REL: September 24, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200092

Sirote & Permutt, P.C.

v.

C. Randall Caldwell, Jr.

Appeal from Mobile Circuit Court
(CV-18-902403)

MITCHELL, Justice.

The law firm of Sirote & Permutt, P.C., and attorney C. Randall Caldwell, Jr., each claim that they are entitled to one-third of the

attorneys' fees that were owed for a BP oil spill settlement. Sirote and Caldwell litigated their dispute against each other, and, following a bench trial, the trial court ruled in favor of Caldwell and awarded the funds to him. We affirm that judgment.

Facts and Procedural Background

George Woerner, Caldwell's ex-father-in-law, owned several businesses along the Gulf Coast ("the Woerner entities"). From about 2008 to 2012, Caldwell worked for the Woerner entities. Although Caldwell occasionally provided legal advice to the Woerner entities, he primarily worked in a business role, including as president of Woerner Landscape, Inc.

In April 2010, the Deepwater Horizon oil rig operated by BP entities began leaking oil into the Gulf of Mexico. Like many businesses on the Gulf Coast at the time, the Woerner entities considered asserting claims against BP. During that evaluation process, Caldwell advised representatives of the Woerner entities that the BP lawsuits would likely result in federal multidistrict litigation and that it would be best to retain a large law firm that might have representatives on the federal

multidistrict-litigation committee. He researched law firms and recommended Cunningham Bounds, LLC, to the Woerner entities' representatives. The Woerner entities gave Caldwell permission to proceed with contacting Cunningham Bounds about representing them.

Caldwell first spoke with Steve Olen, a partner at Cunningham Bounds. Caldwell testified that, during that conversation, Olen confirmed that Cunningham Bounds would pay Caldwell one-third of any attorneys' fees earned and that they would set up an in-person meeting with other representatives of the Woerner entities. That meeting -- which included Olen, Caldwell, George, Roger Woerner (George's brother and part owner of the Woerner entities), and Norm Moore (the Woerner entities' CFO) -- took place in April 2011. In that meeting, the Woerner entities' representatives agreed to retain Cunningham Bounds as counsel for their BP claims. Caldwell testified that the parties also discussed the referral fees, that no one expressed any objection to the referral arrangement, and that there was no discussion suggesting that Caldwell would be required to assist Cunningham Bounds going forward to obtain the referral fees.

Shortly after the April 2011 meeting, the Woerner entities signed representation agreements that entitled Cunningham Bounds to a percentage of any funds recovered for the BP claims. In a paragraph titled "Referral fees, if applicable," each of the representation agreements provided: "I/We understand that my/our claims and case were referred to you by Randall Caldwell (Referring Attorney) who may receive up to 1/3 of the attorneys fees set out in this Agreement." Olen testified that Cunningham Bounds listed Caldwell as the referring attorney to "have a record of what we have agreed to with the referring lawyer." Testimony at trial indicated that no one objected to Caldwell's involvement or to his receipt of referral fees before signing the representation agreements.

The following year, Caldwell filed for divorce from his wife -- who is George's daughter. George then asked Caldwell to leave the Woerner entities. Caldwell agreed and returned to his private legal practice.

In 2013, Cunningham Bounds notified Caldwell of the approximate settlement amount for the BP claims. According to Caldwell, when his ex-wife learned of that amount, she called him in an angry state and threatened to prevent him from obtaining the referral fees. George later

met with Olen and explained that there was "bad blood" in the family over the divorce. He also asked Olen if Cunningham Bounds could split the referral fees among the partners of the Woerner entities rather than pay Caldwell.[1] Olen explained that he could not grant George's request.

The next year, before they had recovered any funds for the BP claims, the Woerner entities retained Sirote as "substitute" referral counsel to assist Cunningham Bounds with certain elements of those claims. As part of that process, each of the Woerner entities sent a letter to Caldwell acknowledging that Caldwell had "previously assisted with a BP oil-spill claim asserted on behalf of" each respective Woerner entity, that the claim "had been principally handled by Cunningham Bounds," and that "at the time Caldwell provided assistance he was working as in-house counsel for one or more" of the Woerner entities. Additionally, the letters purported to terminate each of the Woerner entities' attorney-client relationship with Caldwell. According to George's testimony, the Woerner entities agreed to pay Sirote the referral fees

[1]According to George, he, Roger, Caldwell, and Allen Woerner (George's son) had agreed to split the referral fees as bonuses.

allocated to Caldwell in the representation agreements.[2] Caldwell then contacted Olen and asserted that he was entitled to the referral fees.

