NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4064-13T3

CLIFFORD J. WEININGER, a/k/a
CLIFFORD J. WEININGER, ATTORNEY
AT LAW,

Plaintiff-Respondent,

v.

JOSEPH J. FRITZEN, a/k/a JOSEPH
J. FRITZEN, ATTORNEY AT LAW,

Defendant-Appellant.

Argued September 17, 2015 – Decided November 2, 2015

Before Judges Fisher, Espinosa and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1303-12.

Ronald T. Nagle argued the cause for appellant (Joseph J. Fritzen, attorney; Mr. Nagle, of counsel; Mr. Fritzen, on the brief).

Noel E. Schablik argued the cause for respondent.

PER CURIAM

The parties are attorneys who were formerly engaged together in the practice of law. Shortly after his graduation

from law school, defendant Joseph J. Fritzen was hired by plaintiff Clifford J. Weininger. Fritzen remained Weininger's employee the entire fifteen years they practiced together pursuant to an oral employment agreement which called for Fritzen to receive a fixed salary, various benefits, and one-third of any contingent fee derived from matters he originated.

Steven Iodice retained the Weininger firm to represent him regarding a personal injury matter. The retainer agreement executed in January 2011 called for the payment to the Weininger firm of one-third of the net recovery up to $500,000; because Fritzen originated the matter, his employment agreement entitled him to one-third of Weininger's fee.

Ten months later, Fritzen notified Weininger of his intention to leave the firm, effective November 18, 2011. Iodice wrote to Weininger on November 30, 2011, directing transfer of his file to Fritzen's new office. Weininger responded by recognizing Iodice's right to have the matter handled by Fritzen, but he also returned Iodice's check in the amount of $382.77, which was offered as payment for the costs incurred by the Weininger firm up until that point. Weininger stated in his letter to Iodice that "the cost and fees in this matter are going to have to be resolved between Joseph Fritzen and myself."

The Iodice matter was never put in suit. Instead, four months after Fritzen took over representation of Iodice, the matter settled for $350,000. Fritzen sought to reimburse Weininger only for the costs the latter had incurred prior to November 2011, i.e., $382.77; he took the position Weininger was not entitled to any portion of the contingent fee derived from the settlement.

Consequently, Weininger commenced this action based on a number of legal theories, including quantum meruit. Fritzen filed a counterclaim, alleging his entitlement to a share of fees generated in a number of other matters.

These issues were the subject of a bench trial that took place on March 31 and April 1, 2014, during which the judge heard and considered the testimony of Weininger, Fritzen, Iodice, and Weininger's expert. By way of an oral opinion, the judge invoked the doctrine of quantum meruit and determined Weininger was entitled to $69,886.75; he found no merit in Fritzen's claims for compensation on other legal matters and dismissed the counterclaim.

The judge found from the evidence that the employment agreement between Weininger and Fritzen entitled the latter to one-third of fees earned in personal injury actions originated by him. He also found Fritzen originated the Iodice matter and

would have been entitled to a percentage of Weininger's net recovery. The judge also observed, as seems typical of attorneys representing personal injury claimants, that neither attorney kept time records of their work on the Iodice matter. In addition, the proofs revealed, and the judge found, that Iodice executed a retainer agreement with Fritzen's new firm that called for a fee of only twenty-five percent of the net recovery under $500,000. Consequently, Iodice incurred a legal fee approximately $30,000 less than what would have been due if subjected to the fee agreement signed with Weininger.

After applying the factors we outlined in LaMantia v. Durst, 234 N.J. Super. 534 (App. Div.), certif. denied, 118 N.J. 181 (1989) — and utilizing the one-third fee obligation set forth in the Weininger retainer agreement — the judge calculated an award in Weininger's favor in the amount of $69,886.75, i.e., sixty percent of one-third of the net recovery. Judgment was entered in Weininger's favor in that amount.

