NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 0960

DONNA GRODNER AND DENISE VINET

VERSUS

DANIEL E. BECNEL, JR. AND LAW OFFICES OF DANIEL E. BECNEL, JR.

Judgment Rendered: AUG 1 1 2010

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit number 497,058

Honorable Janice Clark, Presiding

* * * * * *

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BEFORE: CARTER, C.J., GUIDRY, PETTIGREW, GAIDRY, AND HUGHES, JJ.

Carter C.J. Dissents
Guidry, J. dissents and assigns reasons.

PETTIGREW, J.

In this action arising from a dispute over the sharing of attorney fees, Donna Grodner (hereinafter referred to as "Grodner"), Denise Vinet (hereinafter referred to as "Vinet"), and Daniel E. Becnel (hereinafter referred to as "Becnel"), appeal from the judgment of the trial court, awarding Becnel $30,000.00, together with interest. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Grodner and Vinet entered into a contingency contract to represent a group of plaintiffs for injuries sustained as a result of a chemical release by Vulcan Chemical Company. Grodner and Vinet filed suit on behalf of these plaintiffs (hereinafter referred to as the "Vulcan litigation") on December 8, 1998, and the case proceeded in state and then federal court. On October 9, 2001, Grodner and Vinet filed a motion to enroll Becnel as additional counsel of record.

After unsuccessful mediation, the Vulcan litigation went to trial in June 2002. On the second day of trial, the parties reached a settlement of approximately $2,103,500.00. Thereafter, Grodner and Vinet sent Becnel a check for $50,000.00, representing his attorney fees. Becnel objected to the amount, but agreed to accept the undisputed $50,000.00. On July 8, 2002, Grodner and Vinet filed a petition for declaratory judgment, requesting that they be permitted to pay Becnel a sum to be determined at their discretion pursuant to their oral agreement or alternatively, to have the court resolve the attorney fee issue. Becnel filed a reconventional demand, asserting that he, Grodner, and Vinet had entered into an oral contract to use his skill, expertise, and experience in toxic tort and chemical exposure cases to assist in the Vulcan litigation.

On February 6, 2004, Grodner and Vinet filed a motion for partial summary judgment asserting that there was no genuine issue of material fact as to whether there was a written fee division agreement between the parties, thereby limiting the division of the legal fee to the work Becnel performed. Following a hearing, the trial court rendered partial summary judgment in favor of Grodner and Vinet and against Becnel

with respect to the nonexistence of a written contract, limiting the division of the fee to the work performed by Becnel.

Thereafter, a trial on the merits was held on March 2-3, 2004, to determine the amount owed Becnel as attorney fees. On April 13, 2004, the trial court issued oral reasons for judgment. In these reasons, the trial court stated that because there was no contract, the case must be decided on quantum meruit. The trial court recognized a conflict in the testimony regarding the number of hours Becnel spent working on the case, but ultimately gave more weight to Becnel's testimony and found that Grodner and Vinet owed Becnel $80,000.00 in attorney fees, which represents 400 hours at $200.00 per hour. As such, the trial court awarded Becnel $30,000.00, giving Grodner and Vinet a credit for the $50,000.00 they had already paid. The trial court thereafter signed a judgment in conformity with its reasons on May 21, 2004. Becnel filed a motion for new trial, which was denied. Grodner, Vinet, and Becnel now appeal.[1]

DISCUSSION

In the absence of a fee-splitting agreement between the parties, the method of sharing attorney fees depends on whether the attorneys were engaged in a joint venture. Absent an agreement or custom to the contrary, attorneys engaged in a joint venture share equally in the profits. **Whalen v. Murphy**, 2005-2446, p. 6 (La. App. 1 Cir. 9/15/06), 943 So.2d 504, 507, writ denied, 2006-2915 (La. 3/16/07), 952 So.2d 696. In order for a joint venture to exist, the parties must consent to the formation of

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[1] Grodner and Vinet assert in brief that there is no final judgment in the instant case. This court previously issued a rule to show cause questioning the finality of the May 21, 2004 judgment because it made no mention of Grodner and Vinet's cause of action. However, by order dated September 14, 2009, this court recalled the rule to show cause and maintained the appeal. Accordingly, we find Grodner and Vinet's argument in this regard to be without merit.

