

Circuit Court for Prince George's County
Case No. CAL 16-00295

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1153

September Term, 2018

RICHARD BUTCHOK

v.

LYNN SHANNON, ET AL.

Leahy,
Shaw Geter,
Gould,

JJ.

Opinion by Gould, J.

Filed: November 12, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

INTRODUCTION

Richard Butchok represented the estate of James Shannon in a personal injury action. After withdrawing from the representation for health reasons, Mr. Butchok filed a statutory attorney's fee lien and attempted to recover his contingency fee on a settlement offer that had been made by the time that he withdrew from the case. The circuit court denied Mr. Butchok's claim for a statutory lien, as well as his subsequently filed motion to alter or amend. Because his retainer agreement provided him with no basis to recover from a settlement offer that was neither recommended by him nor ultimately accepted, the circuit court properly rejected his claim. Further, the circuit court did not abuse its discretion when it denied his motion to alter or amend, finding that it was not in the interests of justice to allow Mr. Butchok an opportunity to relitigate the issue. Therefore, we affirm.

BACKGROUND

James Shannon was seriously injured in a car accident in 2014, and tragically passed away the following year. In 2016, Mr. Butchok, representing Mr. Shannon's estate, filed suit in the Circuit Court for Prince George's County against the alleged driver¹ of the car in which Mr. Shannon was traveling. Mr. Butchok received a settlement offer of \$125,000 from American States Preferred Insurance Company ("American States"), Mr. Shannon's underinsured motorist carrier. At Mr. Butchok's recommendation, James's parents, the Shannons, rejected the offer.

¹ The major question at issue in the underlying case was who was driving the car: Mr. Shannon or his friend, Steven Herndon.

As the case progressed, Mr. Butchok became seriously ill and moved to withdraw. The court granted his request, stating in its order that should he seek to assert an attorney's fee lien "pursuant to Maryland Code Business Occupations and Professions Article, § 10-501, he sh[ould] comply with Maryland Rule 2-652."

Mr. Butchok filed a response to the court's order, noting that he had sent letters to the Shannons and American States informing them that he was asserting a lien "pursuant to Maryland Code Business Occupations and Professions Article, § 10-501" for attorney's fees and costs "when and if there is a final judgment in the case or if the case settles based on the One Hundred Twenty-Five Thousand Dollar (\$125,000.00) settlement offer negotiated with [American States] prior to his withdrawal from the case." Attached to Mr. Butchok's filing was an index of the files returned to the Shannons and the letters asserting the lien.

The Shannons subsequently negotiated a \$185,000 settlement with American States and dismissed the case. After the case was dismissed, Mr. Butchok filed a "Request for Hearing/Trial on Attorney Richard[] Butchok's Lien for Attorney's Fees"² (the "Motion for Attorney's Fees"), informing the court that he had received a check from American States in the amount of \$50,000—an amount he represented as his 40% fee on the \$125,000 settlement amount that was offered but not ultimately accepted. Attached to this motion was Mr. Butchok's prior response to the court's order, the letters attached to that response,

² Despite the title of the motion, the motion did not include any request for affirmative relief from the court.

an email reflecting the adjuster’s initial \$125,000 settlement offer, and a letter from Mr. Butchok to the Shannons asking whether the parties could resolve the attorney’s fees issue.

At the hearing on the Motion for Attorney’s Fees, Mr. Butchok presented several exhibits, four of which were admitted: 1) the Retainer Agreement; 2) the \$125,000 settlement offer he had received from American States; 3) the index of exhibits that he had transferred to the Shannons; and 4) the final report on James Shannon’s estate. He then explained the events that had led the parties to that point: his entry into the case, his discussions with American States, his medical issues, and his subsequent disagreement with the Shannons over his entitlement to fees.

Mr. Butchok argued to the circuit court that, based on the retainer agreement between himself and James Shannon (the “Retainer Agreement”), he should receive 40% of the settlement amount that had been offered by the time that he withdrew from the case.

The Retainer Agreement stated in relevant part:

In the event an offer to settle is made by the Defendant, recommended by Plaintiff’s attorney, refused by Plaintiff, and Plaintiff ceases to be represented by Richard Butchok, by Plaintiff’s choice, Plaintiff’s counsel shall be entitled to a fee to which he would have been entitled had the refused settlement offer been accepted, from any subsequent settlement, verdict, [judgment] or decision, and is hereby authorized to have a lien on any said monies, settlement, judgment or decision to that extent, plus costs and expenses as per the above agreement. This will be a charging lien and all liable will be notified NOT to release any funds without protecting Richard Butchok to the extent of his interests.

Mr. Butchok did not, however, explicitly rely on this provision for his contention that he was owed fees—perhaps because it was undisputed that he neither recommended the \$125,000 settlement offer nor was he terminated “by Plaintiff’s choice.” Instead, he

offered two somewhat contradictory rationales for his position: 1) that he had in fact recovered \$125,000 for the Shannons (notwithstanding that he recommended against accepting the offer and that the offer was in fact never accepted); and 2) that an attorney who is removed from a case should be entitled to recover for the value of his services, absent fraud. He made no further legal argument and presented no evidence of the services he had rendered on the case other than his vague assertions that he did “[a] lot of discovery”) or the value of such services.