Fritzen appeals, arguing:

> I. THE FINDING THAT AN ATTORNEY WHO WAS TERMINATED BEFORE PERFORMANCE OF ANY LEGAL SERVICES RETAINS A PERCENTAGE-BASED INTEREST IN ANY CONTINGENT RECOVERY IS CONTRARY TO PUBLIC POLICY BECAUSE IT IS AN IMPERMISSIBLE RESTRAINT UPON THE ATTORNEY/CLIENT RELATION-SHIP.
>
> II. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF, AN ATTORNEY TERMINATED BY THE

CLIENT AFTER INCURRING $382.77 IN COSTS WHILE THE CLIENT'S MATTER WAS PRE-SUIT AND WHILE THE CLIENT REMAINED IN MEDICAL CARE, HAD A RIGHT TO RECOVERY ON A QUANTUM MERUIT BASIS.

III. THE TRIAL COURT FAILED TO APPLY ANY REQUISITE FACTORS BEFORE DECIDING THAT RESPONDENT EARNED A QUANTUM MERUIT SHARE OF AN ATTORNEY FEE BASED ONLY ON A DAY-FOR-DAY COMPARISON OF THE LIFE OF THE FILE.

IV. THE EFFECT OF JUDGMENT IN FAVOR OF PLAINTIFF, EVEN UNDER THE GUISE OF QUANTUM MERUIT, IS TO CREATE A POST-EMPLOYMENT CONTRACT WHERE NONE EXISTS.

> A. The Post-Employment Application of an Alleged Oral Employment Agreement is Void as a Matter of Law.
>
> B. Even if the Plaintiff Could Prove a Valid Oral Contract, His Prior Breach of that Agreement Renders That Agreement Void.
>
> C. The Alleged Oral Agreement is Unconscionable.
>
> D. The Alleged Oral Employment [Agreement] Cannot Be Judicially Modified to Suit the Present Needs of Plaintiff.

V. PLAINTIFF HAS BEEN UNJUSTLY ENRICHED BY THE JUDGMENT OF THE TRIAL COURT.

VI. THE DECISION TO REOPEN DISCOVERY AND THE TRIAL COURT'S MID-TRIAL REVERSAL OF THE MOTION IN LIMINE WITH RESPECT TO RESPONDENT'S PURPORTED EXPERT IS REVERSIBLE ERROR.

VII. DEFENDANT PROVED ENTITLEMENT TO REIMBURSEMENT OF MEDICAL EXPENSES AND A

POLITICAL CONTRIBUTION MADE AT THE REQUEST OF PLAINTIFF.

VIII. THE INJUNCTIVE RELIEF PREVIOUSLY GRANTED TO PLAINTIFF SHOULD BE VACATED.

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments about Points I, II, III and IV.[1]

Initially, we find no substance in the arguments contained in Point I (permitting Weininger a recovery is against public policy because it constitutes a restraint on the attorney/client relationship) and Point II (LaMantia does not apply unless the underlying action was put in suit by the ceding attorney). In essence, Fritzen would have us hold that the attorney/client relationship does not come into being and the right to a contingent fee never arises if a claim is never put in suit. The mere statement of that proposition compels its rejection.

[1]We also observe that, in Point VIII, Fritzen complains that after judgment was entered the trial judge restrained the release of approximately $20,000 in his trust account and compelled an additional deposit of $48,000 – the entire amount representing the approximate amount due Weininger by way of the judgment. This post-judgment order also precludes Weininger's execution on the judgment while the fund remains in Fritzen's trust account. Considering that this arrangement actually acts as a stay of the judgment – despite our later denial of Fritzen's motion for a stay pending appeal – we fail to see how Fritzen is aggrieved by the injunctive relief issued by the trial judge.

The attorney/client relationship was formed no later than the client's execution of the parties' retainer agreements and the nascent quantum meruit claim of the ceding attorney imposes no burden on the new attorney's representation.

