NOT DESIGNATED FOR PUBLICATION

MICHAEL L. RODRIGUEZ, JR.	*	**NO. 2016-CA-1276**
	*	
VERSUS		**COURT OF APPEAL**
	*	
PATRICK KEHOE, JR.		**FOURTH CIRCUIT**
	*	
		STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2009-11019, DIVISION "B"
Honorable Regina H. Woods, Judge
* * * * * *

Judge Paula A. Brown
* * * * * *

(Court composed of Judge Edwin A. Lombard, Judge Rosemary Ledet, Judge Paula A. Brown)

LOMBARD, J., CONCURS IN THE RESULT

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AFFIRMED
February 28, 2018

This matter involves a dispute between two attorneys over the division of attorney's fees. Appellant, Patrick Kehoe, Jr. ("Mr. Kehoe"), appeals the district court's judgment which awarded attorney's fees to Appellee, Michael Rodriquez, Jr. ("Mr. Rodriquez"), in two of the disputed cases. Mr. Rodriguez's answer to the appeal avers the district court erred in failing to adopt the Special Master's Report of July 18, 2011, which awarded him attorney fees in eleven disputed cases. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Mr. Kehoe and Mr. Rodriquez entered into an oral fee sharing agreement in 2002. The agreement called for Mr. Rodriguez to receive a 50-50 fee split on personal injury cases assigned to him by Mr. Kehoe that were favorably resolved through settlement or trial.[1] Mr. Kehoe financed the cases, and Mr. Rodriquez performed the legal work to bring the cases to fruition.

[1] The clients subject to the fee sharing agreement had a written contingency fee contract exclusively with Mr. Kehoe; however, they consented to Mr. Rodriquez's representation.

During 2007, Mr. Rodriquez developed a debilitating addiction to alcohol. He failed to appear at work on a regular basis and neglected the cases of clients. In November 2007, Mr. Rodriguez entered an in-patient facility to treat his alcoholism. At the time he entered the treatment facility, he left approximately sixteen cases unresolved. Mr. Rodriquez never returned to work with Mr. Kehoe.[2]

Mr. Rodriguez sought compensation for the work he had performed on the unresolved cases. In an attempt to settle the dispute, the parties met at the Galley Restaurant in the summer of 2008. Mr. Kehoe proposed a fee split agreement (FSA)[3] whereby Mr. Rodriguez would receive 20% of the attorney's fees collected on the disputed cases, subject to two contingencies. The contingencies required Mr. Rodriguez to provide a written statement, explaining his failure to disclose outstanding attorney's fees collected in the Elsie Finley ("Finley") case, and to meet with health care providers to resolve outstanding invoices owed on cases that had previously been resolved. Mr. Rodriquez rejected the proposal. At some point after the initial rejection, Mr. Rodriguez agreed to the terms of the FSA and gave the FSA to Christopher Rodriguez, his brother, to return to Mr. Kehoe.

In late summer/early fall of 2008, Mr. Kehoe and Mr. Rodriguez met in Mr. Kehoe's office to discuss the division of attorney's fees. They failed to reach an agreement.

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[2] Mr. Kehoe took over Mr. Rodriguez's caseload or paid another attorney to handle the cases.

[3] As will be discussed further herein, the parties factually dispute the date they met at the Galley Restaurant, whether a written FSA was presented at the meeting, and the date Christopher Rodriguez, Mr. Rodriguez's brother, provided Mr. Rodriguez with a written copy of the FSA.

