IN THE SUPREME COURT OF IOWA

No. 20-1035

JAMES C. LAREW,
Plaintiff-Appellant/Cross-Appellee,

v.

HOPE LAW FIRM, P.L.C.,
Defendant-Appellee/Cross-Appellant ,

and

ANDREW L. HOPE, TRAVIS J. BURK and HOPE LAW FIRM & ASSOCIATES, P.C.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY
NO. CVCV055562
HON. ROBERT B. HANSON, JUDGE

FINAL REPLY BRIEF OF HOPE LAW FIRM, P.L.C., DEFENDANT/APPELLEE/CROSS-APPELLLANT AND ANDREW L. HOPE, TRAVIS J. BURK and HOPE LAW FIRM & ASSOCIATES, P.C., DEFENDANTS-APPELLEES

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SUMMARY OF THE ARGUMENT

Larew's Reply Brief, and the arguments set out therein, while attempting to castigate the conduct of HLF, ignores that the Trial Court listened to 11 days of trial testimony by numerous witnesses and reviewed many documents and rejected Larew's extreme assertions. Larew, while attempting to diminish the arguments of HLF Defendants, continues to make the emotionally charged but overall unsupported statements and arguments of his previous Brief, even though those arguments of Larew were rejected by the fact finder, the District Court.

The great majority of HLF Defendants' response to these assertions and arguments of Larew were previously made by HLF in the Initial Brief in this appeal. Pursuant to the Court's direction that in a Reply there should be an attempt to avoid, as much as possible, a repetition of assertions, the HLF Defendants will continue to refer the Court to their Initial Brief for response to demonstrate why the Larew arguments and contentions in his Reply Brief continue to be wrong and should be rejected in this appeal. HLF Defendants will, however, attempt to address a few issues and arguments as now advanced by Larew, which also are properly to be rejected as erroneous.

Contrary to the assertions of Larew this case, and all theories alleged, were at law and review is for correction of errors at law. The District Court, as trier of fact and observer of the testimony presented, considered the credibility of the various

witnesses, and any inconsistencies alleged, and the context of any statements made by the witnesses, and made conclusions of fact which are binding upon this Court on appeal in the same manner as a jury verdict. Contradicting testimony does not justify an appellate court altering a jury or a non-jury verdict. In fact, if there is substantial evidence supporting both factual sides of an issue, it is in those very circumstances when the factual resolution by the fact-finder is upheld on appeal. Larew's contentions otherwise are unavailing in this case. Rather, as urged by HLF in its Initial Brief, the issues on appeal are not the resolution of those underlying facts, but whether the District Court made errors of law in applying those facts.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN FINDING THAT HLFA WAS NOT A SUCCESSOR IN INTEREST TO HLF.

Larew admits that HLF continued to exist and continued to pay bills and incur liabilities. (Larew Reply Brief, p. 6). HLF continued to hold the Trust Account from which the judgment was paid for the Swanny expenses per the Order of the District Court. (Transcript Vol. VII, p. 146, Vol. IX p. 14-15, Vol. X p. 77). Larew admits that HLF received and held the funds from the Swanny case. (Larew Reply Brief, p. 6). HLFA never held Swanny Funds, HLFA never held the Trust funds of Swanny, HLFA never had an agreement with Larew or Swanny. (App Vol I. 336-338, 348-350, Transcript Vol. VII, p. 146, Vol. IX p. 14-15, Vol. X p.77).

Larew admits the Andrew Hope owns both HLF and HLFA. (Larew Reply Brief, p. 6). Yet, there is no showing of an agreement by HLFA to pay HLF debts, no showing of consolidation and no showing of fraud or inequity. Rather the facts show HLF continued in existence and continued in addressing its obligations and responsibilities. (Transcript Vol. VII, p. 146, Vol. IX p. 14-15, Vol. X p.77) The two companied continue to exist. (Transcript Vol. VII, p. 146, Vol. IX p. 14-15, Vol. X p.77) Yet Larew argues that because the owner of a separate corporation causes that separate corporation to pay some debts of a sister corporation, with no proof of what agreements exist to cause that to happen, that means in law the later organized corporation is a “continuation” of the other existing sister corporation. That is not

the law of Iowa and is not the holdings of the cases cited by Larew. *Arthur Elevator Co. v. Grove*, 236 N.W.2d 383,392 (Iowa 1975). Larew's argument on this issue was properly rejected by the District Court as finder of fact and the District Court's finding should be affirmed.

II. THE DISTRICT COURT FAILED TO ENFORCE THE OCA AGREEMENT UNTIL LAREW COMPLIED WITH HIS OBLIGATION TO OBTAIN A NEW ATTORNEY FEE CONTRACT WITH THE CLIENT.

In the second portion of his Reply Brief, Larew ignores the argument of HLF as to the legal requirement in Iowa for Larew to have obtained a new fee agreement and arrangement with the client. It was, and remains, HLF's contention that Larew was obligated, under Iowa law and ethics, to obtain a new written contingency fee agreement with the client before there was to be a change in the compensation to be awarded to him for completing the legal representation of the Swanny client. This a prime difference between the case of *Watson v Peterson*, 650 N.W.2d 562 (Iowa 2002). In *Peterson*, new fee agreements were obtained with the clients. In this case, Larew chose not to do so. That is a legal distinction with a different result.

While Larew writes extensively claiming there was "grabbing" of the client by HLF, Larew quite studiously avoids addressing his own "grabbing" in the underlying salient facts: Larew claimed in an email that he would never solely represent a client of HLF without first obtaining a written fee agreement with the client. (Catherine Anderson Depo, p. 87). Yet, in this case, Larew never advised the

client of any change in the attorney relationships (Michael Anderson Depo, p. 53-71); never obtained a new attorney client agreement with the client (Michael Anderson Depo, p.54, 58); Larew knew that HLF asserted it had the right to the attorney client agreement and OCA terms (Catherine Anderson Depo, p.87); the client thought it was HLF performing the legal services (Michael Anderson Depo, p.73, 80, 81). The client was shocked when Larew sought fees directly from the client and in a greater amount than what the fee agreement provided. (Catherine Anderson Depo, p. 55, Michael Anderson Depo, p.80). The client thought it was a team effort to get the jury award. (Michael Anderson Depo, p. 91-93). The client was not pressured to hire Sauro and Bergstrom. (Catherine Anderson Depo, p. 93). Larew never advised the client as to his motive in not telling them that he was going to claim he was no longer with HLF. (Catherine Anderson Depo, p. 89, 90). Larew never explained to the client how he would profit if HLF were terminated and he took over sole representation in the case. (Catherine Anderson Depo, p. 90). The client understood that all of the attorneys who represented them would get paid some money. (Catherine Anderson Depo, p. 99, Michael Anderson Depo, p.70-73). The client understood that money would be from the 40% contingency fee of the attorney client fee agreement held with HLF and Wilson. (Michael Anderson Depo, p. 23, 70-72)(Catherine Anderson Depo, p. 68-69). The client even recalls it was Larew and Wilson who suggested and desired other appeal counsel get hired and that would

come out of the 40% contingency fee agreement with HLF. (Michael Anderson Depo, p. 23, 70-72). Larew never advised HLF that he would claim, as he does in this case, to be entitled to not only virtually all of the monies paid by the client for the time post OCA, but would claim all the fees under the fee agreement directly against the client, and then seek even greater amounts against HLF than provided for in the fee agreement with the client under which Larew operated.

HLF continues to assert that the "court supervision" Larew claims should be ordered by this Court to be an enforcement of the OCA terms under which Larew first took representation of the Swamy client, until such time as Larew complied with the Iowa Supreme Court's rules of establishing an attorney client relationship and fee agreement in writing in this contingent fee case. This Court supervision should be ordered to protect Iowa clients from being subjected to these fee disputes between or among their lawyers and, further, to cause Iowa attorneys to follow the "court supervision" rules and have in effect the controlling written contingency fee agreement. Larew intentionally failed to follow those rules, and the only written agreements, the OCA and the HLF fee agreement with the client, should be the written agreements enforced.

III. IF THE COURT APPLIES AN IMPLIED-IN-LAW CONTRACT THEN QUANTUM MERUIT APPLYS TO DETERMINE LAREW'S COMPENSATION AS PREVIOUSLY SET OUT BY HLF.

Larew first attempts to obtain de novo review. Larew ignores basic Iowa law that the appellate review is based upon the way the case was pled and tried in the lower court. In *Watson v Peterson,* 650 N.W.2d 562 (Iowa 2002), the case was pled seeking, among other things, an accounting and constructive trust and was tried in equity to the Court. *Id* at 563-564. As such de novo review occurred on appeal. *Id* at 564. [1] Here, the case was filed at law (App Vol I. 1139; tried at law Tr. Vol 1, p. 7-9) and ruled on by the District Court at law. (Ruling, p. 1).[2] For this reason, HLF urged in its previous brief this review is at law. Appellate review of this issue should be in this case for correction of errors at law.

[1] Larew confusingly cites to a Minnesota case of an award of attorney fees which was not a case determining allocation of monies earned between two law firms from a contingency fee. *State v Krause,* 925 N.W.2d 30 (Minn. 2019). No client is involved as a party in this present case. The case cited by Larew has no applicability to this case.

[2] Larew's citation to language by the Court to "treat this like we would like an equity case" referred to how admission and progression of evidence and trial and when objections would be made and handled. (Tr. Vol 1, pp. 7-9). First, since the Court said it was going to be "like" an equity case, that indicates the Court understood it was a law case and not an equity case. Second, the Court did require the parties to identify objections when proposed findings were submitted and it was then the ruling on objections would be made it argued by a party. (Tr. Vol 1, pp. 7-9). Third, the Trial Court stated it would, and did actively make evidentiary rulings at trial on evidence (See e.g. Tr. Vol 1, Hope pp. 8-9, Tr. Vol IX p.16, 25, 34, 36, 73, 77-78; Vol II, pp. 147, 156, 157; Vol X, Larew pp. 35, 52, 53, 56, 76, 87). Many more could be cited. The Trial Court did not state at any time it was converting this law case into an equity case.

Larew continues to argue for a judgment award far exceeding the actual fees paid by the client. The Lodestar method has no support in Iowa for purposes Quantum Meruit in this case. Larew continues to ignore Larew's choice to not make an agreement with HLF due to a possible secret intent to take all of the fees earned in the case; Larew's choice not to advise the client Larew was allegedly solely in charge of the case and HLF had been essentially discharged by Larew without the client being advised; Larew's choice to continue to operate under the HLF attorney fee contract with the client; and the client's decision to terminate Larew from the case once Larew chose to request the client to decide between Larew's continued representation and the retaining of Sauro & Bergstrom. (App Vol I. 446-447, 459).

Of note, Larew, in his Reply Brief, appears to denigrate the argument of HLF that Larew had an obligation to enter into a new few agreement with the client if contending his rights to be paid are not controlled or limited by the existing fee agreement. Yet Larew admits that the law required him to do so, and he had told HLF he would do that if he were to solely take over representing the client. (Catherine Anderson Depo., p. 80, 87, App Vol I. 446-447, 459 App. Vol II. 159). HLF submits one of the important teachings and holdings of the Peterson case is that the Iowa Supreme Court holds paramount the right of a client to retain attorneys and terminate attorneys in an unfettered manner. *Peterson at 567*. An attorney serving as of counsel, or as an associate, or as a partner or co-counsel, cannot be allowed to

disavow the contracted amount to be paid for work undisputedly performed during the existence of the contract of being of counsel, an associate or as a partner or co-counsel. That same attorney cannot also be allowed to claim a right to take virtually all the fee monies, or even more monies than the fee agreement with the client. That attorney cannot claim a right of moral or legal superior ground when that attorney concedes he failed to inform the client of the change in relationships and failed to obtain a new fee agreement with the client. To hold otherwise will turn the concepts of *Peterson* to protect the client's rights on its head.

HLF asserts this Court should hold that an attorney who works under a fee agreement that a client has for the work, is bound by the maximum of that fee agreement. This is especially true when the attorney intentionally, as Larew did in this case, fails to apprise the client of the changed relationship and obtain a new attorney fee agreement and assures the other attorney he will not begin to solely represent the client without such a new attorney client relationship. The holdings of this Court should be such as to encourage attorneys with no fee agreement with a client to get that fee agreement on a contingency case, in writing, and not create years long disputes between the attorneys tying up the courts and the client's times and monies. HLF asserts, both HLF and Larew remain bound by the terms of the OCA, both in terms as to fee with the client and payment of the associated attorney, until the client discharges HLF who has the fee agreement with the client. HLF

further asserts quantum meruit sustains that same division under the facts of this case.

CONCLUSION

Defendants respectfully request that: (1) the District Court's determination on non-liability for HLFA as a successor entity be affirmed; (2) The District Court's determination of the amount of money owed by HLF to Larew be modified to the sum of $132,357.53; (3) The District Court's determination of finding of no conversion, no conspiracy and no quantum meruit recovery against Defendants HLFA, Andrew Hope and Travis Burk be affirmed; (4) the District Court's determination of no punitive damages against any Defendant be affirmed; and (5) that Larew be determined to be liable for interference with contract with this matter remanded for determination of the compensatory and punitive damages to be awarded.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request oral argument.

CERTIFICATE OF COST

The undersigned attorney does hereby certify that the actual cost of producing the foregoing Appellant's Final Reply Brief and Request for Oral Argument was $0.00.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on the 18th day of October, 2021, I electronically filed the foregoing Final Reply Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Pursuant to Rule 16.317(1), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the type face requirements and type volume limitation of Iowa Rules of Appellate Procedure 6.903 and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 2629, excluding the parts of the brief exempted by Iowa R. App. p. 6.903(1)(g)(1).

By: *Bruce H. Stoltze*