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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Marriage of ANGEL
XIAO-PING WANG and
CHARLES HONGKUANG HSU.

B291530

Los Angeles County
Super. Ct. No. GD060160

ANGEL XIAO-PING WANG,

Plaintiff and Respondent,

v.

CHARLES HONGKUANG HSU,

Defendant;

CARITAS CHRISTIAN CHURCH,

Claimant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Theresa M. Traber, Judge. Affirmed.

Nonprofit Legal Services, Inc. and Adam Dolce for
Claimant and Appellant.

Edward C. Ip & Associates and Edward C. Ip for Plaintiff
and Respondent.

INTRODUCTION

Third party claimant Caritas Christian Church (Caritas) appeals from the trial court's order denying its motion to disqualify counsel for Angel Xiao-Ping Wang. Wang is the petitioner in the underlying dissolution case against her husband Charles Hongkuang Hsu. Wang joined Caritas in the divorce case after she learned her postfiling transfer of real property to Caritas in exchange for its promise to support her financially was "seriously problematic." After the transfer, but before the joinder, a pastor for Caritas accompanied Wang to two meetings with an attorney to retain the law firm to represent Wang in her divorce. Caritas paid the law firm's consultation fee and retainer on behalf of Wang. After Wang filed the joinder complaint against Caritas, it moved to disqualify Wang's counsel. The trial court denied the motion, rejecting Caritas's contentions that the law firm and Caritas had an attorney-client relationship, Caritas had an expectation of confidentiality with the law firm, even if it was not a client, and the attorney would be a necessary witness for Caritas's defense at trial. We find no abuse of discretion and affirm the trial court's order.

FACTS AND PROCEDURAL BACKGROUND

1. *Initiation of divorce and real property transfer*

Wang filed a petition for dissolution against Hsu in August 2016. In September 2016, Hsu filed a response to the petition, claiming a community property interest in real property located in Temple City (the Property), and recorded a Notice of Pending

Action (Lis Pendens) on the Property. The summons issued with the petition also temporarily restrained the parties from transferring property without written consent of the other party (TRO).

Wang owned the Property before her marriage to Hsu, but mortgage payments and capital improvements were made with community property funds during the marriage. About eight months before she filed for divorce, Wang transferred half of the Property to her daughter. Wang lives with her daughter at the Property.

Wang, who had attended a different church with her husband, began to attend services at Caritas after she filed for divorce. In November 2016, Wang agreed to donate the Property to Caritas,¹ and it agreed to assume the mortgage and pay Wang's living expenses until her death. Wang, her daughter, and Caritas, through its Chief Pastor James Yang (who has known Wang for years) and Witnessing Pastor Michael Ma, signed a written agreement to this effect prepared on Thomas Business Law Group P.C. (Thomas Firm) stationery.² Wang alleged Caritas told her the agreement had been prepared by an attorney and, according to the attorney, she could transfer

¹ During their marriage, Wang and Hsu had used the Property "for church service" and had considered donating it to their church.

² Ma declared Caritas and Wang "jointly retained" the services of the Thomas Firm to help them prepare the documents to transfer the Property to Caritas. Wang declared she never spoke with an attorney at the Thomas Firm before December 8, 2016.

the Property to Caritas while her divorce was pending. On December 9, 2016, Wang and her daughter quitclaimed the Property to Caritas, as a “[b]onafide gift.”

On January 9, 2017, the trial court heard Hsu’s request for spousal support, attorney fees, and an order appointing a forensic accountant and appraiser for the Property. During the hearing, Hsu’s counsel disclosed he had learned Wang and her daughter had transferred the Property, where they still lived, to Caritas in December 2016. The Thomas Firm represented Wang at the hearing.³ Counsel mentioned Wang and her husband had discussed giving the Property to their church in exchange for the ability to live there. Wang also told the court that she and Hsu had proposed donating the Property to the church 14 years earlier. Counsel explained to the court, “the quitclaim was done to [Caritas] in December, and it was done about two days after I was hired, and I was not consulted about it.”

