IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DANIEL S. SIMON; DOES 1 through 10; and, ROE entities 1 through 10; Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; THE HONORABLE TIERRA JONES Respondents, and EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Real Parties in Interest.	**SUPREME COURT CASE NO.** DISTRICT COURT CASE NO.: A-16-738444-C *Consolidated with:* DISTRICT COURT CASE NO.: A-18-767242-C

PETITION FOR WRIT OF PROHIBITION or MANDAMUS

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

NRAP 26.1 DISCLOSURE

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

No such corporations involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, of Christiansen Trial Attorneys has also appeared on behalf of the Petitioner.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney of Record for Petitioner

Routing Statement

The Nevada Supreme Court should retain this writ proceeding under NRAP 17(a)(10) and (11) because the Edgeworths filed a direct appeal (No. 83258 consolidated with No. 83260) challenging the attorney lien adjudication. Thus, this petition is needed for the dispute to be fully heard; and, the petition should be consolidated with the appeal, which is currently pending before the Supreme Court.

I. Introduction

Attorney Daniel Simon (Simon) seeks relief from an order adjudicating an attorney lien. In 2018 the district court first adjudicated the Simon lien and sanctioned the Edgeworths for bringing and maintaining their conversion complaint without reasonable grounds. On the first appeal by the Edgeworths and petition by Simon, this Court affirmed the district court in some respects with instructions to revisit the quantum meruit fee award to Simon and the amount of the sanction levied upon the Edgeworths. On remand, the district court confirmed the amount of the sanction and issued a new adjudication order confirming its previous fee award. The Edgeworths appealed the latest adjudication order arguing for a lower fee award. Simon files this petition requesting this Court provide direction to the district court regarding reaching a fee award by applying the market approach under the principles of quantum merit.

II. Case History

In April 2016, a premature fire sprinkler activation caused about $500,000 in property damage to a speculation home being built by the Edgeworths.[1] The Edgeworths turned to their family friend Simon for help.

[1] Plaintiffs are entities which are controlled by Angela and Brian Edgeworth. VII-WA01733

In May 2016, Simon agreed to help his friends without an express fee agreement.[2]

The seemingly straight forward property damage claim grew into a complex product liability and contract case. In December 2017/January 2018, because of an enormous amount of work by Simon, the case settled for $6,100,000.00. Renowned trial lawyer Will Kemp called the result "amazing", "phenomenal" and "fantastic".[3] The Court found that Simon's work led to an "impressive" and "phenomenal" result for the Edgeworths.[4] Brian Edgeworth agreed that Simon did an outstanding job.[5]

Historically, Simon does contingency fee work. During the 19-month long case, Simon advanced almost $165,000.00 dollars in costs. Simon worked without an express fee agreement with the understanding that he would receive a reasonable fee at the end of the case. During litigation, Simon also sent four incomplete hourly bills, at $550 an hour, to demonstrate damages under the attorney fees provision of the contract with the installer of the defective fire sprinkler. Brian Edgeworth knew the bills were incomplete, because the bills did not include entries for his

[2] III-WA00734:5-25; III-WA00802:20-WA00803:7
[3] VII-WA01508:24-WA01509:17
[4] IX-WA02225:19-20; IX-WA02226:25-WA02227:2
[5] IV-WA00952

hundreds of emails and phone calls. Brian Edgeworth was happy receiving lower bills.[6]

As the case progressed, there were unsuccessful efforts to reach an express fee agreement. Then, in late November 2017, when a potential $6,000,000.00 settlement with the manufacturer was being hammered out, the Edgeworths stopped speaking with Simon, then hired other counsel.

On November 29, 2017, the Edgeworth's signed a fee agreement with Vannah & Vannah (Vannah) to represent them in the fire sprinkler case.[7] On November 30, Simon was informed of Vannah's hiring.[8]

On December 1, 2017, the Edgeworths, advised by Vannah, signed a release with the manufacturer for $6,000,000.00.[9]

On December 1, 2017, Simon served an attorney lien.

On December 28, 2017, Simon and Vannah agreed to open and deposit settlement checks into a separate interest-bearing trust account that required both Vannah and Simon's signatures for a transaction, and with all interest going to the Edgeworths.[10]

On January 4, 2018, the Edgeworths sued Simon for conversion.

