94839-9

No. 75014-3-I

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

Davis Wright Tremaine, LLP,

Respondent,

v.

Frederick Peterson,

Appellant

ON APPEAL FROM
KING COUNTY SUPERIOR COURT
(The Honorable Carol A. Schapira)

PETITION FOR REVIEW

Dennis J. McGlothin, WSBA No. 28177
Robert J. Cadranell, WSBA No. 41773
Attorneys for Frederick Peterson, Appellant

WESTERN WASHINGTON LAW GROUP, PLLC
7500 212th Street SW Suite 207
Edmonds, WA 98026
(425) 728-7296

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Other Cases

Statutes

Rules of Appellate Procedure

Rules of Professional Conduct

I. INTRODUCTION

May a law firm collect contractual attorney fees from its client for its own efforts in attempting to collect an unreasonable fee? The Respondent ("Law Firm") is not entitled to fees because not only did it expend time on something prohibited by the RPC 1.5(a) (charging an unreasonable fee) and RPC 8.4(a) (*attempting to collect an unreasonable fee*), it also did not wholly prevail. Review should be granted and the matter remanded with appropriate instructions.

II. PETITIONER'S IDENTITY

Petitioner Fredrick Peterson ("Client") is the Appellant at the Court of Appeals and the Defendant at the trial.

III. CITATION TO APPELLATE DECISION TO BE REVIEWED

The Client requests the Washington Supreme Court review the Washington State Court of Appeals Unpublished Opinion in *Davis Wright Tremaine, LLC v. Frederick Peterson*, No. 75014-3-I (May 1, 2017), (the "Opinion," **copy attached hereto**).

IV. ISSUES PRESENTED FOR REVIEW

A. Whether the Law Firm was the wholly prevailing party entitled to contractual attorney fees when it attempted to collect an unreasonable fee from the Client.

B. Whether the Client prevailed on a major issue at trial.

C. Whether the Client was wholly or partially prevailing party at trial.

D. Whether the trial and appellate court should have determined that neither party was the prevailing party and not have awarded any fees or should have utilized the proportionality approach and awarded fees to both parties and offset the fee awards.

E. Whether the Law Firm's standard pre-printed form fee agreement was void or unenforceable because it allowed the attorney to charge, and required the Client to pay, for the actual, as opposed to the reasonable, time the Law firm spent on the Client's case.

F. Whether Law Firm's fee agreement was unenforceable to the extent it charged Client an unreasonable fee for Law Firm's services.

G. Whether Client raised for the first time on appeal that he should not have to pay the Law firm's invoices unless they were reasonable.

H. Whether the Lawyer bears the burden to prove that its fee agreement's terms are fair.

I. Whether the Lawyer has the burden to prove its claimed fees are reasonable.

J. Whether fee shifting provisions in an agreement between a lawyer and a client are enforceable

K. Whether the Appellate Court erred in awarding the Law Firm attorney fees on appeal.

L. Whether the Appellate Court erred in not awarding the Client attorney fees on appeal.

V. CASE STATEMENT

For continuity, the relevant facts are included with the arguments.

VI. ARGUMENT

A. Conflicts with Decisions of this Court.

1. Neither Party was the Prevailing Party

Where both parties prevail on major issues, there can be no prevailing party. "If neither wholly prevails, then the determination of who is a prevailing party depends upon who is the substantially prevailing party, and this question depends upon the extent of the relief afforded the parties." *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669, 681 (1997). "If both parties have prevailed on major issues, neither qualifies as the prevailing party under the contract." *Am. Nursery Prod., Inc. v. Indian Wells Orchards*, 115 Wn. 2d 217, 234–35, 797 P.2d 477, 487 (1990).[1] Here, Appellant ("Client") prevailed on his Affirmative Defense No. 8 ("Plaintiff has breached RPC 1.5(a) by charging an unreasonable fee for its services. Plaintiff cannot collect an unreasonable fee for the services it may

[1] This analysis has been adopted by the Court of Appeals Divisions 2 and 3, but there remains confusion between these two Divisions and the "proportionality approach" adopted by Division 1, explained *supra*.

have rendered. Plaintiff's fee request must be limited to a reasonable fee...") CP 13, ¶8.[2] This was a major issue in this case.

Client paid the Law Firm $40,817.27, which he thought was a reasonable fee.[3] Law Firm claimed Client still owed $81,630.97.[4] Client prevailed in proving the remaining fees Law Firm had charged and was attempting to collect were unreasonable. The trial court reduced the Law Firm's $81,630.97 claim by $38,587.84 by reducing an associate attorney's time 1/3 due to "duplication...and considerable hours wasted because of inexperience, unproductive claims, or lack of client management."[5] Thus Law Firm was awarded only $43,043.13 of its claimed $81,630.97 in unpaid fees.

Without analyzing the Client prevailing in its affirmative defense that Law Firm's claimed unpaid fees were unreasonable, the trial court concluded Law Firm was the wholly prevailing party based on having entered judgment in Law Firm's favor.[6] It then awarded Law Firm $90,000 for its efforts attempting to collect an unreasonable

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[2] *See, also*, the Law Firm's Opposition to the Client's Summary Judgment Motion (CP 167, ln 7-8 "Peterson also seeks to avoid DWT's breach of contract claim by arguing that DWT's fees were unreasonable).
[3] CP 486, Findings of Fact and Conclusions of Law, ¶15.
[4] CP 6, ¶22.
[5] CP 492, ¶¶40 and 41. For specific examples, *see* CP 490-91, ¶¶31-36.
[6] CP 493.

fee from Client.[7] The Client appealed and raised the issue that the trial court "never analyzed the parties' respective positions and the results achieved in determining who was the prevailing party."[8]

The Court of Appeals in this case did not follow the binding precedent in *American Nurseries* and perpetuated the trial court's error by never considering the fact the Client prevailed on his affirmative defense that the Law Firm's fees were unreasonable. It did so using the same flawed reasoning the trial court used. The Appellate Court affirmed the trial court based solely on the literal language in RCW 4.84.330 that "A 'prevailing party' is 'the party in whose favor final judgment is rendered."[9] It additionally concluded that the Law Firm was entitled to attorney fees on appeal.[10]

The analysis required by *American Nurseries*, however, is not that simple.[11] In *American Nurseries*, this Court determined that there was a contract between a grower and a purchaser of rootstock and affirmed the direct damages caused by the grower's breach of the contract, but reduced the trial court's total damages

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[7] CP 693
[8] Opening Brief, Pg. 24
[9] Opinion (attached), Pg. 11.
[10] Opinion, Pg. 14, f.n. 4.
[11] The Washington Supreme Court Case the Appellate Court cited to support its proposition, *Schmidt v. Cornerstone, Inc.*, 115 Wn.2d 148, 164, 795 P.2d 1143 (1990) is qualified and states "A prevailing party is *generally* one who receives a judgment in its favor."

by the incidental and consequential damages because the contract had a valid incidental and consequential damages limitation.[12] It then held "because both parties have prevailed on major issues, neither qualifies as the prevailing party under the contract."

