[Cite as *State ex rel. Bashein & Bashein Co., L.P.A. v. Indus. Comm.*, 2011-Ohio-5168.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Bashein & Bashein Co., LPA,	:	
Relator,	:	
v.	:	No. 10AP-642
Industrial Commission of Ohio and E. Fred Berchtold,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on October 6, 2011

Paul W. Flowers Co., *L.P.A.*, and *Paul W. Flowers*, for relator.

Michael DeWine, Attorney General, and *Colleen C. Erdman*, for respondent Industrial Commission of Ohio.

Todd G. Kime & Assoc., and *Todd G. Kime*, for respondent E. Fred Berchtold.

IN MANDAMUS

FRENCH, J.

{¶1} Relator, Bashein & Bashein Co., LPA ("relator"), has filed an original action in mandamus requesting this court to issue a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to (1) vacate its order that

determined relator was entitled to receive attorney fees solely under the contingency fee agreement with the client, E. Fred Berchtold ("claimant"), and had no right to receive any other recovery on the basis of quantum meruit, and (2) find that claimant must pay relator for the hours of time expended in relation to claimant's claims.

{¶2} This court referred this matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, which includes findings of fact and conclusions of law and is appended to this decision, recommending that this court grant a writ of mandamus ordering the commission to vacate its order finding that relator was only entitled to recover its expenses and to conduct a hearing and consider the evidence submitted in order to establish what a proper quantum meruit recovery should be, beyond simply considering the number of hours worked on the matter.

{¶3} No objections to the magistrate's decision have been submitted. Finding no error on the face of the magistrate's decision, we adopt the decision, including the findings of fact and conclusions of law contained in it, as our own. Accordingly, we grant a writ of mandamus ordering the commission to (1) vacate its order finding that relator was entitled to recover only its expenses and (2) conduct a hearing and consider the evidence submitted in order to establish an appropriate recovery on the basis of quantum meruit, in accordance with the magistrate's decision and applicable law.

Writ of mandamus granted.

BRYANT, P.J., and SADLER, J., concur.

A P P E N D I X

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Bashein & Bashein Co., LPA,	:	
Relator,	:	
v.	:	No. 10AP-642
Industrial Commission of Ohio and E. Fred Berchtold,	:	(REGULAR CALENDAR)
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on July 12, 2011

Paul W. Flowers Co., LPA, and *Paul W. Flowers,* for relator

Michael DeWine, Attorney General, and *Colleen C. Erdman,* for respondent Industrial Commission of Ohio.

Todd G. Kime & Assoc., and *Todd G. Kime,* for respondent E. Fred Berchtold.

IN MANDAMUS

{¶4} Relator, Bashein & Bashein Co., LPA, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order which determined that relator

was legally entitled to receive attorney fees solely under the contingency fee agreement with the client, E. Fred Berchtold ("claimant") and had no right to receive any other recovery on the basis of quantum meruit, and ordering the commission to find that claimant is required to pay relator for the hours of time expended in relation to claimant's claims.

Findings of Fact:

{¶5} 1. Relator is a legal professional corporation based in Cleveland, Ohio.

{¶6} 2. Claimant suffered two work-related injuries and retained relator to represent him in conjunction with his workers' compensation claims.

{¶7} 3. Two separate fee agreements, drafted by relator, were signed by claimant with regard to the separate injuries. Both agreements provided that relator would receive a sum of money equal to 33 1/3 percent of whatever recovery may be had whether the case was settled before trial or whether a trial was necessary. The second agreement, dated March 29, 2002 provides greater detail and states as follows:

> The Attorney does hereby undertake and agree with the Client to act as his/her/their Legal Counsel in negotiating for a settlement, and if same is not effected, in bringing, conducting and prosecuting an action against the responsible parties and/or insurers to recover damages for injuries which occurred on or about the 24 day of March, 2002, and in consideration for services so rendered and to be rendered by the Attorney, it is agreed that he shall receive a sum of money equal to one-third (33⅓%) of whatever recovery may be had in the event of a settlement of said cause [of] action before the filing of a complaint for suit. In the event the Attorney is unable to settle said claim prior to the filing of a complaint, then the Attorney shall receive an amount equal to one-third (33⅓%) of whatever may be received in litigation or in settlement derived after the filing of said complaint.

