

**[J-67A-2017 and J-67B-2017]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.,

Appellant

v.

LAW FIRM OF MALONE MIDDLEMAN,
PC, AND CANDACE A. EAZOR AND
RICHARD EAZOR, AS EXECUTORS OF
THE ESTATE OF RICHARD A. EAZOR,

Appellees

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.,

Appellant

v.

LAW FIRM OF MALONE MIDDLEMAN,
P.C. AND CANDACE A. EAZOR AND
RICHARD EAZOR AS EXECUTORS OF
THE ESTATE OF RICHARD A. EAZOR,

Appellees

: No. 6 WAP 2017
:
: Appeal from the Order of the Superior
: Court entered June 17, 2014 at No.
: 1470 WDA 2012, vacating the Order of
: the Court of Common Pleas of
: Allegheny County entered August 22,
: 2012 at No. AR 10-007964, and
: remanding.

: ARGUED: October 17, 2017

: No. 7 WAP 2017
:
: Appeal from the Order of the Superior
: Court entered June 17, 2014 at No.
: 1484 WDA 2012, vacating the Order of
: the Court of Common Pleas of
: Allegheny County entered August 22,
: 2012 at No. AR 10-007964, and
: remanding.

: ARGUED: October 17, 2017

OPINION

JUSTICE DOUGHERTY

DECIDED: MARCH 6, 2018

This is the sequel to our decision in *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.* 137 A.3d 1247 (Pa. 2016). We previously held predecessor counsel — Meyer, Darragh, Buckler, Bebenek & Eck (Meyer Darragh) — was not entitled to breach of contract damages against successor counsel — the Law Firm of Malone Middleman, P.C. (Malone Middleman), where a contract regarding counsel fees did not exist between the two firms. *Id.* at 1258. Subsequently, we granted discretionary review *nunc pro tunc* to determine whether Meyer Darragh is entitled to damages in *quantum meruit* against Malone Middleman, where the trial court initially held such damages are recoverable, but the Superior Court reversed. For the reasons set forth below, we reverse the Superior Court and remand to the trial court for reinstatement of its award of damages in *quantum meruit* to Meyer Darragh against Malone Middleman.

This matter arose from a wrongful death lawsuit filed by the Estate of Richard A. Eazor (the Eazor Estate) deriving from a motor vehicle accident (the Eazor Litigation). The Eazor Estate was represented by Attorney William Weiler, Jr., who entered his appearance in the matter on March 24, 2005. See Proposed Stipulated Facts at ¶6. On December 1, 2005, Attorney Weiler became associated with Meyer Darragh. Attorney Weiler brought the Eazor Litigation with him and Meyer Darragh attorneys worked on the Eazor Litigation for a total of 71.25 hours over a nineteen-month period. See *id.* at ¶¶ 4, 39, 40 & Exhibit D to Proposed Stipulated Facts. In May 2007, Attorney Weiler resigned from Meyer Darragh. At the time of Attorney Weiler's resignation, Meyer Darragh understood it would continue as lead counsel in the Eazor Litigation along with Attorney Weiler at his new firm. Written correspondence at the time of Attorney Weiler's separation from Meyer Darragh indicated that Meyer Darragh would receive two-thirds of the attorneys' fees arising out of the Eazor Litigation, and Attorney Weiler would retain one-

third of the fees. See Proposed Stipulated Facts at ¶18 and Exhibit 7 to Proposed Stipulated Facts.

Upon departing from Meyer Darragh, Attorney Weiler became affiliated with Malone Middleman. See Proposed Stipulated Facts at ¶22. In correspondence dated June 18, 2007, the Eazor Estate informed Meyer Darragh that it was moving its file to Malone Middleman and discharging Meyer Darragh as counsel. See Exhibit 14 to Proposed Stipulated Facts. Upon being retained by the Eazor Estate, Malone Middleman entered into a contingency fee agreement with the Estate, noting representation would be provided in exchange for 33.3% of the net proceeds of settlement if the matter settled before suit was filed, and 40% of the net proceeds of settlement recovered if settlement occurred after the filing of suit. See Exhibit C to the Proposed Stipulated Facts. Thereafter, Meyer Darragh notified Malone Middleman that pursuant to its agreement with Attorney Weiler, it was entitled to two-thirds of the contingent fee earned from the Eazor Litigation. In response, Malone Middleman denied Meyer Darragh was entitled to two-thirds of any contingent fee, and “at best, ha[d] a *quantum meruit* claim for actual time expended.” See Exhibit 18 to Proposed Stipulated Facts. Malone Middleman eventually settled the Eazor Litigation for \$235,000, and received \$67,000 in attorneys’ fees, which it apparently accepted as payment in full. See Proposed Stipulated Facts at ¶45.¹