This case is virtually identical to *American Nurseries*. Here, the Law Firm, like the purchaser in *American Nurseries*, received a judgment in its favor, but the Client, like the grower in *American Nurseries*, also prevailed by proving the Law Firm's fee agreement was unenforceable to the extent its fee was unreasonable. Under these circumstances neither party prevailed, and no attorney fees should have been awarded.

By not applying *American Nurseries*, the result shocks. Client rightfully refused to pay Law Firm's unreasonable fees and Law Firm sued. At trial, Client proved the fee agreement was enforceable only to the extent Law Firm's $81,630.97 claim for unpaid fees was unreasonable ($38,587.84). Yet Client also had to pay Law Firm $90,000 in contractual prevailing party attorney fees.

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[12] *Amer. Nurseries*, 115 Wn.2d 217 at 235. ("We uphold the contract between American Nursery Products, Inc. and Indian Wells Orchards and affirm those damages assessed by the trial court under the terms of the contract. We find the exclusionary clause validly excludes incidental and consequential damages and reverse the award by the trial court of those damages.")

Client paid Law Firm $51,412.16 more than he would have had to had he acquiesced to the unreasonable fees Law Firm charged.

2. The Fee Agreement was Unenforceable Because it Allowed the Law Firm to Violate the Rules of Professional Conduct by Charging an Unreasonable fee.

This Court has long held that attorney fee agreements that violate the RPCs are against public policy and unenforceable. *Valley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d 736, 743, 153 P.3d 186, 189 (2007), as amended (May 30, 2007) citing *Holmes v. Loveless*, 122 Wn. App. 470-75, 94 P.3d 338 (2004). RPC 1.5(a) is mandatory and states "A lawyer *shall not* make an agreement for, charge or collect an unreasonable fee." Lawyers must continue to adhere to this rule throughout the time the lawyer represents the client.[13] A fee agreement violates RPC 1.5(a) and is unenforceable to the extent a claimed unpaid fee is found to be unreasonable.[14] Here, the trial court found Law Firm's $81,630.97 claim for unpaid fees was unreasonable. The Client successfully proved the fee agreement was unenforceable, at least to the extent the Law Firm's claimed fees were unreasonable.

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[13] *Holmes*, 122 Wash. App. at 478

[14] *Holmes* at 481 ("After analyzing the RPC 1.5(a) factors, we agree with the joint venture's contention that the time has been reached when making additional distributions under the agreement would result in an excessive fee"); and 484 ("the 1972 agreement and 1986 addendum are no longer enforceable because the fee would not be reasonable.)

The Law Firm's fee agreement was unenforceable because it violated RPC 1.5(a) by allowing the Law Firm to charge the Client an unreasonable fee. The fee agreement allowed the Law Firm to charge the Client for the *actual*, as opposed to the *reasonable*, time the Law Firm spent on the Client's case. *After the Law Firm began representing the Client*, the Law Firm sent its engagement letter and standard, pre-printed Terms of Service ("TOS") to the Client.[15] The trial court concluded this constituted the Law Firm's fee agreement.[16] The Law Firm's engagement letter stated "the time devoted and the experience of those providing the services will be given the most weight."[17] The trial court found:

> The terms of the engagement provided that [The Client] was to pay [the Law Firm] at its normal hourly rates for legal services performed by the [Law Firm's] attorneys[18]
>
> In accordance with the [TOS], [the Law Firm] recorded the time each attorney paralegal and document clerk worked on [the Client's] case, and their hourly rate.[19]
>
> [The Law Firm's] invoices identified the number of hours worked to the tenth of the hour.[20]

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[15] According to the Law Firm's invoices, it began representing the Client on or before October 5, 2010. CP 212. The Law Firm sent the engagement letter and TOS to the Client on October 14, 2010. CP 200-210; and CP 484, ¶6.
[16] CP 488, ¶22.
[17] CP 201.
[18] CP 484, ¶6.
[19] CP 484, ¶8.
[20] CP 486, ¶14.

Nowhere did the trial court find that the Law Firm's fee agreement provided that the Law Firm could only charge for the *reasonable* time the Law Firm spent on the Client's case.

The fee agreement also authorized the Law Firm to charge, and required the Client to pay, for the actual time each timekeeper recorded. The trial court found the fee agreement allowed the Law Firm to charge the Client for the actual time each timekeeper recorded.[21] There was no finding that the invoices were discounted to reflect only the reasonable time the Law Firm spent working on the Client's case. The trial court also found that the fee agreement required the Client to pay the Law Firm's invoices within 30 days.[22]

The Client's Affirmative Defenses included:

> 6. All conditions precedent to bringing this lawsuit were not satisfied or legally excused.
>
> 8. Plaintiff has breached RPC 1.5(a) by charging an unreasonable fee for its services. Plaintiff cannot collect an unreasonable fee for the services it may have rendered. Plaintiff's fee request must be limited to a reasonable fee and all amounts Plaintiff collected in excess of a reasonable fee must be disgorged to Defendant.

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[21] CP 484, ¶8 ("[The Law Firm] communicated this information [the actual time each timekeeper recorded] to [the Client] when it sent him invoices for legal services performed.) See, also, CP 489, ¶25 ("The Law Firm's] invoices were reasonable in part and *consistent with the terms of their contract.*")

[22] CP 484, ¶9.

11. The cause of action and fee agreement are void as against public policy because they violate the Washington Rules of Professional Conduct.