Once the Woerner entities' BP claims settled, Cunningham Bounds filed this interpleader action in the Mobile Circuit Court against Caldwell and Sirote to determine who was entitled to the referral fees. Caldwell moved for summary judgment, asserting that the Woerner entities and Cunningham Bounds had agreed through the representation agreements to pay him those fees. The trial court granted Caldwell's motion, and Sirote appealed. We reversed the trial court's judgment and remanded the case for further proceedings because Caldwell had failed to demonstrate that no genuine issue of material fact existed. See Sirote & Permutt, P.C. v. Caldwell, 293 So. 3d 867, 874 (Ala. 2019). Specifically, this Court held, Caldwell had not "present[ed] any evidence to establish the existence of a contract between him and Cunningham Bounds." Id. Instead, this Court determined, Caldwell had primarily relied on the

[2]Olen testified that Cunningham Bounds never contracted with Sirote to work on the BP claims and never agreed to pay Sirote out of any fees it earned from working on those claims.

representation agreements between the Woerner entities and Cunningham Bounds, which merely stated that Caldwell may be paid up to one-third of the attorneys' fees. Id.

The trial court then held a bench trial in which it heard testimony from Caldwell, George, Olen, Roger, and Thomas Motes, an attorney at Sirote. It found that "there was a legally enforceable agreement between" Caldwell and Cunningham Bounds to pay Caldwell referral fees and that, because the "referral itself was the subject of" the representation agreements, "the referral fee[s] w[ere] earned when the referral was made." Thus, the trial court held, Caldwell was entitled to the referral fees. Sirote again appealed.

Standard of Review

" 'Since this case was heard nonjury by the trial judge and decided by [him] as factfinder, the ore tenus rule applies.' " Murphy Oil, USA, Inc. v. English, [Ms. 1190610, Feb. 19, 2021] __ So. 3d __, __ (Ala. 2021) (quoting Clardy v. Capital City Asphalt Co., 477 So. 2d 350, 352 (Ala. 1985)). " 'There is thus a presumption of correctness in the trial judge's findings and [his] judgment based on those findings should not be

disturbed unless palpably wrong, without supporting evidence, or manifestly unjust.' " Id. at __ (citation omitted). "Nevertheless, we review the trial court's 'conclusions of law or its application of law to the facts' de novo." Id. at __ (citation omitted). Questions concerning the sufficiency of the evidence are questions of law. See Sandoz, Inc. v. State, 100 So. 3d 514, 526 (Ala. 2012).

Analysis

Sirote raises multiple issues on appeal. First, it argues that there was insufficient evidence for the trial court to find the existence of a referral agreement between Caldwell and Cunningham Bounds. Second, it argues that Caldwell is not entitled to the referral fees even if a referral agreement exists. According to Sirote: (1) there was insufficient evidence of an attorney-client relationship between Caldwell and the Woerner entities; (2) there was insufficient evidence that the Woerner entities gave informed consent to the referral agreement, as allegedly required by Rule 1.5(e), Ala. R. Prof. Cond.; (3) if the Woerner entities gave informed consent, they withdrew it by discharging Caldwell; and (4) the trial court erred by holding that Caldwell "earned" referral fees when he referred the

Woerner entities' BP claims to Cunningham Bounds. Finally, Sirote argues that the trial court erroneously awarded Caldwell postjudgment interest. We address each argument below.

A. Was There Sufficient Evidence of a Referral Agreement?

We pick up where our decision in Sirote left off: Was there a contract for the payment of referral fees between Caldwell and Cunningham Bounds? A contract exists when there is an offer, acceptance, consideration, and mutual assent to the essential terms of the agreement. Sirote, 293 So. 3d at 873. Sirote argues that there was insufficient evidence of the essential terms of the agreement.