> The Client understands that he/she/they are responsible for all expenses associated with the prosecution * * * regardless of whether or not a recovery is obtained or attorney fees are incurred. Such expenses include, but are not limited to, filing fees, court costs, deposition fees, witness fees, binding and reproduction charges, research and investigation expenses, record retrieval charges, and expenses incurred in connection with expert witnesses. * * * If a settlement or recovery is not obtained, the Client agrees to reimburse the Attorney for these expenses.

{¶8} 4. It is undisputed that relator was successful in securing awards of compensation for claimant in both claims and relator was paid according to the fee agreement.

{¶9} 5. In a letter dated September 23, 2008, claimant terminated relator's services as follows:

> This is to inform you that as of today, September 23, 2008 I will no longer be requiring your services for my workers['] compensation claims L17409-22 & 02819294.

{¶10} 6. Thereafter, in a letter dated February 20, 2009, relator sent a bill to claimant seeking $18,970.26 in fees based on the number of hours expended in both claims.[1] The following expenses for claim #L17409-22 were also included:

Dr. James Lundeen	$350.00
Simone & Associates	300.00
Dr. James Lundeen	120.00
Bethesda North Hospital	33.36

[1] Relator prepared two itemized statements, one for each claim. In claim #L17409-22, relator billed 37 hours at $300 per hour minus $3,247.53 (fees received) plus expenses (37 hrs. x $300 = $11,100 + $803.36 expenses owed = $11,903.26 minus $3,247.53 fees received) = $8,655.83. In claim #02-819294, relator billed 44.25 hours at $300 per hour minus $2,960.57 (fees received) (44.25 hrs. x $300 = $13,275 minus $2,960.57 fees received = $10,314.43).

{¶11} 7. After no response was received from claimant, relator submitted a C-86 motion to the Ohio Bureau of Workers' Compensation ("BWC") seeking a determination of the amount of legal fees owed pursuant to Ohio Adm.Code 4123-3-24.

{¶12} 8. Relator's motion was heard before a staff hearing officer ("SHO"). In an order mailed September 9, 2009, the SHO determined that relator was legally entitled to receive compensation only under the contingency fee agreement, which had already been paid and that relator had no right to seek any other recovery. However, relator was awarded the expenses that had been advanced in the amount of $803.36. The SHO order provides, in pertinent part:

> [T]he Hearing Officer finds that the Injured Worker and Bashein & Bashein Co. L.P.A. entered into an attorney-client agreement dated 03/24/2002. That agreement provided that the attorney is entitled to 1/3 of any recovery had in the event of a settlement that may be entered into "prior to the filing of a complaint". The agreement also provides that the attorney is entitled to receive 1/3 of whatever may be received in litigation or in settlement derived after the filing of the complaint. The agreement further provide[s] that the Injured Worker is responsible for all expenses associated with the claim. The agreement does not contain a provision which specifically indicates that if the Injured Worker discharges the attorney, the Injured Worker is liable for any services that have been rendered on the Injured Worker's behalf on an hourly basis.
>
> The Hearing Officer finds that the law firm of Bashein & Bashein has received legal fees in the past as a result of payments made to the Injured Worker. These fees totaled $3,247.53 and were received on 10/13/92, 01/97 and 05/18/2007. Following the receipt of these fees, the Injured Worker discharge[d] the law firm of Bashein & Bashein per letter dated 09/23/2008.
>
> The Injured Worker's attorney alleges that the law firm is owed $8,655.83 in attorney's fees and expenses. This is