Additionally, Grodner and Vinet assert that Becnel abandoned his cause of action in the trial court because he failed to timely submit a judgment for the trial court's signature on his motion for new trial. The trial court held a hearing on July 14, 2004, following which it denied Bencel's motion for new trial. Becnel submitted a written judgment on April 14, 2006, on which the trial court made a handwritten notation indicating that the motion was denied in open court and ordering counsel to circulate and submit a judgment. A final judgment was submitted and signed by the trial court on November 13, 2008. Accordingly, because the trial court rendered judgment on July 14, 2004, and there is no evidence of abandonment before that time, we likewise find this argument to be without merit. See **State, ex rel Department of Social Services v. Ramos**, 99-3536 (La. 2/11/00), 754 So.2d 923; see also **Rodgers v. Rodgers**, 34,188, pp. 2-4 (La. App. 2 Cir. 9/27/00), 768 So.2d 695, 697, writ denied, 2000-2857 (La. 12/8/00), 776 So.2d 467.

the venture, share in the losses as well as the profits of the venture, and exercise equal control over the enterprise. **Whalen**, 2005-2446 at 6, 943 So.2d at 507.

In the instant case, the parties do not dispute that they entered into joint representation of the plaintiffs in the Vulcan litigation. Becnel, however, asserts that Grodner and Vinet orally agreed each attorney was to receive one-third of the attorney fee, and that this agreement was in the nature of a joint venture.[2] Grodner and Vinet, conversely, assert that such joint representation was not in the nature of a joint venture, that they never agreed, orally or in writing, to share one-third of the attorney fee with Becnel, and that they had agreed with Becnel to pay him "whatever." Additionally, though all three parties exercised some level of control over the litigation and shared in the profits, it is clear from the record that only Grodner and Vinet bore any of the risks involved, as they each paid over $100,000.00 to finance the litigation, including the hiring of all experts and payment of court costs and filing fees, and reimbursed Becnel for costs he submitted to them. Accordingly, from our review of the record, we do not find any error in the trial court's failure to find that a joint venture existed in the instant case.[3]

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[2] In his reconventional demand, Becnel asserted that he, Grodner, and Vinet had entered into an oral contract. However, Becnel has not raised as error the trial court's failure to find an oral contract in the instant case. Accordingly, we do not address this issue on appeal.

[3] Additionally, we note that effective March 1, 2004, Rule 1.5(e) of the Rules of Professional Conduct was amended to provide:

A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is *advised in writing as to the share of the fee that each lawyer will receive*;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter. [Emphasis added.]

Previous jurisprudence applying the principles of joint venture or quantum meruit to attorney fee disputes was in accord with former Rule 1.5(e), which provided that lawyers not of the same firm may divide a fee only if: (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation, (2) the client is advised of and does not object to the participation of all the lawyers involved, and (3) the total fee is reasonable. See **Dukes v. Matheny**, 2002-0653, pp. 3-5 (La. App. 1 Cir. 2/23/04), 878 So.2d 517, 520-521, writ denied, 2004-1920 (La. 11/8/04), 885 So.2d 1132. However, with the amendment of Rule 1.5(e), requiring that the client be advised in writing as to the share of the fee that each lawyer will receive, it is uncertain whether joint venture and quantum meruit principles will continue to apply to fee-splitting disputes.