First, Sirote contends that, during his testimony at trial, Olen could not recall specific details about his conversations with Caldwell or the Woerner entities' representatives; he testified about only Cunningham Bounds' general policies and practices for referrals of BP claims. Specifically, Olen testified that, rather than entering into separate written agreements, Cunningham Bounds generally agreed to pay one-third of attorneys' fees to the referring lawyer and to reflect that agreement with the referring lawyer in the agreement it signed with clients. But, even

though Olen could not recall the specific telephone call or discussion with Caldwell regarding referral fees, his testimony was unequivocal that they did discuss fees and that it was his understanding that Cunningham Bounds would pay Caldwell one-third of the attorneys' fees. Olen also testified that, consistent with its general practice, Cunningham Bounds "intended [the representation agreements] to show that we had agreed to pay Mr. Caldwell that referral fee." In fact, Olen testified that his staff inserted Caldwell's name in the referral section of the representation agreements upon his "express[] instruction." Finally, Olen testified that, once Caldwell referred the Woerner entities' BP claims, there was nothing "left for Mr. Caldwell to perform" and that he had "perform[ed] everything he was asked to perform."

Caldwell's testimony was consistent with Olen's. He testified that he first called Cunningham Bounds and left a message and that he then received a call back from Olen. During that conversation, Caldwell testified, he and Olen discussed the fee arrangement -- including that it was standard for Cunningham Bounds to pay one-third of attorneys' fees for referrals of BP claims. Further, Caldwell testified that they discussed

the fee arrangement -- including referral fees -- during the April 2011 meeting and that there was no discussion during that meeting about requiring further work from Caldwell on the BP claims.

Sirote makes no attempt to explain away this testimony, which the trial court was entitled to weigh. See Ex parte Caldwell, 104 So. 3d 901, 904 (Ala. 2012) (" 'When evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented.' " (citation omitted)). Nor does Sirote cite any authority for the notion that Olen's testimony about Cunningham Bounds' general practice for handling referrals of BP claims is outside the bounds of the trial court's consideration. Thus, this challenge to the sufficiency of the evidence fails.

Second, Sirote argues that the evidence Caldwell provided during the summary-judgment proceedings was inconsistent with the evidence he provided at trial. When he moved for summary judgment, Caldwell asserted in an affidavit that, "[t]o formalize the employment agreement between Cunningham Bounds and all of the Woerner businesses,

Representation Agreements were executed by each of the Woerner businesses as well as Cunningham Bounds promising to pay me a referral fee on each claim." Sirote argues that this is inconsistent with Caldwell's evidence at trial -- that the contract between him and Cunningham Bounds was oral. Thus, relying on Murphy Oil, Sirote argues that the trial court should not have considered this allegedly new evidence at trial.

Caldwell's statement in his summary-judgment affidavit was, in essence, a legal argument -- that the representation agreements created an enforceable obligation on the part of Cunningham Bounds. We rejected that argument based on the plain language of those agreements, which stated that Caldwell was the referring attorney and that he " 'may receive up to' " one-third of the attorneys' fees, without any indication as to "what would trigger the payment of a referral fee to Caldwell or how the actual amount of such a fee would be determined." Sirote, 293 So. 3d at 874 (emphasis altered). Caldwell also asserted at the summary-judgment stage that he had a contract with Cunningham Bounds separate from but formed at the same time as the representation agreements, which we rejected for a lack of evidence. Id.

During trial, Caldwell did not change any of his testimony. Rather, he provided additional evidence to support his legal theories -- including that Cunningham Bounds had inserted his name in the representation agreements to memorialize the referral agreement it had reached with him. Thus, even if Murphy Oil applied here,[3] it does not bar the trial court from considering Caldwell's evidence at trial.