> calculated based upon an hourly rate of $300.00 per hour per 37 hours worked plus expenses of $803.36 minus $3,247.53 in fees received.
>
> The Hearing Officer denies the C-86 motion filed 03/25/2009 by the Injured Worker's representative for payment of attorney's fees. The Hearing Officer finds that the parties merely entered into a 1/3 contingency fee agreement which awarded the Injured Worker's attorney a 1/3 of any settlement that was recovered. There was no provision in the agreement that if the Injured Worker discharged the law firm of Bashein & Bashein, that the law firm would be entitled to receive payment on an hourly basis.
>
> It is the finding of the Hearing Officer that pursuant to this agreement, the Injured Worker's attorney has received compensation based upon previously awarded benefits that have been made to the Injured Worker. The Hearing Officer finds that this is the only fee that the Injured Worker's representative is entitled to pursuant to the agreement signed by the parties. As the parties did not enter into an agreement whereby the Injured Worker was required to compensate the Bashein & Bashein Co. LPA on an hourly basis if the Injured Worker discharged the law firm, the Hearing Officer finds that the Injured Worker's attorney is not entitled to any payment based on an hourly rate.
>
> The Injured Worker's attorney cannot unilaterally convert a contingency fee agreement to an hourly fee agreement and subsequently request payment based on an hourly rate.
>
> The Hearing Officer finds however, that the law firm of Bashein & Bashein is entitled to payment in the amount of $803.36 from the Injured Worker for expenses that have been advanced by the law firm on the Injured Worker's behalf.
>
> The Hearing Officer relies on the fee agreement signed by the parties dated 03/29/2002, OAC 4121-3-34 and the itemized statement for services rendered filed 03/25/2009.[2]

[2] The SHO only considered the amount of fees arguably due relator in claim #L17409-22 and did not consider the amount of fees arguably due relator in claim #02-819294. Based on the stipulated evidence, the magistrate cannot determine whether or not relator presented evidence relative to both claims.

{¶13} 9. Relator filed a request for reconsideration; however, in an order mailed January 6, 2010 the commission denied relator's request.

{¶14} 10. Thereafter relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶15} Relator contends that a fee dispute existed between relator and claimant. Citing to Ohio Adm.Code 4123-3-24 and 4121-3-34 which provide that when a controversy exists between a party and a party's representative concerning fees for services rendered, the commission shall inquire into the amount of fees charged and those fees should be based upon the time and labor required as well as the novelty and difficulty of the questions involved and the skill requisite to perform those services. Ohio Adm.Code 4121-3-24 provides:

> (A) The commission may inquire into the amounts of fees charged by attorneys, agents or representatives of the parties for services in matters before the commission and shall protect parties against unfair fees. Attorney fees shall be based upon:
>
> (1) The time and labor required.
>
> (2) The novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly
>
> (3) The amount involved and the results obtained.
>
> (B) *When a controversy exists* between a party and his representative concerning fees for services rendered in industrial claims, either the party or the representative may make a written request to the commission to resolve the dispute. *The commission shall set the matter for special hearing and inquire into the merits of the controversy. The commission shall fix the amount of a reasonable fee, if any fee be due the representative, and the decision of the commission shall be binding upon the parties to the dispute.*

> In such controversies, the commission shall not assume jurisdiction unless the written request is filed within one year of the payment of the amount claimed or request therefor.
>
> The representative shall file an itemized statement showing all services rendered and expenses incurred in regard to the matter in controversy and also any and all payments received.
>
> (C) The commission and the bureau of workers' compensation shall prominently display in all areas of an office which the claimants frequent a notice to the effect that the commission has statutory authority to resolve fee disputes.
>
> (D) A "controversy," as used above, means a dispute between a claimant and his attorney.

(Emphasis added.) Ohio Adm.Code 4123-3-24 provides that the commission has exclusive jurisdiction to resolve a controversy with regards to fees.

{¶16} In making its argument, relator directs this court's decision to two cases out of the Supreme Court of Ohio, specifically *Fox & Assoc. Co., L.P.A. v. Purdon* (1989), 44 Ohio St.3d 69 and *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 1994-Ohio-512. Both those cases involve attorneys and clients who had entered into contingency fee agreements. At some point in time, the clients terminated their relationships with their respective attorneys, secured other counsel, and ultimately recovered damages. In both those cases, the discharged attorneys sought to recover fees and the question before the court involved whether or not to enforce the contingency fee agreement or whether or not the attorneys were entitled to fees under the theory of quantum meruit. While there are certain factual

differences in each of these two cases, the law which emerged from those two cases was not dependent on the differences.