In the absence of a joint venture, the attorney fee can be divided only on a quantum meruit basis. **Dukes v. Matheny**, 2002-0652 p. 6, (La. App. 1 Cir. 2/23/04), 878 So.2d 517, 521, writ denied, 2004-1920 (La. 11/8/04), 885 So.2d 1132. The phrase *quantum meruit* means "as much as he deserved." **Barham & Arceneaux v. Kozak**, 2002-2325, p. 10 (La. App. 1 Cir. 3/12/04), 874 So.2d 228, 237, writ denied, 2004-0930 (La. 6/4/04), 876 So.2d 87. As such, Becnel may only receive payment for the services he performed and the responsibilities he assumed. **Dukes**, 2002-0652 at 6, 878 So.2d at 521. The considerations for determining a quantum meruit fee are: the time and labor required, the novelty and difficulty of the issue, the skill required, the likelihood that acceptance of the work might prevent the attorney from accepting other opportunities, and the experience, reputation, and abilities of the attorney. **Dukes**, 2002-0652 at 6-7, 878 So.2d at 521; Rules of Professional Conduct, Rule 1.5(a).

As such, a quantum meruit analysis is not limited to an hourly rate calculation. See **O'Rourke v. Cairns**, 95-3054 at p. 10 (La. 11/25/96), 683 So.2d 697, 703. Rather, a proper analysis evaluates not merely the hours expended, but the results and benefits obtained. **Johnson v. Insurance Company of North America**, 27,847, p. 4 (La. App. 2 Cir. 1/24/96), 666 So.2d 1286, 1290; see also **Barham & Arceneaux**, 2002-2325 at 10, 874 So.2d at 237. A trial court's award of attorney fees pursuant to quantum meruit is subject to the manifest error standard of review. **Barham & Arceneaux**, 2002-2325 at 21, 874 So.2d at 245.

It is undisputed that Grodner and Vinet began their representation of the plaintiffs in the Vulcan litigation in 1998. Grodner and Vinet filed suit on behalf of the plaintiffs in this multiparty action for injuries they sustained as a result of a chemical release. Becnel was enrolled as additional counsel in October 2001. The parties, however, dispute the amount of work that Becnel performed. Grodner and Vinet maintain that although Becnel was enrolled in October 2001, they did not provide him with any documents, which they contend amounted to two large settlement binders, until April 2002. As such, they assert that Becnel performed approximately eighty hours of work. Additionally, they contend that Becnel did not work on the *Daubert* issues, did

not attend Dr. Lee Roy Joyner's deposition, and participated only by telephone in the pretrial conference. Further, Grodner and Vinet asserted that they paid Dr. Joyner $15,000.00 for preparation of a PowerPoint presentation, which Becnel alleges was prepared by Abraham Amador, an information technology professional in his office.

Becnel, however, asserts that he received boxes of documents in October 2001 and he spent time from October through December reviewing the depositions and other documents contained therein. Becnel estimated that he spent approximately 250 hours reviewing and preparing for trial, in addition to the time involved in two mediations, pretrial conference, preparation for *Daubert* motions, jury selection, and two days of trial. Additionally, Lynn Swanson, an experienced attorney in Becnel's firm, attended two days of Dr. Joyner's deposition, and Darryl Becnel, also an attorney in Becnel's firm, attended a mediation. Becnel also alleges that he conferred with Amador in preparing the PowerPoint presentation, which was intended to be used at trial, although ultimately, it was disallowed.

In her testimony, Vinet admitted that she wrote a letter to Becnel indicating that she and Grodner wanted Becnel "on board to help us in reaching a maximum verdict or settlement" and that "without [him], [she] did not feel this can be accomplished." Vinet agreed that Becnel was enrolled as trial counsel. Vinet also stated that prior to Becnel's involvement in the case, they had received a settlement offer from the defendants for $100,000.00. However, the case ultimately settled for $2,103,500.00. Vinet acknowledged that she and Becnel attended the mediations and participated in the settlement discussions with the defendants and plaintiffs, and that Becnel helped to increase the final amount of the settlement.

Finally, the parties do not dispute that Becnel is an accomplished attorney with many years of experience in complex litigation in federal and state court.