12. Plaintiff breached a fiduciary duty it owed to Defendant.[23]

Despite these affirmative defenses, the trial court strictly enforced the fee agreement's terms, as written, and concluded the Client breached the fee agreement. Despite Law Firm's invoices charging Client for the actual time each timekeeper recorded, which time was found to be unreasonable,[24] the trial court concluded the Client breached the fee agreement because he did not pay the Law Firm's unreasonable invoices.[25] The Client challenged this conclusion on appeal, asserting the fee agreement violated RPC 1.5(a) and was unenforceable; and, in the alternative, that Client could not breach the fee agreement by refusing to pay the Law Firm's invoices all or most of which had an unreasonable fee.[26]

The Appellate Court then failed to apply this Court's binding precedent and affirmed the trial court. The Appellate Court's analysis, like the trial court's, was overly simple and did not address whether the fee agreement was unenforceable because it allowed

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[23] CP 12-13.
[24] The trial court found that all the hours the associate, who performed the vast majority of the work, was unreasonably high and needed to be discounted by 1/3 across the board. CP 491-92, ¶¶32, 34, 35, 40 and 41.
[25] CP 489, ¶25.
[26] Opening Brief, pps. 17-19; and Motion for Reconsideration, pps. 2-5.

Law Firm to charge Client an unreasonable fee or at least to the extent Law Firm charged an unreasonable fee. The Appellate Court accepted the trial court's finding that Client "'was to pay [the Law Firm] at its normal hourly rates for legal services performed by [the Law Firm's] attorneys...' within 30 days of receiving a statement."[27] It also concluded the Client breached the fee agreement because it objected to the Law Firm's invoices and tendered an amount less than what the trial court found was a reasonable fee.[28]

The Appellate Court never addressed Client's argument that the Law Firm's invoices had to be reasonable before Client was contractually obligated to pay. In a footnote, it did state Client waived any argument that Law Firm breached an implied duty of good faith and fair dealing because it was not raised below.[29]

To the extent this footnote was meant to address the Client's argument that RPC 1.5(a) requires a lawyer's fees to be reasonable before Client must pay, the Appellate Court misunderstood Client's argument and the issues the trial court said it would consider. The Client raised the issue of the RPC's and the Law Firm's fiduciary

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[27] Opinion, Pg. 8.
[28] Opinion, pp. 8-9
[29] Opinion, Pg.13, f.n.2

duty both in its Affirmative Defenses[30] and in pretrial motions, and the trial court said it would consider them at trial:

> I'm not willing to say that there won't be any issues raised as to duties under the RPC.
>
> This isn't a malpractice case, this is a plaintiff trying to recover its fees. But the Court is mindful that every contract has a duty of good faith and there are fiduciary responsibilities from an attorney to a client.
>
> So I may not say there's no contract because of this, but the Court will be looking at that. And *I think that that is part of the analysis that has to happen. We're not selling tomatoes here, we're selling legal services* ... (emphasis added).[31]

The Opinion stated, "at the presentation hearing on entry of the findings of fact and conclusions of law, [the Client] argued the Legal Services Agreement violates RPC 1.5(a) and is void." Therefore this issue was not raised for the first time on appeal, and there was no waiver because the trial court had an opportunity, and in fact did, address the issue before it became an error on appeal.[32]

3. The Opinion Impermissibly Shifted the Burden of Proof onto the Client.

    a. The Appellate Court shifted the burden of proving the fee agreement complied with RPC 1.5(a) onto the Client.

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[30] See *infra.* Pg. 9, f.n.23.

[31] VRP 17:4-12 (March 24, 2015).

[32] See Wilcox v. Basehore, 187 Wash. 2d 772, 788, 389 P.3d 531, 540 (2017) for purposes of the appellate waiver rule; and *Washington Fed. Sav. v. Klein*, 177 Wash. App. 22, 29, 311 P.3d 53, 56 (2013) ("an argument neither *pleaded* nor *argued* to the trial court cannot be raised for the first time on appeal.")

Lawyers must prove a fee agreement is fair and reasonable if entered into after an attorney-client relationship is formed. In *Albert v. Munter*,[33] this Court stated fee agreements entered into with an existing client are void or voidable unless the attorney shows the contract was fair and reasonable. *See also Kennedy v. Clausing*.[34]

Despite binding precedent, the Opinion shifted the burden to Client to show the fee agreement was unfair or unreasonable. The Client challenged the fee agreement's fairness and reasonableness in its Affirmative Defenses.[35] The Opinion states "The party asserting an affirmative defense has the burden of proving the defense at trial."[36] This impermissibly shifted the burden onto Client to show the fee agreement was unfair or unreasonable.

b. The Appellate Court shifted the burden of proving the fees were unreasonable onto the Client.

The Appellate Court impermissibly shifted the burden of proving Law Firm's claimed fees were unreasonable in two ways. This Court has held, "The burden is on the plaintiff attorney to prove by a preponderance of the evidence both the services rendered *and the*

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[33] 136 Wash. 164, 175, 239 P.210 (1925)
[34] 74 Wash. 2d 483, 491, 445 P.2d 637, 642 (1968)
[35] *Infra.* Pps 8-9, f.n. 20.
[36] Opinion, Pg. 11.

reasonable value thereof."[37] A reasonable attorney fee cannot be determined merely by reference to the number of hours a law firm bills the client; rather "[o]ther factors, including the reasonableness of the hourly rate and *reasonable amount of time required to present the party's case* should be considered, and consideration should be given to the type of case involved."[38]

The overt way the Appellate Court shifted the burden to the Client to establish the Law Firm's claimed fees were unreasonable was by the Opinion stating it is the Client's burden to prove his Affirmative Defenses,[39] and the Client raising the issue as an affirmative defense.[40] The Appellate Court and the trial court shifted the burden subtly by holding Client breached the fee agreement because Client paid Law Firm less than what the trial court finally determined was reasonable. The trial court concluded Client breached because he paid the Law Firm, "*only* $40,817.27 for its services" ($43,043,17 less than what the trial court ultimately found

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[37] *Dailey v. Testone*, 72 Wn.2d 662, 664, 435 P.2d 24, 25 (1967). See, also, *Ramey v. Graves*, 112 Wash. 88, 91, 191 P. 801, 802 (1920).
[38] *Boeing Co. v. Sierracin Corp.*, 108 Wash. 2d 38, 65, 738 P.2d 665, 682 (1987). See, also, Nordstrom, Inc. v. Tampourlos, 107 Wash. 2d 735, 744, 733 P.2d 208, 212 (1987) *implied overruling on other grounds recognized in Matsyuk v. State Farm Fire & Cas. Co.,* 173 Wash.2d 643, 659, 272 P.3d 802 (2012) ("the determination of what constitutes reasonable attorney fees should not be accomplished solely by reference to the number of hours which the law firm representing the successful plaintiff can bill.")
[39] Opinion, Pg. 11
[40] *Infra*. Pg. 9, f.n.23.

was reasonable, but also $38,587.84 less than the "$81,630.97 for legal services rendered" that Law Firm claimed).[41] The Appellate Court affirmed.[42] This excused Law Firm from charging Client an unreasonable fee by requiring Client to determine a reasonable fee.

