

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0855**

Sandra Theis-Walz, et al.,
Appellants,

vs.

Coborn's, Inc., et al.,
Respondents,
James Roberts,
Respondent.

**Filed March 22, 2021
Affirmed
Reyes, Judge**

Stearns County District Court
File Nos. 73-CV-20-792;
73-CV-17-5711; 73-CV-20-837

Gregory S. Walz, Walz Law Office, St. Cloud, Minnesota (for appellants)

James Roberts, St. Cloud, Minnesota (self-represented attorney)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-attorney argues that the district court erred by (1) establishing an attorney
lien for respondent-attorney before it approved a global mediated settlement agreement;
(2) not considering his breach-of-fiduciary-duty and various professional-misconduct

allegations against respondent-attorney when it established the attorney lien; (3) not finding the joint-representation agreements unenforceable between the attorneys under Minn. R. Prof. Conduct 1.8(a) and 1.5(e); and (4) using underlying findings of fact that are not supported by the record in calculating the attorney lien. We affirm.

FACTS

In May 2017, minor C.L.W. died in a car accident that also injured appellants Joseph Walz and C.A.W. Shortly thereafter, respondent-attorney James Roberts and appellant-attorney Gregory S. Walz (Walz), the paternal grandfather of C.L.W., entered into contingent-fee agreements for joint representation (representation agreements) with the heirs and next of kin of C.L.W. to pursue a wrongful-death case against respondents Coborn's, Inc. and Jeffrey Ditlefsen. The representation agreements did not divide labor or responsibility between Walz and Roberts, nor did they specify how fees would be divided between the two. The district court appointed Sandra Theis-Walz, Walz's wife, as trustee for the heirs and next of kin of C.L.W.

On December 2, 2019, the parties settled the matter at mediation and executed a global mediated settlement agreement. Roberts drafted a petition for distribution of funds of the wrongful-death settlement and petition for approval of minor's settlement. On December 19, 2019, Walz requested that Roberts not perform any more work for appellants regarding the case and stated that this communication came from Theis-Walz. On January 10, 2020, Walz emailed Roberts an amended petition for distribution of funds of the wrongful-death settlement and petition for approval of minor's settlement (the amended

petitions) that significantly reduced Roberts’s attorney fees and increased Walz’s attorney fees.

On January 27, 2020, Walz filed a petition on behalf of appellants seeking expedited administrative approval of the settlement agreements on the terms contained in the amended petitions (settlement approval action). On January 29, 2020, Roberts commenced an action to establish a lien for attorney fees (attorney-lien action).

On May 19, 2020, the district court issued an order in 73-CV-20-837 dividing attorney fees between Roberts and Walz and establishing Roberts’s requested attorney lien. This appeal follows.¹

DECISION

I. Walz forfeited his argument that the district court erred by establishing Roberts’s attorney lien before formally approving the global mediated settlement agreement.

Walz asserts that the district court erred by establishing Roberts’s attorney lien because it is “contingent, derivative and dependent on the approval of the Global Mediated Settlement Agreement,” which had been executed but not yet adopted by the district court at the time the lien was established. Because Walz’s assertion lacks analysis or legal support, we conclude that Walz forfeited this argument. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

¹ On July 21, 2020, this court issued an order limiting the appeal to review of the district court’s May 20, 2020 and June 2, 2020 judgments in district court file number 73-CV-20-837.

II. The district court did not err by establishing Roberts’s attorney lien without considering Walz’s allegations of breach of fiduciary duty and professional misconduct against Roberts.

Walz argues that the district court erred by not considering his allegations of professional misconduct against Roberts at the attorney-lien summary proceeding.² We are not persuaded.

A summary proceeding is any proceeding by which a district court can settle a controversy promptly without the aid of a jury. *Thomas A. Foster & Assocs., Ltd. v. Paulson*, 699 N.W.2d 1, 6 (Minn. App. 2005). In *Foster*, the plaintiffs alleged their attorney committed malpractice, breach of fiduciary duty, breach of contract, deceit, and collusion, and therefore contested his claimed attorney lien. *Id.* at 4. Because an attorney lien is established in a summary proceeding, we held that “the practicalities of a summary proceeding do not support the notion that a district court must transform an attorney-lien proceeding into a legal-malpractice trial.” *Id.* at 7. But “[l]itigating the number of hours worked, the reasonableness of an hourly fee, or the existence of a contract in the first instance is not unduly burdensome in a summary proceeding before a district court.” *Id.* at 7-8.

