UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3300
Summary Calendar

RUSSELL McDONALD,

Plaintiff,

CARDIOLOGY CENTER,

Intervenor-Plaintiff,

versus

TRANS ATLAS MARINE CORP., ET AL.,

Defendants.

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RUSSELL STEGEMAN, appearing on his own behalf & in his capacity as a partner of the former partnership known as Stegeman & Falcon,

Movant-Appellant,

versus

TIMOTHY J. FALCON,

Movant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana
(CA-91-2913-E-M5)

(December 17, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on

Russell Stegeman appeals from the district court's allocation of attorney's fees between his former law firm and a former partner of that firm. We **AFFIRM**.

I.

The facts are not disputed. In April 1989, Stegeman and Timothy Falcon executed an agreement prepared by Stegeman, forming a law partnership -- Stegeman & Falcon. The agreement provided that Stegeman and Falcon would share partnership profits and losses on a two-thirds and one-third basis, respectively, and did not contain any termination provisions for the allocation of partnership files or fees earned post-termination.

On April 27, 1989, Russell McDonald (the plaintiff in this action) executed a contract retaining the partnership to represent him in his personal injury suit against Trans Atlas Marine Corporation. (William Perry, an associate of the partnership, brought Russell McDonald to the firm. Perry had a separate agreement with the partnership pursuant to which he would be entitled to 33 1/3% of any fee collected by the partnership.)

The partnership was dissolved by the mutual consent of Stegeman and Falcon on March 13, 1990. By letter dated March 23, McDonald discharged Stegeman and Associates, the successor firm composed of Stegeman and Perry. That same day, McDonald executed a retainer contract with Falcon, and arranged for his file to be

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the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

transferred to Falcon from Stegeman and Associates. Neither Stegeman nor Perry performed any legal services for McDonald after March 13, 1990.

Falcon filed a seaman's suit on McDonald's behalf in the district court in August 1991. Falcon performed basically all of the legal work on this action after the suit was filed, including the negotiation of favorable settlements of McDonald's Jones Act and maintenance-and-cure claims and the medical claims of various health care providers. Falcon also assisted with McDonald's creditor's claim in the Trans Atlas bankruptcy.

In December 1992, Stegeman and Perry intervened in McDonald's action, seeking a portion of the contingent fee. The parties and the district court agreed to resolve the competing claims for apportionment of the fee by cross motions for summary judgment. The district court held that "the S & F partnership is entitled to receive, on a *quantum meruit* basis, 10 % of the total fee, and that Falcon is entitled to receive 90 % of the total fee". Stegeman filed a timely notice of appeal.[2]

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[2] The notice of appeal states that "Russell Stegeman hereby appeals ..."; Perry's name does not appear in either the caption or the body of the notice. Accordingly, Stegeman's notice of appeal did not invoke this court's jurisdiction as to Perry. Fed. R. App. P. 3(c); *see* ***Torres v. Oakland Scavenger Co.***, 487 U.S. 312 (1988). The reference to Perry in the appellant's brief is insufficient to secure appellate jurisdiction over an appellant not specifically named in the notice of appeal. *See* ***Samaad v. City of Dallas***, 922 F.2d 216, 219 (5th Cir. 1991).

II.

Stegeman contends that the district court erred as a matter of law by apportioning the contingent fee on a *quantum meruit* basis in accordance with ***Matter of P & E Boat Rentals, Inc.***, 928 F.2d 662 (5th Cir. 1991). Stegeman asserts that the fee remained an asset of the former partnership and should have been allocated pursuant to the partnership agreement. He maintains that ***P & E Boat Rentals*** is inapposite because this dispute is between former partners, not unrelated attorneys, and a written partnership agreement exists.[3]

In ***P & E Boat Rentals***, our court affirmed an apportionment of a contingent fee between two attorneys who jointly represented a maritime personal injury claimant. ***Id***. at 663. The attorneys did not have a written agreement respecting the terms of the representation or the apportionment of the contingent fee. ***Id***. To resolve the dispute, the district court applied Louisiana law, including its ethical standards and rules. ***Id***. at 664. Disciplinary Rule 2-107 of the Code of Professional Responsibility (CPR)[4] provided that fees between lawyers who are neither partners

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[3] As noted, the facts are not in dispute. "Summary judgment is appropriate if the moving party establishes that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law". ***Lindsey v. F.D.I.C.***, 960 F.2d 567, 570 (5th Cir. 1992). Our review is *de novo*. ***Id***.

[4] Rule 20.04 of the Uniform Local Rules for all Louisiana United States District Courts adopted the Rules of Professional Conduct of the Louisiana State Bar Association (RPC). Rule 1.5(e) of the RPC, which became effective in Louisiana on January 1, 1987, embodies the substance of CPR D.R. 2-107 (applied in ***P & E Boat Rentals***) and provides that lawyers not of the same firm may divide a fee only if:

> (1) The division is in proportion to the

nor associates may be divided only on a *quantum meruit* basis. Using that standard, the district court determined that each attorney should receive payment for the services he performed and the responsibilities he assumed. ***P & E Boat Rentals***, 928 F.2d at 664. Our court rejected the appellant's contention that the district court erred by refusing to enforce an alleged oral agreement between the lawyers and held that "[t]he record clearly establishes that there was neither a joint assumption of responsibility nor equivalent performance of services. [Furthermore, n]o contract between counsel which is in conflict with controlling ethical standards should be recognized and enforced by the court".[5] ***Id***. at 665.