This subverts RPC 1.5(a): "A lawyer *shall not* make an agreement for, *charge* or collect an unreasonable fee." (emphasis added). The trial court found Law Firm charged Client an unreasonable fee. Yet, Law Firm collected $90,000 from Client for its efforts to collect the unreasonable fee.[43] Therefore Client, who is not a lawyer, must determine and pay a reasonable fee to avoid breach and havint to pay Law Firm prevailing party attorney fees for its efforts attempting to collect its unreasonable fee.

B. Conflicts with Decisions of the Court of Appeals.

1. Reviewing the Opinion will Allow this Court to Clarify and Harmonize the rule to Determine Who is a Prevailing Party.

There is divergence between the Divisions in determining who is a prevailing party. In 1993, Div. 1 decided *Marassi v. Lau*.[44] In

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[41] CP 7, ¶A.
[42] Opinion, Pg. 11.
[43] This also violates the RPCS. RPC 8.4(a) makes an attempt to violate the RPCs an RPC violation. RPC 1.5(a) makes collecting an unreasonable fee an RPC violation. Together, an attempt to collect an unreasonable fee is an RPC violation.
[44] 71 Wash. App. 912, 859 P.2d 605, 606 (1993) abrogated by Wachovia SBA Lending, Inc. v. Kraft, 165 Wash. 2d 481, 200 P.3d 683 (2009).

Marassi, the plaintiff claimed defendant breached a contract in 12 ways, prevailed on 2 of the 12, but received a net judgment in his favor.[45] *Marassi* cited *American Nurseries* with approval: "if both parties prevail on major issues, an attorney fee award is not appropriate."[46] Nevertheless, Div. 1 announced the "proportionality approach" that must be used when there are "multiple distinct and severable contract claims."[47] "A proportionality approach awards the plaintiff attorney fees for the claims it prevails upon, and likewise awards fees to the defendant for the claims it has prevailed upon. The fee awards are then offset."[48] Later, Div. 3 decided *Hertz v. Riebe.*[49] A buyer moved into seller's home prior to closing, the sale did not close, and buyer sued to recover earnest money paid under a contract with an attorney fee provision. The seller sued for unpaid rent, but with no grounds for attorney fees. The trial court ruled purchaser was entitled to the earnest money and the seller was entitled to rent.[50] The court refused to award attorney fees.[51] Div. 3 echoed the law announced in *American Nurseries* and

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[45] *Marassi*, 71 Wash. App. at 914.
[46] *Marassi*, at 916.
[47] *Marassi* at 917.
[48] *Id.*
[49] 86 Wash. App. 102, 936 P.2d 24, 26 (1997).
[50] *Hertz v. Riebe*, 86 Wash. App. at 104–05.
[51] *Hertz* at 105.

Marassi, "if both parties prevail on a major issue, neither is a prevailing party and affirmed the superior court's refusal to award fees to either party."[52] It distinguished its case from *Marassi* and held "each party recovered on a *substantial theory* and therefore the proportionality approach adopted in *Marassi* does not apply."[53]

Div. 1has criticized *Hertz*, retreated from the *American Nurseries* rule, and divergent decisions have come from the Divisions. Div. 1's retreat started in *JDFJ Corp. v. Int'l Raceway, Inc.*[54] A tenant cleared timber on leased land; landlord refused a lease extension. Tenant sued for the extension; landlord sued for wrongful timber removal.[55] Both prevailed. Prevailing party attorney fees were available under the lease, but not for timber trespass. The trial court awarded tenant 2/3 of its attorney fees for its successful claim, but did not offset the landlord's successful claim.[56] Although similar to *Hertz*, Div. 1 held *Hertz* did not apply.[57] It did not cite *American Nurseries* and held, "where one claim constitutes two-thirds of an action and the other claim one-third, if each party prevails on an issue, the proportionality approach is the

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[52] Id.
[53] *Hertz* at 106.
[54] 97 Wash.App. 1, 970 P.2d 343 (1999).
[55] *JDFJ Corp.*, 97 Wash. App. at 3–4.
[56] *JDFJ* at 5.
[57] *JDFJ* at 7.

only approach that provides a fair determination of the fee award."[58] Div. 2 follows the *American Nurseries* rule that if both parties prevail on a substantial theory, neither is entitled to fees.[59] The Opinion conflicts with *American Nurseries* and proportionality. If *American Nurseries* applies, neither should have had attorney fees at trial unless the entire fee agreement was unenforceable. If proportionality applies, fees should be awarded both, and offset. *American Nurseries* seems applicable; no fees should have been awarded either at trial. Law Firm established a contract to pay fees; some fees were found reasonable. Client proved some of the fees were unreasonable. Client did more than reduce Law Firm's damages; he proved the contract was *unenforceable* to the extent Law Firm's fees were unreasonable.[60] If the fee agreement is wholly unenforceable, Client should have had a fee award at trial.[61]

2. The Opinion Conflicts with Decisions that Allow Successful Defendants to Recover Attorney Fees

The appellate courts have uniformly held "a successful defendant

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[58] *JDFJ* at 8.
[59] *Phillips Bldg. Co. v. An*, 81 Wash. App. 696, 702–03, 915 P.2d 1146, 1149–50 (1996); and *City of Lakewood v. Koenig*, 160 Wash. App. 883, 896, 250 P.3d 113, 120 (2011)
[60] *Holmes* at 481 and 484; and In re Settlement/Guardianship of AGM, 154 Wash. App. 58, 74, 223 P.3d 1276, 1283 (2010).
[61] *Labriola v. Pollard Grp., Inc.*, 152 Wash. 2d 828, 839, 100 P.3d 791, 796 (2004) ("Attorneys fees and costs are awarded to the prevailing party even when the contract containing the attorneys fee provision is invalidated.")

can also recover as a prevailing party."[62] The defendant "need not have made a counterclaim for affirmative relief, as the defendant can recover as a prevailing party for successfully defending against the plaintiff's claims."[63] The Opinion should have held Client a successful defendant when he proved the fee agreement was either: entirely unenforceable since it allowed Law Firm to charge an unreasonable fee; or partially unenforceable to the extent it charged an unreasonable fee.