² Walz alleges that Roberts has been “secretly” representing an adverse party and is therefore “disqualified.” Walz alleges that Roberts “continues to represent Appellants/Plaintiffs in other cases,” but does not specify which cases or why they have retained Roberts for those cases if they are dissatisfied with his work. Walz also alleges Roberts is guilty of “creating false documents, . . . a false order, . . . [and] making false statements about what work [Roberts] did” without specificity or any explanation. Additionally, Walz did not raise these arguments below, and therefore, we do not consider them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And to the extent that we do not address some of Walz’s allegations of professional misconduct in this section, we are unable to discern them.

Walz alleges breach of fiduciary duty and professional misconduct. Similar to the allegations in *Foster*, Walz does not dispute the hours worked or the reasonableness of the fee, but rather he is “dissatisfied with the quality of the services” and “sought to litigate complex questions of professional misconduct and legal malpractice.” 699 N.W.2d at 8. But “[c]onsideration of complex questions of professional negligence in the lien action is contrary to the legislative intent expressed in the language of [Minn. Stat. § 481.13].” *Id.* These claims are inappropriate for resolution in an attorney-lien summary proceeding, and the district court did not err by establishing Roberts’s attorney lien without considering these allegations.

Walz also alleges that Roberts failed to produce proof of his work, even though he does not dispute any of the hours or costs that Roberts submitted to the district court. To the contrary, the record shows Roberts submitted hours with descriptions of the nature of the work he completed and the dates on which he completed the work. Roberts also submitted an expense report showing costs of \$11,435.03, with receipts and invoices to confirm those costs. It is undisputed that the global settlement agreement bears Roberts’s signature, not Walz’s. The record also includes emails proving that Roberts was responsible for the majority of communications to medical-health providers, opposing counsel, and the county. The district court appropriately considered these documents in calculating the amount of Roberts’s attorney lien as discussed in Part IV.

III. The district court did not err by finding that the representation agreements were enforceable.

Walz argues that the representation agreements are unenforceable between the attorneys without separate writings as required by Minn. R. Prof. Conduct 1.8(a) and 1.5(e).

Walz's argument lacks merit.

A. Minn. R. Prof. Conduct 1.8(a)

Rule 1.8(a) governs business transactions between attorneys and current clients. Although generally a "lawyer shall not acquire a proprietary interest in the cause of action," there are two exceptions: a "lawyer may: (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and (2) contract with a client for a reasonable contingent fee in a civil case." Minn. R. Prof. Conduct 1.8(i). Because the representation agreements are contracts for a reasonable contingent fee in a civil case, they are exceptions to rule 1.8(a). The first comment to rule 1.8 confirms our interpretation by stating that rule 1.8 "does not apply to ordinary fee arrangements between client and lawyer." Because Walz fails to explain how rule 1.8(a) applies to the representation agreements, and we find no basis for the argument, it fails.

B. Minn. R. Prof. Conduct 1.5(e)

Rule 1.5(e) is relevant if one party tries to enforce a fee-splitting agreement. Because Roberts is not attempting to enforce a fee-splitting agreement and concedes that one never existed, the rule 1.5(e) requirements do not apply. Here, the district court did not enforce the 1/3 contingency-fee provision under the representation agreements. Instead, the district

court established the attorney lien based on Minnesota caselaw governing joint-representation agreements when there is no valid fee-splitting agreement.

Alternatively, Walz asserts that Roberts forfeited all fees because *Christensen v. Eggen* stands for the proposition that all ethical rules must be complied with as a condition precedent to collecting fees. 577 N.W.2d 221 (Minn. 1998). This argument fails for three reasons. First and foremost, Walz misstates the law: *Christensen* holds that “*fee-splitting agreements* between attorneys of different firms must comply with all of the requirements of *the rule* to be deemed enforceable and consistent with public policy.” 577 N.W.2d at 222 (emphasis added) (interpreting Minn. R. Prof. Conduct 1.5(e)). Second, because Roberts did not attempt to enforce a fee-splitting agreement, rule 1.5(e) and *Christensen* do not apply. Third, under *Foster*, the district court is not required to turn a summary proceeding into a lengthy trial for alleged violations of all ethical rules. 699 N.W.2d at 7.

IV. The district court did not err in its method of calculating the amount of Roberts’s attorney lien, and its findings are supported by the record.

Walz appears to argue that the district court erred in calculating the attorney-lien amount and that the district court made findings not supported by the record. We disagree.