The fact that Stegeman and Falcon were partners does not remove this case from the ambit of ***P & E Boat Rentals***. Even though the partnership retained its juridical personality after the date

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> services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
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> (2) The client is advised of and does not object to the participation of all the lawyers involved; and
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> (3) The total fee is reasonable.

RPC 1.5(e); *see* ***P & E Boat Rentals***, 928 F.2d at 664. RPC 1.5(a) sets forth the factors to be used in determining the reasonableness of a fee, which were formerly found in CPR D.R. 2-106. *See* ***P & E Boat Rentals***, 928 F.2d at 664-65 n.4.

[5] Rule 1.5(e)(1) of the RPC modified the earlier CPR, which required division of fees based on the proportion of services rendered, to allow a written agreement apportioning fees on a basis other than proportion of services rendered, but only if by written agreement with the client in which each lawyer assumes joint responsibility for the representation.

of termination (March 13, 1990) for liquidation purposes, La. Civ. Code Ann. arts. 2834, 2835 (West 1990), McDonald discharged the partnership on March 23, 1990. In so doing, he dissolved his contract with the partnership. *See* ***Keys v. Mercy Hospital of New Orleans***, 537 So. 2d 1223, 1225 (La. Ct. App. 4th Cir. 1989) ("where a party to a contingency fee agreement discharges his attorney before the fee is earned the attorney's mandate is revoked, the contract is dissolved and *quantum meruit* provides the proper basis for recovery") (italics added); ***Scott v. Kemper Ins. Co.***, 377 So. 2d 66, 70 (La. 1979) ("an attorney can neither force his continued representation of a client who wishes to discharge him, nor obtain, by any means, a proprietary or ownership interest in the client's claim").

Based on ***P & E Boat Rentals***, the district court properly determined that (1) the fact that Stegeman and Falcon had been partners, whose relationship was governed by a written agreement, is relevant only for the purpose of allocating that portion of the contingent fee attributable to the efforts of the former partnership; (2) for all intents and purposes, the former partnership should be treated as a prior, unrelated counsel, discharged by its client, without cause; and (3) without a post-dissolution agreement or provision in the partnership agreement[6] providing otherwise, the partnership asset left for collection was

[6] Stegeman, who drafted the partnership agreement between him and Falcon, does not deny that the agreement is silent regarding the disposition of files and fees earned following the termination of the partnership.

its *quantum meruit* claim for its services rendered prior to the discharge. The former partnership thus was entitled to compensation on a *quantum meruit* basis for its services rendered to the date of discharge. *See* ***Hebert v. State Farm Ins. Co.***, 588 So. 2d 1150, 1152 (La. Ct. App. 1st Cir. 1991) ("[a]n attorney discharged by his client, unless discharged for cause, is entitled to payment for his services on a *quantum meruit* basis[; and when] the client subsequently retains another attorney, the fee should be apportioned according to the respective services and contributions of each attorney, as well as any other relevant factors") (italics added). The district court properly followed ***P & E Boat Rentals*** by apportioning the fee on a *quantum meruit* basis.

The district court acknowledged that agreements executed following the termination of the partnership and agreements containing fee-splitting arrangements between unrelated attorneys, or in a post-termination context, have been upheld by Louisiana courts.[7] The district court concluded correctly that apportionment

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[7] *See* ***Roy v. Gravel***, 570 So. 2d 1175, 1180-81 (La. Ct. App. 3d Cir. 1990) (post-dissolution agreement between former partners constituted a private settlement which governed fees earned following termination, because the partners expressly assumed handling of ongoing cases for the benefit of the former partnership and established an account for the former partnership into which fees were to be deposited), *writ denied*, 573 So. 2d 1118 (La. 1991); ***Scurto v. Siegrist***, 598 So. 2d 507, 509-10 (La. Ct. App. 1st Cir.) (fee-splitting provisions in joint representation agreement between unrelated attorneys upheld because the client consented to the arrangement and both attorneys assumed responsibility for handling the case), *writ denied*, 600 So. 2d 683 (La. 1992); ***Lawrence v. Wynne***, 598 So. 2d 1293, 1294-95 (La. Ct. App. 4th Cir.) (another fee splitting dispute between Falcon and Stegeman, in which a termination provision in an employment contract was upheld because the provision specified that the fee arrangement would not be altered by the contract's termination and the requisites of CPR

of the fee pursuant to the partnership agreement was improper because (1) the agreement did not contain a specific post-termination provision that the partnership's termination would not alter the fee-division arrangement set forth therein, and (2) such an allocation would violate RPC Rule 1.5, inasmuch as Stegeman had not performed, or assumed joint responsibility for, any of the work done on the McDonald file, nor had the client agreed to such an arrangement.[8]

III.

The judgment of the district court is

AFFIRMED.

Rule 1.5 were met), *writ denied*, 604 So. 2d 969 (La. 1992).

[8] Stegeman contends for the first time on appeal that we should reject the *quantum meruit* theory of fee apportionment and adopt a "no extra compensation" rule, whereby "fees earned after dissolution must be shared by the former partners according to their right to fees in the former partnership". Although this contention presents a purely legal issue, our refusal to consider it does not result in a miscarriage of justice, because the *quantum meruit* apportionment of the fee rewards the relative efforts of each attorney in accordance with the requirements of RPC Rule 1.5(e). *See* ***Lindsey***, 960 F.2d at 572.