The court expressed concern about the transaction, describing it as “seriously problematic.” The court did not make a finding at that time about whether Wang had acted in good faith. Among other orders, the court ordered Wang to pay Hsu temporary spousal support of \$1,611 per month, based in part on Caritas’s support payments to Wang, subject to any future motions for modification. Caritas paid Hsu the \$1,611 court-ordered monthly spousal support from January through May 2017. Wang and her daughter paid Caritas \$6,000 during 2017 as rent for the Property.

³ Ma referred Wang to the Thomas Firm in anticipation of the January 2017 hearing. Caritas paid the attorney’s fee.

2. *Events leading to motion to disqualify*

The Thomas Firm stopped working on Wang's case in March 2017 and moved to be relieved as counsel in May 2017 for nonpayment of fees. Caritas had stopped paying the firm's fees in January 2017. Seeking a new attorney, in late April 2017, Wang attended a national law day event where she met Jenny Zhao, an attorney with the law firm that is the subject of Caritas's motion (the Firm). On May 5, 2017, Ma went with Wang to a meeting she had arranged with Zhao. Wang discussed the January 2017 spousal support order with Zhao, and whether the Firm would be interested in representing her. Caritas paid the Firm \$250 on behalf of Wang for this initial consultation. Ma executed the check, and Zhao "helped" him to note, "legal consultation fee" on the check.

Ma again went with Wang to her next meeting with Zhao on May 12, 2017. Zhao and Wang discussed modifying the spousal support order. Zhao also reviewed Wang's documents, including the Lis Pendens and the TRO. She explained to Wang that those documents prevented any party from transferring the Property without the other's consent or a court order. Wang asked if the restrictions applied to donations of property, and Zhao confirmed they did. At the meeting, Ma executed a \$5,000 check from Caritas to pay the Firm's retainer on behalf of Wang. Wang told Zhao the fees were a loan. Zhao wrote "Loan to Angel Wang for legal fee" on the check with Ma's and Wang's consent.⁴

⁴ Ma declared he did not write the notation on the check and "suspect[ed]" the Firm did. Wang's late-filed opposition papers included Yang's declaration from a different hearing. The declaration includes a table of payments Caritas made for Wang's "cost of living expenses." The table describes the

Wang and Zhao also signed the Firm's Legal Service Agreement (representation agreement). Ma did not sign the representation agreement; it identifies only Wang as the Firm's client. The Firm did not have a practice of advising joint clients, but then having only one of them sign the representation agreement.⁵

After the May 12, 2017 meeting, the Firm learned Wang already had transferred the Property to Caritas in December. Wang had informed Zhao after learning Yang intended to use the Property as collateral for a loan. Zhao called Ma at the end of May and told him not to seek a loan against the Property. Zhao also emailed Yang on June 6, 2017, to notify him formally of the Lis Pendens on the Property and warn him that if Caritas encumbered the Property, Caritas and its members could face liability.

In July 2017, on behalf of Caritas, Ma and another church member approached Wang about settling the case. They had documents for Wang to sign, but she told them to contact Zhao. Zhao emailed Yang about the settlement, and he replied on July 18, 2017. Yang explained Caritas had contacted Hsu

payments to the Firm as "Angel Wang's Legal Consultation Fee in divorce action" and "legal fee for Angel Wang in divorce action."

⁵ Ma declared he discussed Caritas's role in the matter and its interest in the Property with Zhao. He believed the Firm would be working for the benefit of Wang and Caritas. Zhao declared Ma made no representation that he attended the meeting with Wang to discuss issues concerning Caritas. She declared she told Ma that Wang was the Firm's client regardless of who paid the Firm's fee.

directly, and Hsu had agreed to settle the divorce case with Wang for \$100,000 in spousal support. Yang asked Zhao to prepare the divorce settlement agreement. Yang also sent documents: (a) an affidavit dated July 12, 2017, purportedly prepared by Wang and her daughter, that states they entered the donation agreement freely, understood Caritas wanted to sell the Property, and had no objection to its sale; and (b) an unsigned July 12, 2017 “Guarantee Letter for Providing Gratitude” from Caritas that explains it will disburse the proceeds from any sale of the Property to pay Hsu the \$100,000, and to make a down payment on a home for Wang, among other things.