Meyer Darragh demanded from Malone Middleman two-thirds of the counsel fees generated by the settlement of the Eazor Litigation pursuant to its agreement with

¹ As the Eazor Litigation was settled after suit was filed, Malone Middleman was slated to receive 40% of the net proceeds of settlement pursuant to its contingency fee agreement with the Eazor Estate. See Exhibit C to the Proposed Stipulated Facts. The amount collected from the insurers was \$235,000. See Proposed Stipulated Facts at ¶¶36-37. Forty percent of the net proceeds of settlement is \$94,000. See Brief for Appellee at 29-30. However, Malone Middleman accepted a fee of \$67,000 from the Eazor Estate, or approximately 28.5% of the entire amount collected. *Id.* The record does not explain the reduced fee, nor does it suggest Malone Middleman sought additional payment from its client.

Attorney Weiler or, in the alternative, payment based on *quantum meruit* in the amount of \$17,673.93 for the work it performed and costs it incurred. See Proposed Stipulated Facts at ¶51. Malone Middleman did not pay any portion of the fees it collected to Meyer Darragh.

In September 2010, Meyer Darragh filed suit for breach of contract against Malone Middleman and for damages in *quantum meruit* against Malone Middleman and the Eazor Estate.² See Amended Complaint. After a bench trial on stipulated facts, the trial court entered a verdict in the amount of \$14,721.39 in favor of Meyer Darragh on its *quantum meruit* claim. The court denied relief on the breach of contract claim.

Both Meyer Darragh and Malone Middleman filed post-trial motions, which were denied, and both parties appealed to the Superior Court. In its Pa.R.A.P. 1925(a) opinion, the trial court first addressed Meyer Darragh's *quantum meruit* claim, noting Pennsylvania's jurisprudence regarding predecessor counsel's entitlement to a portion of a recovered contingent fee under a theory of *quantum meruit* against successor counsel, while inconsistent, does not prohibit such relief. See Trial Ct. slip. op. at 5. The court opined Meyer Darragh's work in the Eazor Litigation conferred benefits to Malone Middleman, and those benefits materialized into a settlement and receipt of a contingent fee of \$67,000. See *id.* at 10. The court further noted cases where *quantum meruit* damages were denied involved contracts regarding the payment of fees to all counsel, and the terms of those contracts controlled in those disputes. See *id.* at 10-11, citing *Ruby v. Abington Mem. Hosp.*, 50 A.3d 128 (Pa. 2012) (agreement by partner of

² Attorney Weiler, who died in October 2009, was not included as a defendant.

In its trial brief and at argument before the trial court, Meyer Darragh abandoned its claim against the Eazor Estate by noting the executors had already paid to Malone Middleman the entire amount the firm had requested of them, and they owed no additional fees. See Meyer Darragh's trial brief at 21.

predecessor counsel's firm who later joined successor counsel's firm was enforceable to provide share of contingent fee to predecessor firm because underlying litigation was "unfinished business" of partners of predecessor firm); *Mager v. Bultena*, 797 A.2d 948, 954 & n.9 (Pa. Super. 2002) (agreement between client and successor counsel that client would indemnify successor counsel against any claim by predecessor counsel for share of contingent fee was enforceable and precluded *quantum meruit* claim against successor counsel); *Fowkes v. Shoemaker*, 661 A.2d 877 (Pa. Super. 1995) (existence of contingent fee agreement between successor counsel and clients requiring clients to be responsible for attorney fee owed to predecessor counsel precluded *quantum meruit* claim against successor counsel). The court reasoned Meyer Darragh could succeed under a claim of *quantum meruit* only if the employment agreement between Attorney Weiler and Meyer Darragh was unenforceable against Malone Middleman. The court concluded Malone Middleman was not bound by the Weiler/Meyer Darragh agreement, and held Meyer Darragh was entitled to its share of fees on a theory of *quantum meruit* instead. *See id.* at 11. The court rejected Meyer Darragh's claim the amount of damages should be increased to \$17,673.93, holding its \$14,721.39 verdict was the correct reflection of the itemized bill submitted by Meyer Darragh excluding charges related to the fee dispute. *See id.* at 14.

The Superior Court first addressed Malone Middleman's challenge to the *quantum meruit* award, reversed the trial court's ruling on the issue, and held a predecessor law firm or attorney who is dismissed as counsel cannot maintain a claim in *quantum meruit* against a successor law firm who ultimately settles the case. *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 95 A.3d 893, 897 (Pa. Super. 2014) (*Meyer Darragh I*). The Superior Court further noted any such *quantum meruit* claim lies against the client, not predecessor counsel. *Id.* at 897-98, *quoting*

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