C. Substantial Public Interest.

This Court has tried to balance a lawyer's right to collect reasonable fees with the rights of clients to be free from undue pressure to pay an unreasonable fee. In *Ross v. Scannel*,[64] this Court prohibited an attorney from recording an attorney's lien against client real property, because "potential for economic coercion by attorneys is obvious. In today's economic setting a client may well be forced to settle the attorney's claim for fees, no matter how unfounded." At least one out of state case has prohibited a lawyer from enforcing the attorney fee provision when, as here, the lawyer did the work itself. The Illinois court stated:

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[62] *Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw., Inc.,* 168 Wash. App. 86, 99, 285 P.3d 70, 78 (2012), citing *Marine Enters., Inc. v. Sec. Pac. Trading Corp.,* 50 Wash.App. 768, 772, 750 P.2d 1290 (1988).
[63] *Newport*, 168 wash. App. at 99 citing *Marassi,* at 916.
[64] 97 Wn.2d 598, 606, 47 P.2d 1004 (1982).

> the retainer agreement anticipates suit against and recovery of additional fees from a client should that client fail to pay the bill... giv[ing] rise to substantial fees for vigorous prosecution of the attorney's own client... this provision very well could be used to silence a client's complaint about fees, resulting from the client's fear of his attorney's retaliation for nonpayment of even unreasonable fees. Such a provision is not necessary to protect the attorney's interests; on the contrary, it merely serves to silence a client should that client protest the amount billed.[65]

The Opinion will have this effect on Client and countless others.

D. Attorney Fees on Appeal

RAP 18.1 allows attorney fees on appeal on the same basis as at trial. RCW 4.84.330 allows a fee award to the party who wholly prevails. As said above, Law Firm should not have wholly prevailed on appeal. The Opinion erred in awarding Law Firm appellate attorney fees. Client should have either wholly prevailed, or partially prevailed, on appeal and is entitled to fees for successful effort under the proportionality approach. Under *American Nurseries*, Client is entitled to attorney fees if the entire fee agreement is unenforceable, Law Firm may collect only the reasonable fee for its services, an issue not contested on appeal, and Law Firm's attorney fee award is eliminated. For the same reasons, Client is entitled to attorney fees in this Court.

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[65] Lustig v. Horn, 315 Ill. App.3d, 319, 327, 732 N.E.2d 613 (2000).

RESPECTFULLY SUBMITTED July 14, 2017.

WESTERN WASHINGTON LAW GROUP, PLLC

/s/ Robert J. Cadranell

By: _____

Dennis J. McGlothin, WSBA # 28177
Robert J. Cadranell, WSBA # 41773
Attorneys for Petitioner Brian Massingham
Western Washington Law Group, PLLC
7500 212th St SW, Suite 207
Edmonds, Washington 98026
(425) 728-7296

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of Petition for Review to the following:

Office of the Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	[ ] Facsimile [ ] Messenger [ ] U.S. Mail [x] Electronic Upload [ ] Email
Anthony S. Wisen Davis Wright Tremaine, LLP 1201 Third Ave, Suite 2200 Seattle, WA 98101	[ ] Facsimile [ ] Messenger [ ] U.S. Mail [x] Electronic Upload [ ] Email

Signed this 14th day of July, 2017 Edmonds, Washington.

/s/ Lindsey Matter

Lindsey Matter

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DAVIS WRIGHT TREMAINE LLP, a limited liability partnership,	)	No. 75014-3-I
Respondent,	)	UNPUBLISHED OPINION
v.	)	
FREDERICK PETERSON,	)	
Appellant.	)	FILED: May 1, 2017

SCHINDLER, J. — Davis Wright Tremaine LLP (DWT) filed a lawsuit for unpaid legal fees against Frederick Peterson. Following a bench trial, the court ruled Peterson breached the legal services agreement. The court found the majority of the fees were reasonable, entered a judgment in favor of DWT, and awarded DWT attorney fees as the prevailing party. Peterson appeals the judgment and the award of attorney fees to DWT as the prevailing party. We affirm.

Meilinger Lawsuit

Frederick Peterson is the president of Retaining Walls Northwest Inc. (RWNW). In July 2010, Trent Meilinger, Larry Westling, and Tower and Cabling Services Inc. filed a lawsuit against Peterson and Patrick McHugh (the Meilinger lawsuit). The complaint

alleged Peterson breached the agreement "to provide financing of up to $2,000,000" to Tower and Cabling Services. The lawsuit sought damages and attorney fees.

Peterson discussed the Meilinger lawsuit with his longtime friend Gregory Hendershott. Hendershott is a partner at Davis Wright Tremaine LLP (DWT). Peterson asked DWT to represent him in the Meilinger lawsuit.

On October 14, 2010, DWT sent Peterson an "Engagement Letter" and the "Standard Terms of Engagement for Legal Services" (Legal Services Agreement). The letter states DWT would bill Peterson monthly for legal fees based on a number of factors including the "time and effort required"; the "novelty and complexity of the issues presented"; the "amount of money or value of property involved and the results obtained"; and the "experience, reputation and expertise of the lawyers performing the services." The Engagement Letter states, in pertinent part:

> **Engagement**
>
> At Davis Wright Tremaine LLP we believe it is essential that our clients and we have the same understanding of the client-attorney relationship. With this in mind, attached for your review is a copy of our Standard Terms of Engagement for Legal Services, which describes in greater detail the basis on which we provide legal services to our clients.
>
> As with most firms, fees for services at Davis Wright are based on a variety of factors including, for example, the time and effort involved, the experience of those doing the work, and the complexity of the matter. Of these and other considerations, the time devoted and the experience of those providing the services will be given the most weight. For example, John Theiss's present rate is $435.00 per hour. Rates are subject to adjustment from time to time. Depending on circumstances that may arise, other Davis Wright attorneys or paralegals may assist at rates consistent with their skills and experience. John will advise you before any attorney besides John does substantial work on this matter. Our services are billed monthly. Please let me know if you ever have a question or concern on a bill.

