NO. CAAP-15-0000399

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

HEATHER ROBIN RILEY, Plaintiff/Appellant,
v.
CLARENCE OSAKO, Defendant/Appellee,
v.
KRUEGER • WONG,
Real Party-in-Interest/Appellee,

JOHN DOES 1-5, JOHN DOE CORPORATIONS 1-5,
JOHN DOE PARTNERSHIPS 1-5, ROE NON PROFIT CORPORATIONS 1-5,
and ROE GOVERNMENTAL AGENCIES 1-5, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 13-1-1064(1))

SUMMARY DISPOSITION ORDER
(By: Foley, Presiding J., Reifurth and Ginoza, JJ.)

Plaintiff/Appellant Heather Robin Riley (**Riley**) appeals pro se from the "Order Granting Krueger • Wong's Motion to Collect Attorney's Lien" entered on April 21, 2015 in the Circuit Court of the Second Circuit[1] (**circuit court**).[2]

Riley was a client in an attorney-client relationship with Real Party-in-Interest/Appellee Krueger • Wong (**Appellee**) and signed a contingent fee agreement with Appellee that established Appellee's payment of fees for their services. After Appellee withdrew as Riley's counsel, Appellee filed a motion to

[1] The Honorable Rhonda I.L. Loo presided.

[2] Although Riley's notice of appeal and amended notice of appeal include errors, it is apparent that Riley intended to appeal from the circuit court's April 21, 2015 "Order Granting Krueger • Wong's Motion to Collect Attorney's Lien."

collect an attorney's lien in the amount of $32,702.47 (**Motion to Collect**), which represented Appellee's attorney's fees, general excise tax, and costs that were calculated pursuant to a contingent fee agreement between Riley and Appellee.

On appeal, Riley contends the circuit court erred in granting Appellee's Motion to Collect because the amount Appellee's requested was unreasonable given Appellee's poor communication with Riley and overall mishandling of her case.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude Riley's appeal is without merit.

Under Hawaii Revised Statutes (**HRS**) § 507-81 (2006 Repl. and Supp. 2011), Appellee had a right to an attorney's lien for the legal services they provided Riley. HRS § 507-81 provides, in relevant part:

> **§ 507-81 Attorney's lien upon actions and judgments.**
> (a) An attorney has a lien upon:
>
> (1) Actions, suits, and proceedings after commencement of the action or arbitration proceeding;
>
> (2) Judgments, decrees, orders, settlements, and awards entered by the court or an arbitrator in favor of the client; and
>
> (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.
>
> (b) The lien shall be for:
>
> (1) The fees and compensation specifically agreed upon with the client;
>
> (2) The reasonable value of the services of the attorney, if there is no fee agreement;
>
> (3) Any costs advanced by the attorney; and
>
> (4) Any fees or commissions taxed or allowed by the court.

(Emphasis added.)

Before granting a contractually-based award of attorney's fees, the circuit court is required to consider the reasonableness of the fees. See Booker v. Midpac Lumber Co., 65 Haw. 166, 172, 649 P.2d 376, 381 (1982) (holding, where an

attorney was discharged without cause prior to the conclusion of a personal injury case, that "a contingent fee agreement, without more, is not good reason for boosting an attorney's compensation or denying him a fee that adequately compensates him for actual services performed"). In general, an appellate court must "examine the circumstances under which the circuit court approved the [attorney's] fee to determine whether its exercise of discretion was consistent with the tenets enunciated in Sharp [v. Hui Wahine, Inc., 49 Haw. 241, 413 P.2d 242 (1966)]." Booker, 65 Haw. at 170-71, 649 P.2d at 379. In Sharp, the Hawaiʻi Supreme Court put forth the following guidelines for determining the reasonableness of attorney's fees when the fees are provided for by contract:

> Comprehensive discussions of the numerous factors to be considered in determining a reasonable attorney's fee are to be found in Annotations in 143 A.L.R. 672 and 56 A.L.R.2d 13. Canon 12 of the Canons of Professional Ethics adopted by the American Bar Association has set up the following guidelines to be considered in determining the real value of the services performed by an attorney so as to be able to fix the reasonable compensation for such services:
>
> > "In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service."
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> It closes with the admonition that:
>
> > "In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."
>
> The Canons have been adopted as governing the conduct of the members of the Hawaii Bar by Rule 16(a) of this court.

Booker, 65 Haw. at 170 n.2, 649 P.2d at 379 n.2 (quoting Sharp, 49 Haw. at 244-45, 413 P.2d at 245-46). The considerations

delineated in Sharp are to be considered "mere guides in ascertaining the real value of the service [rendered]." Booker, 65 Haw. at 172, 649 P.2d at 381.

In sum, the Hawaiʻi Supreme Court has held:

> Where the efforts of an attorney who was employed under a contingent fee contract would have a tendency to advance the client's claim or to enhance the possibility of a favorable result, we would also conclude the contract and the reasonably estimated value of the case should be considered in fixing a reasonable attorney's fee.

Booker, 65 Haw. at 172, 649 P.2d at 381. "'[T]he real value of the service' encompasses 'the benefits resulting to the client.'" Id. (quoting Sharp, 49 Haw. at 244-45, 413 P.2d at 245).

Here, the circuit court did not state the basis for its decision to grant Appellee's Motion to Collect, however, Appellee provided the circuit court with adequate evidence to support the court's decision. Appellee provided a copy of the contingent fee agreement, which predetermined how Riley was to compensate Appellee for their legal services and stated that Appellee may obtain a lien against any recovery in Riley's favor if Appellee withdrew as Riley's counsel for cause. Appellee also provided the circuit court with a record of expenses they accrued while working on Riley's case. Furthermore, a review of the record indicates that before Appellee withdrew as Riley's counsel, Appellee filed a complaint, pretrial statement, and witness list on Riley's behalf; filed a "Stipulated Qualified Health Information Protective Document and/or Order" to facilitate the release of Riley's medical information; facilitated settlement discussions with Defendant Clarence Osako (**Osako**); and obtained two settlement offers from Osako for $60,000 and $75,000. In addition, although Riley later settled with Osako for $85,000, Appellee only sought a lien on the last $75,000 settlement offer that Appellee obtained on Riley's behalf.[3] Based on the record, it is apparent that Appellee's services benefitted Riley and aided in her ultimate settlement agreement with Osako. Appellee's requested fees were reasonable.

[3] Appellee obtained a settlement offer from Osako on February 6, 2015 for $75,000. On March 18, 2015, after Appellee withdrew as Riley's counsel, Riley received a $85,000 settlement offer from Osako.

Riley fails to establish that her dissatisfaction with how Appellee handled her case materially affected the case's outcome or the determination of whether Appellee's attorney's fees were reasonable. See Sharp, 49 Haw. at 244-45, 413 P.2d at 245-46. Given the circumstances of Riley's case, the circuit court did not abuse its discretion in granting Appellee's Motion to Collect. See Booker, 65 Haw. at 172, 649 P.2d at 380 (providing that the circuit court's determination as to the reasonableness of an allowance or award of attorney's fees is reviewed for abuse of discretion).

Therefore,

IT IS HEREBY ORDERED that the "Order Granting Krueger • Wong's Motion to Collect Attorney's Lien" entered on April 21, 2015 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawaiʻi, June 30, 2016.

On the briefs:

Heather Robin Riley
Plaintiff/Appellant pro se. Presiding Judge

James Krueger
Cynthia K. Wong
(Krueger • Wong)
for Real Party-in-Interest/
Appellee. Associate Judge

Associate Judge