On December 5, 2008, Mr. Rodriguez wrote Mr. Kehoe a letter regarding the status of the FSA. He advised Mr. Kehoe that he had accepted Mr. Kehoe's offer to settle for 20% of attorney's fees collected on cases listed in the FSA.[4] The letter specifically detailed the attorney's fees collected for work performed in six cases that resolved after his November 2007 departure. He expressed his willingness to settle those cases and the remaining cases in which he had filed interventions for 20% of the attorney's fees collected. The letter also referenced the Iris Butler case, which Mr. Rodriguez maintained had settled in October 2007—before his departure date. Mr. Rodriguez acknowledged that he had received two installments of attorney's fees in the Butler case. He agreed to accept 30% of the remaining fees owed in that matter, rather than the 50-50 division of fees agreed to in their original, oral fee sharing agreement. In closing, Mr. Rodriguez apologized for the inconvenience caused by the termination of his and Mr. Kehoe's working relationship, and he attached a copy of the signed FSA, bearing his signature, to the letter.[5]

Mr. Kehoe sent a written rejection to Mr. Rodriguez's proposed settlement agreement on December 10, 2008. In the letter, Mr. Kehoe expressed that Mr. Rodriguez had failed to settle or try the disputed cases, accused Mr. Rodriguez of quitting on his clients, and claimed Mr. Rodriguez had improperly reduced certain

[4]The designated clients covered in the FSA included: Kieran O'Driscoll; Derrick Tabb; Christine Williams; Corey Williams; Timothy Webb; Alfred Guillard; Renee Davis; Kenny Davis; Natasha Dorsey, (on behalf of Derrick Ford, Jr.); Irene Green; Kerry Fitts; Ray Owens; Terri Engeron; Jennifer Foret; Mary Stampley; Shevata Adams; Kentrell Pritchett; Joyce Garrett; Harold Augustus; and Tawanka Sparkman.

[5]The signed FSA was dated July 31, 2008.

health care fees and wreaked havoc on his trust account. Mr. Kehoe did not sign the FSA.

On October 16, 2009, Mr. Rodriguez filed a Petition for Breach of Contract against Mr. Kehoe. Mr. Rodriguez sought 50% of all fees generated by his representation of Mr. Kehoe's clients; or in the alternative, 20% of the fees as designated in the FSA; or, further in the alternative, a proportionate amount under the original agreement based on the percentage of time he spent on the cases and legal services rendered, or an amount that reasonably compensated him for the time and legal services performed on behalf of the clients.

Mr. Kehoe filed an answer, affirmative defenses and reconventional demand on November 12, 2009. Mr. Kehoe affirmatively pled numerous defenses, including non-performance and un-clean hands, to bar Mr. Rodriguez from recovery under the oral fee sharing agreement. The reconventional demand sought recovery for breach of contract, breach of duty, conversion, fraud, and unjust enrichment.[6]

The matter came before the district court, on January 12, 2011, for a settlement conference. To facilitate resolution of the issues, the parties consented to the district court's appointment of a Special Master,[7] pursuant to La. R.S.

[6] The reconventional demand also alleged that Mr. Rodriguez improperly intervened in seven cases seeking to recover a portion of any award the client might receive, notwithstanding that Mr. Rodriguez had no contingency fee agreement with the clients. Because the interventions were dismissed, Mr. Kehoe requested reasonable attorney's fees for opposing the "meritless" interventions.

[7] The presiding district court judge, Michael G. Bagneris, appointed M. Suzanne Montero as Special Master.

13:4165.[8]

The Special Master submitted her Special Master's Findings and Recommendations report (Report I) on July 22, 2011, and a supplemental Special Master's Findings and Final Recommendations report (Report II), on August 8, 2014. Both Mr. Kehoe and Mr. Rodriquez filed written objections to Report II. On September 24, 2014, the district court[9] conducted an evidentiary hearing on the parties' objections to Report II.

At the hearing, Mr. Rodriguez argued that Report II's findings should not be considered. Instead, he maintained Report I should be adopted as the Special Master's findings because Mr. Kehoe did not timely object to Report I within ten days as required by La. R.S. 13:4165(C)(3). Further, Mr. Rodriguez testified that he disagreed with some of the substantive findings in Report II regarding the scope, time, and nature of the legal work he performed.

