IN THE COURT OF APPEALS OF IOWA

No. 7-537 / 96-1226

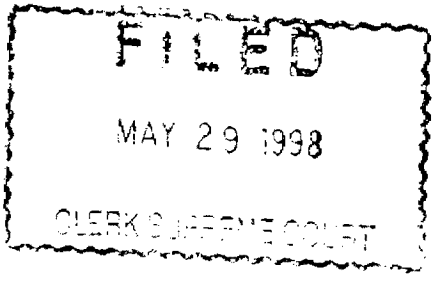
JOHN KEITH RIGG,

Appellee,

vs.

PAUL PFAB and RANDY ROLING,

Appellants.



Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Paul Pfab and Randy Roling appeal the district court's ruling allowing foreclosure on John Rigg's attorney's lien. **AFFIRMED.**

Paul Pfab, Epworth, and Randy Roling, Bernard, pro se appellants.

Jerry Foxhoven, Des Moines, for appellee.

Considered by Cady, C.J., Huitink, J., and McCartney, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

McCARTNEY, S.J.

The respondents and appellants, Paul Pfab and Randy Roling, appeal from a decision of the district court foreclosing an attorney's lien in favor of the petitioner, John Keith Rigg. We affirm.

Pfab and Roling are farmers in the Dubuque County area. They suffered financial losses to their crops and livestock occasioned by the fault of a farm service company. These losses occurred in the early 1990's and, as a consequence, in March 1993, they filed suit against the company. At that time, they together employed David McCrea, an out-of-state attorney, upon a contingency contract which provided that McCrea would receive one-third of any recovery realized by Pfab and Roling after their lawsuit was filed.

During this period of time and after the filing of the lawsuit they became disturbed over the proposed costs of an expert witness employed by McCrea and, as a consequence, McCrea and the expert witness agreed to a fee arrangement whereby McCrea would receive 19.8 percent of the recovery, if any, and the expert witness

would receive 13.2 percent of such recovery.[1] This was not agreeable to Pfab and Roling and they terminated the employment of both McCrea and the expert.

They then contacted petitioner John Keith Rigg, a practicing attorney in Polk County, Iowa. Rigg advised them that his contingent fee would be one-third of any recovery, together with his out-of-pocket expenses. Rigg then sent the respondents an attorney fee contract setting forth those terms, which Pfab and Roling never signed. It appears that at this juncture of their lawsuit against the farm service company, they were facing a motion for sanctions because of their failure to provide certain discovery and, consequently, Rigg moved forward with the litigation even though the written attorney fee contract had not been signed.

Rigg continued to represent the respondents through the entire litigation and they accepted his services. Prior to trial, there was a settlement conference conducted by a district court judge. Various amounts of settlement were discussed. Throughout the conference, as various possibilities of settlement were considered, the amounts to be received by respondents were always reduced by one-third. The respondents were

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[1] We are not ignoring the fact that Ethical Consideration 3-8 and Disciplinary Rule 3-102 prohibit a lawyer from sharing legal fees with a nonlawyer, except in specific circumstances which are not present here. *See Committee on Professional Ethics v. Lawler,* 342 N.W.2d 486, 488 (Iowa 1984). Nor are we ignoring the fact that Ethical Consideration 7-28 prohibits a lawyer from paying a contingent fee to a witness. However, because no actual agreement for improper fee splitting was made, we do not address this issue on appeal.

both present during that particular settlement conference, participated in it and raised no objection to the one-third reductions.

Rigg then proceeded to try the cases on behalf of the respondents and, as a consequence, received favorable verdicts. Pfab eventually received $271,988, and Roling received $15,396. The trial lasted approximately two weeks.

Rigg made an agreement with the defendant service company by which he agreed not to levy execution upon the judgments in exchange for which the defendant company agreed not to seek an appeal, and agreed further to pay the verdict amounts forthwith. Unbeknownst to Rigg, the respondents caused an execution to be issued on their own account. This precipitated the filing by the petitioner of his attorney's lien.

It was the respondents' contention that, based upon their agreement with McCrea, petitioner Rigg was to receive only 19.8 percent of the recovery, whereas Rigg asserted he was to receive one-third of the recovery.

When the instant matter, i.e., foreclosure of the lien, was tried, the respondents produced a purported letter from them to attorney Rigg in which they did not agree to his one-third fee. The trial court found, and the record supports such finding, that such letter was spurious and had been inserted into the files in the principal litigation against the farm service company by the respondents long after the document in which it was found had been filed.

Our review is de novo. Iowa R. App. P. 4. Although we try the matter anew, we do give considerable credence and weight to the findings and conclusions of the trial court since it had the first-hand opportunity to observe the witnesses and review the documents in great detail.

The trial court found Rigg was entitled to one-third of the recovery. With regard to the Pfab recovery, that one-third amounted to $90,662.61, and Rigg's out-of-pocket expenses were $3382.26, for a total of $94,044.87. With regard to the Roling recovery, that one-third amounted to $5132.07, and Rigg's out-of-pocket expenses were $3382.26, for a total of $8514.33. The trial court found that these were the appropriate amounts and directed that a $45,657.10 escrow, previously held by the clerk of court, be delivered to Rigg. Rigg had previously been paid $56,902. The balance of the recoveries, less the $45,657.10 amount placed in escrow, had already been delivered to Pfab and Roling. The issue is whether or not Rigg agreed to provide services for 19.8 percent of the recovery or for the one-third for which he contends.

We hold Rigg is entitled to one-third of the recovery, plus his out-of-pocket expenses. Rigg had informed them his fee was one-third and they employed him. The respondents were present at a settlement conference in which the one-third recovery fee was used in calculating various amounts on possible recoveries. Rigg entered into the litigation at a crucial period when the appellants were facing sanctions. He

salvaged the litigation and conducted it to a successful conclusion and they accepted the benefits of those labors. Their attempt to convince the trial court that they sent a letter to Rigg stating the contrary did not avail them, given the spurious nature of that particular letter. The one-third fee, after trial and successful conclusion, appears to be, based upon the record a normal contingent fee arrangement. Rigg offered to do their legal work for one-third of the recovery and they accepted his offer. Their conduct and acceptance of the recovery benefits show their assent. *Prestype Inc. v. Carr*, 248 N.W.2d 111, 120 (Iowa 1976).

Consequently, we hold the evidence supports the finding of the trial court that the respondents agreed to the one-third contingent fee arrangement, together with out-of-pocket expenses.

Based upon the foregoing, the decision of the trial court is affirmed with costs assessed to the respondents.

AFFIRMED.