It is clear there was sufficient evidence for the trial court to conclude that a referral agreement existed between Caldwell and Cunningham Bounds. No one disputes that there was an offer and an acceptance -- Caldwell offered to refer the Woerner entities' BP claims to Cunningham Bounds, which accepted that offer. And there is evidence to conclude that

[3]In Murphy Oil, we applied the well-established rule that we will not review the denial of a motion for summary judgment when there has been a subsequent trial on the merits. In doing so, we referenced (but did not apply) an exception to that rule: when a party changes testimony based on experiences gained during the summary-judgment proceedings. Murphy Oil, __ So. 3d at __. This exception applies when a summary-judgment movant asserts on appeal that the judgment should have been granted at the time it filed the motion. But it does not necessarily follow that the exception applies when a nonmovant, like Sirote, challenges additional evidence a movant submitted at trial after the movant was denied summary judgment.

consideration existed for both sides in the form of attorneys' fees. Finally, the testimony of Caldwell and Olen was sufficient to establish the essential terms of their agreement -- Caldwell's obligation was to refer the Woerner entities' BP claims, and Cunningham Bounds' job was to represent the Woerner entities and pay Caldwell one-third of its attorneys' fees from any funds it recovered from the BP claims. Thus, the trial court did not err by finding the existence of a contract between Caldwell and Cunningham Bounds.

B. Is the Referral Agreement Void or Unenforceable?

Sirote advances several arguments that, if correct, could render the referral agreement void or unenforceable. We find each of those arguments unconvincing.

1. Was There Sufficient Evidence to Find an Attorney-Client Relationship Between Caldwell and the Woerner Entities?

Sirote contends that the evidence at trial was insufficient to establish an attorney-client relationship between Caldwell and the Woerner entities. Because Caldwell "has no basis for receiving a fee based on money recovered on behalf of a non-client," Sirote argues, he is not

entitled to the referral fees. We disagree. Our review of the evidence presented at trial reveals that the trial court had sufficient evidence to conclude that an attorney-client relationship between Caldwell and the Woerner entities existed and that the scope of that relationship was limited to the initial advice Caldwell provided and his referral of the Woerner entities' BP claims to Cunningham Bounds.[4]

"To create an attorney-client relationship, there must be an employment contract ' "either express or implied" ' between an attorney and ' "the party for whom he purports to act or some one authorized to represent such party." ' " Bryant v. Robledo, 938 So. 2d 413, 418 (Ala. Civ. App. 2005) (quoting Board of Comm'rs of the Alabama State Bar v. Jones, 291 Ala. 371, 377, 281 So. 2d 267, 273 (1973)). The testimony at trial included the following:

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[4]Although the trial court did not make any express factual finding on these points, those findings are implicit in the trial court's conclusions that an enforceable referral agreement existed between Caldwell and Cunningham Bounds and that Caldwell "earned" the referral fees at the time of the referral. See Ex parte Owen, 860 So. 2d 877, 880 (Ala. 2003) ("[W]hen the trial judge makes no specific findings of fact as to an issue, we will assume that the judge has made the findings necessary to support the judgment, unless those findings are clearly erroneous.").

- Caldwell was not hired as in-house legal counsel because the Woerner entities did not "have enough ongoing legal issues to acquire in-house counsel," but, as needed, he would "certainly review contracts, things of that nature";

- According to George, Caldwell's compensation from the Woerner entities included payment for legal advice and services;

- As of 2011, Caldwell "provide[d] expert legal knowledge" to the Woerner entities and Caldwell believed he had an attorney-client relationship with them regarding "lots of things";

- Although George would not characterize Caldwell's relationship with the Woerner entities as an attorney-client relationship generally, he and other representatives of the Woerner entities would "[a]bsolutely" ask Caldwell for legal advice, and Caldwell would provide it;

- Caldwell provided legal advice to the Woerner entities concerning their potential BP claims by explaining the nature of federal multidistrict litigation, by stating that they would want to hire a large firm that might have someone directly involved in the federal multidistrict-litigation committee, by researching and recommending Cunningham Bounds, and by facilitating the discussions with Cunningham Bounds;

- Caldwell believed he had an attorney-client relationship with all the Woerner entities regarding their BP claims from the point they began discussing the possibility of filing claims against BP until he referred those claims to Cunningham Bounds;

- George characterized Caldwell's relationship with the Woerner entities regarding the BP claims as an attorney-client relationship. George said that he had expected Caldwell to continue working on the BP claims even after the termination of his employment with the

> Woerner entities. He further testified that he had terminated that relationship in favor of Sirote because he believed that Caldwell was not performing well in that capacity.