Fritzen's remaining arguments in his first four points mostly relate to the judge's findings of fact, which we, of course, examine in light of the deferential standard described in Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). See also Zaman v. Felton, 219 N.J. 199, 215-16 (2014). We conclude that the factual findings were supported by substantial credible evidence. And although the judge's conclusions of law are not entitled to deference, Manalapan Realty L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1994), we are satisfied the judge correctly applied the principles outlined in La Mantia.

In this regard, we observe that after Iodice decided to change attorneys, Fritzen secured Iodice's agreement to pay a lesser contingent fee than the fee Iodice had agreed to pay Weininger. Fritzen believes the judge was required to apply those terms even though, as we have noted, the judge found the Fritzen-Iodice agreement was reached without the input, let alone consent, of Weininger. On the other hand, Weininger contends that the judge properly utilized Iodice's promise to

pay him thirty-three-and-one-third percent of the net recovery as the starting point for the quantum meruit determination. Although the client in such circumstances retains the implied right at law to terminate the attorney/client relationship, Glick v. Barclays De Zoete Wedd, Inc., 300 N.J. Super. 299, 309 (App. Div. 1997), we reject the argument that the judge was not entitled, in crafting an equitable remedy[2] in this case, to apply the terms of the Weininger fee agreement, particularly when his opinion implicitly suggests the more favorable terms offered by Fritzen to Iodice may have played some part in Iodice's decision to terminate Weininger's involvement. The judge possessed considerable discretion in devising an appropriate remedy in this matter in light of the evidence he found credible, and we find no abuse of discretion in his determination that it was fair and equitable to start with a one-third rather than a one-fourth fee.

With that, we consider the judge's findings and his application of LaMantia, which held that, in similar disputes, trial courts should consider: (1) "the length of time each of the firms spent on the case relative to the total amount of time

[2]The matter was correctly decided through application of the equitable doctrine of quantum meruit, which literally means "as much as is deserved." Kas Oriental Rugs, Inc. v. Ellman, 394 N.J. Super. 278, 286 (App. Div.), certif. denied, 192 N.J. 74 (2007).

expended to conclude the client's case"; (2) the "quality" of their representation of the client; (3) "the result of each firm's efforts as well as the reason the client changed attorneys"; (4) the "[v]iability of the claim at transfer," i.e., "if the case was initially speculative but concrete by the time the cause of action moved to the second firm"; (5) "[t]he amount of the recovery realized"; and (6) "any pre-existing partnership agreements between the members of the firms [competing] for a percentage of the contingency fee." 234 N.J. Super. at 540-41.

Here, the judge recognized that the duration of the claim — from its arrival in Weininger's office to its settlement during Fritzen's representation — amounted to approximately fourteen months; according to the judge, "71.4 percent of that time [the matter] was in [Weininger's] office [and] 28.6 [percent] in [Fritzen's] office." The judge also considered in some respect that 67.6% of the minimal costs in the matter were borne by Weininger's office, and the remainder by Fritzen's office. These findings are supported by the record, and they support the judge's ultimate conclusion as to the first LaMantia factor.

LaMantia counsels further that the quality of the representation should be considered. Id. at 540. There was no great elaboration in the testimony about the particular nature

of the Iodice claim. Essentially, the record reveals little. Apparently, Iodice, his wife, and another married couple were out in Atlantic City when the other woman in the group poked Iodice in the eye with a fingernail when she somehow placed him in a friendly headlock; this caused a retina tear that required numerous surgical procedures both before and after the transfer of the file to Fritzen's office. In describing the quality of the representation, the judge expressed concerns about Fritzen's failure — either while he was in Weininger's employ or after opening his own firm — to ascertain the policy limits of the alleged tortfeasor's homeowner's policy.[3] The judge elaborated on the nature of the representation — while the matter was still with the Weininger office — in the following way:

> The case was in the Weininger office for ten months. [Weininger and Fritzen] both discussed the case. They talked about it. They admit that both of them talked about it from time to time. These were the two attorneys in the firm. They had lunch together every day. They talk about many things, and of course they talked about work, and the matters in the office, and handling the matters, and where they were going, and what

[3]There was no dispute that Fritzen was directly involved with the file throughout the life of the matter, and that Weininger only provided advice and guidance while the matter was in his office. One of the things Weininger specifically recalled was his repeated advice to Fritzen that he discover the insurance coverage available. He also repeatedly urged Fritzen to commence suit, but Fritzen always responded that Iodice and the alleged tortfeasor were friends, and he thought it best to wait.

