COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-58

DOROTHY J. MACAULAY

vs.

MAUREEN F. DIPALMA & others.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Ronald I. Bell, on behalf of the law firm Bernstein & Bell (the firm), sought to establish and enforce an attorney's lien on proceeds totaling $58,127.74 awarded to his former client, Dorothy J. Macaulay. In a thoughtful and well-reasoned decision, a Superior Court judge allowed Bell's motion, but only in the amount of $20,925.99. Bell appeals, contending that the judge abused her discretion in calculating the amount of the lien. We affirm.

Discussion. "The attorney's lien statute, G. L. c. 221, § 50, provides 'attorneys [with] a statutory right to assert a

[1] DiPalma and the other defendants named in the complaint are not parties to this appeal. The plaintiff's attorney, Ronald I. Bell, filed a motion in this Superior Court action seeking to establish the amount of his law firm's attorney's lien. Only issues pertaining to the attorney's lien are before us.

charging lien securing compensation for their legal services.'" Northeastern Avionics, Inc. v. Westfield, 63 Mass. App. Ct. 509, 512 (2005), quoting Boswell v. Zephyr Lines, Inc., 414 Mass. 241, 244 (1993). As "a tool for recovery of legal fees," Boswell, supra at 248, the statute is designed to protect "a lawyer's labor in the client's cause." Cohen v. Lindsey, 38 Mass. App. Ct. 1, 5 (1995). "Filing an attorney's lien for a specific amount does not entitle an attorney to fees in that amount, nor does it limit the court in its determination of reasonable fees for the services rendered." Cohen, 38 Mass. App. Ct. at 6. An attorney is entitled to only "reasonable fees and expenses" under the statute (emphasis added). G. L. c. 221, § 50.

The judge undertook a two-step analysis to determine a reasonable amount for Bell to recover. First, she evaluated Bell's claim for $906,159.50 in fees as set forth in his affidavit detailing the time spent of various matters. From this amount, she deducted credits and payments already made by Macaulay, totaling $78,080.44. Further deducting "fees and expenses claimed for work not reasonably required," specifically, time spent preparing for the trial that resulted in a mistrial when Bell violated a court order during his opening statement, as well as time spent appealing from the

ensuing dismissal of the case, the judge determined that Bell reasonably claimed fees and expenses of $395,227.81.

When assessing the reasonableness of attorney's fees, a judge should consider "several factors, including 'the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price for similar services by other attorneys in the same area, and the amount of awards in similar cases.'" Berman v. Linnane, 434 Mass. 301, 303 (2001), quoting Linthicum v. Archambault, 379 Mass. 381, 388-389 (1979). See Craft v. Kane, 65 Mass. App. Ct. 322, 325 (2005) (noting "usual factors" in assessing reasonableness of fees and costs under attorney's lien statute include "the dollar value of the case, the value of the services, the fees usually charged, time spent, and the success achieved"). See also Mulhern v. Roach, 398 Mass. 18, 24 (1986) (discussing relevant factors for determining "fair and reasonable" attorney's fees awarded on quantum meruit basis). "No one factor is determinative." Berman, supra. We review a "judge's determination of a reasonable attorney's fee for abuse of discretion." Brady v. Citizens Union Sav. Bank, 91 Mass. App. Ct. 160, 161 (2017).

The judge properly arrived at the $395,227.81 figure using the lodestar method. She accepted Bell's requested hourly rate and his explanations of the time spent of various tasks, "multiplying hours reasonably spent by a reasonable hourly rate," Stratos v. Department of Pub. Welfare, 387 Mass. 312, 322 (1982), to arrive at the lodestar figure of $906,159.50.[2] She then made downward adjustments based on credits and payments already made by Macaulay, as well as "criteria that are not subsumed within the lodestar itself." Id. We discern no abuse of discretion in the judge's decision to disallow time spent on a trial from which Macaulay derived no benefit, as well as time spent appealing from a dismissal that would not have occurred absent counsel's own misconduct. See Coutin v. Young & Rubicam Puerto Rico, Inc., 124 F.3d 331, 337 (1st Cir. 1997) ("The court can segregate time spent on certain unsuccessful claims, eliminate excessive or unproductive hours, and assign more realistic rates to time spent" [citations omitted]). Cf. Kourouvacilis v. American Fed'n of State, County & Mun. Employees, 65 Mass. App. Ct. 521, 532 (2006) (affirming

[2] As the judge accepted Bell's representations as to his rates and hours, even if she neglected to review the large three-ring binder containing ten years of invoices and merely consulted the billing summaries, as Bell suggests in a footnote to his brief, he suffered no harm from the oversight.

