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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170973

Napoleon Harris

v.

Capell & Howard, P.C.

Appeal from Lee Circuit Court
(CV-14-900387)

PER CURIAM.

In July 2014, siblings Napoleon Harris, Tiffany Harris, and Robin Harris (hereinafter referred to collectively as "the siblings") filed a complaint in the Lee Circuit Court ("the trial court") contesting the validity of the will of their

uncle, Robert Lee Harris ("the will contest"). Robert T. Meadows and R. Faith Perdue, attorneys with the law firm of Capell & Howard, P.C., represented the siblings in the will contest. After significant litigation and one failed settlement, the will contest was concluded in February 2017 by a settlement whereby, among other things not pertinent to this appeal, Robert's estate paid the siblings $170,000. No appeal was taken from the February 2017 judgment incorporating the settlement.

In July 2017, Meadows filed a "Motion to Schedule a Hearing to Determine a Reasonable Attorney Fee and to Divide the Remaining Settlement Funds." In that motion, Meadows alleged that, as required by the settlement agreement, Robert's estate had paid the $170,000 by check made out to the siblings and Capell & Howard jointly; that a dispute had arisen between the siblings and Meadows relating to the fee due to Capell & Howard for its representation of the siblings in the will contest; and that the siblings could not agree among themselves regarding the division of the proceeds of the will contest. The trial court set the motion for a hearing, which was continued at least twice at Napoleon's request.

The trial court held a hearing on Meadows's motion on November 9, 2017. At that hearing, the parties presented their respective arguments regarding the trial court's jurisdiction over Meadows's motion. The trial court ordered the parties to present written briefs on the jurisdiction issue. Napoleon filed his opposition to Meadows's motion, arguing in that opposition that the trial court lacked jurisdiction to decide the attorney-fee dispute. Specifically, Napoleon contended that Meadows's motion was not a timely filed postjudgment motion under Rule 59, Ala. R. Civ. P., and that, although the trial court, in the February 2017 judgment, had "retain[ed] jurisdiction to issue any additional orders needed for the finalization of this matter," the fee dispute and the division of the proceeds among the siblings were not items over which the trial court could retain jurisdiction because they were not issues before the trial court in the will contest. In response to Napoleon's opposition, Meadows argued that the trial court's reservation of jurisdiction provided it with the power to decide the fee dispute and the proper division of the settlement funds and that it also had such authority pursuant to Rule 60(b)(6),

Ala. R. Civ. P. Meadows also contended that, even if he should have filed an independent action under Rule 60(b), as opposed to a motion, the trial court could choose to treat the motion as an independent action. See, e.g., Robinson v. Kato, 944 So. 2d 965, 967 (Ala. Civ. App. 2006) (quoting Committee Comments on 1973 Adoption of Rule 60 and explaining that "'courts have consistently treated a proceeding in form an independent action as if it were a motion, and vice versa, where one but not the other was technically appropriate, and any procedural difference between them was immaterial in the case'").

On April 13, 2018, the trial court entered a judgment awarding Capell & Howard $54,158 in attorney fees and dividing the remainder of the $170,000 settlement funds among the siblings. In its judgment, the trial court stated that it had retained jurisdiction to address the issues in Meadows's motion. Napoleon timely filed a postjudgment motion, in which he again contended that the trial court lacked jurisdiction to entertain Meadows's motion and also challenged the sufficiency of the evidence supporting the attorney-fee award. After the trial court denied his postjudgment motion, Napoleon timely

appealed the judgment to our supreme court, which transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-6(7).

On appeal, Napoleon again asserts that the trial court lacked jurisdiction to entertain Meadows's motion. He specifically contends that the retention of jurisdiction to effectuate the February 2017 judgment did not include the power to determine a fee dispute between the siblings, who were the contestants in the will contest, and their attorney. Furthermore, Napoleon argues that the trial court could not have exercised jurisdiction over Meadows's motion under Rule 60(b).