On July 19, 2017, Zhao responded and requested additional documents from Yang to evaluate Caritas’s proposal and to determine if it was enforceable.⁶ Another email exchange ensued between Zhao and Yang around August 2017 when Zhao attempted to arrange a meeting with Caritas’s representatives, Hsu, and Wang to discuss Caritas’s proposed settlement. After Yang did not provide the documents and Caritas contacted Wang without involving Zhao, on August 17, 2017, Zhao emailed Yang to tell him the matter would move forward.

In the meantime, on August 7, 2017, Wang filed her own *Lis Pendens* on the Property. And, on August 8, 2017, the court heard Wang’s request to terminate or modify its January 2017

⁶ Zhao asked for documents establishing Yang was legally authorized to act for the Church, establishing Caritas’s written agreement with Hsu to settle with Caritas to resolve the divorce litigation, and demonstrating Caritas had sufficient funds or collateral to enforce the proposed guarantee, among others.

spousal support order.⁷ The court reduced the previously ordered spousal support to zero due to changed circumstances and, by stipulation of the parties, ordered Wang's counsel to join Caritas. On August 14, 2017, Wang filed a complaint in joinder against Caritas, Ma, Yang, and others for intentional misrepresentation, unlawful conveyance, and declaratory relief.⁸

3. *Motion to disqualify the Firm*

After further proceedings, on February 22, 2018, Caritas filed a motion to disqualify the Firm and its individual attorneys from representing Wang in the matter. Caritas supported its motion with declarations from Ma and Yang and other documentary evidence. Wang did not file her opposition or responsive declarations from Zhao and herself until June 5, 2018, just before the continued June 8, 2018 hearing on Caritas's motion.

At the hearing, the court noted it had not seen Wang's opposition and responsive declarations. Based on the moving papers, supporting declarations and evidence, and the court's own research, the court tentatively denied Caritas's motion and explained its reasoning.

⁷ At this hearing, Hsu apparently gave Zhao and Wang a July 27, 2017 letter signed by Yang, with a signature line for Hsu, that states Hsu agreed to settle his divorce with Wang for \$100,000, to be paid by Caritas from Wang's donation of the Property to it.

⁸ In September 2017, Wang filed a verified first amended complaint in joinder for intentional misrepresentation, fraudulent transfer, declaratory and injunctive relief, and to quiet title. We refer to both complaints as the "joinder complaint."

It first concluded Caritas had not formed an attorney-client relationship with the Firm. The court found the purpose of the May 5 and May 12, 2017 meetings, “even from the words of the claimant [Caritas], was to set up an attorney-client relationship between” Wang and the Firm.

The court found the representation agreement did not support Caritas’s contention. It found the provisions concerning “joint representation” to be “boilerplate” and inapplicable. The representation agreement “quite clearly states that the agreement is between the Firm and Ms. Wang as the client. It does not mention any other parties as a party to the agreement. It does not require anyone else’s signature.” The court noted Caritas not only was not mentioned in the representation agreement, but also it never signed a conflict waiver and consent—the condition required for the Firm to represent joint clients under the agreement’s terms.⁹

Finally, the court concluded the emails Zhao sent Yang did not show Zhao was acting as an attorney for Caritas or

⁹ The provisions the trial court found “to be boilerplate that are only applicable in the event that that condition is met” include a section entitled “Joint Representation” that states, “In the event when Clients consist[] of more than one person or entity, (i) as a condition to the Firm representing any of the Clients, each of the Clients must execute and deliver to the Firm a Conflict Waiver and Consent attached hereto and incorporated herein by reference” The second provision is entitled “Conflicts” and provides, “Since this is a joint representation, you must agree to waive any potential conflict of interest among you. . . . [¶] In a joint representation, we cannot become involved with investigating, settling or litigating disputes among our Clients. . . .” We concur with the trial court’s assessment.

its members. The court noted Zhao always referred to Wang as “my client.” It described the first email to Yang as “not the kind of communication that one has with their client.” The court explained, “It’s not legal advice. It’s not friendly. It’s a notice not to do something because of the legal implications.” The court interpreted the other emails as Zhao responding to Caritas’s “proposal that [Wang] sign off on a settlement that [Caritas] had attempted to negotiate with [Hsu] without involving Wang,” and requesting documents to evaluate that proposal.