{¶17} In *Fox,* Theresa Marshall Purdon ("Purdon") hired the law firm of Fox & Assoc. Co., L.P.A. ("Fox & Assoc.") to file a personal injury claim arising from an automobile accident. The case was assigned to an associate employed by the firm, Michael Ellerbrock ("Ellerbrock") and a contingency fee agreement was executed.

{¶18} Ellerbrock telephoned Purdon to inform her that he was leaving Fox & Assoc. and that her case belonged to the law firm. Purdon indicated that she wanted to continue with Ellerbrock as her attorney and, on his instructions, Purdon attempted twice to terminate the law firm's employment.

{¶19} Ellerbrock telephoned Purdon after a settlement was reached in Purdon's personal injury claim. The settlement check was sent to Ellerbrock, who withheld the agreed one-third in attorney fees and costs. Fox & Assoc. filed its complaint against Purdon, seeking the full one-third contingency fee to which they had agreed.

{¶20} The trial court directed a verdict in favor of Fox & Assoc., finding that Purdon had breached the contingency fee agreement by discharging the law firm without just cause and refusing to pay the agreed contract fee. Fox & Assoc. was awarded one-third of the total award plus interest.

{¶21} Purdon appealed arguing that the directed verdict was improper because she had just cause to terminate Fox & Assoc. The appellate court agreed that whether she had just cause for termination was a question of fact for the jury and reversed for a new trial on this issue. Purdon had also urged the court to adopt a rule of law providing

a discharged attorney quantum meruit as the measure of damages, regardless of whether there was cause for the discharge. While acknowledging this is the rule of law in other jurisdictions, the appellate court rejected Purdon's argument as inconsistent with Ohio precedent.

{¶22} Purdon appealed on the sole issue of whether or not quantum meruit should be the measure of damages for a discharged attorney regardless of whether there was cause for the discharge. The Supreme Court of Ohio set forth the issue and resolution as follows:

> [Purdon] asks that this court depart from a rule established in *Scheinesohn v. Lemonek* [(1911), 84 Ohio St. 424] and followed in *Roberts v. Montgomery* [(1926), 115 Ohio St. 502] paragraph two of the syllabus, in which we held that where it is proven that an express contingency fee contract between a lawyer and a client is breached by the client without just cause, "the measure of damages in such case is not limited to the reasonable value of the services rendered by the lawyers employed prior to the cancellation of the contract," but rather damages should be for the full contract price.
>
> [Purdon] argues that such a rule has a chilling effect upon the absolute right of a client to discharge an attorney, with or without just cause. We agree, and adopt a rule of law we believe will protect the special and confidential nature of the attorney-client relationship and ensure that an attorney who renders services will be fairly compensated.
>
> Under present Ohio law, a client may dismiss an attorney at any time, but the existence or nonexistence of just cause is relevant with regard to the attorney's right to compensation or damages. See *Bolton v. Marshall* (1950), 153 Ohio St. 250 * * *. Where an express contract exists between the attorney and client, breach of the contract without just cause requires full payment of the contract price, even if the attorney has not yet rendered services. *Scheinesohn v. Lemonek, supra.* This rule is based on the premise that

quantum meruit should not be used as the measure for damages since the client has not been benefited by some service, and yet, the value of the attorney's anticipated services has been fixed by agreement of the parties. The client not only bargains for the performance of the lawyer's services, but also for the fee to be paid for the services. Failure to perform actual services does not constitute a failure of the consideration underlying the promise to represent which is the basis of the promise to pay. See *Dombey, Tyler, Richards & Griesser v. Detroit T. & I. Ry. Co.* (C.A.6, 1965), 351 F.2d 121, 127. Furthermore, it has been assumed that placing value on attorney services is difficult since such services are not easily apportionable to the time or the labor performed or to be performed in the future. See *Kikuchi v. Ritchie* (C.A.9, 1913), 202 F. 857. This reasoning, however, must be abandoned in view of the contemporary and regulated status of today's attorney-client relationship relative to fees. For instance, the Code of Professional Responsibility, DR 2-106(A) through (C), provides guidelines for determining legal fees. These guidelines serve in large degree to protect the public from exorbitant fees as well as giving attorneys defined parameters in charging for legal services.