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[8] La. R.S. 13:4165 provides in part:

> A. Pursuant to the inherent judicial power of the court and upon its own motion and with the consent of all parties litigant, the court may enter an order appointing a special master in any civil action wherein complicated legal or factual issues are presented or wherein exceptional circumstances of the case warrant such appointment. . . .
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> C. (1) The court may order the master to prepare a report upon the matters submitted to him and, if in the course of his duties he is required to make findings of facts or conclusions of law, the order may further require that the master include in his report information with respect to such findings or conclusions.
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> (2) The report shall be filed with the clerk of court and notice of such filing shall be served upon all parties.
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> (3) Within ten days after being served with notice of the filing of the report, any party may file a written objection thereto. After a contradictory hearing, the court may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions. If no timely objection is filed, the court shall adopt the report as submitted, unless clearly erroneous.

[9] At time of the hearing, Lynn Luker had been appointed judge *pro tempore* to replace Judge Michael G. Bagneris.

Mr. Kehoe countered that he did not receive proper notice of Report I from the clerk of court as provided for in La. R.S. 13:4165(C)(2). Moreover, he argued that the parties agreed that the Special Master would file a supplemental report due to omissions in Report I. In support, Mr. Kehoe cited an October 19, 2011 e-mail from the district court that memorialized the agreement among the attorneys and the Special Master for the "submission of a revised/supplemental Special Master's Report." The district court's e-mail also provided that "[p]ursuant to the Special Master Order, her report shall be filed with the clerk of court, with a courtesy copy to the Court, and notice of such filing shall be served upon all parties. Any objections to this report should be raised in accordance with La. R.S. 13:4165(C)(3)."

Both parties also examined the Special Master at the hearing and questioned her regarding the methodology she employed to formulate the recommendations contained in Report I and Report II. Specifically, when asked whether receipt of additional information from either party prompted her to issue a supplemental report, the Special Master responded as follows:

> A. I don't know that it was a result of being given additional information. I rendered an amending and supplemental report. It's not - - it wasn't as a result of being given more information. It was more of a result of an internal state in my head about my initial evaluation that was done in the initial report. There was nothing that was provided to me between the issuance of the first report and the second report that I had some sort of, oh, ah-ha moment.
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> Q. Right.
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> A. It was more - - it was - - a more accurate statement is that ***when I sat down to coalesce all of this information and looked at the first report with further reflection***, I did not think that was an appropriate way to - - by weighting with percentages of, you know, what a

> step in the prosecution was ***I didn't think that that was an appropriate evaluation*** to come up with a recommendation to the court ***of what I thought Mr. Rodriquez's interest or payment should be out of these cases***. (emphasis added).

At the conclusion of the hearing, the parties discussed the possibility of a settlement conference. However, the district court did not convene a settlement conference or render a decision on the objections to Report II before the term of her judge *pro tempore* appointment expired.

The parties filed a Joint Motion to Submit Matters Without a Hearing/Further Hearing before the elected district court judge[10] to rule on their objections to Report II. The motion requested that the district court issue its ruling based on the transcript of the September 24, 2014 hearing, along with the exhibits introduced therewith, without additional oral argument. On January 11, 2016, upon consideration of the pleadings, exhibits, the entire record, and the applicable law, the district court declined to consider or adopt Report I or Report II, finding each report was "too divergent from one another."

A judge trial was held on May 23, 2016 and May 24, 2016. Counsel for Mr. Rodriguez called Mr. Kehoe; Christopher Rodriguez; Shannon Rodriguez—Mr. Rodriguez's wife; Michael Rodriguez, Sr.—Mr. Rodriguez's father; and Mr. Rodriguez as witnesses to testify at trial.[11] The following testimony was elicited at trial.