The court also rejected Caritas’s contention that it had engaged in protected, nonclient confidential communications with the Firm. The court reasoned Caritas did not have a confidential or fiduciary relationship with either Wang or the Firm that would give rise to Caritas’s ability to disqualify the Firm. And, the court dismissed as unsupported by the Rules of Professional Conduct Caritas’s third argument that the Firm was required to notify Caritas as a third party payor that it was not a client.

At the hearing, Caritas’s counsel argued the Firm also must be disqualified because Zhao was a necessary witness to the litigation based on her late-filed declaration. Caritas’s counsel said he would question Zhao at trial to establish she had discussions with Ma about the Property and knew that was why Caritas paid the Firm’s retainer. The court concluded Zhao was not a necessary witness to any material facts, but at the time of trial the court would revisit the issue if the parties raised it. The court stated Zhao’s testimony likely would not be needed “even at that stage of the proceeding.” The court adopted its tentative decision to deny the motion, adding there was no proof Zhao had to be disqualified as a witness in this case.

Caritas filed a timely notice of appeal.¹⁰

DISCUSSION

Caritas contends the trial court should have granted its motion to disqualify the Firm from representing Wang because either Caritas was the Firm's current or former client, or as a nonclient, Caritas had an expectation of confidentiality from the Firm. Caritas also argues that, regardless of its client or nonclient status, the Firm was subject to disqualification because its attorney Zhao is a material witness.

1. *Standard of review*

"Generally, a trial court's decision on a disqualification motion is reviewed for abuse of discretion. [Citations.] If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence. [Citations.] When substantial evidence supports the trial court's factual findings, the appellate court reviews the conclusions based on those findings for abuse of discretion. [Citation.] . . . [W]here there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law. [Citation.]" (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143-1144 (*Speedee Oil*)).

"In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence

¹⁰ Although Caritas's counsel represents Caritas and all but one of the individually named third party claimants, it appears that Caritas alone moved to disqualify the Firm. In any event, only Caritas filed a notice of appeal from the order denying the motion to disqualify.

unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact.’ . . . We presume the trial court found for the prevailing party on all disputed factual issues.” (*City National Bank v. Adams* (2002) 96 Cal.App.4th 315, 322-323.) We also presume the order of the lower court is correct and “all intendments and presumptions are indulged to support it on matters as to which the record is silent.” (*H. F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445, 1451.)

2. *The evidence supports the court’s finding that Caritas was not a joint client of the Firm*

Caritas first contends the trial court erred when it did not find Caritas to be a client of the Firm. Caritas concedes the court’s reading of the joint representation provisions in the representation agreement was fair. We agree with the trial court—and Caritas’s apparent concession—that the representation agreement does not establish an attorney-client relationship between the Firm and Caritas. The agreement never mentioned Caritas, was signed by Wang only, did not have a space for Caritas to sign, and—as Caritas concedes—the condition for joint representation never occurred.

Caritas nevertheless contends the circumstances and other evidence it presented established it was a client of the Firm. An attorney-client relationship can be created through an implied contract. (*Shen v. Miller* (2012) 212 Cal.App.4th 48, 57.) A party, however, “cannot unilaterally establish an attorney-client relationship, and its hindsight ‘beliefs’ that such a relationship existed are thus legally irrelevant. [Citation.] Instead, it is the intent and conduct of the parties that controls the question as to whether an attorney-client relationship has been created.”

(*Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1010 (*Zenith*).)