The Legal Services Agreement states the client agrees to "make payment within 30 days of receiving our statement," pay the expenses of collecting the debt, and pay reasonable attorney fees. The Legal Services Agreement states, in pertinent part:

Billing Arrangements and Terms of Payment

> We will bill you on a regular basis, normally each month, for both fees and disbursements. You agree to make payment within 30 days of receiving our statement. . . .
>
> We will give you prompt notice if your account becomes delinquent, and you agree to bring the account or the retainer deposit current. If the delinquency continues and you do not arrange satisfactory payment terms, you agree that we may withdraw from the representation and pursue collection of your account. You agree to pay the expenses of collecting the debt, including court costs, filing fees and a reasonable attorney's fee.

DWT partner John Theiss and associate Carly Summers represented Peterson. Peterson told the attorneys to "act aggressively in the Meilinger Lawsuit." DWT investigated a broad range of claims against McHugh, Meilinger, Westling, and the officers of Tower and Cabling Services. DWT filed counterclaims alleging breach of contract, breach of fiduciary duties, securities fraud, fraudulent misrepresentation, conversion, and unjust enrichment. DWT also filed a cross claim against McHugh alleging breach of contract and breach of fiduciary duty and a third-party complaint against the officers of Tower and Cabling Services.

Between October 2010 and September 2012, DWT "engaged in considerable litigation." From October 2010 through September 2012, DWT billed Peterson $122,415.90—$119,779.00 for professional services and $2,636.90 for costs and other expenses. Theiss billed 44.7 hours at an hourly rate of $435.00 in 2010 and $475.00 per hour by 2012. Summers billed 338.1 hours at an hourly rate of $250.00 in 2010 and

$290.00 by 2012. Peterson paid DWT $40,817.27. DWT "expended considerable effort in attempting to resolve the unpaid invoices" with Peterson.

In September 2012, DWT withdrew from representing Peterson in the Meilinger lawsuit. Peterson retained another law firm and filed a motion for partial summary judgment.[1] The motion relied on evidence obtained by DWT during discovery. The court granted partial summary judgment in favor of Peterson. The court dismissed the complaint and ruled in Peterson's favor on the counterclaim against Westling. But the court denied summary judgment on the counterclaim against Meilinger. On May 17, 2013, the parties stipulated to dismissal of all claims.

DWT Lawsuit

On January 22, 2014, DWT filed a lawsuit against Peterson for the unpaid legal fees. DWT alleged Peterson incurred $119,779.00 in legal fees and $2,636.90 in costs and other expenses but paid only $40,817.27. DWT sought judgment in the amount of the unpaid balance of $81,630.97.

Peterson asserted a number of affirmative defenses including that DWT charged unreasonable fees in violation of RPC 1.5(a) and that the fee agreement violated the RPCs and is "void as against public policy."

> Plaintiff has breached RPC 1.5(a) by charging an unreasonable fee for its services. Plaintiff cannot collect an unreasonable fee for the services it may have rendered. Plaintiff's fee request must be limited to a reasonable fee and all amounts Plaintiff collected in excess of a reasonable fee must be disgorged to Defendant.
>
> . . . .
>
> . . . . The cause of action and fee agreement are void as against public policy because they violate the Washington Rules of Professional Conduct.

[1] The motion for partial summary judgment did not address Peterson's claims against the officers of Tower and Cabling Services.

DWT and Peterson presented testimony during the three-day bench trial.

Theiss and Summers testified at length about the legal services and representation of Peterson in the Meilinger lawsuit. Theiss testified his hourly rates were "fairly similar to [partners] with the same tenure as me" and the hourly rates for Summers were the same as other associates at DWT. Theiss stated DWT billed Peterson at its standard hourly rates and the hourly rates were "generally similar" to the rates charged by other large law firms. Theiss testified the hours billed for Summers were "comparable" to the hours other associates spent on similar lawsuits and "reasonable for the tasks she was asked to do."

At the conclusion of DWT's case, Peterson moved to dismiss. Peterson argued DWT did not present evidence to show the legal fees incurred were reasonable. DWT argued the witnesses testified about the work performed and "the need for the work that was performed because of [the] complexity of the case." The court denied the motion to dismiss.

Peterson called attorney David Nold as an expert witness on the reasonableness of the legal fees. Nold testified the fees were "grossly unreasonable." According to Nold, DWT billed "approximately 90 percent" of the hours for the work of an associate and he had "never seen an associate with . . . one year of experience to whom this amount of responsibility should have been given." In his opinion, 36 hours for Theiss and 93 hours for Summers was reasonable. Nold testified a reasonable fee for the work DWT performed on the Meilinger lawsuit was $40,455.

The trial court entered extensive findings of fact and conclusions of law. The court found Peterson breached the Legal Services Agreement. The court found DWT

billed Peterson $119,779.00 in fees and $2,636.90 in costs for the Mellinger lawsuit. The court found Theiss's testimony "credible on hourly rates being reasonable generally for himself and Ms. Summers." The court concluded the hours billed were "reasonable in part." The court found Theiss "spent a reasonable number of hours working on Peterson's case." However, the court concluded the "hours spent on the matter by the associate were too high." The court reduced the hours billed for Summers by one-third from 338.1 to 225.5 for "some duplication (conferences with Mr. Theiss) and considerable hours wasted because of inexperience, unproductive claims, or lack of client management."

Using an average hourly rate of $455.00 for the 44.7 hours of work performed by Theiss, the court found a reasonable fee was $20,338.50. Using an average hourly rate of $270.00 for Summers, the court concluded a reasonable fee for her work was $60,885.00. The court concluded the total reasonable legal fees and costs for the Meilinger lawsuit was $83,860.40—$81,223.50 in attorney fees and $2,636.90 in costs. After subtracting the $40,817.27 that Peterson had paid, the court awarded DWT $43,043.13. The court found DWT was "the prevailing party under the Billing Arrangements and Terms of Payments section of the Engagement Agreement and [Legal Services Agreement] and is entitled to recover its attorneys' fees and costs" incurred in the breach of contract lawsuit.