---

6 V-WA01075
7 IX-WA02210:9-11; IX- WA02216:5-10
8 IX-WA02210:12-20
9 IX-WA02215:8-WA02216:4
10 IX-WA02036:6-19

On January 8, 2018, settlement checks were endorsed and deposited into the joint Vannah/Simon trust account.

On January 9, 2018, the conversion complaint was served; and Vannah sent an email threatening increased damage claims against Simon if Simon withdrew after being sued.[11]

On January 18, 2018, the Edgeworths received $**3,950,561.27** in undisputed funds.[12] The Edgeworths admit the 4-million-dollar recovery made them more than whole on their half million-dollar loss.[13]

Beginning on August 27, 2018, the District Court held a five-day evidentiary hearing to adjudicate the Simon lien. Simon asked for a reasonable fee under quantum meruit, based on the market rate.

Will Kemp testified as an expert on the reasonable fee of an attorney in a product case. Mr. Kemp opined the reasonable fee for Simon was $2,440,000.00.[14] Simon also submitted time sheets (called a superbill) documenting the hours worked. The superbill was not contemporaneous, instead each entry was based on a verifiable tangible event. The superbill listed hours worked not found on the four prior bills. The superbill was

[11] IX-WA02216:27-WA02217:2
[12] I-WA00062
[13] VII-WA01735:11-19
[14] VII-WA01506:25-WA01507:4

presented to support the quantum meruit award and demonstrate the extensive work performed. It was not a final bill.

The Edgeworths' testified Simon expressly agreed to work for $550 an hour from the outset and that Simon was owed nothing, they later retreated from their owed nothing stance, but did not offer a number.

On October 11, 2018, the District Court issued its decision & order adjudicating the lien.[15] The Court found there was no express fee contract, contrary to the Edgeworths' direct testimony. The Court found the four bills formed an implied hourly rate contract, which was then terminated by the Edgeworth's on November 29, 2017. The Court denied additional fees through the last day covered by the prior bills, September 19, 2017, ruling that the superbill was unreliable based on a handful of questioned entries. Since the Edgeworth's terminated Simon on November 29, 2017, Simon was entitled to a reasonable fee under the doctrine of quantum meruit for the period of work that was already performed, but not paid. The District Court then used the superbill to find hours worked from September 19 to November 29 and then applied the payment term of the terminated contract to grant hourly fees; and, used the *Brunzell* factors to

[15] VIII-WA01838-WA01862

reach reasonable flat fee for the hours worked after November 29 through the end of the case.

On October 31, 2018, Simon moved for relief under Rule 52. Simon argued that, as a matter of law, because the Edgeworth's terminated the implied contract on November 29, the Simon fee could not be set by enforcing the terminated/repudiated payment term. Instead, quantum meruit based on the market rate is the method to be used under Nevada lien law. The reason the market rate is to be used is to avoid unjust enrichment to the client refusing attorney fees for work performed.

On November 19, 2018, the Court issued an amended order. The Court made minor corrections but declined to provide the relief requested by Simon on the two points above.[16]

On December 30, 2020, the Supreme Court issued two orders addressing the Edgeworth appeal and Simon's prior writ petition. The appeal order affirmed the district court in some respects. The appeal order remanded the case with instructions to re-address the quantum meruit award of fees to Simon and to re-address the amount of fees assessed as a sanction against the Edgeworths for pursuit of their frivolous conversion complaint. In the writ order, the Simon petition on the manner of

[16] IX-WA002006-WA02028; VIII-WA01995:5-14

calculation of quantum meruit was denied as moot, apparently in consideration of the instructions on remand contained in the appeal order.

On March 16, 2021, because of procedural confusion, the district court issued an amended order a few days before this Court denied the Edgeworths' petition for rehearing.[17]

On May 13, 2021, Simon moved for lien adjudication following remand and argued the proper method for determining the reasonable fee due Simon was the market approach under quantum meruit and submitted a second declaration from expert Will Kemp on the amount of the reasonable fee.[18]

On April 19, 2021, the district court issued an order adjudicating the lien. Notice of entry of order was filed May 16, 2021.[19] The district court committed an error of law in its order when the district court enforced the terms of the repudiated contract and calculated the reasonable fee due using the superbill which it had already found unreliable, instead of applying the market rate approach under quantum meruit. The error in law resulted in an unjust award to Simon and provided a windfall to the

[17] IX-WA02040-WA02063
[18] IX-WA02065-WA02169
[19] IX-WA02206-WA02228

Edgeworths by allowing the Edgeworths to avoid paying reasonable attorney fees for the work performed.