The overriding consideration in the attorney-client relationship is trust and confidence between the client and his or her attorney. The right to discharge one's attorney would be of little value if the client were liable for the full contract price. To force such an agreement into the conventional status of commercial contracts ignores the unique, fiduciary relationship created by an attorney's representation of a client. There is nothing more critical to the professional relationship between attorney and client than the trust and confidence of the person being represented. Under the rule of *quantum meruit,* the client is protected since the discharge of an attorney is not always caused by a client's dissatisfaction with the quality of the service rendered but, rather, may result from the client's lack of faith and trust or confidence in the attorney. The client need not show cause or present evidence sufficient to constitute legal malpractice or negligence before discharge can be effectuated.

> Neither does the *quantum meruit* rule create a threat that the discharged attorney will not be compensated for services rendered before discharge occurs. The fact that the contract is contingent does not vest the attorney with an interest in the case or affect the right to discharge. An attorney who substantially performs under the contract may be entitled to the full price of the contract in the event of discharge "on the courthouse steps," or just prior to settlement. See *Kaushiva v. Hutter* (D.C. App. 1983), 454 A.2d 1373; *MacInnis v. Pope* (1955), 134 Cal.App.2d 528, 285 P.2d 688. Similarly, it would be inequitable to force a client who has received no service from the discharged attorney to pay the full price of the contract. Any benefit received by the client through subsequently successful litigation or settlement may have been the result of *in propria persona* representation or representation by new counsel.
>
> We therefore overrule *Scheinesohn v. Lemonek, supra,* and *Roberts v. Montgomery, supra. Bolton v. Marshall, supra* is also overruled to the extent that it distinguishes between recovery in cases where express contracts exist (full price must be paid), and recovery on the basis of *quantum meruit* in the absence of an express contract.

Id. at 70-72.

{¶23} The court held as follows in the syllabus:

> When an attorney is discharged by a client with or without just cause, and whether the contract between the attorney and client is express or implied, the attorney is entitled to recover the reasonable value of services rendered the client prior to discharge on the basis of *quantum meruit.* (*Scheinesohn v. Lemonek* [1911], 84 Ohio St. 424, 95 N.E. 913, and *Roberts v. Montgomery* [1926], 115 Ohio St. 502, 154 N.E. 740, overruled.)

{¶24} The question was again addressed in the *Reid* case. There, Donald Lansberry ("Lansberry") was injured in an automobile accident and entered into a contingent-fee-representation agreement with the law firm of Reid, Johnson, Downes, Andrachik & Webster ("Reid, Johnson"). Approximately one and one-half years later,

William A. LeFaiver, a salaried attorney with Reid, Johnson, who had been working on the case, ceased affiliation with the law firm. Lansberry signed a contingent-fee-representation contract with LeFaiver which did not mention the previous representation agreement signed with the law firm of Reid, Johnson. Lansberry sent three letters to Reid, Johnson, advising the law firm that Lansberry considered LeFaiver, and not the law firm, to be his attorney and asking the firm to immediately forward the Lansberry file to LeFaiver.

{¶25} Reid, Johnson filed a complaint on behalf of Lansberry in the common pleas court and notified Lansberry that his file would not be released to LeFaiver until two conditions were met: (1) expenses incurred by the law firm relating to the matter were paid, and (2) the firm received one-third of any settlement reached or judgment achieved in the matter.

{¶26} Reid, Johnson received a settlement offer of $65,000 and advised LeFaiver that Lansberry's file would be released upon payment of expenses advanced and upon receipt by the firm of one-third of $65,000. Lansberry executed a guaranty to pay Reid, Johnson one-third of the amount in return for the release of Lansberry's file to LeFaiver.

{¶27} When Lansberry still did not pay, Reid, Johnson filed a complaint in the common pleas court seeking to enforce the guaranty and alleging that Lansberry's personal injury case had been settled, that the disputed amount had been placed in an escrow account, and that the firm was entitled to recover $21,636.57 plus interest. Lansberry denied that the law firm was entitled to the money in the escrow account and

alleged that the law firm was entitled to an amount not to exceed $2,500 because the law firm had spent less than 20 hours on the case prior to being discharged and $2,500 represented the reasonable value of Reid, Johnson's services. Lansberry argued that $2,500 was quantum meruit measure of the total value of the law firm's services.