Caritas contends it was the Firm's client based on the Evidence Code's definition that a client includes one who "consults a lawyer for the purpose of retaining the lawyer *or* securing legal service or advice from him in his professional capacity." (Evid. Code, § 951, italics added.) Our Supreme Court has held that the giving of legal advice by an attorney to one who sought it is prima facie evidence of an attorney-client relationship. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 811.) Caritas argues its communications with Zhao, along with its payment of the Firm's fees—\$5,250 in total—demonstrate it sought and was given legal advice. The payment of fees alone does not establish an attorney-client relationship, however. (*Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 Cal.App.4th 1399, 1404 (*Strasbourger*).) The declarations from Caritas's own representatives support the trial court's finding that the purpose of Ma's presence at the two meetings with Zhao "was to set up an attorney-client relationship between [Wang] and [the Firm]," rebutting any possible inference of an attorney-client relationship arising from Caritas's payment of the Firm's fees.

As the court noted, Caritas, through Ma, acknowledged it paid the Firm *to represent Wang*. Ma declared, "I was there because Caritas had agreed to take care of [Wang's] cost-of-living, including her attorney bills and costs associated with this Action (before joinder)." Ma therefore admitted he attended the meetings with Zhao to facilitate Wang's retention of the Firm. Yang confirmed Ma was authorized to pay the Firm's fees "pursuant to a prior understanding between Caritas and [Wang]."

He also declared that Ma and Wang met with Zhao to retain the Firm’s services “to complete and finalize [Wang’s] dissolution action.” And, the joint representation agreement itself confirms Wang—not Caritas—was the Firm’s client. The court thus reasonably concluded Ma’s intent was not to secure joint representation for Wang and Caritas, but to help Wang retain an attorney and fulfill Caritas’s obligation to her.

Caritas argues it believed its interests were aligned with Wang’s when Ma and Yang communicated with Zhao. That subjective belief alone cannot form an attorney-client relationship between Caritas and the Firm, however.¹¹ (*Zenith, supra*, 148 Cal.App.4th at p. 1010 [“California law is settled that a client’s subjective belief that an attorney-client relationship exists, standing alone, cannot create such a relationship, or a duty of care owed by the attorney to that plaintiff.”].) Ma declared he attended the meetings also “to explain what Caritas’[s] interest was in the underlying Action—namely, its interest in the [Property]”; and discussed with Zhao “the history involved with the Donation Agreement . . . , as well as Caritas’[s] then ownership-interest in the . . . Property.” But these statements do not compel a finding that Ma sought the Firm’s *legal advice* on Caritas’s interest in the Property. As the court said, any discussion Ma had with Zhao about the donation agreement and Caritas’s interest in the Property was merely a disclosure

¹¹ Although the court stated it did not receive Wang’s opposition and supporting declarations, we note Zhao declared she told Ma the Firm represented only Wang.

of information—Ma “wasn’t there to get advice himself, and he wasn’t there to secure an attorney for himself or the church.”¹²

Nor do Zhao’s emails to Yang support the creation of an implied attorney-client relationship. As the court found, the emails do not purport to give Caritas legal advice. The court reasonably read the emails as providing Caritas with notice of potential legal consequences should it or its members encumber or transfer the Property and warning them not to do so.

As the court noted, Zhao’s June 6, 2017 email to Yang is entitled, “Notice of Pendency of Action, In re Marriage of Wang v. Hsu.” It begins, “Dear Mr. Yang: [¶] I represent Angel Wang in the above matter. This email is sent to you *to put you on notice* for [sic] the filed notice of pending action . . . on the [Property], which you intended to use to borrow \$720,000 from a private lender” (Italics added.) The email goes on to state Wang’s transfer of the Property to Caritas is invalid and to explain Caritas does not have the legal authority to dispose of the Property. Zhao then warns Yang that if he, or “any member of the Church, disregard[s] the notice of pendency of action, and obtain[s] any loan against the . . . Property, you or any member of the Church would be personally liable for any damages claimed by [Hsu].” Zhao also informs Yang that at the end of May she “advised [Ma] . . . not to seek a loan against the . . . Property.” Finally, she asks Yang to stop any loan application and again warns him: “Otherwise, not only the Church and its member would be liable to [Hsu], the private lender who was not aware of the *lis pendens* will also [sic] claim

¹² And, as we will discuss, there is no evidence Caritas divulged confidential information to the Firm.

against the Church and its member for fraud and non-disclosure of material information.”