We agree that Meadows's motion was not cognizable under Rule 60(b)(6) because Meadows can present no basis upon which he, a nonparty, is entitled to relief from the February 2017 judgment. See Ex parte Overton, 985 So. 2d 432 (Ala. 2007) (explaining that a nonparty cannot typically seek relief from a judgment by way of a rule 60(b) motion). Furthermore, we agree that the language in the trial court's February 2017 judgment did not permit it to retain jurisdiction over the fee dispute between the siblings and Meadows, which dispute was

not directly related to the issues presented in the will contest. See Ex parte Caremark Rx, LLC, 229 So. 3d 751, 760 (Ala. 2017) (noting that "[t]he jurisdiction retained by the trial court after it entered its final judgment ... is limited to interpreting or enforcing that final judgment; the trial court could not extend its jurisdiction over any matter somehow related to [a] final judgment in perpetuity by simply declaring it so"). However, Capell & Howard argues on appeal that it has an attorney's lien on the proceeds collected from the settlement incorporated into the February 2017 judgment and that Meadows properly sought to have the dispute over the attorney fee decided by filing a motion.

Specifically, Capell & Howard contends that Ala. Code 1975, § 34-3-61, provides for a lien in favor of an attorney. The statute reads, in its entirety, as follows:

> "(a) Attorneys-at-law shall have a lien on all papers and money of their clients in their possession for services rendered to them, in reference thereto, and may retain such papers until the claims are satisfied, and may apply such money to the satisfaction of the claims.
>
> "(b) Upon actions and judgments for money, they shall have a lien superior to all liens but tax liens, and no person shall be at liberty to satisfy the action or judgment, until the lien or claim of the attorney for his or her fees is fully satisfied;

and attorneys-at-law shall have the same right and power over action or judgment to enforce their liens as their clients had or may have for the amount due thereon to them.

"(c) Upon all actions for the recovery of real or personal property, and upon all judgments for the recovery of the same, attorneys-at-law shall have a lien on the property recovered, for their fees, superior to all liens but liens for taxes, which may be enforced by the attorneys-at-law, or their lawful representatives, as liens on personal and real estate, and the property recovered shall remain subject to the liens, unless transferred to bona fide purchasers without notice.

"(d) The lien in the event of an action, provided in subsections (b) and (c) of this section, shall not attach until the service upon the defendant or respondent of summons, writ or other process. However, when any claim is settled between the parties after the filing of an action but before the defendant has actual notice of the filing of the action by service of summons or otherwise, such settlement shall operate as a full discharge of the claim."

Moreover, Capell & Howard points out, Ala. Code 1975, § 34-3-62, permits an attorney seeking to settle a disagreement about the compensation to which that attorney is entitled to "file a motion" in the circuit court. Indeed, § 34-4-62 reads, in pertinent part:

"Whenever any disagreement or controversy arises between an attorney-at-law and any other person respecting the amount of the compensation to which he or she is entitled by contract or otherwise and his or her retention of the same out of any funds in

> his or her hands, such attorney may by motion in the circuit court or court of like jurisdiction, of the county of his or her residence, of which such other person shall have notice, obtain an order of the court that a certain amount is due under such contract or would be reasonable compensation for his or her services ...."

We have located no caselaw construing § 34-4-62 or its predecessors. The rules of statutory construction require us to give the words used in § 34-4-62 their common and ordinary meaning. See Ex parte Lambert Law Firm, LLC, 156 So. 3d 939, 941 (Ala. 2014). Based on the language used in § 34-4-62, an attorney holding money from which his or her attorney fee may be deducted may file a motion in the circuit court of the county of his or her residence seeking to settle a dispute over the amount of compensation to which the attorney is entitled.

Napoleon insists on appeal that, in order to properly assert an attorney's lien, Meadows was required to intervene in the action and to "file an attorney's lien." In support of this argument, Napoleon quotes Ex parte Clanahan, 261 Ala. 87, 94, 72 So. 2d 833, 839 (1954) (quoting Owens v. Bolt, 218 Ala. 344, 347, 118 So. 590, 593 (1928), which construed a predecessor statute to § 34-3-61):

> "'There is a distinct difference between a suit for the recovery of property under subdivision 3 and one for the recovery of money under subdivision 2.
>
> "'In a suit for money, the suit must be prosecuted to judgment to bring into being the subject-matter to which the lien attaches. In a suit for property, the subject-matter is already in being. Hence the marked difference in the language of the two subdivisions. In one the attorney is given the same power over the suit as the client. In the other, he is merely granted power to enforce his lien.'"

