COURT OF APPEALS
DECISION
DATED AND RELEASED

April 9, 1996

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.

NOTICE

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

No. 95-1930

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

ATTORNEY ANDREW S. ZIEVE,

Plaintiff-Appellant,

v.

NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE, P.A., and ATTORNEY THOMAS D. ROGERS,

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County: FRANK T. CRIVELLO, Judge. *Reversed*.

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Milwaukee Attorney Andrew S. Zieve appeals from an order granting summary judgment and dismissing his claim against a South Carolina law firm, Ness, Motley, Loadholt, Richardson and Poole, P.A., and Attorney Thomas D. Rogers. Zieve brought an action seeking declaratory judgment on the division of attorney fees earned in his joint representation of Ruth Quint and Mary Lou Clemons. He also sought damages as the result of

the law firm's deduction of expenses from his share of the contingency fee in the Quint case. Zieve raises two issues on appeal. He claims that: (1) the trial court erred in ignoring the fee contract between Zieve and the law firm and improperly ruled that Zieve had been discharged by Clemons for cause before the case was settled; and (2) the trial court improperly applied the doctrine of accord and satisfaction in its determination that Zieve was not entitled to maintain his claim that the Quint expenses were improperly deducted from his fee. We reverse.

In 1990, Zieve and the law firm entered into an agreement to represent clients in L-Tryptophan litigation. The agreement, which was reduced to writing, provided that the fees earned by Zieve and the law firm would be split evenly if Zieve was able to handle all local discovery and client contact but would be split one third to Zieve and two-thirds to the law firm if Zieve was only able to provide limited assistance.

Zieve was retained by a number of individuals, including Quint and Clemons. The retainer agreement signed by Quint contained language that her expenses were not to exceed two hundred dollars. The Quint case settled in June, 1993. The law firm sent Zieve a check for forty percent of the contingency fee, less $2,658.19 for expenses, due to the expenses limitation language contained in the Quint retainer agreement. The check was cashed by Zieve. The Clemons case settled in the summer of 1994. Clemens, however, had discharged Zieve before settlement.

Summary judgment is appropriate when there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. Section 802.08(2), STATS. On review, appellate courts apply the summary judgment standards in the same fashion as trial courts. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). In summary judgment cases, we review the matter *de novo*. ***United States Fidelity and Guar. Co. v. Goldblatt Bros., Inc.***, 142 Wis.2d 187, 190, 417 N.W.2d 417, 419 (Ct. App. 1987). On review, we must decide whether a genuine issue of fact exists relative to whether Zieve was fired for cause. We must also decide whether a genuine issue of material fact exists as to whether there was an accord and satisfaction when Zieve cashed the Quint settlement check.

The trial court determined that Zieve was discharged for cause and held that $5053.51 represented fair and reasonable compensation to Zieve for his work on the Clemons case. In reaching its decision, the trial court relied on the termination letter Clemons sent to Zieve. The letter stated in part:

> It is our understanding you have played literally no continuing role in the prosecution of my claim against the various defendants other than referring us to Mr. Rogers. Consequently, I am asking that you be discharged as my attorney....

The trial court, although failing to make a finding as to what constitutes cause, stated that the above language indicated that Zieve was discharged for cause because Clemons believed Zieve was doing nothing to prosecute her claim. The trial court made this determination while ignoring contrary evidence submitted by Zieve, namely, an affidavit by Zieve and one of his employees which outlined the work that had been done on the Clemons case.

Inferences drawn from underlying facts should be viewed in the light most favorable to the party opposing the summary judgment motion. ***Grams v. Boss***, 97 Wis.2d 332, 339, 294 N.W.2d 473, 477 (1980). If material presented is subject to conflicting interpretation, summary judgment is inappropriate. ***Id***. Clearly, there is a disputed issue of fact as to whether Zieve was fired for cause. *See* ***Millar v. Joint Sch. Dist.***, 2 Wis.2d 303, 314, 86 N.W.2d 455, 460–461 (1957) (the existence of good cause is a jury question unless there is a provision in the contract specifying the grounds upon which discharge is justifiable).

Regarding the second issue, the trial court held that Zieve's cashing of the Quint settlement check was an accord and satisfaction and, therefore, Zieve cannot maintain his claim that the Quint expenses were improperly deducted from his fee.

The doctrine of accord and satisfaction bars claims when there is an agreement by the parties that payment will constitute full satisfaction of a disputed claim. ***Flambeau Prods. Corp. v. Honeywell Info. Sys., Inc.***, 116 Wis.2d 95, 111, 341 N.W.2d 655, 663 (1984). "[T]he creditor must have reasonable notice that the check is intended to be in full satisfaction of the debt." ***Id***. Zieve claims that there was no understanding that his cashing of the check evidenced an intention by the parties to be a final settlement. We agree. The record indicates that Zieve sent a letter to the law firm objecting to the law firm's deduction of costs from his portion of the fee. The only response Zieve received from the law firm was a letter stating that the check represented his share of the fees and expenses. There is, therefore, a genuine issue of material fact as to whether this exchange put Zieve on notice that cashing the check would bar him from asserting his claim.

We reverse the trial court's award of summary judgment against Zieve.

By the Court.—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.