Mr. Kehoe testified that he gave a written copy of the FSA to Christopher Rodriguez to submit to Mr. Rodriguez before the Galley Restaurant meeting,

[10] The Honorable Regina H. Woods was elected to serve as judge of Civil District Court for the Parish of Orleans, Division "B".

which occurred in August 2008, not July 2008. Mr. Kehoe said that when he attempted to discuss the FSA at the meeting, Mr. Rodriquez "blew up" and declared, "there is no f'ing way I'm taking 20 per cent of the fee." Mr. Kehoe accused Mr. Rodriguez of back-dating his signed copy of the FSA to reflect a July 31, 2008 signature date. He pointed out the FSA could not have been confected in July because he did not learn about the two issues—Mr. Rodriguez's failure to disclose settlement of the Finley case and pay his portion of attorney's fees, and Mr. Rodriguez's failure to pay outstanding medical invoices on resolved cases—until late July/early August 2008. He, then, included the resolution of those matters as contingencies in the FSA. Mr. Kehoe re-emphasized that the FSA meeting could not have taken place in July because settlement funds involving some clients included in the FSA had not been disbursed until after July 2008.

Mr. Kehoe said that Mr. Rodriguez came to his office to discuss the fee dispute in October 2008. He told Mr. Rodriguez that he believed Mr. Rodriguez had stolen from him; and, as result, he did not intend to pay Mr. Rodriguez any attorney's fees. Mr. Kehoe testified that he did not sign the FSA because Mr. Rodriguez did not meet the conditions contained in the FSA, and he learned of other wrongful acts Mr. Rodriquez had committed. He said he did not agree to the fee split Mr. Rodriguez proposed in the December 5, 2008 correspondence, reiterating his contention that Mr. Rodriquez had quit the office and quit on his clients.

As to the Alfred Guillard ("Guillard") case, Mr. Kehoe admitted that Mr. Rodriguez had been assigned the case in 2004. He also acknowledged the Iris

[11] For purposes of this opinion, the summation of the testimony is primarily limited to the errors assigned on appeal.

Butler ("Butler") case was settled before Mr. Rodriguez left the firm; however, he pointed out that Mr. Rodriguez did not actually try the case.

Christopher Rodriguez testified that he had no independent recollection of when he gave the FSA to his brother. He said that after he returned the signed FSA to Mr. Kehoe, he had no further direct involvement in the fee dispute. Christopher Rodriguez also said he never had any problems with Mr. Kehoe honoring his agreements and he did not think that Mr. Kehoe treated his brother unfairly.

Shannon Rodriguez testified that her husband sought treatment for his alcoholism in November 2007. She admitted her husband stayed home for days at a time because of his drinking. Mrs. Rodriguez conceded that during the height of Mr. Rodriquez's drinking, she was concerned whether anything he said was truthful.

Michael Rodriguez, Sr. testified that he had known Mr. Kehoe for over forty-six years. He said he had never known him to do anything dishonest. Mr. Rodriguez, Sr. recalled an incident when his son, Mr. Rodriguez, asked him to put one of Mr. Kehoe's client's checks into his trust account. He also acknowledged that in 2007, his son had a recurring problem of not showing up for work.

Mr. Rodriguez testified regarding the work he completed on the Guillard and Butler cases before his alcoholism became debilitating. He said he worked on the Guillard case for forty-seven months. During that time, he monitored Mr. Guillard's treatment, arranged all of his appointments, communicated with the insurance company, prepared pleadings, and filed the lawsuit. However, he did not take any depositions on the case.

As to the Butler case, Mr. Rodriguez identified a letter dated October 9, 2007, which showed the matter had settled. He said that he took all witness depositions and prepared all the pleadings leading up to the trial and the appeal. He claimed that he participated in the trial, noting that he had perpetuated the deposition of one of the physicians for use at trial. He emphasized that the 50-50 fee arrangement with Mr. Kehoe was in effect at the time of settlement. He said Mr. Kehoe had paid him $56,111.00 in attorney's fees.

Mr. Rodriguez recalled that he met with Mr. Kehoe at the Galley Restaurant in July 2008. He said he verbally rejected the proposed FSA discussed at that meeting, but his brother brought him a written copy of the FSA at a later date. He said he agreed to sign it after discussing it with his wife and family. To the best of his knowledge, he signed the FSA on July 31, 2008 and gave it to his brother to return to Mr. Kehoe.