On July 22, 2021, the Edgeworths filed a notice of appeal of the latest order. This petition followed.

III. Relief Sought

Simon respectfully requests that this Court: (1) Issue a writ of prohibition or mandamus; (2) Vacate in part the April 19, 2021 order; and, (3) Issue instructions directing the district court to determine the reasonable fee due Simon based upon the market rate instead of enforcing the payment term of the terminated/repudiated contract.

IV. Issues Presented

1. Having properly found that the Edgeworths terminated the implied fee contract on November 29, 2017, did the District Court err by enforcing the payment terms of the terminated contract to adjudicate fees due under the lien.

2. Did the Court err by not applying the market approach to find the reasonable fee due Simon under quantum meruit.

V. Why Extraordinary Relief is Appropriate

Consideration of a petition for extraordinary relief and issuance of a writ is solely within the discretion of the Court. *Mountainview Hospital v. Eighth Jud., Dist., Ct*., --Nev--, 273 P.3d 861, 864 (2012). The petitioner bears the burden to establish that issuance of an extraordinary writ is warranted. *Pan v. Dist. Ct*. 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Usually, an extraordinary writ will only issue when there is no "plain, speedy and adequate remedy at law". *Ibid.* (quoting NRS 34.170 and NRS 34.330).

An attorney seeking appellate review of an attorney lien adjudication is usually not a party and likely does not have a right of direct appeal. *Albert D. Massi LTD., v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995). Thus, an attorney seeking review of an adjudication must do so by a petition for extraordinary writ. *Ibid*; and, *A.W. Albany v. Arcata Associates, Inc*., 106 Nev. 688, 799 P.2d 566 at n. 1 (1990). Simon is an attorney seeking review of an adjudication; so, an extraordinary writ is appropriate.

In addition, the Edgeworths filed a direct appeal (No. 83258 consolidated with No. 83260) challenging the attorney lien adjudication. Thus, this petition is needed for the dispute to be fully heard.

VI. Relevant Facts

Angela and Brian Edgeworth are both sophisticated international business owners and managers.[20] The Edgeworths are not lay clients.

Angela Edgeworth majored in Business Administration and Actuarial Science.[21] Angela has been an entrepreneur for more than 20 years. Angela founded, built up and sold a cosmetics company; Angela is the co-founder and President of Pediped Footwear, a successful children's footwear company with an international footprint; and, Angela is active with the family business, American Grating.[22]

Brian Edgeworth has a business degree and an MBA from Harvard.[23] Brian Edgeworth traded commodity derivatives for Enron and was a floor trader on Wallstreet. Brian Edgeworth helps run Pediped, manages American Grating, which is a fiberglass reinforced plastic manufacturer with an international footprint, and works in a crypto currency operation.[24]

Both Edgeworths have experience hiring and paying lawyers.[25]

Angela Edgeworth met Eleyna Simon when their children attended school together 15 years ago.[26] The families were close, they vacationed

---

[20] *E.g.*, VII-WA01727-WA01728
[21] VII-WA01579:11-14
[22] VII-WA01579:17-WA01580:6
[23] VII-WA01727:17-21
[24] IV-WA00998:16-21

together, they helped each other through family crisis, and Angela thought of Eleyna as one of her closest friends.[27]

In April 2016, a premature fire sprinkler activation caused about $500,000 in property damage to a speculation home being built by the Edgeworths.[28] The fire sprinkler was manufactured by Viking and was installed by Lange Plumbing.[29] The Edgeworths did not carry insurance for the loss, and Viking and Lange initially denied responsibility.[30]

The Edgeworths turned to their family friend, Daniel Simon, for help. On May 27, 2016, Simon agreed to help his friends as a favor without an express written or oral fee agreement.[31]