Caritas argues Zhao’s email provides legal advice and demonstrates her concern about its potential liability. We are not persuaded. We agree with the trial court’s reading—this is not a friendly email. Zhao clearly identifies herself as Wang’s attorney and warns Yang of the legal implications of encumbering the Property to get him to stop his actions, not to counsel him. Nor does Zhao’s call to Ma to “advise[] him” not to take a loan out on the Property constitute legal advice. As the joinder complaint alleges and Wang and Zhao declared, Zhao called Ma to stop the loan process after she learned about it from her client, Wang.

The court also reasonably could conclude that Zhao’s further email exchanges with Yang about Caritas’s proposed settlement with Hsu do not constitute legal advice. Zhao clearly is responding to overtures Caritas had made directly to Hsu, without involving Wang until after the fact, about settling the divorce case with Wang. Zhao again refers to Wang as “my client” and asks Yang to contact her about any documents he wants Wang to sign. Caritas seems to contend Zhao took advantage of its belief that its interests were aligned with Wang by requesting “a plethora of documents that had little bearing on the proposed settlement with [Hsu].” But the emails demonstrate Zhao asked Yang for documents in the context of evaluating Caritas’s proposed settlement agreement for her client. Nothing in the emails suggests Zhao asked Yang for Caritas’s documents to provide Yang or Caritas advice or to look out for (or take advantage of) Caritas’s interests.

Substantial evidence supports the trial court's finding Caritas's payments to and communications with the Firm did not create an attorney-client relationship.

3. *The court properly found Caritas did not have an expectation of confidentiality*

Caritas also contends that, even if not a client, it had an expectation of confidentiality in its dealings with the Firm requiring the Firm's disqualification. Caritas argues the court had no basis to find Caritas lacked standing to disqualify the Firm when Caritas, believing its interests were aligned with Wang's, paid the Firm's fees and openly discussed settlement strategy with Zhao.

A party moving to disqualify an attorney must have "an invasion of a legally protected interest," in other words, "standing." (*Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356.) Generally, that requires the moving party to have or have had an attorney-client relationship with the attorney subject to disqualification. (*Ibid.*) In limited circumstances, however, a party may have standing to disqualify an attorney based on "a breach of the duty of confidentiality owed to the complaining party, regardless of whether a lawyer-client relationship existed." (*DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 832.) "Thus, some sort of confidential or fiduciary relationship must exist or have existed before a party may disqualify an attorney predicated on the actual or potential disclosure of confidential information." (*Great Lakes*, at p. 1356.) The moving party bears the burden to establish such a "confidential nonclient relationship." (*Lynn v. George* (2017) 15 Cal.App.5th 630, 638.)

The court did not err. Caritas did not meet its burden to establish a confidential nonclient relationship. First, as the trial court explained, there was no agency or fiduciary relationship between Wang and Caritas so that Caritas should have expected the Firm to maintain Caritas's confidences, if any, learned through its representation of Wang. Second, nothing in Caritas's supporting declarations or exhibits reveals it had an expectation of confidentiality or disclosed confidential information to Zhao to give rise to a fiduciary or confidential duty on the Firm's part.

Caritas makes much of the fact it paid Wang's initial attorney fees, which it asserts now are funding Wang's litigation against it. At the hearing on the motion, Caritas argued its payment of the Firm's fees under the circumstances establishes "a fiduciary obligation, or at least it creates the aura of [a] fiduciary obligation." But, as we discussed—and the trial court recognized—Caritas paid those fees under an agreement with Wang, not in anticipation of retaining the Firm to protect its own interests. Caritas emphasizes the court's statement during the hearing that the Firm mistook the retainer payment as a check from Wang or a gift, and asserts it had no basis to make that finding. But, the court made clear that whether "a loan or a gift, . . . an obligation or something else, it's as between the Church and Ms. Wang." Thus, because the communications with Zhao and the payment of the Firm's fees "were all to obtain a relationship between the [Firm] and Ms. Wang for her benefit in the lawsuit," the nature of the payment is irrelevant.