Mr. Rodriguez testified that he believed he met with Mr. Kehoe at Mr. Kehoe's office in August 2008. During the meeting, Mr. Kehoe blamed him for Mr. Kehoe being fired from certain cases; told him that Mr. Kehoe would take care of the health care fee dispute; and declared that their relationship was finished. Mr. Rodriguez conceded that he submitted his December 5, 2008 settlement proposal because the FSA terms had not been fulfilled. He acknowledged that he did not think an agreement had been reached because he had not heard from Mr. Kehoe after he had signed the FSA. He also admitted that Mr. Kehoe never agreed to his December 5, 2008 settlement proposal.

At the conclusion of Mr. Rodriguez's case-in-chief, Mr. Kehoe's counsel moved for an involuntary dismissal. The trial court granted the motion as to all the cases, with the exception of the Guillard and the Butler cases. The trial court noted

that none of the witnesses, including Mr. Rodriguez, testified to the legal work he performed on the cases subject to the involuntary dismissal.

Thereafter, Mr. Kehoe's counsel rested his case based on the stipulation reached on his reconventional demand and the testimony of Mr. Kehoe.

In its reasons for judgment, the district court evaluated the testimony of each of the witnesses who testified at trial. The district court found that the testimony of both Christopher Rodriguez and Mr. Rodriguez, Sr. was "neutral" in that it did not help or hurt either Mr. Rodriguez or Mr. Kehoe. As to Shannon Rodriguez, the district court concluded that her testimony may not have helped Mr. Rodriguez because she admitted he was not always honest during the height of his alcoholism.

In viewing the testimony of Mr. Kehoe, the district court found Mr. Kehoe to be a credible witness. The court accepted Mr. Kehoe's version that a written FSA was given to Mr. Rodriquez before the August 2008 Galley Restaurant meeting; at that meeting, Mr. Rodriguez angrily rejected the FSA; Mr. Rodriguez "back-dated" the signed FSA; and the parties never reached an agreement on the division of attorney's fees.

In contrast, the district court found Mr. Rodriguez to be a "very incredible" witness. The court discounted his testimony regarding the FSA and his account of when, how and if an agreement was confected. The district court reasoned, "It makes no sense, and so if you are going to, you know, the same thing that we tell a jury if you are going to lie to me about one thing, then what else are you lying to me about."

However, the district court found Mr. Rodriguez's testimony credible as to the legal work he had performed on the Butler and Guillard cases. The district court believed that the Butler case was settled before Mr. Rodriguez left the firm

and that Mr. Rodriguez brought the case to fruition. As to the Guillard case, the district noted that Mr. Rodriguez worked-up the case over a period of forty-five months.

Based on the above reasons, the district court rendered judgment on June 6, 2016, which granted, in part, Mr. Kehoe's motion to dismiss Mr. Rodriguez's request for attorney's fees on all of the cases, with the exception of the Guillard and Butler cases. The judgment awarded Mr. Rodriguez 20% of the recovered fees in the Guillard case and 50% of the recovered fees in the Butler case.[12]

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[12] The judgment in its entirety judgment provides as follows:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for involuntary dismissal brought by defendant Patrick G. Kehoe, Jr. is granted in part, and plaintiff's claims for attorney's fees with respect to the following underlying cases be and are hereby dismissed: Kieran O'Driscoll, Derrick Tabb, Christine Williams, Corey Williams, Timothy Webb, Renee Davis, Kenny Davis, Natasha Dorsey, on behalf of Derrick Ford, Irene Green, Kerry Fitts, Ray Owens, Terri Engeron, Jennifer Foret, Shevata Adams, Kentrell Pritchett, Joyce Garrett, Harold Augustus, and Tawanka Sparkman.
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> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for involuntary dismissal brought by defendant Patrick G. Kehoe, Jr. is denied with respect to plaintiff's claims for attorney's fees with respect to the Iris Butler and Alfred Guillard matters.
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> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be entered in favor [sic] Michael Rodriguez and against Patrick G. Kehoe, Jr., awarding plaintiff 50% of the gross attorney's fees received on the Iris Butler matter (50% of $284,666.65), and that said amount shall be reduced by $56,111.00, for the payments already made to plaintiff, the reduced award being subject to the addition of judicial interest from the date of judicial demand.
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> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor [sic] Michael Rodriguez and against Patrick G. Kehoe, Jr., awarding plaintiff 20% of the gross attorney's fees received on the Alfred Guillard matter (20% of $220,000.00), plus judicial interest from the date of judicial demand.
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> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered on the reconventional demand in favor [sic] Patrick Kehoe, Jr., and against Michael Rodriguez, in the sum of $24,256.17, plus judicial interest from the date of judicial demand.
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> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in accordance with the foregoing, judgment be entered in favor of Michael Rodriguez and against Patrick G. Kehoe, in the principal amount of $130,222.33