In addition to that testimony, the documents introduced as evidence at trial support the existence of an attorney-client relationship. Each of the representation agreements list Caldwell as the "Referring Attorney," and each of the Woerner entities sent letters to Caldwell stating that he had assisted with the BP claims as "in-house counsel for one or more of the Woerner entities" and "terminating the attorney-client relationship between [Caldwell] and/or your firm and [each Woerner entity] on the BP oil spill claim." Taken together, there was sufficient testimonial and documentary evidence from which the trial court could have found an attorney-client relationship between Caldwell and the Woerner entities, at least concerning the BP claims.

The trial court also had sufficient evidence to conclude that the scope of that relationship consisted of Caldwell's initial advice and his referral of the Woerner entities' BP claims to Cunningham Bounds. Of the four individuals who testified about this issue -- George, Roger, Caldwell, and Olen -- only George testified that he had expected Caldwell to continue

working on the BP claims. But George's testimony arguably contradicted itself. For example, he testified that he wanted to discharge Caldwell as the Woerner entities' attorney for the BP claims because Caldwell was not keeping George updated about the status of the BP litigation. Yet, despite frequent news reports about the BP litigation, George testified that he never contacted Caldwell in the years following Caldwell's departure from the Woerner entities to express his dissatisfaction that Caldwell was not keeping him updated. The trial court was entitled to weigh this testimony and the witnesses' credibility. See Caldwell, 104 So. 3d at 904.

Finally, none of the authorities Sirote cites prohibit Caldwell from receiving referral fees. Sirote cites Alabama State Bar Office of General Counsel Formal Opinion 2013-01 for the proposition that Caldwell's status as an employee of a nonlawyer corporation prevented him from receiving referral fees for the Woerner entities' BP claims. But that opinion states that it is impermissible to share referral fees for BP claims with nonlawyers, such as accountants and other advisors. It says nothing about referral fees for a lawyer who -- if not formally designated as in-

house counsel -- provided legal advice concerning his employer's BP claims.[5]

Sirote argues in the alternative that, even if an attorney-client relationship existed, Caldwell was entitled to fees only under a quantum meruit theory -- that is, Caldwell could recover fees only "for the reasonable value of services [he] rendered." Gaines, Gaines & Gaines, P.C. v. Hare, Wynn, Newell & Newton, 554 So. 2d 445, 447 (Ala. Civ. App. 1989). Sirote relies on Gaines and Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. v. DuBois, 266 So. 3d 1064 (Ala. Civ. App. 2017), both decisions of the Court of Civil Appeals, in making this argument. But both cases are distinguishable.

In Gaines, a law firm challenged the trial court's award of attorneys' fees on a quantum meruit basis when the firm had been discharged before the completion of a case, arguing that it was instead entitled to half the contingency fees awarded under a joint-representation agreement with

[5]Similarly, Sirote refers to Rule 5.4(a), Ala. R. Prof. Cond., which prohibits sharing fees with a "nonlawyer." That rule has no application here because Caldwell was a licensed Alabama lawyer throughout the relevant events in this case.

another firm. Gaines, 554 So. 2d at 446. The Court of Civil Appeals affirmed the trial court's quantum meruit award because the law firm's contractual claim to a share of the contingency fees in Gaines "was conditioned on active participation" by that firm, and the firm's termination rendered participation "an impossibility and limited the Gaines firm's recovery to the services it had performed." Id. at 449. In fact, the Court of Civil Appeals held, "there was no case referral." Id. Here, by contrast, the trial court reasonably found that a referral agreement existed. And in Pope, a law firm intervened in a case in which it sought attorneys' fees based on a quantum meruit theory, not because it said it was entitled to referral fees. See Pope, 266 So. 3d at 1068. Thus, neither case would preclude Caldwell from receiving referral fees.

2. Was There Sufficient Evidence that the Woerner Entities Gave Informed Consent to the Referral Agreement?

Sirote argues that Rule 1.5(e), Ala. R. Prof. Cond., requires the Woerner entities' informed consent to the referral agreement, which, Sirote says, they did not give. And because George had expected Caldwell to continue working on the Woerner entities' BP claims and Caldwell did

not, Sirote argues, "there was no meeting of the minds between [George] and Caldwell" and thus no informed consent.