DWT filed a motion for an award of $130,285.74 in attorney fees and costs as the prevailing party. Peterson argued DWT was not entitled to an award of attorney fees and costs as the prevailing party because he proved the fees were unreasonable. Peterson also claimed that because the court reduced the hours billed, DWT violated

RPC 1.5(a). In the alternative, Peterson argued the attorney fees DWT sought as the prevailing party were unreasonable and should be reduced. The court awarded DWT $90,000.00 in attorney fees and costs as the prevailing party.

Breach of the Legal Services Agreement

On appeal, Peterson contends substantial evidence does not support the finding that he breached the Legal Services Agreement. We review the trial court decision to determine whether substantial evidence supports the findings of fact and whether those findings, in turn, support the conclusions of law. Ridgeview Props. v. Starbuck, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982). Substantial evidence is the quantum of evidence "sufficient to persuade a rational fair-minded person the premise is true." Sunnyside Valley Irrig. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

We will not "disturb findings of fact supported by substantial evidence even if there is conflicting evidence." Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). We treat findings of fact labeled as conclusions of law as findings of fact. Riley-Hordyk v. Bethel Sch. Dist., 187 Wn. App. 748, 759 n.11, 350 P.3d 681 (2015); Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). We defer to the trial judge on issues of witness credibility and persuasiveness of the evidence. Boeing Co. v. Heidy, 147 Wn.2d 78, 87, 51 P.3d 793 (2002); City of Univ. Place v. McGuire, 144 Wn.2d 640, 652, 30 P.3d 453 (2001). "Unchallenged conclusions of law become the law of the case." Rush v. Blackburn, 190 Wn. App. 945, 956, 361 P.3d 217 (2015); King Aircraft Sales, Inc. v. Lane, 68 Wn. App. 706, 716-17, 846 P.2d 550 (1993).

The trial court entered extensive findings of fact and conclusions of law. Peterson challenges only one finding. Peterson argues substantial evidence does not

support the finding that "[i]n October 2010, Mr. Peterson requested that DWT represent him in his defense of the Meilinger Lawsuit." Substantial evidence supports the finding. The first invoice from DWT is dated October 5, 2010. DWT filed a notice of appearance on behalf of Peterson in the Meilinger lawsuit on October 8, 2010. The other unchallenged findings of fact are verities on appeal. In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

The unchallenged findings support the conclusion that Peterson breached the terms of the Engagement Letter and Legal Services Agreement. The unchallenged findings establish the "terms of DWT's engagement were communicated to Mr. Peterson" and DWT sent Peterson its Legal Services Agreement that "explained how fees DWT charged would be set." Under the "Engagement Agreement" and the Legal Services Agreement, Peterson "was to pay DWT at its normal hourly rates for legal services performed by DWT's attorneys and reimburse DWT for out-of-pocket costs incurred in connection with the Meilinger Lawsuit" within 30 days of receiving a statement. Although Peterson did not sign the Engagement Agreement, the court concluded Peterson "contracted with DWT for legal services under the terms of the Engagement Agreement and the enclosed [Legal Services Agreement]."

> Here, as in [Bakke v. Columbia Valley Lumber Co., 49 Wn.2d 165, 169, 298 P.2d 849 (1956)], DWT gave Mr. Peterson and RWNW a letter describing the terms DWT imposed for representing Mr. Peterson in the Meilinger Lawsuit. He/it did not contest any of the terms, and Mr. Peterson agreed to DWT representing him after having received the [Legal Services Agreement]. He/it knew DWT was performing extensive services for him/it after having received the Engagement Letter, and Mr. Peterson on behalf of RWNW also initially compensated DWT in accordance with the Engagement Letter and [Legal Services Agreement]. Thus, Mr. Peterson contracted with DWT for legal services under the terms of the Engagement Agreement and the enclosed [Legal Services Agreement].

The court concluded the contract was "fair" and the Engagement Letter and Legal Services Agreement "provided full and fair disclosure of the contract's terms."

> DWT's contract with Mr. Peterson, including the Engagement Letter and [Legal Services Agreement], was fair, DWT exerted no undue influence on Mr. Peterson to cause him to enter into or continue to perform under the contract, and the Engagement Letter and [Legal Services Agreement] provided full and fair disclosure of the contract's terms.

The unchallenged findings establish "DWT rendered legal services to Mr. Peterson in connection with the Meilinger Lawsuit" between October 2010 and September 2012 totaling $122,415.90 but Peterson paid only $40,817.27. We conclude the unchallenged findings support the trial court's conclusion that Peterson breached the Legal Services Agreement.

Motion To Dismiss

Peterson argues the court erred in denying his motion to dismiss at the conclusion of the evidence presented by DWT. Peterson asserts DWT presented no evidence that the legal fees DWT incurred were reasonable. Under CR 41(b)(3), dismissal is appropriate only " 'if there is no evidence, or reasonable inferences therefrom, that would support a verdict for the plaintiff.' " Commonwealth Real Estate Servs. v. Padilla, 149 Wn. App. 757, 762, 205 P.3d 937 (2009) (quoting Willis v. Simpson Inv. Co., 79 Wn. App. 405, 410, 902 P.2d 1263 (1995)); Brant v. Mkt. Basket Stores, Inc., 72 Wn.2d 446, 447, 433 P.2d 863 (1967). We review a trial court's decision on a motion to dismiss for manifest abuse of discretion. Escude v. King County Pub. Hosp. Dist. No. 2, 117 Wn. App. 183, 190, 69 P.3d 895 (2003); Johnson v. Horizon Fisheries, LLC, 148 Wn. App. 628, 636, 201 P.3d 346 (2009). "A trial court abuses its discretion only if its decision is manifestly unreasonable or based on

untenable grounds." Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co., 186 Wn.2d 336, 350, 376 P.3d 372 (2016).

In an action filed by an attorney to collect legal fees, the burden is on the attorney "to prove by a preponderance of the evidence both the services rendered and the reasonable value thereof." Dailey v. Testone, 72 Wn.2d 662, 664, 435 P.2d 24 (1967). An attorney must present " 'reasonable documentation of the work performed.' " Scott Fetzer Co., Kirby Co. Div. v. Weeks, 122 Wn.2d 141, 151, 917 P.2d 1086 (1993) (quoting Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983)).

Here, DWT introduced into evidence invoices documenting the legal services performed for Peterson between 2010 and 2012. Theiss and Summers used the invoices to testify at length about the legal services DWT provided while representing Peterson. The evidence presented at trial established the legal services DWT provided to Peterson included (1) "[r]esearching, drafting, and filing cross-claims, counterclaims, and a third-party complaint"; (2) engaging in extensive discovery including interrogatories, document production, depositions, and motions to compel; (3) engaging in mediation; and (4) "engaging in numerous settlement discussions with the plaintiffs, cross-claim defendant, and third-party defendants." Theiss also testified about the reasonableness of the hourly rates DWT billed. The court did not abuse its discretion in denying the motion to dismiss under CR 41(b)(3).

Prevailing Party Attorney Fees

Peterson asserts the court erred in awarding attorney fees to DWT as the prevailing party. Peterson claims he is the prevailing party because the court reduced

the amount of attorney fees awarded to DWT.

A "prevailing party" is "the party in whose favor final judgment is rendered." RCW 4.84.330; see also Schmidt v. Cornerstone Invs., Inc., 115 Wn.2d 148, 164, 795 P.2d 1143 (1990) ("a prevailing party is generally one who receives a judgment in its favor"); Emerick v. Cardiac Study Ctr., Inc., 189 Wn. App. 711, 732, 357 P.3d 696 (2015) ("In general, a prevailing party is one who receives an affirmative judgment in his or her favor.").

After reducing the amount billed for the associate by one-third, the court found DWT was entitled to $83,860.40 as reasonable attorney fees and costs for the work performed. The court deducted the amount Peterson had previously paid and entered a judgment in favor of DWT for $43,043.13. The court did not err in concluding DWT was the prevailing party.

RPC 1.5(a)

Peterson asserts the DWT Legal Services Agreement is void and unenforceable under RPC 1.5(a). DWT argues Peterson waived his right to raise this argument for the first time on appeal

In answer to the complaint, Peterson asserted as an affirmative defense that "by charging an unreasonable fee," DWT violated RPC 1.5(a), and that the Legal Services Agreement was void because it violated RPC 1.5(a). The party asserting an affirmative defense has the burden of proving that defense at trial. Camicia v. Howard S. Wright Const. Co., 179 Wn.2d 684, 693, 317 P.3d 987 (2014); Schmidt v. Coogan, 181 Wn.2d 661, 665, 335 P.3d 424 (2014); Cregan v. Fourth Mem'l Church, 175 Wn.2d 279, 283,

285 P.3d 860 (2012); Steele v. Organon, Inc., 43 Wn. App. 230, 239, 716 P.2d 920 (1986).

At trial, Peterson presented evidence on whether the fees were reasonable. But at the presentation hearing on entry of the findings of fact and conclusions of law, Peterson argued the Legal Services Agreement violates RPC 1.5(a) and is void.

On appeal, Peterson claims that as a matter of law, the Legal Services Agreement violates RCP 1.5(a). Peterson asserts the agreement places an undue emphasis on "the time and effort required" rather than "equally weigh[ing]" the factors set forth in RPC 1.5(a).

RPC 1.5(a) states:

> A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
> (8) whether the fee is fixed or contingent; and
> (9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

Peterson cites no authority that the factors in RPC 1.5(a) must be given equal weight. Because the RPC 1.5 factors "are not exclusive. Nor will each factor be relevant in each instance," we conclude the Legal Services Agreement did not violate RPC 1.5(a). RPC 1.5 cmt. 1.[2]

In the alternative, Peterson claims the award of attorney fees to DWT as the prevailing party violates public policy. The unchallenged findings establish the terms of the Legal Services Agreement control. The Legal Services Agreement states Peterson agrees to pay reasonable attorney fees incurred in collecting unpaid legal fees. "Where a contract provides for such fees, RCW 4.84.330 requires that the court award them to the prevailing party." Riss v. Angel, 80 Wn. App. 553, 563-64, 912 P.2d 1028 (1996).[3] Because the award of attorney fees and costs is mandatory and the court does not have "discretion except as to the amount," Peterson's public policy argument fails. Nw. Cascade, Inc. v. Unique Constr., Inc., 187 Wn. App. 685, 704, 351 P.3d 172 (2015); Crest Inc. v. Costco Wholesale Corp., 128 Wn. App. 760, 772, 115 P.3d 349 (2005); Kofmehl v. Steelman, 80 Wn. App. 279, 286, 908 P.2d 391 (1996).

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[2] For the first time on appeal, Peterson also argues the Legal Services Agreement is unenforceable because DWT violated the implied covenant of good faith and fair dealing. We decline to consider an argument raised for the first time on appeal. RAP 2.5(a); Herberg v. Swartz, 89 Wn.2d 916, 925, 578 P.2d 17 (1978).

[3] (Emphasis added.) RCW 4.84.330 states, in pertinent part:

> In any action on a contract . . . where such contract . . . specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract . . . , shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract . . . or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

(Emphasis added.)

We affirm the judgment against Peterson and the award of attorney fees to DWT as the prevailing party.[4]

Schindler, J.

WE CONCUR:

Trickey, ACJ

Cox, J.

[4] DWT requests attorney fees on appeal under RAP 18.1. Because DWT is entitled to attorney fees and costs incurred to enforce the contract, we award DWT reasonable attorney fees on appeal upon compliance with RAP 18.1.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DAVIS WRIGHT TREMAINE LLP, a limited liability partnership, Respondent, v. FREDERICK PETERSON, Appellant.	)	No. 75014-3-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Frederick Peterson filed a motion for reconsideration of the opinion filed on May 1, 2017. Respondent Davis Wright Tremaine LLP filed an answer to the motion. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 14th day of June, 2017.

For the Court:

Judge

RCW 4.84.330

Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorneys' fees—Waiver prohibited.

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

[2011 c 336 § 131; 1977 ex.s. c 203 § 1.]

WESTERN WASHINGTON LAW GROUP, PLLC

July 14, 2017 - 3:10 PM

Transmittal Information

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