Although the reasonable value of attorney fees is a question of fact, we review de novo whether the district court employed the proper method to calculate the amount of an attorney lien. *Foster*, 699 N.W.2d at 4 (citations omitted). When a representation agreement does not include fee provisions, “the amount of the lien is determined by the reasonable value of the services rendered.” *Id.* at 6 (citation omitted). In determining the reasonable value of the services rendered between two firms in a contingency-fee case,

courts consider the factors listed in *In re L-tryptophan Cases*: “(1) the length of time each firm spent on the case; (2) the proportion of funds invested by each firm; (3) the quality of representation; (4) the result of each firm’s efforts; (5) the reason the client changed firms; (6) the viability of the claim at transfer; (7) the amount of recovery realized; and (8) any pre-existing partnership agreements” (*L-tryptophan* factors). 518 N.W.2d 616, 621 (Minn. App. 1994). Although the reasonable value of the services rendered in a contingency-fee arrangement is determined on quantum meruit, this does not require a court to calculate fees on an hourly basis. *Ashford v. Interstate Trucking Corp. of Am., Inc.*, 524 N.W.2d 500, 503 (Minn. App. 1994).

Because the parties agree that the reasonable value of the services rendered is approximately \$569,000.00, the only remaining dispute is which portion of that amount each attorney earned. The district court reviewed fees and costs from Walz and Roberts and then applied the *L-tryptophan* factors to determine the reasonable value of each attorney’s contribution to the case. These findings are supported by the record.

On the first factor, the district court found that Roberts contributed 94% of the costs, time, fees, and paralegal time; that Walz contributed 6%; and that Roberts’s costs were reasonable and related to the case. Roberts submitted a time log that shows over 150 time entries ranging from 0.15 to 14 hours each, over more than two years, totaling 202.3 hours. The district court found all of Roberts’s hours reasonable and attributable to his representation. Walz submitted 485.30 hours, but the district court could not determine how the majority of his hours were attributable, necessary, or reasonable to his role as an attorney for this matter. On the second factor, Roberts submitted \$11,435.03 in costs to

various health-care institutions and police departments, with receipts showing him as the corresponding attorney. Conversely, Walz submitted \$771.50 in costs which include copying costs, payment to a third-party attorney of \$450.00, and a filing fee.

On the third and fourth factors, the district court noted that Roberts had the lead on communications with the liability carrier, including the global mediated settlement agreement. The record shows that only Roberts signed on behalf of the appellants on the global mediated settlement agreement. The district court also found that Roberts obtained appointment of the trustee, frequently contacted the county attorney, was the only attorney authorized to speak to the county attorney and submitted information helpful to the underlying case, addressed medical-billing issues, drafted documents relevant to the settlement, and served necessary parties. These findings are supported by the emails that Roberts submitted requesting information from the various health-care institutions and the county attorney. The district court found that not all of Walz's activities, including research on punitive damages, drafting opening and closing arguments, and sentencing argument, provided value to the case. Walz billed for all of these activities even though Roberts settled the matter before the need to prepare closing arguments or other trial materials arose.

On the fifth factor, Roberts ceased working on the case after the settlement because Walz communicated that Theis-Walz wanted Roberts to stop work. The district court determined that Walz released Roberts because "the only reasonable explanation . . . is the action was taken to obtain a reduction of Mr. Roberts's fees and redistributions of settlement proceeds. This is because a global settlement agreement had already been

reached when Attorney Walz's[sic] took over the case." Walz made changes to increase distributions to the trustee, his wife, out of the amount held in trust for attorney fees and shifted more fees to himself. On this record, the district court did not find that Roberts was discharged for any reason attributable to him.

The district court did not directly analyze the seventh factor, but it noted that Roberts's efforts resulted in a 2.75 million dollar settlement and that Walz became active only after Roberts reached the settlement. The remaining factors are inapplicable.

Walz argues that the district court erred by not considering that the "paternal grandparents have subsidized the parents of [C.L.W.] since before [C.L.W.'s] birth by providing a home and daycare at no cost," and that Walz drafted poems which added specific facts to the demand letter. Although laudable, those actions are not part of the *L-tryptophan* factors, and the district court found that those actions appeared to be in Walz's personal capacity as the paternal grandfather to C.L.W., not as an attorney.

We conclude that the district court did not err in calculating the reasonable value of services rendered between Roberts and Walz, who had no fee-splitting provision in the contingency-fee agreements and that its underlying findings on the *L-tryptophan* factors are supported by the record.

Affirmed.