We note at the outset that, by its express terms, Rule 1.5(e) does not require informed consent. Rule 1.5(e) provides, in part:

> "A division of fee between lawyers who are not in the same firm, including a division of fees with a referring lawyer, may be made only if:
>
> > "(1) ... (c) in a contingency fee case, the division is between the referring or forwarding lawyer and the receiving lawyer;
> >
> > "(2) the client is advised of and does not object to the participation of all the lawyers involved;
> >
> > "(3) the client is advised that a division of fee will occur; and
> >
> > "(4) the total fee is not clearly excessive."

(Emphasis added.) Nor is there any requirement in Rule 1.5(e) -- and Sirote cites no authority to support its argument -- that there be a "meeting of the minds" between the client and the referring attorney.

Even if Rule 1.5(e) required informed consent, however, there is sufficient evidence to conclude that the Woerner entities gave such consent to the referral agreement. Each of the Woerner entities signed a

representation agreement allowing Cunningham Bounds to pay Caldwell one-third of the attorneys' fees. And there is no indication in the record that the parties entered into those agreements involuntarily or were unaware of the terms of those agreements. Further, Caldwell testified that the referral-fee arrangement was discussed at the April 2011 meeting. Even George testified that he knew at that time that Caldwell would receive one-third of the attorneys' fees.

Although the trial court made no specific findings concerning this issue, "we will assume that the judge has made the findings necessary to support the judgment, unless those findings are clearly erroneous." Ex parte Owen, 860 So. 2d 877, 880 (Ala. 2003). Given the evidence available, the trial court would not have been clearly wrong to find that the Woerner entities were informed of the referral arrangement and that they had consented to it.

3. Were the Woerner Entities Entitled to Withdraw Their Consent to the Referral Agreement?

Attorneys who are not part of the same law firm may split contingency fees as long as the client is "advised of and does not object to

the participation of all the lawyers involved." Rule 1.5(e)(2), Ala. R. Prof. Cond. Sirote argues that, when they terminated their attorney-client relationship with Caldwell, the Woerner entities objected to Caldwell's involvement, thereby rendering the referral agreement unenforceable under Rule 1.5(e)(2).

Sirote's argument identifies a tension between a client's right to choice of legal counsel and the rights of parties to enter into contracts. See, e.g., Berkel & Co. Contractors v. Providence Hosp., 454 So. 2d 496, 505 (Ala. 1984) ("Alabama law firmly embraces the concept of freedom of contract."); National Filtronics, Inc. v. Sherwood Land, Ltd., 428 So. 2d 11, 15 (Ala. 1983) ("The right of private counsel of one's own choice is virtually absolute ...."). Indeed, "[a]pplying general contract law to contracts governing the attorney-client relationship, especially with regard to the termination of the attorney-client relationship, ignores the unique relationship between an attorney and client." Fuston, Petway & French, LLP v. Water Works Bd. of Birmingham, [Ms. 1180875, June 30, 2021] __ So. 3d __, __ (Ala. 2021). It appears that this Court has not addressed whether a client may substitute referring counsel and effectively rewrite

the original referring counsel's contract with the attorney to whom the case was referred. But Sirote and Caldwell have identified several cases from other jurisdictions that have discussed this issue.

Sirote relies on Woods v. Southwest Airlines Co., 523 F. Supp. 2d 812, 817 (N.D. Ill. 2007). In that case, a family hired two attorneys to pursue a wrongful-death claim. Id. at 816-17. Several days later, the clients and their attorneys met with a separate law firm to discuss assisting the attorneys with the case, after which the clients executed a representation agreement entitling the attorneys and the law firm to 50% of the fees recovered from their claims. Id. at 817-18. Only a month later -- before a complaint had been filed -- the family terminated its relationship with the attorneys and signed a new representation agreement that included the original law firm and a new, secondary firm. Id. at 818. The attorneys then filed a petition seeking to enforce their original contingency-fee agreement. The court found that the original agreement was not a mere referral agreement because it "clearly contemplate[d] continued involvement" by the attorneys and that "[a]ny obligation to pay fees was contingent upon [their] continuing to perform

their contractual obligations until recovery was obtained." Id. at 823. The court noted that the nature of the agreement was not dispositive, however, because the family "ceased to consent to the fee sharing and removed any ability of the [attorneys] to maintain professional responsibility for the representation," id. at 823, thereby rendering the agreement unenforceable under the Illinois Rules of Professional Conduct. Id. at 824. Thus, the court held that the attorneys could seek fees only on a quantum meruit basis. Id. at 821, 827.