Mr. Rodriguez filed a timely Motion for New Trial on two issues: (1) the district court's judgment did not consider and deviated from the Special Master's Report I; and (2) because Mr. Rodriguez had filed bankruptcy proceedings, the "set-off" terminology used by the district court in its judgment could potentially encroach upon the jurisdiction of the bankruptcy court to properly adjudicate the bankruptcy action. The motion prayed for removal of the final paragraph of the judgment with the "set-off" language as it was an unnecessary recapitulation of the relief already granted in the previous paragraphs of the judgment.

On September 6, 2016, the district court denied the new trial motion based on the district court's rejection of the Special Master's Reports and granted the motion for new trial as it pertained to Mr. Rodriguez's request to remove the "set-off" terminology from the judgment.

This appeal followed. Mr. Rodriguez filed an answer to the appeal.

DISCUSSION

In his assignments of error, Mr. Kehoe asserts the district court erred in the legal fees awarded to Mr. Rodriguez in the Guillard and Butler cases. As to the Guillard case, he asserts the trial court should not have awarded 20% of the gross attorney's fees collected based on *quantum meruit* because Mr. Rodriguez offered little evidence to prove the nature and extent of the legal work he performed. In the Butler matter, Mr. Kehoe contends Mr. Rodriguez did not bring the case to conclusion as required by the oral fee sharing agreement; therefore, he was not

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plus judicial interest from the date of judicial demand, representing the Iris Butler and Alfred Guillard fees as set forth herein, with a setoff of $24,256.17 plus judicial interest from the date of judicial demand (for the amount awarded on the reconventional demand).

entitled to 50% of the attorney's fees recovered. Mr. Kehoe further argues both awards constitute error because they are inconsistent with the district court's assessment that Mr. Rodriguez lacked credibility.

Louisiana jurisprudence is well-settled that a reviewing court may not disturb the factual findings of the trier of fact in the absence of manifest error. *Ardoin v. Firestone Polymers, L.L.C.*, 2010-0245, p. 6 (La. 1/19/11), 56 So.3d 215, 219. The issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. *Stobart v. State, Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993). As further espoused in *Rosell v. ESCO*,

> [A] court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of manifest error or unless it is clearly wrong, and where there is conflict in testimony, reasonable evaluations of credibility and reasonable inference of fact should not be disturbed on review, even though the appellate court may feel that its own evaluations and inference are as reasonable.
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> When findings are based on determinations regarding the credibility of witnesses, the "manifest error-clearly wrong" standard demands great deference to the trier of fact's findings; only the fact finder can be aware of the variations in demeanor and the tone of voice that bear so heavily on the listener's understanding and belief in what is said.

549 So.2d 846, 845 (La. 1989).

In fixing an award of attorney's fees, a trial court has much discretion, and its award will not be modified on appeal absent an abuse of discretion. *Regions Bank v. Automax USA, L.L.C.*, 2002-1755, p. 4 (La. App. 1 Cir. 6/27/03), 858 So.2d 593, 595. To determine the reasonableness of an award, the compensation of an attorney is based upon the facts of the record and the application of the criteria listed in the Louisiana State Bar Association Rules of Professional

Conduct, Rule 1.5(a). *See Melendreras v. Blanchard*, 598 So.2d 1226, 1228 (La. App. 4th Cir. 1992). The criteria considered pursuant to Rule 1.5(a) of the Rules of Professional Conduct in determining the reasonableness of an attorney fee award include: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances made; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's knowledge.