Simon's early efforts were not fruitful.[32] On June 14, 2016, Simon filed a complaint against Viking and Lange Plumbing.[33] The case was

---

[25] *E.g.*, V-WA01007:12-WA01009:18
[26] VII-WA01589:19-23
[27] *Ibid*.
[28] IX-WA02207:16-22; IX-WA02207:27- WA02208:4
[29] *Ibid*.
[30] *Ibid.*
[31] IX-WA02207:9-14; IX-WA02211:7; IX-WA02213:2-3; IX-WA02213:26-27
[32] IX-WA02207:23-26
[33] IX-WA02207:27-WA02208:4

complex,[34] with multiple parties, with negligence, contract and product liability claims, and construction, manufacturing, and fraud issues.[35]

The Edgeworths' contract with Lange Plumbing obligated Lange to pursue claims against the manufacturer of a defective product which Lange installed.[36] Thus, the contract provided for attorney fees if Lange did not pursue a claim against Viking.[37] As a result, attorney fees incurred by the Edgeworths was an element of damage in the case against Lange and would not be certain until the case against the manufacturer resolved.[38]

In October of 2016, an early case conference (ECC) was set for December. In preparation for the ECC Simon wanted to produce a bill in support of the case against Lange.[39] On December 2, 2016, the first Simon bill was sent to the Edgeworths, seven (7) months after retention.[40] Over the next 12 months of the 19-month litigation, Simon sent three more incomplete bills.[41] Simon advanced substantial costs throughout the case.

---

[34] IX-WA02207:2
[35] IX-WA02224:16-24
[36] IX-WA02220:26-27
[37] *Ibid.*
[38] IX-WA02207:27-WA02208:4
[39] VI-WA01304:12-WA01306:23
[40] IX-WA02208:21-25
[41] IX-WA02208:26-WA02209:14

Simon aggressively pursued the case.[42] The District Court found that Simon did a "tremendous amount of work"[43], which was impressive in quality and quantity.[44] Michael Nunez, a defense attorney in the case, testified Simon's work was extremely impressive.[45] Mr. Kemp testified that Simon's work and results were exceptional.[46] Mr. Kemp also testified he would not have taken the case and the Edgeworths were lucky they had a friend like Simon.[47]

On August 9, 2017, Simon and Brian Edgeworth discussed a fee. On August 22, 2017, Brian Edgeworth sent an email in which Brian stated an express fee agreement was never formed.[48] Brian testified that as part of any fee negotiation, Brian wanted Simon *to pay the Edgeworths* enough money to pay off a $300,000.00 loan taken from Angela's mother.[49] Brian also believed the more work Simon did, the less Simon should get paid.[50] Given this mindset, a fee agreement was not reached.[51]

---

42 IX-WA02224:23-24
43 IX-WA02209:19-21
44 IX-WA02225:8-9
45 IX-WA02224:8-14
46 *Ibid.*
47 VII-WA01508:24-WA01509:17
48 IX-WA02208:5-18; IX-WA02213:2-WA02214:9
49 V-WA01074:17-WA01082:20; V-WA01150:15-WA01151:25
50 V-WA01078
51 IX-WA02208:5-18

In November/December of 2017 an evidentiary hearing to strike Defendant's answers, several motions and a host of depositions were calendared, and a mediation took place.[52] The mediator, Floyd Hale, Esq., issued a mediator's proposal for Viking to settle for $6,000,000.00. Mr. Hale confirmed to Mr. Kemp that about $2,400,000.00 of the proposed settlement was intended for attorney fees.[53]

On November 15, 2017, Viking made a counteroffer to the mediator's proposal which required confidentiality and a dismissal of Lange.[54]

On November 17, 2017, Simon met with the Edgeworths. Simon discussed the case including the counteroffer, the claim against Lange, upcoming hearings, preparation for trial, and a reasonable fee.[55] The Edgeworths testified to a radically different meeting, which included physical intimidation by Simon (who is dwarfed in size by Brian) and a threat to harm the case. The District Court *did not find* the Edgeworth version of the meeting had occurred.[56] Quite the opposite, the Court found that Simon consistently and competently represented the Edgeworths;