The Woods court relied in large part on Rule 1.5(g)(2) of the Illinois Rules of Professional Conduct, which required a referring lawyer " 'to assume the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer.' " Id. at 821. Importantly, however, there is no equivalent provision in the Alabama Rules of Professional Conduct. Rather, Alabama attorneys may split contingency fees so long as the client is "advised of and does not object to the participation of all the lawyers involved." Rule 1.5(e)(2), Ala. R. Prof. Cond.; see also Kessler v. Gillis, 911 So. 2d 1072, 1079 (Ala. Civ. App. 2004) (citing Rule 1.5, Ala. R. Prof. Cond., and noting that, "[u]nlike many

other states, Alabama has historically allowed an unrestricted division of fees between a referring lawyer and a receiving lawyer").

Caldwell, on the other hand, cites Burrell v. Sperry Rand Corp., 534 F. Supp. 680 (D. Mass. 1982), and Idalski v. Crouse Cartage Co., 229 F. Supp. 2d 730 (E.D. Mich. 2002). In Burrell, a client hired attorneys on a contingency-fee basis, who later agreed to refer certain claims to separate counsel in return for one-third of any attorneys' fees earned. Burrell, 534 F. Supp. at 681. Then, before the parties reached a settlement, the client terminated her relationship with the referring attorneys. Id. The separate counsel and the client argued that, because the referring attorneys had been discharged, they were entitled to fees only on a quantum meruit basis. Id. at 682. The court rejected those arguments. It reasoned that "it is clear that [the client] has no legally cognizable interest in this dispute" because "[t]he amount of her recovery will remain the same regardless of who gets the attorney's fees." Id. The court added that, "[w]hile [the client] may have strong feelings on where the money should go, I know of no authority which allows a client, at the conclusion of a case, to alter the terms of a referral contract to suit her own desires"

and that the "reasons for not allowing the client such a prerogative appear self-evident." Id. Because the referral contract "was made at arm's length by experienced attorneys," and there were no allegations that the referring attorneys had breached their obligations, the court held that "[t]he contract should be enforced." Id.

The court in Idalski likewise rejected the clients' argument that the referring attorney was not entitled to referral fees because the clients had terminated the attorney-client relationship. It explained that "it would be unwise as a matter of policy" and "inconsistent with basic contract law" to "permit a client by whim or fancy, or perhaps more nefarious motives, to undo a referral contract after the lawyers' work is finished but before the final payment." Id. at 739. It also expressed concern that " '[i]t is easy to conjecture situations where the attorney to whom a case has been referred colludes with the client to deprive the referring attorney of the benefit of his bargain, and later splits the referral fee.' " Id. (citation omitted). Thus, the court concluded, "client consent to a referral

agreement is required only at the time the referral agreement is made and not also immediately prior to payment." Id.[6]

We find the rationale of Burrell and Idalski persuasive and more consistent with Alabama law. Even though there is a "virtually absolute" right to terminate the attorney-client relationship in Alabama, National Filtronics, 428 So. 2d at 15, that right does not allow the client to escape its obligation to pay an attorney for services rendered. See Fuston, ___ So. 3d at __ ("[A] client has the unqualified right to hire and fire attorneys at will with no obligation at all except to pay for completed services."). The Woerner entities consented to Caldwell's referral of their BP claims to Cunningham Bounds. And, as explained above, there was sufficient evidence for the trial court to find that Caldwell fulfilled his duties under the referral agreement. See Bassett Lumber Co. v. Hunter-Benn & Co., 238 Ala. 671, 675, 193 So. 175, 178 (1939) ("It is elementary law that a contract may be executed as to one of the parties and executory as to the other, and where one of the parties to a contract has performed everything

[6]The court in Idalski ultimately held, for reasons not applicable here, that the referring attorney was not entitled to referral fees. Id. at 732-33.

necessary to be done by him, according to the terms of the contract, the contract, in so far as that party is concerned, is executed ....'). Allowing the Woerner entities to alter the referral agreement at this stage would undermine freedom of contract, do nothing to protect a client's right to terminate the attorney-client relationship, and possibly create the kind of "nefarious motives" and perverse incentives identified in Idalski. Thus, although the Woerner entities were entitled to terminate their attorney-client relationship with Caldwell, they have no right to erase Caldwell's right to payment for contractual obligations he fulfilled.