Moreover, the Firm's fiduciary duty was to Wang, its client, not Caritas, a third party payor. In response to Caritas's argument that the Firm was required to give it notice that as a third party payor it had no client standing, the trial court

noted former rule 3-310(F) of the Rules of Professional Conduct¹³ requires attorneys who accept payment from someone other than their client to exercise their independent judgment on behalf of *the client*, without interference from or regard to who pays their bills. That is exactly what happened here. As the court said, that “the funds that were advanced ultimately resulted in a motion for joinder against the Church is *consistent* with the attorney’s professional responsibility to her client in representing her interests zealously and disregarding who paid the retainer.” (Italics added.)¹⁴

Nor do Caritas’s proffered communications with Zhao establish a confidential nonclient relationship. As we have discussed, Ma’s purported discussion with Zhao about the history of the donation agreement and Caritas’s interest in the Property was the disclosure of information—it did not “give rise to any kind of protection.” Ma’s declaration does not establish he revealed *confidential* information to the Firm. Any potential, material information he may have disclosed to Zhao, Wang of course already knew. She thus could reveal the same information Caritas purportedly did to any attorney she may hire. (*Strasbourger, supra*, 69 Cal.App.4th at pp. 1410-1411 [adverse party’s confidential information disclosed to attorney by attorney’s own client cannot form the basis for disqualification].)

¹³ Rule 1.8.6 replaced former rule 3-310(F), effective November 1, 2018. It is substantially similar to the former rule.

¹⁴ And, the attorney must give notice to and obtain consent from the client, not the third party payor, as Caritas seemed to suggest to the trial court. (Rules Prof. Conduct, former rule 3-310(F)(3), current rule 1.8.6(c).)

Nor is there any evidence that Ma revealed confidential information to anyone at the Firm outside of Wang's presence. (Cf. *SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1148 [attorney represents a client for disqualification purposes when "attorney knowingly obtains material confidential information from a client and renders legal advice or services as a result"].)

Similarly, Yang's discussion with Zhao about the proposed settlement did not establish a confidential or fiduciary relationship between Caritas and the Firm. As we have said, the record reflects Caritas approached Hsu with the settlement proposal first and then attempted to obtain Wang's approval. The proposed settlement documents Yang transmitted to and discussed with Zhao thus were not confidential. Moreover, Caritas had no expectation of confidentiality arising from Yang's email communications with Zhao. She made clear she was evaluating the settlement proposal on behalf of Wang. She requested the additional financial and other documents in that vein. In any event, Yang never provided those additional documents.

Based on the record, there is no risk that the Firm has obtained confidential information it can use unfairly to advantage Wang against Caritas. (*Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1205 (*Kennedy*) [disqualification may be considered where attorney has acquired confidential information about adverse party through prior relationship].) The facts here are thus distinguishable from *Kennedy*, relied on by Caritas. There, a mother successfully disqualified her child's paternal grandfather from representing his son in a custody dispute with the mother over his grandchild. The paternal grandfather's firm previously represented the mother's father in his dispute for

custody of mother. (*Id.* at pp. 1200-1202.) Thus, the paternal grandfather could have obtained confidential information about the mother through that earlier representation that he otherwise would not have learned from his client, his son. (*Id.* at pp. 1205, 1207.) In direct contrast, any information the Firm may have obtained from Ma or Yang, it already had learned or could learn from Wang.

