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RECENT DEVELOPMENT

TYDINGS & ROSENBERG, LLP V. ZORZIT

By: Nicole Queri

A LAW FIRM THAT REPRESENTED THE “NONMONIED” SPOUSE HAD THE RIGHT TO INTERVENE IN A DOMESTIC RELATIONS CASE TO RECOVER ATTORNEY’S FEES EARNED WHEN THE PARTIES WERE NOT PROTECTING THE FIRM’S INTERESTS.

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RECENT DEVELOPMENT

TYDINGS & ROSENBERG, LLP V. ZORZIT: A LAW FIRM THAT REPRESENTED THE “NONMONIED” SPOUSE HAD THE RIGHT TO INTERVENE IN A DOMESTIC RELATIONS CASE TO RECOVER ATTORNEY’S FEES EARNED WHEN THE PARTIES WERE NOT PROTECTING THE FIRM’S INTERESTS.

By: Nicole Queri

The Court of Appeals of Maryland held that in a divorce proceeding, where a law firm had a substantial interest in the property at issue, the firm possessed the right to intervene to recover attorney’s fees. *Tydings & Rosenberg, LLP v. Zorzit*, 422 Md. 582, 583, 30 A.3d 984, 984 (2011). The court found that the law firm’s right to enforce its claim for attorney’s fees survived after the parties terminated representation, and that the lower court had power to rule in favor of the attorney. *Id.* at 584, 595, 30 A.3d at 985, 991. The court sought to protect both the “nonmonied” spouse, who could be disadvantaged by the wealthier spouse, and attorneys whose services were terminated prior to the litigation’s conclusion. *Id.* at 589-90, 594-95, 30 A.3d at 988, 990-91.

On February 23, 2009, Tydings & Rosenberg, LLP (“T & R”) filed a complaint on behalf of Julie Zorzit against John Zorzit, for divorce seeking numerous forms of monetary relief, including attorney’s fees. On August 4, 2010, T & R received a letter from Mr. Zorzit’s attorney, which stated that the parties were communicating without the assistance of counsel. The letter further requested a postponement for a court conference so the parties would have more time to reach an agreement. Upon learning of the terms in the proposed settlement, T & R filed a Motion to Intervene, claiming that the agreement between the parties was an effort to deprive T & R of payment for fees and costs and that the terms were unfair and unconscionable to Mrs. Zorzit. Under the terms of the proposed judgment, Mrs. Zorzit would not have assets available after the divorce, rendering her judgment-proof and unable to pay T & R for fees incurred on her behalf.

On August 20, 2010, the Circuit Court for Baltimore County denied T & R’s Motion to Intervene and entered a Judgment of Absolute Divorce that incorporated the settlement agreed upon by the parties, including a waiver of attorney’s fees contributions. On August 24, 2010, T & R filed a timely appeal to the Court of Special Appeals of

Maryland. Prior to any proceedings in the intermediate appellate court, the Court of Appeals of Maryland issued a writ of certiorari to address whether a law firm had the right to intervene in a domestic relations case to recover counsel fees that it earned while representing the “nonmonied” spouse.

The Court of Appeals of Maryland began its analysis by examining Maryland Rule 2-214, which governs an “outsider’s” right to intervene. *Zorzit*, 422 Md. at 588-89, 30 A.3d at 987 (citing MD. R.C.P. CIR. CT. 2-214). Upon timely motion, a person may intervene in an action when he or she has an unconditional right to intervene as a matter of law, or when the person claims an interest in the property that is the subject of the action and the litigating parties do not adequately represent that interest. *Zorzit*, 422 Md. at 588-89, 30 A.3d at 987 (citing MD. R.C.P. CIR. CT. 2-214(a)(1)-(2)). Additionally, a Maryland circuit court may award attorney’s fees directly to a party’s lawyer. *Zorzit*, 422 Md. at 592, 30 A.3d at 989 (citing MD. CODE ANN., FAM. LAW §§ 7-107(f)(West 2011)).