From our review of the record and the reasons for judgment, we are of the opinion the trial court did not strictly perform an hourly rate calculation in determining the $80,000.00 attorney fee owed to Becnel. During the trial on the merits, counsel for plaintiffs, Mr. Monahan, commented that if the total amount of hours worked and a rate

were determined, a "reasonable" fee could then be calculated. The trial court stated, "Well, that would certainly be one way to do it, but that's not the only way to do it, Mr. Monahan." Further, in its reasons for judgment, the trial court stated that even though there was no other evidence to document Becnel's total hours spent, the court was willing to give him the benefit of the doubt and would accept his representation that he spent 400 hours in this case. The trial court acknowledged that the prevailing rate for attorney fees in Baton Rouge was $150.00. The trial court continued as follows: "However, Mr. Becnel presented his credentials of long-standing practice, great [ability], with an impressive practice of civil litigation." It is obvious the trial court was considering more factors than just hourly rate and total hours as required by **O'Rourke** and **Johnson**.

After considering these additional factors, the trial court increased the hourly rate to $200.00 and then awarded $80,000.00, with a credit of $50,000.00. Although as a trial court, we may have found differently on the work and value of that work by Becnel, we cannot say, nor do we find, that the trial court committed manifest error in its award to Becnel.

CONCLUSION

For these reasons, we affirm the judgment of the trial court. All costs associated with this appeal are assessed against Daniel E. Becnel.

AFFIRMED.

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DONNA GRODNER AND DENISE VINET

VERSUS

DANIEL E. BECNEL, JR. AND LAW OFFICES OF DANIEL E. BECNEL, JR.

GUIDRY, J., dissents and assigns reasons.

GUIDRY, J., dissenting.

While I agree with the majority's finding that there was no joint venture in the instant case, I respectfully disagree with the remainder of the majority's opinion, affirming the trial court's award of attorney's fees to Daniel Becnel.

In the absence of a joint venture, the attorney fee can be divided only on a quantum meruit basis. Dukes, 02-0652 at p. 4, 878 So. 2d at 520. The phrase *quantum meruit* means "as much as he deserved." Barham & Arceneaux v. Kozak, 02-2325, p. 10 (La. App. 1st Cir. 3/12/04), 874 So. 2d 228, 237, writ denied, 04-0930 (La. 6/4/04), 876 So. 2d 87. As such, Becnel may only receive payment for the services he performed and the responsibilities he assumed. Dukes, 02-0652 at p. 6, 878 So. 2d at 521. The considerations for determining a quantum meruit fee are: the time and labor required, the novelty and difficulty of the issue, the skill required, the likelihood that acceptance of the work might prevent the attorney from accepting other opportunities, and the experience, reputation, and abilities of the attorney. Dukes, 02-0652 at pp. 6-7, 878 So. 2d at 521; Rules of Professional Conduct, Rule 1.5(a).

As such, a quantum meruit analysis is not limited to an hourly rate calculation. See O'Rourke v. Cairns, 95-3054 at p. (La. 11/25/96), 683 So. 2d 697, 703. Rather, a proper analysis evaluates not merely the hours expended, but the results and benefits obtained. Johnson v. Insurance Company of North America, 27,847, p. (La. App. 2nd Cir. 1/24/96), 666 So. 2d 1286, 1290; see also Barham & Arceneaux, 02-2325 at p. 10, 874 So. 2d at 237. A trial court's award of attorney's fees pursuant to quantum meruit is subject to the manifest error standard of review. Barham & Arceneaux, 02-2325 at p. 21, 874 So. 2d at 245.

From my review of the reasons for judgment in the instant case, it appears that the trial court strictly performed an hourly rate calculation in determining the $80,000.00 attorney fee owed to Becnel, finding that Becnel had performed 400 hours of work at a rate of $200.00 per hour. Further, though the court did take into consideration Becnel's reputation and experience in determining the hourly rate, there is no indication that the trial court considered the results and benefits obtained, nor any of the other factors articulated above. Finally, even if it can be argued that the hourly rate calculation were appropriate, I would find that the trial court still erred in failing to use the $500.00 per hour rate asserted by Becnel and used by Grodner and Vinet in their original attorney fee calculation. Therefore, based on the foregoing, I would find that the trial court clearly erred in determining the amount of attorney's fees owed to Becnel based on quantum meruit.