Moreover, the fitness of the paternal grandfather's own household was an issue in the custody dispute, making it a "virtual certainty" that he would be needed to testify. (*Kennedy, supra*, 201 Cal.App.4th at p. 1209.) The attorney thus would "not only provide important testimony affecting the outcome, but actually represent his son in an adversarial role against the mother of his grandson." (*Id.* at p. 1211.) As we discuss below, Caritas did not demonstrate Zhao is a necessary witness to its defense.

We thus cannot find, as Caritas would have us, that the Firm's representation of Wang against Caritas "undermine[s] the integrity of the judicial process," such that Wang's right to counsel of her choice should yield. (*Kennedy, supra*, 201 Cal.App.4th at p. 1205; *Strasbourgger, supra*, 69 Cal.App.4th at p. 1403.) The relationships among the Firm, Wang, and Caritas, although perhaps not ideal, come nowhere close to raising what the Court of Appeal described in *Kennedy* as "an awkward spectacle, where the lines between attorneys, relatives, and litigants become blurred and confused." (*Kennedy*, at p. 1212.)

On this record, we cannot conclude the court had "no reasonable basis for its action." (*City National Bank v. Adams, supra*, 96 Cal.App.4th at p. 323.) Substantial evidence supports

the court's finding disqualification of the Firm was not warranted, and it did not abuse its discretion in refusing to do so.

4. *The court did not abuse its discretion when it did not disqualify Zhao and the Firm as a material witness*

Finally, substantial evidence supports the court's finding that Zhao was not a necessary witness requiring the Firm's disqualification under former rule 5-210 of the Rules of Professional Conduct.¹⁵ Caritas did not establish that it needed Zhao to testify about her communications with Ma in May 2017 to defend against Wang's allegation that she entered the donation agreement and transferred the Property to Caritas as a result of its alleged misrepresentations. As Zhao explained at the hearing, those fraud allegations relate to Caritas's conduct in late 2016, long before Ma and Wang met with Zhao. Caritas's counsel made an offer of proof to the trial court of what he would ask Zhao: "You had discussions with my client about the Property. That's why he was there at your initial consultation. That's why he paid the retainer fee; isn't that correct?" We agree that Caritas did

¹⁵ Former rule 5-210 prohibits an attorney from acting as an advocate where the attorney "knows or should know that he or she ought to be called as a witness" except in certain circumstances or where the client has provided informed, written consent. (Rules Prof. Conduct, former rule 5-210 & Discussion (eff. Sept. 14, 1992 to Oct. 31, 2018).) Current rule 3.7, effective November 1, 2018, is similar, but applies in all trials. The Comment notes that even with client consent, "courts retain discretion to take action, up to and including disqualification of a lawyer who seeks to both testify and serve as an advocate, to protect the trier of fact from being misled or the opposing party from being prejudiced." (Rules Prof. Conduct, rule 3.7 & comment 3.)

not present any facts to which “Ms. Zhao would have to testify” for Caritas to defend the joinder complaint.

In its brief, Caritas also contends Zhao is a material witness to Wang’s allegation that Caritas falsified a settlement offer from Wang to Hsu. The joinder complaint alleges Caritas presented Hsu with a document it created, without Wang’s knowledge, purporting to be an offer from Wang to pay Hsu \$100,000 to settle their divorce litigation. In its brief, Caritas spends many paragraphs explaining how the evidence, including the emails between Yang and Zhao, contradicts this allegation. Caritas never made an offer of proof to the trial court as to how Zhao’s testimony about those emails is needed to establish a material fact, nor has it established on appeal that her testimony will be *necessary* for its defense.¹⁶

In any event, the court expressly left open Caritas’s ability to revisit this issue at the time of trial. Thus, even if it becomes necessary for Zhao to testify in Caritas’s defense, Caritas is not prejudiced by the court’s denial of its motion.

¹⁶ Caritas seems to contend there was no concealment because it discussed the settlement with Wang and Zhao and Zhao obtained the documents. That Caritas did so, however, does not negate the allegations that it first purported to settle with Hsu as if Wang had approved the deal.

DISPOSITION

The trial court's order denying appellant's motion to disqualify respondent's counsel is affirmed. Respondent shall recover her costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.