This particular language does not support Napoleon's conclusion because it merely distinguishes between attorney's liens against monetary judgments and those against judgments involving real or personal property. In Owens, our supreme court explained that, under Ala. Code 1923, § 6262(4), the predecessor to § 34-3-61(d), "the [attorney's] lien attaches on service of summons upon respondent" in the underlying action. Owens, 218 Ala. at 347, 118 So. at 593. The language of § 34-4-61(d), although slightly different than that of its predecessor statute, states that "[t]he lien in the event of an action, provided in subsections (b) and (c) of this section, shall not attach until the service upon the defendant or respondent of summons, writ or other process." Put another way, an attorney's lien attaches to either the expected

monetary judgment or to the real or personal property that is the subject of the action at the time that the defendant or respondent is served in the action in which the attorney's services are rendered. We find no basis for the conclusion that, in order to perfect an attorney's lien in a monetary judgment, an attorney is required to file "a lien" or a separate action seeking to collect his or her fee.

An attorney's lien attached to the monetary judgment at the time the complaint in the will contest was served on the proponent of the will. See § 34-4-61(d). Once the action was prosecuted to a monetary judgment and the check, which was made out to the siblings and Capell & Howard jointly, was forwarded to Capell & Howard, Meadows was entitled to apply that money toward the satisfaction of the claim for attorney fees. See § 34-3-61(a). When a dispute arose about the amount of compensation due, Meadows complied with § 34-4-62 and filed a motion in the circuit court seeking resolution of the fee dispute.[1] Thus, we agree with Capell & Howard that

[1]Meadows filed his motion in the circuit court that handled the will contest. Nothing in the record indicates the county in which Meadows resides.

the circuit court had the authority to consider Meadows's motion.

Napoleon also argues that Capell & Howard was not the proper party to enforce the attorney's lien and that, instead, any enforcement action was required to be brought by the attorney of record. Napoleon correctly states the general rule. As we explained in Eaton v. Keller Plumbing Co., 587 So. 2d 338, 339 (Ala. Civ. App. 1991), "[i]ndeed, the right of an attorney to intervene or assert a lien after settlement is available only to the attorney of record at the time of settlement." The attorney seeking to impose a lien in Eaton, Alicia K. Haynes, had been a partner in a law firm that had represented the plaintiff for a time; however, Haynes had never been an attorney of record for the plaintiff. Eaton, 587 So. 2d at 339. After the settlement of the action, Haynes sought reimbursement for expenses incurred by the law firm and an attorney's fee for the work performed by the law firm on the theory of quantum meruit. Id. This court affirmed the trial court's denial of Haynes's motion, explaining that, because she had not been counsel of record, she was not a proper party to claim a lien under § 34-3-61. Id.

However, the present case differs markedly from Eaton. In this action, Meadows, as attorney of record, filed the motion pursuant to § 34-3-62 seeking to have the dispute between him and the siblings regarding the amount of the attorney fee decided. The contract in the record appears to be between the siblings and Capell & Howard, although it is signed by Meadows. The judgment ordered that the siblings pay Capell & Howard the attorney fee; however, if the judgment is defective for ordering payment to Capell & Howard, a point that we do not decide, that may be corrected by virtue of a Rule 60(a), Ala. R. Civ. P., amendment to the judgment to reflect that Meadows is the proper party entitled to the attorney fee.

Furthermore, relying on Boykin Timber & Farm Resources, Inc. v. Nix, 438 So. 2d 294 (Ala. 1983), Napoleon argues that the proper avenue for addressing an attorney-fee dispute is the institution of a new action and not a motion filed in the underlying action. Napoleon relies on the following quotation from Boykin, 438 So. 2d at 296:

> "[J]ust as the statute fails to allow liens upon 'proceeds,' it also fails to authorize the entry of personal judgments. If, therefore, an attorney wishes to seek a personal judgment against a former

> client, or the shareholders of a former corporate client, he must seek a legal remedy in the form of a new action based upon the employment contract or quantum meruit."