---

[52] *See, e.g.*, VI-WA01316:19-WA01321:17
[53] VII-WA01521-WA01522
[54] IX-WA02209:19-21
[55] IX-WA02210:4-5
[56] IX-WA02206-WA02228; IX-WA02210:4-5

noting that “recognition is due to Mr. Simon” for promoting Edgeworth interests even after Vannah was hired.[57]

On November 25, 2017, the Edgeworths last spoke with Simon.[58] The Edgeworths asked Simon for a written fee proposal.[59]

On November 27, 2017, Simon sent a written fee proposal.[60] Simon told the Edgeworths to talk to other attorneys about the fee proposal.[61]

On November 29, 2017, the Edgeworths hired Vannah “for representation on the Viking settlement agreement and the Lange claims.”[62]

On November 30, 2017, Vannah faxed to Simon a letter signed by Edgeworth stating that Vannah had been hired to work on the Viking case.[63] On reading the letter, Simon believed that he had been fired.[64]

On November 30, 2017, Vannah sent Simon a written consent signed by the Edgeworths to settle with Lange. Vannah was advising the Edgeworths regarding all aspects of the claim.

---

[57] IX-WA02225:8-17
[58] IX-WA02210:9-11; IX-WA02216:5-10
[59] IX-WA02210:6-8
[60] IX-WA02211:6-8;IV-WA00879:2-5
[61] IX-WA02217:11-12
[62] IX-WA02210:9-11;IX-WA02214:25-WA02215:11
[63] IX-WA02210:12-19
[64] VI-WA01339:10-15

The District Court found Simon was discharged when Vannah was hired on November 29, 2017.

Prior to December 1, 2017, Simon convinced Viking to drop confidentiality and a Lange release as settlement terms.[65] On December 1, 2017, the Edgeworths, based on advice from Vannah, signed a release with Viking for a promised payment of $6,000,000.00.[66]

On December 1, 2017, Simon served an attorney lien.[67] Mr. Simon was owed for substantial work based on quantum meruit in addition to about $68,000.00 in advanced costs at the time.

On December 7, 2017, on advice from Vannah, the Edgeworths signed a consent to settle with Lange for $100,000.00.[68] Vannah's advice and the Edgeworths decision to settle at $100,000.00 ran against the advice of Simon, because Simon felt the case was worth substantially more.[69]

On December 23, 2017, while trying to arrange endorsement and deposit of Viking settlement checks, Vannah sent an email accusing Simon

---

[65] IX-WA02215:15-WA02216:4
[66] *Ibid*.
[67] IX-WA02210:24-WA02211:1
[68] IX-WA02211:8-9
[69] IX-WA02016:5-20

of an intent to steal the settlement.[70] Vannah later clarified that the accusation came only from the Edgeworths.

On December 28, 2017, Simon and Vannah agreed to deposit settlement checks into a joint interest-bearing trust account, which required both Vannah and Simon's signatures for a transaction, and with all interest going to the Edgeworths.[71]

On January 4, 2018, an amended attorney lien was served.[72] On January 4, 2018, the Edgeworths sued Simon alleging Simon converted the settlement by filing an attorney lien.[73]

On January 8, 2018, the settlement checks were endorsed and deposited into the joint trust account.[74]

On January 9, 2018, the conversion complaint was served; and Vannah threatened Simon not to withdraw.[75]

On January 18, 2018, the Edgeworths received $**3,950,561.27** in undisputed funds, which they agree made them more than whole.[76]

---

[70] IX-WA02216:21-WA02217:2
[71] IX-WA02036:6-19
[72] I-WA00044-WA00050
[73] IX-WA02211:13-15
[74] IX-WA02037:12-18
[75] IX-WA02216:21-WA02217:2
[76] I-WA00062; and, VII-WA01735:11-19

On January 24, 2018, Simon moved to adjudicate the attorney lien. The Edgeworths opposed adjudication claiming the conversion complaint blocked adjudication under NRS 18.015. The District Court granted the motion and held a five-day evidentiary hearing to adjudicate the lien.

