COURT OF APPEALS
DECISION
DATED AND RELEASED

May 6, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2714

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JANICE L. GELINE, D/B/A
THE CRYSTAL BAR,

PLAINTIFF-APPELLANT-CROSS RESPONDENT,

V.

AUTO OWNERS INSRUANCE COMPANY,
A FOREIGN CORPORATION,

DEFENDANT,

FIRST OF AMERICA BANK, UPPER PENINSULA BRANCH—N.A.,

DEFENDANT-RESPONDENT-CROSS APPELLANT,

TOWN OF AURORA,

INTERVENOR-DEFENDANT-CROSS RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Florence County: ROBERT A. KENNEDY, Judge. *Reversed and cause remanded with directions.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. Mary Brouillette Barglind, the attorney for Janice L. Geline, appeals an order requiring her to pay $15,773.34 to the First of America Bank. Barglind asserts that the court erred because the court did not have jurisdiction to order a judgment against her as a nonparty and that the amount due the bank should be taken from the proceeds of the settlement received by Geline, the owner of the property on which the bank had a lien. Because we conclude that the burden of reimbursing the bank for money erroneously deducted from the bank's lien for the costs of collection falls upon the owner of the property and not the owner's attorney, we reverse the order and remand with directions to vacate the judgment against Barglind.

This case arose as a result of a prior case, ***Geline v. Auto-Owners Insur. Co.***, No. 95-0773, slip op. (Wis. Ct. App. Feb.13, 1996). In that case, we determined that the trial court erroneously reduced the First of America Bank's lien against the Geline property for the cost of collection. Because the bank had never retained Barglind to represent its interest or to pursue its lien claim in the suit brought by Geline against her insurer, Auto Owners, to collect the proceeds of an insurance policy on the property destroyed by fire, we concluded the trial erred in reducing the lien.

Geline retained Barglind to prosecute her claim for the insurance proceeds. The bank held a mortgage against the property that was destroyed. Barglind started suit against Auto Owners on behalf of Geline and ultimately

negotiated a settlement under the terms of which Geline was to receive $200,000 as a full and complete settlement of all claims against Auto Owners. Geline would be responsible for satisfying various liens that had been asserted against the property by the bank, the state and federal governments for tax liens, and the Town of Aurora for the costs of razing remnants of the destroyed building.

A series of issues regarding the validity of the liens and a claim of an agreement to compromise the bank's claim were litigated. Among the various determinations made by the trial court was that the bank held a valid lien, that the lien was not subject to an agreement to compromise or satisfy the lien for a reduced amount but that the bank's lien should be reduced by the cost of collection. On appeal, this court affirmed the trial court's determination on all issues, except the reduction of the value of the bank's lien by the cost of collection. We concluded that the court's order reducing the bank's lien was in error because no agreement existed between counsel and the bank and no other basis was asserted for reducing the bank's claim by the cost of collection. We then remanded the case with directions to order "that Geline and her attorney return $15,773.34 to the bank."

Unfortunately, our language was sufficiently ambiguous that the trial court was misled into believing that we were directing judgment against either or both Geline and Barglind for the amount by which the bank's claim was reduced. Because Geline had previously declared bankruptcy, the trial court entered an order against Barglind and in favor of the bank for the amount in question.

Whether Geline's attorney is liable to repay the amount ordered by the court presents a question of law which we review de novo. *See* ***Towne Realty,***

Inc. v. Zurich Ins. Co., 201 Wis.2d 260, 267, 548 N.W.2d 64, 66 (1996). The application of undisputed facts to a legal standard is a question of law. ***Id.***

Our direction to enter an order against either Geline or Barglind, based upon which of them possessed the insurance proceeds, was ambiguous and subject to misunderstanding. We did not intend by this language to direct a judgment against either or both of these parties but simply to direct the court to enter judgment against the party or person who possessed the remaining proceeds paid by Auto Owners.

In this case, Barglind entered into a contract with Geline providing that Barglind was to receive a contingent fee of one-third of the amount recovered from the litigation with Auto Owners. When Auto Owners settled Geline's claim for $200,000, Barglind claimed and received one-third of that amount as attorney fees for her successful prosecution of Geline's claim. The remaining proceeds were subject to the various liens being asserted by the state and federal governments, the bank and the Town of Aurora. Each of these claims was disputed and the dispute resolved. The burden of making full payment to each of the lien claimants rests upon Geline as the property owner. She received the remainder of the insurance proceeds to which the liens were applicable. The fact that the court miscalculated the amount of the liens by reducing them for the cost of collection does not affect the fact that the proceeds of the settlement received from Auto Owners is the source from which the liens were to be paid. Geline signed the mortgage and remained responsible for satisfying the bank's lien.

It now appears undisputed that Barglind received only the fees agreed upon between her and Geline as part of her retainer agreement when she undertook the prosecution of this claim. The agreement did not provide for the

reduction of attorney fees based upon the amount of proceeds that must be paid to satisfy lien claimants. Barglind is not obligated to reduce the attorney fees she received from Geline pursuant to her retainer agreement to satisfy the bank's claims any more than Barglind would have the right to demand one-third of the proceeds received by the bank as a result of her efforts on Geline's behalf. There was no contractual or other legal relationship existing between Barglind and the bank. The bank is entitled to the full amount of its liens and the source of satisfaction of this claim is to be from the proceeds received from Auto Owners or Geline personally. We therefore reverse the trial court's order against Barglind. The effect of the discharge in bankruptcy is not an issue before us and therefore we do not address it.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.