

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001877-MR

MELBOURNE MILLS, JR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 11-CI-01563

DAVID HELMERS AND
DAVID HELMERS LAW OFFICE, PLLC

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, STUMBO AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Melbourne Mills, Jr., brings this appeal from an October 3, 2013, summary judgment of the Fayette Circuit Court dismissing all claims asserted against David Helmers and David Helmers Law Office, PLLC (collectively referred to appellees). We affirm.

Mills and Helmers were practicing attorneys in Kentucky. Both Mills and Helmers were permanently disbarred from the practice of law in this state on May 20, 2010, and September 22, 2011, respectively. Before being disbarred, Mills and Helmers entered into an attorney fee splitting agreement on June 8, 2006 (fee agreement). Thereafter, on March 23, 2011, Mills instituted an action against appellees seeking recovery of legal fees under the fee agreement. Mills also claims entitlement to legal fees per the claims of *quantum meruit* and unjust enrichment.

Appellees filed a motion for summary judgment. By opinion and order entered September 17, 2012, the court granted in part and denied in part the motion for summary judgment. The circuit court concluded that the fee agreement was unenforceable under Kentucky Rule of Professional Conduct § 1.5(e). As to the equitable claims of *quantum meruit* and unjust enrichment, the court believed that Mills' "equitable arguments barely survive summary judgment." The circuit court specifically cautioned Mills:

One line in the deposition gives the Court pause. Mills makes reference to personally reviewing files for litigation relating to the drug Prempro – forty-seven files, one hour each, at \$300 an hour. [Mills] may be able to prove a case in equity compensating him for work he personally performed for the case mentioned. [Mills'] word with nothing to substantiate it will not suffice, and if he returns with no log, records, or other proof, then his equitable claims will also be properly disposed of.

Appellees subsequently filed another motion for summary judgment upon the claims of *quantum meruit* and unjust enrichment. By summary judgment entered

October 3, 2013, the circuit court dismissed Mills' claims, thus precipitating this appeal.

In Kentucky, the standard of review on appeal from a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing Kentucky Rules of Civil Procedure 56.03). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

Mills contends that the circuit court erroneously rendered summary judgment dismissing his claims of *quantum meruit* and unjust enrichment. In particular, Mills argued that material issues of fact preclude entry of summary judgment. And, in support thereof, Mills cites to his depositions testimony that he reviewed 47 files on the "Prempro cases" for one hour each at \$300 per hour

To prevail upon a claim of *quantum meruit*, it must be demonstrated:

1. [T]hat valuable services were rendered, or materials furnished;
2. to the person from whom recovery is sought;
3. which services were accepted by that person, or at least were received by that person, or were rendered with the knowledge and consent of that person; and
4. under such circumstances as reasonably notified the person that the plaintiff expected to be paid by that person.

Quadrille Bus. Sys. v. Ky. Cattlemen's Ass'n, Inc., 242 S.W.3d 359, 366 (Ky. App.

2007). And, to prevail upon a claim of unjust enrichment, it must be demonstrated:

(1) [B]enefit conferred upon defendant at plaintiff's expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value.

Jones v. Sparks, 297 S.W.3d 73, 78 (Ky. App. 2009).

To survive summary judgment, it was incumbent upon Mills to raise a material issue of fact demonstrating that he rendered valuable services or conferred a benefit. While Mills did state that he reviewed 47 files related to the Prempro cases, Mills also admitted at his deposition that he presented no claims in the complaint against appellees relating to the Prempro cases:

Q I notice in comparing the Exhibit A that lists these different groups which is dated June 8th, 2006, compared to your complaint, the complaint does not specifically mention Prempro litigation either. Were you aware of that?

A Generally, yes.

Q The complaint doesn't reference Prempro litigation and it doesn't reference Cordis litigation. It does reference Vioxx, nursing home and medical malpractice?

A Yes.

Q So as you sit here today it sounds like you acknowledge you don't have a claim related to any Prempro cases as to Mr. Helmers?

A As of today.

Mills' deposition testimony concerning the Prempro cases did not create a material issue of fact precluding summary judgment. Consequently, we conclude that no material issue of fact exists and that appellees were entitled to judgment as a matter of law upon the claims of *quantum meruit* and unjust enrichment. Thus, the circuit court properly rendered summary judgment dismissing Mills' claims.

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

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BRIEF AND ORAL ARGUMENT
FOR APPELLEES:

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ORAL ARGUMENT FOR
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