Simon sought a reasonable fee based on the market rate under quantum meruit.[77] Will Kemp was recognized by the Court as an expert in determining a reasonable attorney fee in a product case. Mr. Kemp opined the reasonable fee due Simon was $2,440,000.00. Simon also introduced the superbill which documented the hours worked on the case. This superbill did not contain all the actual work performed as it was recreated based only on verifiable tangible events to merely demonstrate the substantial work performed and not presented as a final bill. The Edgeworths had a changing position, they went from denying money was owed, to agreeing money was owed but declining to provide the amount.

On October 11, 2018, the District Court issued its own decision and order on the motion to adjudicate lien.[78] The Court found there was no express fee contract, contrary to the Edgeworths' direct testimony. The Court found an implied hourly rate contract for $550/hour, which was

[77] NRS 18.015(2) ("In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.")

terminated by the Edgeworths on November 29, 2017. The Court did not grant fees for hours worked listed on the superbill prior to September 19, 2017, granted fees for hours worked listed on the superbill for September 19 to November 29, and used the Brunzell factors to reach a reasonable fee for the work done after November 29.

Simon moved for relief under Rule 52. On November 19, 2018, the district court issued an amended decision and order. The district court made corrections but declined to provide the relief requested by Simon on the two issues presented in this petition.[79]

In three different affidavits, Brian Edgeworth claimed that on May 27, 2016, an express oral agreement was formed with Simon to work for $550.00 an hour.[80] The avowal is repeated and is central to the conversion complaint against Simon.[81] When confronted at the evidentiary hearing with emails stating otherwise[82], Brian Edgeworth changed his testimony to claim the express oral agreement was later formed in June of

---

[78] VIII-WA01838-WA01863
[79] IX-WA02006-WA02028
[80] II-WA00491-WA00496; III-WA00624-WA00632; III-WA00667-WA00676
[81] I-WA00051-WA00060
[82] I-WA00001-WA00002;V-WA01009:1-14

2016.[83] In the amended order the district court rejected Brian's stories and found that an express oral agreement *was never* reached.[84]

The district court found that the Simon lien complied with the law.[85] Mr. Kemp testified that the value of services provided by Simon was greater than the amount claimed in the lien.[86] While the district court did not grant the reasonable fee sought by Simon, the district court did not find the lien was excessive or otherwise improper.

After the Edgeworths appeal, the Simon appeal and this Court's decision and remand, the district court issued an adjudication order on April 19, 2021. The Edgeworths appealed and Simon filed this petition.

VII. Argument

The district court found that Simon worked for the Edgeworths on the sprinkler case on an implied in fact contract; and, that Simon was discharged from the contract on November 29, 2017.[87]

[83] IV-WA00770:3-10; V-WA01059:3-10
[84] IX-WA02213:2-3
[85] IX-WA02212:15-16
[86] VII-WA01550:19-WA01552:1
[87] IX-WA02206-WA02228

The district court found that Simon was paid under the implied contract through September 19, 2017, and was not paid for considerable work that came after September 19. The district court also concluded that:

> When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. (Citations omitted.)[88]

The district court's conclusion agrees with NRS 18.015(2) and case law and was affirmed on the previous appeal. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished).

In the latest adjudication order, the district court again enforced the payment term of the repudiated implied contract to calculate a reasonable fee for the time worked from September 19 through November 29, 2017.[89] Retroactive enforcement of the payment term of a terminated contract is not consistent with the conclusion of law quoted above, NRS 18.015(2) or case law and was thus an error of law. Simon respectfully submits that the correct method is to use the market approach under quantum meruit as the measure to compensate Simon for work performed from the date of September 19, 2017, forward through the end of Simon's involvement. The market rate is the only application consistent with the law which avoids a windfall to the Edgeworths.

---

[88] IX-WA02206-WA02228

A. When a fee contract is terminated by the client, the amount of the outstanding fee due the attorney is determined by quantum meruit.

The Edgeworths discharged Simon on November 29, 2017. Thus, the fee contract was terminated as of that date. The Edgeworths terminated the fee contract before the lien was served and before funds were paid. Therefore, the implied fee contract had been terminated and was not enforceable when the lien was adjudicated.

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged contract but is paid based on *quantum merit*. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800; *Golightly v. Gassner*, 281 P.3d 1176 (Nev. 2009) (unreported) (discharged attorney paid by *quantum merit* rather than by contingency); *citing*, *Gordon v. Stewart*, 324 P.3d 234 (1958) (attorney paid in *quantum merit* after client breach of agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees awarded in *quantum merit* when there was no agreement).