{¶28} The trial court applied the rule of law from *Fox* and awarded Reid, Johnson $2,500 as the reasonable value of services rendered prior to discharge by Lansberry. The appellate court reversed and found that *Fox* was inapplicable because Lansberry had entered into a new guaranty contract with Reid, Johnson and determined that the payment under the guaranty was enforceable.

{¶29} The Supreme Court of Ohio ultimately determined that the rule of law from *Fox* was applicable and remanded the case to the trial court to specifically address the amount of Reid, Johnson's recovery in quantum meruit. The court explained:

> In *Fox & Associates Co., L.P.A. v. Purdon* (1989), 44 Ohio St.3d 69, 541 N.E.2d 448, syllabus, this court held: "When an attorney is discharged by a client with or without just cause, and whether the contract between the attorney and client is express or implied, the attorney is entitled to recover the reasonable value of services rendered the client prior to discharge on the basis of *quantum meruit.* (*Scheinesohn v. Lemonek* [1911], 84 Ohio St. 424, 95 N.E. 913, and *Roberts v. Montgomery* [1926], 115 Ohio St. 502, 154 N.E. 740, overruled.)" Thus, pursuant to *Fox,* even if an attorney is discharged without cause, and even if a contingent fee agreement is in effect at the time of the discharge, the discharged attorney recovers on the basis of *quantum meruit,* and not pursuant to the terms of the agreement.
>
> 1. "*Quantum meruit*" means literally "as much as deserved." See Black's Law Dictionary (6 Ed.1990) 1243 (The equitable doctrine of *quantum meruit* is based on an implied "promise on the part of the defendant to pay the plaintiff *as much as*

> *he* reasonably *deserved* to have for his labor." [Emphasis *sic.*]).
>
> * * *
>
> One of the central tenets of the *Fox* approach is that a client has an absolute right to discharge an attorney or law firm at any time, with or without cause, subject to the obligation to compensate the attorney or firm for services rendered prior to the discharge. See 44 Ohio St.3d at 72, 541 N.E.2d at 450. Cf. Model Rules of Professional Conduct (1992), Rule 1.16, Comment at 57 ("A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services."). See *Rosenberg, supra,* 409 So.2d at 1020 (*quantum meruit* recovery limitation is necessary to avoid placing restrictions on client's right to discharge attorney). Once discharged, the attorney must withdraw from the case, and can no longer recover on the contingent-fee-representation agreement. The discharged attorney may then pursue a recovery on the basis of *quantum meruit* for the reasonable value of services rendered up to the time of discharge.

Id. at 573-74.

{¶30} Although *Fox* and *Reid* involved attorneys who left their respective law firms and clients who followed them, the court's pronouncements in both *Fox* and *Reid* do not hinge on that distinction. Instead, the court has specifically stated that:

> When an attorney representing a client pursuant to a contingent-fee agreement is discharged, the attorney's cause of action for a fee recover on the basis of *quantum meruit* arises upon the successful occurrence of the contingency.

Reid at paragraph two of the syllabus.

{¶31} In the present case, the commission determined that relator was only entitled to recover under the contingency fee agreement and that, inasmuch as relator was discharged prior to any additional sum of money being awarded, relator could not

assert a claim under quantum meruit and was only entitled to the amount of fees expended. While the commission does have exclusive jurisdiction to determine the controversy concerning fees in the present case, the commission may not ignore the rule of law in doing so. The wording found in Ohio Adm.Code 4123-3-24 indicates that a determination of fees owed is to be made when a controversy exists. While the commission argues that the rule of law in *Fox* and *Reid* should not be applied in workers' compensation cases, the language in the Administrative Code indicates otherwise.

{¶32} Based on the foregoing, it is this magistrate's decision that this court should issue a writ of mandamus ordering respondent Industrial Commission of Ohio to vacate its order finding that relator was only entitled to recover its expenses and should conduct a hearing and consider the evidence submitted in order to establish what a proper quantum meruit recovery should be, beyond simply considering the number of hours worked on the matter.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).