Court of King's Bench of Alberta

Citation: Solis v Sfakianakis, 2025 ABKB 211

Date: 20250404
Docket: 2501-02671
Registry: Calgary

Between:

Julie Marie Solis and Mary Aweit Mabior
by Her Litigation Representative Julie Marie Solis

Plaintiffs

- and -

Georgios Sfakianakis

Defendant

Reasons for Decision
of the
Honourable Justice M.A. Marion

I. Introduction and Background

[1] This matter came before me by way of an uncontested civil desk application with a proposed consent order. The Plaintiff, Julie Marie Solis (**Applicant**), in her capacity as litigation representative of her minor child, Mary Awiet Mabior (**Mary**), seeks approval of a settlement of a motor vehicle accident claim on Mary's behalf pursuant to section 4(2) of the *Minors' Property Act*, SA 2004 c M-18.1.

[2] On January 17, 2023, the Applicant and Mary were driving together in a vehicle when they were struck by the defendant's vehicle. Mary was 10 years old at the time. She suffered injuries requiring treatment.

[3] On December 18, 2023, the Applicant met with legal counsel and, on Mary's behalf, signed a form of contingency fee agreement with legal counsel (**Contingency Agreement**) in respect of Mary's claim.

[4] Legal counsel negotiated a settlement of Mary's claim for $50,000 (**Settlement**). On January 7, 2025, the Applicant authorized Mary's legal counsel to settle Mary's claim on that basis.

[5] On February 18, 2025, the Applicant filed a desk application seeking the Court's approval of the settlement by way of a consent order. The proposed order includes approval of legal fees, disbursements, other costs and GST in the amount of $14,781.32, with the net sum of $35,218.68 to be paid to the Public Trustee pursuant to section 4(4)(b) of the *Minor's Property Act*. The proposed order is consented to by the Public Trustee and the defendant's insurer.

[6] For the reasons set out below, I find that the Settlement is reasonable and in the best interests of Mary, but that the Contingency Agreement is unenforceable, and, therefore, the proposed form of order is not in Mary's best interests because it endorses an unenforceable agreement against her interests.

[7] I approve the settlement of Mary's claim based on the proposed form of order, but amending the proposed order to reduce the legal fees, disbursements and other costs and GST to the amount of $7,843.78, and increasing the net sum paid to the Public Trustee on Mary's behalf to $42,156.22.

II. Issue

[8] The issue is whether the Settlement should be approved on the terms proposed.

III. Analysis

[9] The *Minors' Property Act* gives the Public Trustee input, and the court oversight, in dealings with property of minors. In addition to giving the court discretion in the approval of settlements under section 4(2), pursuant to section 4(4)(c) of the *Act* the court has oversight and discretion over the payment of the settlement proceeds.

[10] There is no dispute that the Settlement is in Mary's best interests. I agree and so find, subject to considering the amount to be approved for payment to legal counsel.

[11] The Court may consider whether an amount proposed to be paid to legal counsel as part of a settlement of a minor's claim is reasonable in all the circumstances. In the case of a valid contingency fee agreement, that would include an assessment of reasonableness of the contingency fee agreement: ***Tallcree First Nation v Rath & Company***, 2022 ABCA 174 at para 57; ***Morrison v Rod Pantony Professional Corp***, 2008 ABCA 145 at para 25; ***Stanchfield v Doe***, 2023 ABKB 273 at para 8; ***Sturgeon Lake Cree Nation v Rath and Company Barristers and Solicitors***, 2024 ABKB 258 at paras 16-20 aff'd 2025 ABCA 65.

[12] An assessment of the reasonableness of a contingency fee agreement presumes that it is valid and in accordance with the requirements of rules 10.7 and 10.8 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*): ***Stanchfield*** at para 14.