A *quantum meruit* review of attorney's fees owed encompasses not only the labor expended, but also the results and benefits obtained. *Melendreras*, 598 So.2d at 1228. The vast discretion that a district court has to fix an attorney's fee award also applies in determining proper attorney's fees in *quantum meruit*; and, similarly, *quantum meruit* fee awards will not be disturbed on appeal absent manifest error. *Id*.

As to the Guillard case,[13] the record includes Mr. Rodriguez's testimony that he worked on the matter for forty-seven months, arranged medical appointments for the client, regularly communicated with the client, and filed all the pleadings leading up to the lawsuit. The district court's oral reasons for judgment show it believed Mr. Rodriguez worked-up the case, while another attorney conducted depositions and tried the case to conclusion. As such, the court determined that Mr. Rodriguez was not entitled to the 50-50 fee split allowed in the oral fee sharing agreement. Rather, based upon Mr. Rodriguez's testimony, the court apportioned the work performed on the case in an 80% to 20% ratio in favor

[13] The Guillard case settled for $550,000.00 approximately seven months after Mr. Rodriguez's departure.

of Mr. Kehoe and awarded Mr. Rodriguez a 20% fee in accordance with that apportionment.

Mr. Kehoe complains the district court failed to affirmatively apply all the factors outlined in Rule 1.5(a)(1) to determine a reasonable attorney fee. However, Rule 1.5(a)(1) presents an illustrative list of factors; we know of no jurisprudence that mandates the strict application of **all** these factors in determining the reasonableness of an attorney fee nor that precludes other factors from consideration. In the case *sub judice*, the district court clearly considered certain factors contemplated by Rule 1.5(a), such as the time and labor involved and the amount and results obtained, in making its attorney's fee award. Upon our review of the record, we cannot say that the 20% attorney's fee award was unreasonable based on the facts of the case—a fee dispute between attorneys, as opposed to an attorney/client dispute—nor can we say the district court's application of Rule 1.5(a) was erroneous. Accordingly, we find the district court did not abuse its discretion in awarding Mr. Rodriguez 20% of the attorney's fees collected in the Guillard case.

For similar reasons, we find that the district court did not manifestly err in its 50-50 attorney's fee award in the Butler case. The district court made a factual finding that Mr. Rodriguez brought the case to fruition before he left Mr. Kehoe's firm—which would entitle him to the 50-50 attorney fee sharing agreement consented to in their oral fee sharing agreement. The district court's finding is supported by Mr. Rodriguez's testimony that he perpetuated a deposition for trial, that he participated in the June 2005 trial, and that the matter settled by October 9, 2007—a time when he was still at the firm and the oral fee sharing agreement was still in effect.

Mr. Kehoe argues that, notwithstanding the 50-50 oral fee sharing agreement, Mr. Rodriguez, in his December 5, 2007 letter to Mr. Kehoe, had agreed to reduce his attorney fee from 50% to 30% in the Butler case. Mr. Rodriguez, however, denies that the parties reached an enforceable agreement. Indeed, the record supports Mr. Rodriquez's argument that a binding agreement was never perfected between the parties for the reduced fee in the Butler case. In fact, in his letter dated December 10, 2007, Mr. Kehoe flatly rejected Mr. Rodriguez's settlement proposal. Accordingly, we conclude the 50% attorney's fee awarded to Mr. Rodriguez in the Butler case did not constitute an abuse of the district court's discretion.