The district court cited *Rosenberg* in concluding the Edgeworths fired Simon. *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS 5460 (1986). In *Rosenberg*, Calderon stopped all communication with his lawyer, Rosenberg, on the eve of a settlement. Rosenberg sought his fees.

---

[89] IX-WA02206-WA02228

The *Rosenberg* court found that Rosenberg was constructively discharged when Calderon stopped speaking with the lawyer. On the question of compensation, the court found that termination of a contract by a party after part performance of the other party, *entitles the performing party to elect to recover the value of the labor performed irrespective of the contract price*. *Id.*, at *19. In other words, the lawyer is not held to the payment term of the repudiated contract, but rather receives a reasonable fee under quantum meruit. The lawyer was able to select his payment method and in *Rosenberg*, he selected the market approach under quantum meruit, which is sought by Simon in this petition.

The Edgeworths did not admit to firing Simon even after they stopped communication and then frivolously sued for conversion. Even as late as their first appeal, the Edgeworths denied firing Simon in a transparent gambit to avoid a reasonable fee determination by the market approach under quantum meruit. The law is clear that because Simon was fired, Simon's outstanding fee for the work performed on the sprinkler case after September 19, 2017, is set by quantum meruit, the reasonable value of services rendered.

The use of the market rate is a generally accepted method to determine a reasonable fee. Restatement Third, The Law Governing

Lawyers §39, comment c. The use of the market approach to determine a reasonable fee under quantum meruit in the absence of a fee agreement was affirmed in the unpublished decision of *Gonzales v. Campbell & Williams*, 2021 WL 4988154, 497 P.3d 624 (Nev. 2021)(unpublished).

Simon respectfully requests this Court issue an instruction to the district court to use the market approach under quantum meruit to reach the attorney fee due Simon for work performed after September 19, instead of retroactively applying the payment term of the discharged fee contract.

B. The quantum meruit award

Will Kemp testified as an expert on product defect litigation, the prevailing market rate for such litigation in the community[90], and the method of determination of a reasonable fee for work performed on a product case in Las Vegas. Mr. Kemp's credentials are well known, and his opinion was beyond question and unrebutted. Mr. Kemp's opinion was not disputed and was accepted by the district court.

Upon remand, Mr. Kemp provided a second declaration in which he reviewed his unrebutted opinion in the light of the Supreme Court orders.[91] Mr. Kemp responded to the Supreme Court's instructions and explained that he reviewed the *Brunzell* factors and concluded that a reasonable fee

under the prevailing market rate of the community for product liability trial counsel from September 19, 2017, through February of 2018, is $2,072,393.75.[92] Mr. Kemp did not consider any work prior to September 19, 2017 in his second analysis and noted that the overwhelming amount of relevant work under the *Brunzell* factors was done after September 19, 2017.

Mr. Kemp's report and testimony provided the only expert testimony on the amount of the reasonable fee due Simon. "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion**."** *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006). The witnesses' testimonies alone can constitute substantial evidence. *CoruSummit Vill., Inc., v. Hilltop Duplexes Homeowners Ass'n*, 2011 Nev. Unpub. LEXIS 873, *10-11 (Nev. April 27, 2011). Mr. Kemp's declarations and live testimony provided substantial evidence on the value of Simon's work.

The evidence of the value of Simon's work under the market rate approach was substantial and undisputed. This Court has stated the trial court should "either … award attorney's fees or … state the reasons for refusing to do so." *Pandelis Const. v. Jones-Viking Assoc., 103 Nev. 129,*

---

[91] IX-WA02065-WA022169

734 P. 2d 1239 (1987); also, Watson v. Rounds, 358 P.3d 228 (2015).

The district court erred when it did not award the reasonable amount of attorney fees which were supported by substantial and unrebutted evidence.