> was happening, and . . . what would be done, what the law was, what the facts were, all the kinds of things lawyers discuss[] concerning experts, other witnesses, other investigation, trial strategy and the life.

In addition to these generalities, the judge observed:

> [T]his contingent fee case, that was an insured claim, that is to say the defendant had insurance, and it was . . . a good case . . . in the sense that liability was . . . pretty clear with this horseplay and the fingernail to the . . . eye, it seems to have been done at the instance of the defendant . . . , so liability seemed to be pretty good, and as lawyers sometimes facetiously say, the injuries are very good, . . . meaning that it's a serious injury, and it no doubt was, the way it was described during the trial, and so, it had a high financial value. . . .
>
> However, the [c]ourt doesn't know enough about the case to actually value it. I didn't see any medicals. Mr. Weininger testified, at one point, he thought the case was worth $500,000. The [c]ourt can't assess what that case might have been worth, not knowing enough about it. . . . I learned that there [were] five or six medical procedures on the eye, which I take it meant some type of invasive treatment, a detached retina, a lot of blood at the outset, but I don't know the current condition or the prognosis.

The judge also found the nature and quality of the representation did not change after Iodice followed Fritzen to his new firm; that is, Fritzen still did not commence a lawsuit

and never discovered the policy limits,[4] but he continued to communicate with the insurance adjuster until a settlement was achieved. Other than this, the judge recognized that the evidence permitted no other conclusion about the quality of the competing firm's representation of Iodice. It is interesting to note that the one LaMantia factor upon which such disputes usually turn — the comparative worth of the representation provided by the competing attorneys — seems to be indistinguishable here. For example, in Glick we observed that "if the predecessor's work, no matter how extensive, contributed little or nothing to the case, then the ceding lawyer should receive little or no compensation." 300 N.J. Super. at 311. Here, the judge recognized that neither law firm contributed much, and one particularly significant factor — the amount of insurance coverage available to the alleged tortfeasor — was never discovered due to Fritzen's failure to obtain that important information. So there was nothing about the comparable representations that would tilt the equities one way or the other.

In other words, the representation of Iodice at both firms was hardly rigorous or energetic. That fact does not require

[4]This fact caused the judge to conclude that "the quality of [Fritzen's] representation there was not what it should have been."

rejection of Weininger's entitlement to a portion of the fee any more than it favors Fritzen's claim. Moreover, the judge properly recognized that Weininger bore "the risk and the operation of a law office that accompanied [his] involvement with the case for ten months"; this included the risk during that time that the claim might prove worthless and his firm's energies wasted — Fritzen took on that same responsibility, but only for a four-month period.

In weighing all these circumstances, the judge reached his conclusion about the division of the fee not only by considering the percentage of time the matter resided in each competing law office and the percentage of the costs borne by the competing offices. The judge also considered the fact that Fritzen stood to receive one-third of Weininger's fee had Fritzen remained associated with Weininger. In considering the judge's findings, we are presented with no principled reason for questioning the judge's determination that Fritzen should be allocated only forty percent of the fee derived from the Iodice settlement.

As we earlier noted, the applicable standard of appellate review compels our deference to the judge's fact findings when supported by credible evidence. This is particularly true when considering an exercise of judicial discretion in crafting an equitable remedy. Waste Mgmt. of N.J., Inc. v. Morris Cnty.

Mun. Utilities Auth., 433 N.J. Super. 445, 454-55 (App. Div. 2013). We have been presented with no reason for departing from these standards and will not second guess the result reached by the experienced trial judge.

Affirmed.