A closer reading of Boykin, however, reveals that the above-quoted holding is based on the fact that the attorney's lien in Boykin had arisen by virtue of § 34-3-61(c) and had therefore attached to stock that had been the subject of the action in which the attorney's services were performed. Id. ("The recovery of the ... stock in the original action necessarily circumscribed the subject matter jurisdiction of the circuit court, and the stock thus represented the only property upon which the § 34-3-61(c) lien could attach."). The attorneys had further argued that they had been promised an interest in a condominium owned by the company whose stock they had assisted in recovering; the clients sold that condominium, and the attorneys argued that their attorney's lien could have attached to the condominium or to the proceeds from its sale. Id. Our supreme court disagreed, commenting first that, "even if the condominium unit was deemed to be tantamount to the stock recovered in the original action," the trial court lacked the power to impress a lien upon it because it had been sold to bona fide purchasers without notice. Id.

(citing § 34-3-61(c)). In addition, our supreme court rejected the idea that the proceeds of the sale could be considered to be the "property recovered," as used in § 34-3-61(c), because "the statute failed to include the word 'proceeds' within its terms." Id. Finally, our supreme court explained that § 34-3-61(c) did not provide for the entry of a personal judgment against the clients and that, therefore, the attorneys would be required to file a new action against the clients in order to recover the outstanding attorney fees. Id.

In the present case, unlike in Boykin, the will contest produced, through settlement, a monetary judgment in favor of the siblings. Thus, the applicable statute is § 34-3-61(b) and not § 34-3-61(c). An attorney's lien attached to the $170,000 awarded to the siblings, and the holding in Boykin does not require Meadows to institute an independent action to collect attorney fees.

Furthermore, we reject Napoleon's argument that the fact that the trial court's February 2017 judgment "dismissed" the will contest prevented the attachment of an attorney's lien. To support his argument, Napoleon cites CSX Transportation,

Inc. v. Wettermark, 644 So. 2d 969, 970–71 (Ala. Civ. App. 1994), for the propositions that, "when an attorney has a lien on an action, it cannot be enforced unless the action is prosecuted to judgment" and that, "where the action was dismissed, there is nothing upon which a lien could attach." Although those propositions are sound, they are inapplicable here. The actions in Wettermark had been dismissed without prejudice on forum non conveniens grounds before they were litigated; thus, as our supreme court explained, "[t]here were no Alabama judgments to which Wettermark's attorney's liens could attach." Wettermark, 644 So. 2d at 971. In the present case, the dismissal of the siblings' will contest accompanied a judgment incorporating a settlement awarding the siblings $170,000, which was a monetary judgment to which the attorney's lien could attach.

Napoleon also contests the award of attorney fees in the amount of $54,158 to Capell & Howard. He complains that the evidence does not support the fees awarded. He also argues that the judgment awarding attorney fees must be reversed because, he contends, this court is unable to discern from the

judgment what factors the trial court considered in setting the fees.

Although the April 13, 2018, judgment awarding $54,158 in attorney fees to Capell & Howard does not contain express findings of fact or conclusions of law, we conclude that the record contains sufficient evidence to evaluate and affirm the award.

> "A trial court is not required to set forth a detailed analysis of all the applicable factors considered by it in exercising its discretion in establishing a reasonable attorney fee. However, where the trial court's order does not articulate the basis for its attorney-fee award, we are left to search the record for the basis for the award. The record 'must allow for meaningful appellate review by articulating the decisions made, the reasons supporting those decisions, and how it calculated the attorney fee.' Pharmacia [Corp. v. McGowan], 915 So. 2d [549,] 553 [(Ala. 2004)]."

Diamond Concrete & Slabs, LLC v. Andalusia-Opp Airport Auth., 181 So. 3d. 1071, 1076 (Ala. Civ. App. 2015).

As Napoleon points out, when determining the appropriate compensation due an attorney, the trial court is to consider the various factors outlined in Peebles v. Miley, 439 So. 2d 137, 141-43 (Ala. 1983). In Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988), our supreme court explained:

> "In Peebles, this Court added five more criteria to the seven that had been enumerated in our cases. The complete list of criteria used in the estimation of the value of an attorney's services now includes the following: (1) the nature and value of the subject matter of the employment; (2) the learning, skill, and labor requisite to its proper discharge; (3) the time consumed; (4) the professional experience and reputation of the attorney; (5) the weight of his responsibilities; (6) the measure of success achieved; (7) the reasonable expenses incurred; (8) whether a fee is fixed or contingent; (9) the nature and length of a professional relationship; (10) the fee customarily charged in the locality for similar legal services; (11) the likelihood that a particular employment may preclude other employment; and (12) the time limitations imposed by the client or by the circumstances."