In its analysis, the court relied on Maryland precedent and looked to other jurisdictions for guidance. *Zorzit*, 422 Md. at 584, 30 A.3d at 985. In *Henriquez v. Henriquez*, the Court of Special Appeals of Maryland held that the statutory power authorizing a court to award counsel fees directly to the attorney could be triggered even if a fee agreement did not exist between the client and the attorney. *Zorzit*, 422 Md. at 584, 30 A.3d at 985 (citing *Henriquez v. Henriquez*, 185 Md. App. 465, 486, 971 A.2d 345, 358 (2009)). The court continued to elaborate on the property interest that allows a law firm to utilize Maryland’s intervention laws by examining *Gaines v. Dixie Carriers, Inc.*, a case involving a contingent fee agreement. *Zorzit*, 422 Md. at 589, 30 A.3d at 988 (citing *Gaines v. Dixie Carriers, Inc.*, 434 F.2d 52 (5th Cir. 1970)). In *Gaines*, the U.S. Court of Appeals for the Fifth Circuit held that after the plaintiff signed a contingent fee agreement and attempted to discharge his counsel, the law firm still had an interest in the property at issue. *Zorzit*, 422 Md. at 589-90, 30 A.3d at 988 (citing *Gaines*, 434 F.2d at 54). The decision recognized a law firm’s “identifiable interest” in funds that are the subject of litigation, because the firm earned legal fees through representation. *Zorzit*, 422 Md. at 589, 30 A.3d at 988 (citing *Gaines*, 434 F.2d at 54).

The court then proceeded to summarize the holdings of two cases from other jurisdictions with statutes similar to Maryland Rule 2-214. *Zorzit*, 422 Md. at 592-94, 30 A.3d at 989-90. In California, counsel may request a payment from a former client’s spouse if the client impliedly or expressly authorized such a request. *Id.* at 592, 30 A.3d

at 989 (citing *In re Marriage of Erickson & Simpson*, 46 Cal. Rptr. 3d 253, 253 (Cal. Ct. App. 2006)). In Florida, a former husband claimed that he did not owe his ex-wife attorney's fees. *Zorzit*, 422 Md. at 592, 30 A.3d at 989-90 (citing *Knott v. Knott*, 395 So. 2d 1196, 1198 (Fla. Dist. Ct. App. 1981)). However, the Florida court found that the attorneys had appropriate standing to enforce their claim. *Zorzit*, 422 Md. at 593, 30 A.3d at 990 (citing *Knott*, 395 So. 2d at 1197-99; FLA. STAT. § 61.16 (1979)). The court expressly stated that there was no principle of law to support not compensating an attorney after a party employed him, and that the party initiating the meritorious claim for divorce should be allocated suit money for such purpose. *Zorzit*, 422 Md. at 593-94, 30 A.3d at 990 (citing *Knott*, 395 So. 2d at 1198-99; *Hadlock v. Hadlock*, 137 So. 2d 873, 874 (Fla. Dist. Ct. App. 1962); *Kiddle v. Kiddle*, 133 N.W. 181, 182 (Neb. 1911)).

The court next addressed policy considerations, stating that courts may prevent disadvantages caused by drastic economic disparity between spouses seeking divorce. *Zorzit*, 422 Md. at 594-95, 30 A.3d at 991 (citing *Frankel v. Frankel*, 814 N.E.2d 37, 39 (N.Y. 2004)). In *Frankel v. Frankel*, the Court of Appeals of New York decided that an ex-wife's former counsel possessed standing to pursue the adversarial spouse for compensation. *Zorzit*, 422 Md. at 594, 30 A.3d at 990 (citing *Frankel*, 814 N.E.2d at 38). The New York court stated that efforts could be taken to eliminate economic disparity between parties to ensure that a wealthier spouse did not tip the scales of justice. *Zorzit*, 422 Md. at 594-95, 30 A.3d at 991 (citing *Frankel*, 814 N.E.2d at 39; *O'Shea v. O'Shea*, 711 N.E.2d 193, 195 (N.Y. 1999)). The court found this reasoning dispositive and stated that to conclude otherwise would result in less affluent spouses suffering the consequences of attorneys being unwilling to represent them if those attorneys would later be prohibited from petitioning a court for attorney's fees. *Zorzit*, 422 A.3d at 595, 30 A.3d at 991. Accordingly, the Court of Appeals of Maryland vacated the ruling of the trial court and remanded the case to the circuit court with directions to grant T & R's Motion to Intervene and resolve the claims within the motion. *Id.* at 595-96, 30 A.3d at 991-92.

In *Zorzit*, the Court of Appeals broadened protections for economically disadvantaged spouses in divorces by recognizing a lawyer's right to intervene for attorney's fees. Perhaps this case will lead to an increased use of dispute alternatives to litigation, such as arbitration and mediation, where attorney's fees are likely to be substantially less. The court also protected attorneys, ensuring their right to intervene in divorce cases, even if their services are terminated

before the end of the proceedings. In the past, a lawyer could be left unpaid after a divorce has rendered his client financially drained. Now, lawyers will be compensated for their services, even if parties attempt to manipulate divorce settlements to exclude payment of attorneys' fees. Compensation for attorneys is irrespective of terminating representation and Maryland practitioners should advise potential clients accordingly to avoid litigation.