4. Did the Trial Court Err by Holding that Caldwell "Earned" the Referral Fees when He Referred the Woerner entities' BP Claims?

The trial court held that, "[b]ecause the referral itself was the subject of the legally enforceable agreement between Caldwell and Cunningham Bounds as to the division of attorney fees only, the referral fee[s] w[ere] earned when the referral was made." Sirote argues that the trial court's judgment should be reversed because that court erred by holding that Caldwell "earned" the referral fees when he referred the Woerner entities' BP claims.

To the extent that Sirote construes "earned" to mean that Caldwell was not entitled to payment of any fees under a contingency-fee agreement until the funds were recovered, it is correct. See Pope, 266 So. 3d at 1079 ("[B]y definition, an attorney's contingent fee becomes payable only upon the successful disposition of the client's case."). But we do not read the trial court's order so narrowly. By the time the trial court issued its judgment, funds from the settlement of the Woerner entities' BP claims had been recovered and attorneys' fees were available for payment. And Caldwell had done everything required of him under the referral agreement to earn the referral fees as of the date he referred the Woerner entities' BP claims to Cunningham Bounds. See Bassett, 238 Ala. at 675, 193 So. at 178 (explaining that "a contract may be executed as to one of the parties and executory as to the other"). It is clear that the trial court did not mean that Caldwell became entitled to payment of a hypothetical amount of fees as soon as he referred the Woerner entities' BP claims. Rather, it meant that he had completed his contractual obligations as of that date and would now be entitled to payment of the referral fees. Thus, the trial court's use of the word "earned" does not require reversal.

C. Did the Trial Court Improperly Award Postjudgment Interest to Caldwell?

Sirote argues that the trial court erred by awarding postjudgment interest to Caldwell under § 8-8-10, Ala. Code 1975. But Caldwell says the trial court did not actually award such interest. Instead, Caldwell says that the trial court required Sirote to pay a bond to stay execution of the trial court's judgment pending appeal and that the trial court calculated the bond amount as a percentage of the interpleaded funds based on the statutory postjudgment-interest rate.

Caldwell is correct. In its posttrial order, the trial court made no reference to postjudgment interest. It only awarded the payment of interest that had accumulated on the interpleaded funds that sat in an interest-bearing account maintained by Cunningham Bounds. Sirote then sought to stay the execution of the judgment pending appeal, but the parties disagreed about the amount of the bond. The trial court set the bond at 6.65% of the amount of the interpleaded funds -- that is, an amount equal to the statutory interest rate in § 8-8-10 minus the "blended

interest rate" that had been accruing in Cunningham Bounds' account containing the interpleaded funds.

A bond to secure a stay pending appeal is just that -- a bond. It is not an award of postjudgment interest. Sirote has not demonstrated that the trial court erred by setting the bond at the amount it did. See Rule 8(a)(3), Ala. R. App. P. (providing that, when judgment is for "recovery or sale of property or the possession thereof," the bond shall be "in such sum as the trial court may in writing prescribe"). Because the trial court did not award Caldwell postjudgment interest, Sirote's argument lacks merit.

Conclusion

The trial court had sufficient evidence to find the existence of a valid referral agreement between Caldwell and Cunningham Bounds as well as the existence of an attorney-client relationship between Caldwell and the Woerner entities. Sirote is not entitled to replace Caldwell as referring counsel merely because the Woerner entities terminated their attorney-client relationship with Caldwell. And the trial court's finding that Caldwell earned his referral fees at the time he referred the Woerner entities' BP claims does not require reversal. Finally, it is clear that the

trial court did not award postjudgment interest. In all respects, the judgment is due to be affirmed.

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, and Mendheim, JJ., concur.