C. The Edgeworths will be unjustly enriched if the market approach is not applied.

Lien adjudication is a proceeding in equity to determine the fair value of an attorney's services, and the lawyer should be compensated for the work performed. In *Leventhal v. Black & LoBello*, 129 Nev. 472, 475, 305 P.3d 907, 909 (2013), the Supreme Court of the state of Nevada stated:

> "A charging lien "is not dependent on possession, as in the case of the general or retaining lien. It is based on natural equity—the client should not be allowed to appropriate the whole of the judgment without paying for the services of the attorney who obtained it." 23 *Williston on Contracts* § 62:11 (4th ed. 2002)."

The Edgeworths agreed the four million dollars already received made them whole on their $500k property damage claim. Mr. Hale confirmed that the amount of his mediator proposal in the sum of $6 million was based on the presumption that Mr. Simon's fee was $2.4 million.

In erroneously enforcing the payment term of the terminated contract, the district court then acted arbitrarily when it used the superbill as the

---

[92] *Ibid.*

metric to determine the hours worked.[93] The act was arbitrary because the district court had earlier determined that the superbill was not reliable.[94] While Simon believes the hours were reliable, the focus of the analysis is on the disparate use of the superbill by the district court. The district court accepted the superbill for one period, but not for another, without supplying an explanation for the differing treatment. Using the market approach for the period beginning September 19, 2017 through the end of the Viking case avoids the problem of the arbitrary use of the superbill.

If the district court does not apply quantum meruit using the market rate it unjustly enriches the Edgeworths virtually giving them Simon's attorney's fees that were already considered as part of the entire settlement as confirmed by Mr. Kemp and Mr. Hale. The windfall the Edgeworth's will receive will certainly result in a miscarriage of justice and undermine the equitable proceeding of lien adjudication.

VIII. Summary of Arguments

The district court properly found that the Edgeworths terminated the implied fee contract on November 29, 2017. It is well-settled law that when a client terminates a fee contract, the contract payment terms end, and the attorney is due a reasonable fee under quantum meruit. Thus, the

[93] IX-WA02220-222.

district court erred when it applied the payment term of the terminated contract to set the fee due to Simon for work done from September 19, 2017 through November 29, 2017. Instead, the district court should have used the market approach under quantum meruit to determine the reasonable fee due Simon for the work done from September 19, 2017 through February of 2018.

Simon respectfully submits that the proper course to determine the reasonable fee due under the attorney lien is via quantum meruit by application of the *Brunzell* factors with due consideration of the expert opinion of Will Kemp regarding the going market rate for the legal services provided by Simon. This is the only method that will avoid unjust enrichment. Since the lien adjudication is a proceeding in equity, the purpose is to avoid unjust enrichment. The effect of the district court order grants a windfall to clients by not requiring payment of reasonable fees due their lawyer for work actually performed.

IX. Conclusion

The Edgeworths have challenged the district court's fee award for November 29, 2017, through the end of the Viking case. Simon disputes the district court fee award from September 19, 2017, through the end of

---

[94] IX-WA02220-222.

the Viking case. Simon submits that remand to the district court with instruction to apply the market approach to determine fees from September 19, 2017, through the end of the Viking case is in the best interest of the parties.

Simon respectfully requests an extraordinary writ issue directing the district court to consider determine the reasonable fee due Simon using the market approach under quantum meruit from compensation for September 19, 2017 through February of 2018.

Dated this 11th day of March 2022.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

VERIFICATION

I, James R. Christensen, declare as follows:

I am an attorney for Petitioner herein. I hereby certify that I have read the foregoing Petition for Writ of Mandamus, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

I declare under the penalty of perjury of the laws of Nevada that the foregoing is true and correct.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parties of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 7,000 words and contains approximately 5,088 words.

I hereby certify that I have read this Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition for Writ of Mandamus complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 11th day of March, 2022.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2022, I served a copy of the foregoing PETITION FOR WRIT OF MANDAMUS on the following parties by depositing a true and correct copy thereof in the United States Mail, in Las Vegas, Nevada, postage prepaid, addressed to the following:

Via Hand Delivery
Honorable Judge Tierra Jones
Department X
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Vía U.S. Mail and/or EFlex E-filing
Steve Morris
Rosa Solis-Rainey
MORRIS LAW GROUP
801 South Rancho Dr., Ste. B4
Las Vegas, NV 89106

/s/ Dawn Christensen
an employee of
JAMES R. CHRISTENSEN, ESQ.