When evaluating the factors applicable to the determination of reasonable attorney fees, "it is generally recognized that the first yardstick that is used by the trial judges is the time consumed." Peebles v. Miley, 439 So. 2d at 141. In support of the award, Meadows submitted detailed records of the time consumed and the activities conducted in the representation of the siblings. The bills submitted by Capell & Howard indicated that Meadows and junior attorney R. Faith Perdue had expended 264 and 378 hours, respectively, on the litigation. The total amount of the attorney fees sought was over $95,000. Meadows stated that he had indicated to Napoleon in October 2016 that he would take $40,000 to settle

the fee dispute; however, Meadows stated on the record at the hearing before the trial court that, at that time, he was requesting between $50,000 and $60,000 in attorney fees.

In support of the requested fees, Meadows also presented the affidavits of John V. Denson and Roger W. Pierce, who are both local attorneys familiar with the rates charged in Lee County for legal work comparable to that required by the will contest. Both Denson and Pierce opined that the fees and expenses reflected on the bills submitted to Napoleon were fair, just, and reasonable and gave statements regarding the quality of the work and the experience and reputation of the attorney primarily performing the services. Meadows also presented evidence of the attorney fees charged by other attorneys involved in the will contest, which were comparable to those charged by Meadows and Perdue.

To challenge the fee request, Napoleon presented testimony of Danny Fred Dukes, a certified public accountant and certified fraud examiner from Georgia. Dukes testified that the contract between the siblings and Capell & Howard required detailed billing but that many items in the bills related to the time spent on the will contest by Perdue

contained what Dukes called "block billing," in which a task is not specifically labeled. In addition, Dukes testified that several items were billed at Perdue's $160-per-hour rate despite the fact that the tasks were administrative and should have been billed at a lower rate and that many tasks were billed by both Meadows and Perdue, resulting in duplicate billing when the services of both attorneys were not necessary for the task. According to Dukes, the adjusted amount of time Capell & Howard should have billed the siblings for was 216.6 hours, which, at a rate of $200 per hour, would have equaled a total bill of $43,320. On cross-examination, Dukes admitted that he was not aware of the customary rate charged for legal services in Lee County and that he was not an attorney; instead, he explained, his knowledge had been gained by reviewing the bills submitted by attorneys for the company by which he was employed.

A review of the hearing transcript together with the affidavits submitted in support of the fee request shows that the trial court had information from which it could evaluate the factors set out in Van Schaack. The trial court was able to evaluate the quality and quantity of the time expended by

the attorneys from the record of the underlying litigation and from the evidence presented in determining the fees to be awarded. "We defer to the trial court in an attorney-fee case because we recognize that the trial court, which has presided over the entire litigation, has a superior understanding of the factual questions that must be resolved in an attorney-fee determination." Pharmacia Corp. v. McGowan, 915 So. 2d 549, 553 (Ala. 2004) (citing City of Birmingham v. Horn, 810 So. 2d 667, 681–82 (Ala. 2001), citing in turn Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)).

Further, the amount of the attorney fees the trial court awarded could have been based on the trial court's assessment of what would have been a reasonable percentage of the recovery after evaluating the outcome and measure of success. At the November 2017 hearing, Meadows asked the trial court to consider awarding a fee that was comparable to what would be reasonable if the fee was based on a contingency-fee agreement. Meadows argued that a reasonable contingency fee was 40% of the total recovery of $170,000, or $68,000. He further argued that, because the siblings had already paid approximately $18,000, a reasonable fee award would be between

$50,000 and $60,000, significantly less than the total claimed of approximately $95,000. The trial judge could have considered the award of $54,158 to be reasonable after assessing these factors. See Diamond Concrete & Slabs, LLC v. Andalusia-Opp Airport Auth., 181 So. 3d. at 1076 ("We do not hold that a reasonable fee cannot be equivalent to an amount that is equal to a percentage of the amount recovered, and we note that the trial court may consider the measure of success achieved and other factors, as illustrated in Peebles.").

Because we have rejected each of Napoleon's arguments regarding the trial court's authority to entertain Meadows's motion and its determination that an award of $54,158 in attorney fees was reasonable, we affirm the judgment of the trial court.

AFFIRMED.

Thompson, P.J., and Pittman, Thomas, Moore, and Donaldson, JJ., concur.