forfeiture of attorney's lien where attorney was suspended for ethical misconduct related to case).[3]

Bell's arguments on appeal primarily target the second step of the judge's analysis. The judge found that Macaulay's recovery of $58,127.74 from the trustee in bankruptcy was based on a claim in the amount of $1,912,076, which comprised $700,000 in damages owed to Macaulay and approximately $1.2 million in attorney's fees owed to Bell.[4] Substituting Bell's reasonable fees of $395,227.81 for the claimed fees of $1.2 million, the judge determined that, in reality, only thirty-six percent of the claim in bankruptcy was attributable to Bell's efforts and sixty-four percent was attributable to Macaulay's damages. She accordingly allocated the total recovery from the bankruptcy court in the same proportion: thirty-six percent, or $20,925.99, to Bell, and the remainder to Macaulay.

Even if the second step of the judge's analysis amounted to a departure from the lodestar method, she acted within her

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[3] Macaulay filed a complaint against Bell with the Office of Bar Counsel of the Board of Bar Overseers, who were ultimately unable to conclude that Bell's conduct "warrant[ed] the imposition of a disciplinary sanction." [RAI/220]

[4] In a footnote, Bell argues that the $700,000 figure is inaccurate, as the proof of claim asserted damages of only $658,625. However, Bell's own testimony supported the judge's finding. At the evidentiary hearing on his motion, when asked whether "$700,000 was Ms. Macaulay's claim, and $1.2 [million] was legal fees and interest," Bell answered "I believe that's correct, yes."

discretion. Although the lodestar method may serve as a "basic measure of a reasonable attorney's fees," Fontaine v. Ebtec Corp., 415 Mass. 309, 326 (1993), "that does not mean it is the only method." T-Peg, Inc. v. Vermont Timber Works, Inc., 669 F.3d 59, 63 (1st Cir. 2012). See Coutin, 124 F.3d at 337 ("the lodestar method is a tool, not a straitjacket").

Bell's reliance on cases arising under Federal and State civil rights statutes with fee-shifting provisions is misplaced. See Joyce v. Town of Dennis, 720 F.3d 12, 31 (1st Cir. 2013) (abuse of discretion to give "too much weight" to amount of damage award in determining reasonable attorney's fees); Coutin, 124 F.3d at 340 (abuse of discretion where judge failed to consider "time-and-rate data" and to explain why the amount of attorney's fees awarded "was itself reasonable in relation to counsel's efforts, even given a perceived shortfall in the relief received"). Judges use the lodestar method to calculate attorney's fees in such actions to ensure that civil rights laws are "adequately enforced" by "produc[ing] an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by hour in a comparable case." Perdue v. Kenny A., 559 U.S. 542, 551 (2010). See Fontaine, 415 Mass. at 324-326 ; Stratos, 387 Mass. at 322-323. In that context, "a 'reasonable'

fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." Perdue, supra at 552.

The attorney's lien statute, which is "designed to ensure payment to an attorney if his or her 'efforts resulted in a fund available to' the client," Northeastern Avionics, 63 Mass. App. Ct. at 512-513, quoting Cohen, 39 Mass. App. Ct. at 5, serves a different purpose. "As Chief Judge Cardozo aptly put it, the attorney's lien protects attorneys 'against the knavery of their clients, by disabling the clients from receiving the fruits of recoveries without paying for the valuable services by which the recoveries were obtained.'" Boswell, 414 Mass. at 248, quoting Matter of Heinsheimer, 214 N.Y. 361, 364 (1915). No such purpose would be served here by awarding Bell the entirety of Macaulay's recovery. The judge reasonably concluded that the proceeds should be equitably apportioned between the client and the attorney. She devised, and adequately explained, a method for doing so. We discern no error or abuse of discretion.

Conclusion. We affirm the judgment entered on the order establishing an attorney's lien in the amount of $20,925.99, and

we likewise affirm the order denying the motion to alter or amend the judgment.[5]

So ordered.

By the Court (Vuono, Massing & Desmond, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: July 20, 2021.

[5] During the course of this appeal, Macaulay filed several motions, including a "Motion for an Appeals Court Investigation" into omissions in the trial court transcripts. The motion is denied, as its allowance would amount to "impermissible appellate fact-finding." Kiely v. Teradyne, Inc., 85 Mass. App. Ct. 431, 448 (2014). Macaulay also filed a "Motion to Enjoin a Necessary Party," as well as two motions for reimbursement of costs unrelated to the present appeal. We deny these motions as well. In addition, Macaulay filed a letter seeking to add missing documents to her supplemental appendix and add a document to one of her motions. Treating the letter as a motion to correct the record and there being no objection, we allow that motion.

[6] The panelists are listed in order of seniority.