[13] If a lawyer does not comply with rule 10.7(1) to (4), (6) and (7), the lawyer is entitled only to lawyer's charges determined in accordance with rule 10.2 "as if no contingency agreement had

been entered into": rule 10.8; ***Sturgeon Lake Cree Nation v Rath and Company Barristers and Solicitors***, 2025 ABCA 65 [***Sturgeon Lake CA***] at para 12; ***Stanchfield*** at paras 21.

[14] Simply put, a contingency agreement that does not meet mandatory preconditions of rule 10.7 is unenforceable: ***Sturgeon Lake CA*** at paras 3-5; ***Betser-Zilevitch v Prowse Chowne LLP***, 2021 ABCA 129 at para 20.

[15] The preconditions are not new, are not onerous, and are easily incorporated into contingency agreements: ***Sturgeon Lake CA*** at para 3; ***Stanchfield*** at para 21. They are consumer protection provisions that "recognize that lawyers who have superior legal knowledge draft their own fee agreements for clients who are often vulnerable litigants facing economic barriers to accessing courts": ***Sturgeon Lake CA*** at para 6. The purpose of the rule is to promote clarity and certainty surrounding the rights and obligations of the lawyer and the client: ***Sturgeon Lake CA*** at para 6. None of the mandatory requirements are relieved or relaxed even if the lawyer demonstrates no prejudice to the client arising from the lawyer's noncompliance: ***Sturgeon Lake CA*** at paras 7-8.

[16] In this case, I find that the Contingency Agreement did not comply with the requirements of rule 10.7. In particular, the Contingency Agreement contemplated counsel receiving an amount from a costs award, but did not include language mandated by rule 10.7(2)(f)(iii) and (iv); it also did not include all the language mandated by rule 10.7(2)(h)(i) and (ii). In these circumstances, the Contingency Agreement is unenforceable, and legal counsel is only entitled to charges determined in accordance with rule 10.2.

[17] Far too often this Court receives applications involving contingency agreements that cause concern. Despite the ease by which they can comply with the mandatory requirements of rule 10.7, many lawyers continue to use non-compliant contingency fee agreements. In many cases, this appears to be based on an erroneous assumption of counsel entitlement to contingency fees, rather than the required careful adherence to the *Rules*. See, for example: ***Stanchfield*** at paras 16-17; ***Sturgeon Lake*** at paras 14-19; ***Downes v Botan***, 2018 ABQB 341 at paras 20-21; ***MS v DM***, 2014 ABQB 702 at paras 52-53; ***Betser-Zilevitch v Prowse Chowne LLP***, 2021 ABCA 129 at paras 15-17; ***Niam v Silverberg***, 2015 ABQB 682 at paras 114-116. This case is but one example of this phenomenon, which illustrates that even highly-recommended, well-respected, well-meaning, and good counsel providing valuable access to justice to their clients can inadvertently proceed on the incorrect basis that they are entitled to a contingency fee.

[18] When lawyers do not strictly follow the *Rules*, they may unintentionally defeat an important purpose of the *Rules*. Then, both they and their clients may proceed on the misunderstanding that counsel is entitled to a contingency fee, which in turn can have a problematic ripple effect, including:

(a) at the time of resolution of the matter, lawyers may issue invoices to clients reflecting the contingency fee calculation based on a non-compliant and *unenforceable* agreement. Lawyers should take care not to enforce or implement unenforceable agreements against their clients (whether in the *Minors' Property Act* context or otherwise). Lawyers are expected to review their contingency agreements prior to billing to ensure they are compliant and enforceable;

(b) in *Minors' Property Act* matters, lawyers may represent to the Public Trustee that they are entitled to a contingency fee, when they may not be. It is unclear to me to what extent, if any, as part of the Public Trustee's mandate to "protect the property or estate of minors" under section 5 of the *Public Trustee Act*, SA 2004 c P-44.1, the Public Trustee uses its powers (including under section 44 of the *Public Trustee Act*) to gather information or analyze whether contingency agreements are compliant and enforceable before consenting to orders detailing payment to counsel. The Public Trustee charges a fee for reviewing *Minors' Property Act* settlements (which, in this case, was $2,000); and

(c) in matters that come before the Court for approval, counsel may adduce evidence (from the lawyer, legal staff or the client) expressly or implicitly (and inadvertently and unintentionally) representing that the contingency agreements are enforceable, when they may not be. For example, in this case, the Applicant's affidavit stated: "the Contingency Agreement would allow for a legal fee of 33 1/3% to be paid to Counsel".