Next, Mr. Kehoe argues the district court erred in making any fee award to Mr. Rodriguez based on its determination that some of his testimony lacked credibility. However, appellate courts defer to a district court's factual findings, credibility determinations, and assessment of witnesses' testimony. *State in Interest of K.M*, 2014-0306, p. 10 (La. App. 4 Cir. 7/21/14), 146 So.3d 865, 873. Determination of the relative credibility of witnesses rests solely with the fact-finder, who may accept or reject the testimony of any witness in whole or in part. *Id*. In the matter before us, the district court explicitly found Mr. Rodriguez credible regarding his testimony in the Guillard and Butler cases. Accordingly, the district court's decision to award attorney's fees in those matters was not manifestly erroneous or an abuse of discretion.

Based on the foregoing reasons, Mr. Kehoe's assignments of error, as to the award of attorney's fees to Mr. Rodriguez in the Guillard and Butler cases, lack merit. We now address Mr. Rodriguez's answer to the appeal.

Mr. Rodriguez's Answer to Appeal

Mr. Rodriguez's answer to appeal maintains the trial court legally erred in failing to adopt Report I, as per La. R.S. 13:4165(C)(3); erred in failing to consider the factual findings and evidence compiled in Report I; erred in its findings regarding the execution and presentation of the FSA; and erred in ignoring evidence of modifications to the written FSA. These errors fall within two categories, which essentially ask: (1) whether the district court erred in rejecting the findings in Report I and (2) whether the district court erred in failing to apply the FSA terms in its award of attorney's fees. We answer both questions in the negative.

Mr. Rodriguez contends that Report I should have been adopted by the district court because of Mr. Kehoe's failure to make a timely written objection to its findings in accordance with La. R.S. 13:4165(C)(3). The statute provides, in pertinent part , that "[i]f no timely objection is filed, the court shall adopt the report as submitted, unless clearly erroneous." Mr. Rodriguez argues that, even if the district court disregarded Mr. Kehoe's failure to timely object, the district court erred in not adopting Report I because it failed to make a factual determination that Report I was clearly erroneous.

This Court need not address whether Mr. Kehoe made a timely objection, as we find the district court did, in fact, determine Report I was clearly erroneous. Implicit in the district court's decision to reject both Report I and Report II on the basis that the reports were "too divergent from one another" is a finding of clear error. This conclusion is supported by the testimony of the Special Master, who testified at the evidentiary hearing on the objections to Report II. The Special Master made clear that she issued a second report because she found the method she used to allocate fees to Mr. Rodriguez in Report I was "inappropriate."

La. R.S. 13:4165 grants the district court authority to accept, modify, or reject the findings in the Special Master's report. After a contradictory hearing, the district court elected to reject the Special Master's Reports, both Report I and Report II, based on clear error. Thereafter, the district court held a trial on the merits on the attorney's fee dispute. After evaluating the evidence and the witnesses' testimony, the district court was under no obligation to consider the findings of an adjudicated erroneous report in its judgment. Accordingly, we find no merit in Mr. Rodriguez's contention that the district court erred in failing to adopt or consider the findings of Report I in its attorney's fee awards.

Mr. Rodriquez further contends that the trial court erred in accepting Mr. Kehoe's version of events surrounding the FSA and ignoring evidence of oral modifications to the written FSA. These errors lack merit. The trial court's acceptance of Mr. Kehoe's account as to when, where and if the written FSA was confected is a credibility determination; and, as previously noted, an appellate court will not disturb a trial court's reasonable evaluations of credibility upon review. *See Stobart v. DOTD, supra*.

Next, the issue of oral modifications to the FSA is moot. "A contract is formed by the consent of the parties established through offer and acceptance." La. C.C. art. 1927. Here, Mr. Kehoe did not sign the FSA. Mr. Rodriguez acknowledged the FSA was not signed, which is why he drafted his December 5, 2008 settlement proposal—a proposal that Mr. Kehoe also rejected. Therefore, the district court's alleged failure to consider evidence of oral modifications to the FSA is inconsequential, as the parties never entered into an enforceable FSA contract. Therefore, these assignments of error regarding the FSA are without merit.

CONCLUSION

Based on the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED