IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WILLIAM H. MONTAGUE, Appellant, v. BRAIN INJURY LAW OF SEATTLE, INC., a Washington corporation, and ADAM MICHAEL URRA, an Individual, Respondents.	No. 86065-8-I DIVISION ONE UNPUBLISHED OPINION

SMITH, C.J. — William Montague was driving his car when a construction crane collapsed, landing on a vehicle behind him and allegedly causing him a number of injuries. Montague retained Brain Injury Law of Seattle (BILS) to represent him in recovering damages for his injuries. The fee agreement between Montague and BILS provided that Montague would pay all litigation costs.

The relationship between Montague and BILS deteriorated over the next two years and Montague retained new counsel. With the help of this new counsel, Montague obtained a $160,000 settlement for his injuries. He failed, however, to reimburse BILS for its costs. Instead, Montague sued BILS, alleging legal malpractice. BILS asserted counterclaims of breach of contract and unjust enrichment. BILS later moved for partial summary judgment on its breach of contract claim, which the trial court granted.

On appeal, Montague claims that factual issues exist as to the reasonableness of BILS's expenses and costs and that a dispute remains as to BILS's claim of recovery based on unjust enrichment. Because Montague fails to establish a genuine issue of material fact as to reasonableness and because unjust enrichment does not apply, we affirm.

FACTS

In April 2019, William Montague was driving his car in Seattle when a construction crane collapsed, landing on a vehicle behind him. Montague alleged that the impact's "concussive effect" resulted in a brain injury, tinnitus, vision problems, and post-traumatic stress disorder. About a year after the crane collapse, Montague retained Adam Urra and Brain Injury Law of Seattle (BILS) to represent him in recovering damages for the alleged injuries.

In engaging BILS, Montague signed the firm's "Standard Fee Agreement." The contract stated,

> Client agrees to pay all costs. Costs will be deducted from the proceeds of any settlement or verdict that might be recovered in the case, in addition to the Attorney's contingency fee. Client authorizes attorney to deduct all unreimbursed costs from the proceeds of any recovery after calculation of attorney's fees.

Over the course of several months, BILS began to gather evidence to document Montague's claim and prepare for litigation. BILS offered Montague three options for moving forward with the lawsuit: Montague could join a plaintiffs' group with seven other individuals with similar claims, he could sue alone in the hopes that he could settle, or he could reject negotiations, voluntarily dismiss his

suit, and refile later. BILS was clear that the third option would include hiring a consulting engineer to serve as an expert witness and preparing a jury focus group, each with their own expenses. Montague chose the third option. In total, BILS incurred $18,333.64 in costs.

In May 2022, Urra informed Montague that he had decided to retire and would pass along Montague's case to Scott Blair, another BILS attorney. Montague was unhappy with this change and BILS referred Montague to Michael Maxwell of Maxwell Graham, a different personal injury law firm. Montague retained Maxwell Graham and BILS waived any claim it had to attorney fees. Under Maxwell's representation, Montague settled his claim for $160,000. He did not, however, refund BILS for any of its incurred costs.

Rather, in August 2022, Montague sued BILS for legal malpractice. He alleged that BILS fell below the standard of care in failing to initiate a lawsuit until April 2022, that BILS was responsible for a subsequent verdict that exhausted the available liability insurance, and that his claim should have been worth between $6.3 million and $8 million. He did not assert that BILS fell below the standard of care when it incurred the costs for the expert witness or the focus group.

BILS answered Montague's suit and counterclaimed, seeking to collect the expenses it incurred on Montague's behalf. BILS first moved for partial summary judgment to dismiss Montague's complaint, which Montague did not oppose. BILS then moved for summary judgment in favor of its counterclaim.

In opposition to the second motion, Montague denied liability for the expenses on the bases that no need existed to retain the consulting engineer because fault had already been established by other litigation, that Urra did not properly prepare for the focus group, rendering it useless, and that BILS had waived any potential reimbursement in failing to attempt to withhold the incurred costs from Montague's settlement.

The trial court granted BILS's motion for summary judgment and entered judgment in its favor for $20,023.25. Montague appeals.

ANALYSIS

Standard of Review

We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court. Hornbuckle v. Dep't of Soc. and Health Servs., 23 Wn. App. 2d 800, 807, 520 P.3d 456 (2022). We consider the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

Summary Judgment

Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c). "A genuine issue of material fact exists if reasonable minds could disagree on the conclusion of a factual issue that controls the outcome of the litigation." Hicks v. Klickitat County Sheriff's Office, 23 Wn. App. 2d 236, 242-43, 515 P.3d 556 (2022), review denied, 200 Wn.2d 1024, 522 P.3d 49 (2023). If the moving party

meets the initial showing for a motion for summary judgment, the burden then shifts to the opposing party to set forth evidence to support his or her case. Samra v. Singh, 15 Wn. App. 2d 823, 832, 479 P.3d 713 (2020).

A party opposing summary judgment cannot rely simply on allegations, denials, opinions, or conclusory statements, but instead must provide specific facts establishing a genuine issue for trial. Allen v. Asbestos Corp., Ltd., 138 Wn. App. 564, 569-70, 157 P.3d 406 (2007). Further, those facts must be admissible as evidence. CR 56(e). Lay witness testimony as to any scientific, technical, or otherwise specialized knowledge is inadmissible. ER 701(c).

1. RPC 1.5(a) Reasonableness

Montague asserts that the trial court erred in granting summary judgment because a genuine issue of material fact remains as to the reasonableness of the costs that BILS incurred and now requests reimbursement for. The unreasonable fees, Montague contends, violate the Rules of Professional Conduct (RPCs) and therefore invalidate his contractual duty to pay. BILS disagrees, arguing that the grant of summary judgment was proper because Montague fails to dispute the contract's express terms, its validity, or provide evidence of the unreasonableness of the cost amounts.

Because BILS met its initial burden of proof and Montague fails to provide any admissible evidence of unreasonableness, no genuine issue remains as to the reasonableness of the costs or whether the allegedly unreasonable costs violate the RPCs. Accordingly, summary judgment is proper.

RPC 1.5(a) provides that an attorney "shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses." A violation of the RPCs does not necessarily render a contract unenforceable. LK Operating, LLC v. Collection Grp., LLC, 181 Wn.2d 48, 87, 331 P.3d 1147 (2014).

BILS moved for summary judgment on the basis that Montague failed to comply with the terms of their attorney-client fee agreement. In providing evidence of the signed contract documenting Montague's agreement to pay all costs, the expenses BILS incurred working under that contract, and Montague's failure to reimburse BILS for any of those costs, BILS met its initial burden of showing that no genuine issue of material fact remained as to whether Montague breached the contract. The burden then shifted to Montague to establish, with specific facts, that a genuine issue did exist. Montague failed to do so.

Montague does not contest the existence of the contract, that BILS incurred costs, or that he did not reimburse BILS. Rather, Montague responded to BILS's motion by arguing that a genuine issue of material fact remained as to whether the costs BILS incurred under the fee agreement were reasonable. He did not, however, provide any evidence that the incurred costs were unreasonable.

Instead, Montague stated a legal conclusion, that the costs were unreasonable, and then relied purely on his own inadmissible lay witness testimony as support. Lay witnesses may not testify to any specialized

knowledge. That Montague personally believed that there was never any need to retain a counseling engineer or that Urra did not prepare adequately for the focus group, rendering it "a waste of time and money," is inadmissible and insufficient to establish any actual unreasonableness.

Montague also attached a declaration from his new attorney, Maxwell, to his opposition to the motion for summary judgment, suggesting that it establishes the unreasonableness of the costs. But Maxwell's declaration, which did not speak to the reasonableness of BILS's actions at all, is similarly unpersuasive. Although Maxwell, as a licensed attorney, may have had the specialized knowledge to testify as to the reasonableness of BILS's actions, he did not do so. The declaration speaks to the quick turnaround time between Maxwell taking the case and the deadline for responding to an entirely separate motion to dismiss, all irrelevant information.

Without any evidence of unreasonableness beyond his own inadmissible opinion, Montague failed to provide specific facts establishing a genuine issue for trial. Summary judgment is proper.

2. Unjust Enrichment

Montague next contends that the trial court erred in granting summary judgment because BILS failed to establish that no genuine issue of material fact remained as to unjust enrichment. BILS does not address this issue. Because unjust enrichment does not apply in this circumstance, we decline to reach the issue.

Unjust enrichment is "the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it." Young v. Young, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008).

Neither party disputes the existence of a valid contract. Accordingly, the theory of unjust enrichment does not apply.

We affirm.

Smith, C.J.

WE CONCUR:

Brennan, J.

Dwyer, J.