 657 (holding that a discharged attorney cannot recover its contingency fee and remanding for a determination of reasonable fees under an equitable quantum-meruit theory of recovery). The district court found that Faricy spent approximately ten hours on the Home liquidator claim for which it has not yet been compensated, and that “any fee award that is greater than ten times Faricy’s highest submitted customary hourly rate” would be unreasonable. The district court’s existing-fee-arrangement analysis is not erroneous.

vii. Contributions of Others

The district court found that the settlement award received from the Home liquidator was based on the contribution of others, including the trustee for the API Trust. The district

court noted that at the time of Faricy's termination, the API Trust and the Home liquidator were "over \$28 million apart and there was no guarantee of a settlement." The final \$21.5 million offer did not occur until after Faricy's termination, "and following Home liquidator negotiations conducted solely by [the trustee]." The district court found that the trustee's "contribution to the outcome was substantial and pivotal," militating against a high fee award to Faricy. This finding is supported by the evidence in the record.

viii. Timing of Termination

The district court recognized that the API Trust terminated Faricy's legal services "within only weeks" of Home liquidator's \$21.5 million offer to the API Trust. However, the district court found that the termination was based on the API Trust's "continued dissatisfaction with Faricy's work" and was not motivated by an attempt to "avoid a contingent fee in the Home Liquidator case." The district court concluded that:

the timing of the termination, when combined with the other factors, does not warrant an extreme fee value approximating a contingent fee whether applied to a prior offer or the ultimate settlement. Nevertheless, the size of the offer at the time of Faricy's termination warrants substantially more than a value based upon hours worked.

While Faricy argues that it is entitled to "virtually all if not all of the full contingency fee," the district court's factual finding regarding the timing of the termination is not erroneous.

b. Instructions on Remand

Faricy argues that the district court failed to give appropriate prominence to the timing-of-the-termination factor. Faricy argues that the timing of termination is "especially crucial" in an attorney-fee determination and "must be applied first and foremost" in a

district court's analysis. We disagree. The Minnesota Supreme Court stated that "the timing of the termination is especially crucial to prevent a client from avoiding a contingent fee when it becomes apparent that the client will recover or reach a successful result." *Faricy Law Firm*, 912 N.W.2d at 660. But the supreme court did not elevate this final factor over the other factors. *See id.*

The *Faricy Law Firm* opinion articulated eight factors to consider in a quantum-meruit-based attorney-fee award. *Id.* at 658. The supreme court did not analyze the first six factors in depth, noting instead that "we have consistently used these [first six] factors to assist in determining the value to attribute to an attorney's services." *Id.* at 659-60; *see also Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 536 (Minn. 2013) (describing six factors as "relevant circumstances" in lodestar analysis); *City of Minnetonka v. Carlson*, 298 N.W.2d 763, 765, 765 n.1 (Minn. 1980) (relying on six factors to determine reasonable value of legal services); *State by Head v. Paulson*, 188 N.W.2d 424, 425-26 (Minn. 1971) (listing six factors to consider when determining reasonable value of legal services); *see also* Minn. R. Gen. Prac. 119 (using six factors in lodestar method). The *Faricy Law Firm* opinion then explained that:

the first six factors discussed above are not alone sufficient to determine the value conferred upon the client, particularly in situations where the attorney's representation is terminated after substantially contributing to an ultimately successful case. We have thus added two factors: 'the contributions of others' and 'the timing of the termination.'

These factors allow the court to measure the value of the services depending on how the timing of the termination related to the ultimate result and whether the discharged attorney added value compared to other contributors to the

case. [. . .] Considering the timing of the termination is especially crucial to prevent a client from avoiding a contingent fee when it becomes apparent that the client will recover or reach a successful result.

Id. at 660.

When viewed in context, it is clear that the supreme court did not elevate the eighth factor above the others and, instead, instructed district courts to consider all of the factors and weigh them together to determine the reasonable value of an attorney's services. *Id.* at 661 ("The calculation of a quantum meruit award is instead an equitable process by which the court determines the reasonable value of services based on a variety of factors, which, ultimately, produces an equitable remedy."). A plain reading of *Faricy Law Firm* does not support Faricy's argument that the district court ignored the supreme court's instructions on remand by failing to give greater weight to the eighth factor at the expense of the other seven. We therefore affirm the district court's attorney-fee award.

Affirmed.