[19] Further, Counsel often do not include sufficient evidence to allow the Court to assess whether a contingency agreement is enforceable, thus requiring the Court to make requests for more information. In any matter seeking approval of fees based on a contingency agreement, counsel should provide all the evidence necessary for the Court to assess rule 10.7 compliance.

[20] Where contingency agreements are unenforceable, having regard to rule 10.2, the Court may nonetheless find that a reasonable fee is one calculated consistent with a percentage based on (or having regard to the expectations of the parties reflected in) the contingency agreement; or it may apply *quantum meruit*: ***Stanchfield*** at para 20, citing ***Botan (Botan Law Office) v St Amand***, 2011 ABQB 774 aff'd 2013 ABCA 27; ***Steinke v Hajduk Gibbs LLP***, 2014 ABQB 34 at paras 51, 53; ***McDonald v Crawford***, 2004 ABCA 150 at para 11; ***Downes*** at para 22; ***Singh v GlaxoSmithKline Inc***, 2025 ABKB 136 at para 117; ***Barry v Industrial Alliance Insurance and Financial Services Inc (IAF)***, 2022 ABKB 706 at paras 24-25.

[21] In my view, consistent with ***Stanchfield*** at para 21, in non-class action matters where the client is not a sophisticated business-person and did not have independent legal advice regarding the contingency agreement, *quantum meruit* will normally be appropriate except where the amount calculated under the contingency agreement would be less than the amount calculated under *quantum meruit*. Of course, assessment of reasonable fees must be determined on its own facts.

[22] In this case, I find that *quantum meruit* is appropriate. At my request, counsel provided detailed time entries so I could assess counsel's fee under rule 10.2, as required by rule 10.8.

[23] In a legal assistant's affidavit, it states that the time entries do not include all time spent on the matter, as tasks often overlapped with the Applicant's claim and that the fee would be higher if on an hourly basis. Insufficient record keeping can impair the Court's ability to quantify and assess non-documented time: ***MS*** at para 86. "A lawyer working on a contingency basis is still well advised to keep time records. If it turns out that the contingency fee agreement is unenforceable for any reason, time records will be needed to establish a fair fee": ***Tallcree*** at para 72. I don't have enough information to warrant me factoring in undocumented time in this case.

[24] After considering the factors in rule 10.2, I find the documented time entries reflect a reasonable fee, other than the last time entry related to counsel's time preparing the account to the client. Generally, time spent managing the business aspects and administrative tasks of a legal practice, such as invoicing and collection from clients, is not legal work and is not properly chargeable as a legal fee: ***Narayan v Slater Law Corporation***, 2023 BCSC 2073 at paras 55-56; ***Burns v Wood***, 2019 BCSC 642 at para 44; ***Farber & Folk v Diep and Diep***, 2010 BCSC 1427 at para 17.

[25] Based on the information provided, I calculate counsel's reasonable legal fees as $5,367.00. The disbursements and other charges in the amount of $2,103.27 (inclusive of the Public Trustee fee) are reasonable. Therefore, counsel's entitlement for fees, disbursements and other charges, plus GST, is $7,843.78.

IV. Conclusion

[26] The Settlement is approved based on the form of order provided, with the amendments noted above to the amounts to be paid to counsel and the Public Trustee. Plaintiff's counsel is directed to submit a revised form of order to my attention through the civil desk application process for my signature and approval.

Desk application materials filed February 18, 2025; supplemental evidence filed March 7, 2025 and March 27, 2025.
Dated at the City of Calgary, Alberta this 4th day of April, 2025.

M.A. Marion
J.C.K.B.A.