The Shannons disputed some of the facts asserted (or implied) by Mr. Butchok. They disputed that they had ever agreed to pay Mr. Butchok 40% of any recovery.³ They also pointed out that Mr. Butchok did not recommend that they accept the \$125,000 settlement offer and instead told them that it was a “no-brainer” to reject it. Most concerning to the circuit court, the Shannons contended that they had never received a satisfactory accounting of certain other settlement funds that had been received from third-parties. When questioned, Mr. Butchok could not confirm that he had paid all of the money owed to his clients from these previous settlements.

The circuit court denied Mr. Butchok’s request for an attorney’s fee lien, noting that there was neither a contractual basis for a fee equal to 40% of the settlement amount, nor did it have “sufficient information to determine a reasonable amount of attorney’s fees, if any, which Mr. Butchok may be owed for services performed.”

³ For his part, Mr. Butchok conceded in the Motion for Attorney’s Fees that they had only “agreed on a legal fee between 30% and 40%.”

Mr. Butchok filed his “Motion to Alter or Amend or, in the Alternative, Motion for a New Trial” (the “Motion to Alter or Amend”)⁴. Mr. Butchok argued that, in light of new evidence that he provided the court, he was entitled to recover under a theory of quantum meruit. This time, he attached an affidavit purporting to detail the services he provided to the Shannons on the case, as well as a post-hearing letter he sent to the court with an accounting of the prior payments he had received on his clients’ behalf. The circuit court denied the Motion to Alter or Amend, noting that Mr. Butchok failed to argue quantum meruit at the hearing, and that it did not find that it was in the interest of justice to allow Mr. Butchok to relitigate his case. Mr. Butchok filed a timely appeal.

DISCUSSION

I. MR. BUTCHOK’S CONTENTIONS

Mr. Butchok contends that the circuit court erred in assessing his entitlement to a lien based on the Retainer Agreement because “no settlement offer had been recommended at the time of [his] termination,” and thus the termination provision of the Retainer Agreement did not control. Further, because the Retainer Agreement “does not state that this is the only situation in which [Mr. Butchok] could recover should his representation be terminated,” he claims he was entitled to recover based on the common law theory of quantum meruit.

⁴ It appears that on appeal, Mr. Butchok has abandoned his request for a new trial.

Mr. Butchok further argues that the circuit court erred in denying his Motion to Alter or Amend, in which he presented further evidence of the services performed by him on the case.

For the reasons that follow, we find that the circuit court did not abuse its discretion in denying Mr. Butchok’s lien or in denying his motion to alter or amend.

II. ANALYSIS

A. The Circuit Court’s Original Denial

Mr. Butchok’s initial argument—that the circuit court incorrectly relied upon the Retainer Agreement—involves the circuit court’s interpretation and application of Maryland law. As such, we review this issue de novo. See Blood v. Stoneridge at Fountain Green Homeowners Ass’n, Inc., 242 Md. App. 417, 426 (2019).

Mr. Butchok’s argument rests on a misunderstanding of the nature of the issue before the court. Mr. Butchok did not file a lawsuit for damages against the Shannons for legal fees; he asserted a claim for a statutory attorney’s fee lien. The hearing, therefore, was convened pursuant to Mr. Butchok’s request to impose and enforce a statutory lien on the Shannons’ recovery.

The procedures for adjudicating an attorney’s fee lien are set forth in Md. Rule 2-652. A review of this rule, as well as Md. Code Ann., Bus. Occ. & Prof. (“BOP”) § 10-501 (1989, 2018 Repl. Vol.), shows that not only was the circuit court correct in focusing on the Retainer Agreement, but that it would have erred had it imposed or enforced a lien on any basis other than the Retainer Agreement. We explain.

Md. Rule 2-652(c) provides:

(1) If a lien asserted pursuant to this Rule relates to an action that has been filed in a circuit court of this State, on motion filed by the attorney, the attorney's client in the action, or any person who has received a notice pursuant to section (b) of this Rule, the court shall adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

(2) If a lien is asserted pursuant to this Rule and a related action has not been filed in a circuit court of this State, the attorney, the attorney's client, or any person who has received a notice pursuant to section (b) of this Rule may file a complaint with a circuit court to adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

Two points from the language of Rule 2-652(c) are worth noting. First, in this case subsection (1) applies because the underlying tort action had already been filed, and Mr. Butchok was therefore able to initiate the adjudication of the lien dispute by filing a motion within the underlying case. Had the underlying case not been commenced, under subsection (2), Mr. Butchok would have had to file a separate complaint—that is, a new action—to adjudicate his lien request. It is apparent that the court construed and treated Mr. Butchok's "Request for Hearing/Trial on Attorney Richard Butchok's Lien for Attorney's Fees" as a motion pursuant to Rule 2-652(c)(1).

Second, the scope of the hearing provided under subsection (1) is limited to "the rights of the parties in relation to the lien." In other words, under this subsection, a court does not adjudicate a claim for damages; it only adjudicates the attorney's claim for a retaining lien or statutory lien.

Rule 2-652 does not vest any substantive rights to an attorney's lien; it merely provides the procedures for asserting and adjudicating disputes over liens. A lawyer's right

to a statutory lien—i.e. the specific type of lien at issue here—is governed by BOP § 501, which provides in relevant part:

(a) Subject to subsection (b) of this section, an attorney at law has a lien on:

(1) a cause of action or proceeding of a client of the attorney at law from the time the cause of action arises or the proceeding begins; and

(2) a settlement, judgment, or award that a client receives as a result of legal services that the attorney at law performs.

(b) A lien under this section attaches only if, and to the extent that, under a specific agreement between an attorney at law and a client, the client owes the attorney at law a fee or other compensation for legal services that produced the settlement, judgment, or award.

BOP § 10-501(a), (b).

As evident by the express terms of this statute, a statutory lien must be predicated on a claim arising from a fee agreement between the attorney and client. Thus, Mr. Butchok’s complaint about the court’s focus on the Retainer Agreement is misguided because the very statute upon which he relied to assert his lien requires a contractual basis for the the lien.⁵ The trial court did not err when it looked for support in the Retainer Agreement, and, in the absence of such support, rejected Mr. Butchok’s lien.⁶

⁵ There is no question that Mr. Butchok relied upon these specific provisions in asserting his lien. In his initial “Response to Memorandum and Order Dated August 23, 2017 and Assertion of Lien for Attorney’s Fee and Costs,” Mr. Butchok explained that he sent letters to the Shannons advising them of his lien so that he could comply with “Maryland Code Business Occupations and Professional Article § 10-501 and Maryland Rule 2-652.” The trial court’s order specifically noted that Mr. Butchok had asserted the lien pursuant to BOP § 10-501 and notified his clients pursuant to Maryland Rule 2-652(b). Mr. Butchok has never challenged this characterization of his lien.

⁶ In any event, the trial court did not rely on its interpretation of the Retainer Agreement alone in rejecting Mr. Butchok’s claim for attorney’s fees. Rather, the trial

B. The Motion to Alter or Amend

Mr. Butchok also argues that the circuit court abused its discretion by failing to grant his Motion to Alter or Amend under Md. Rule 2-534. Mr. Butchok’s motion asked the court to consider evidence to support a quantum meruit theory of recovery. Rule 2-534 states:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Md. Rule 2-534. The circuit court has “broad discretion” in determining whether to grant a motion to alter or amend, Benson v. State, 389 Md. 615, 653 (2005), and only an abuse of this discretion warrants reversal. Miller v. Mathias, 428 Md. 419, 438 (2012). An abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court . . . when the court acts without reference to any guiding principles,” or when the court acts “clearly against the logic and effects of facts and inferences” before it. Cent. Truck Ctr., Inc. v. Cent. GMC, Inc., 194 Md. App. 375, 398 (2010) (quotations omitted) (cleaned up).

court also determined that the record of Mr. Butchok’s services, at the time of the hearing, was not a sufficient basis for a fee award. Mr. Butchok does not appear to dispute the propriety of the court’s finding in this regard. Rather, as addressed below, Mr. Butchok claims that the court erred by not allowing him to add evidence to the record regarding the nature and value of the services provided after the issue had already been decided.

Here, the circuit court did not abuse its discretion when it denied Mr. Butchok’s Motion to Alter or Amend. Mr. Butchok has cited no case law that suggests that a trial court is required to reconsider its decision after being supplied with evidence that could have been provided before the initial ruling. In fact, there is no such requirement. See Schlotzhauer v. Morton, 224 Md. App. 72, 85 (2015), aff’d, 449 Md. 217 (2016) (citation omitted) (“When a party requests that a court reconsider a ruling solely because of new arguments that the party could have raised before the court ruled, the court has almost limitless discretion not to consider those [arguments]”); Steinhoff v. Sommerfelt, 144 Md. App. 463, 484 (2002) (noting that a motion to alter or amend “is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight”). Mr. Butchok’s motion was nothing more than a request for a do-over to provide evidence that he could have provided before or at the hearing. The court did not abuse its discretion in denying Mr. Butchok’s motion.

Further, as explained above, under BOP § 10-501, the only possible basis for the statutory lien requested by Mr. Butchok was a “specific agreement”—here, the Retainer Agreement—not quantum meruit. For that reason alone, the circuit court properly denied Mr. Butchok’s motion to alter or amend.

CONCLUSION

Mr. Butchok asked the court to impose a statutory lien and was given a fair opportunity to adjudicate his request. The court considered Mr. Butchok’s claim, and correctly determined that the Retainer Agreement did not provide a basis for a statutory

lien. The court was not required to give Mr. Butchok a mulligan, and therefore it did not abuse its discretion when it denied his Motion to Alter or Amend. We affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**