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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CHAD BIGGINS,

Plaintiff and Respondent,

v.

MICHAEL K. NEWLEE,

Defendant and Appellant.

2d Civil No. B254897
(Super. Ct. No. CIV242460)
(Ventura County)

This is a dispute between two attorneys over the division of fees. In the first appeal we reversed the judgment in part and affirmed in all other respects. (*Biggins v. Madison* (Nov. 2011, B217945) [nonpub. opn.]; hereafter *Biggins I.*) On remand, one of the attorneys convinced the trial court that the portion of the judgment we affirmed should be modified to change a judgment against the attorney to a judgment against the attorney's former client. The court so modified the judgment even though the former client was not a party to the cause of action that gave rise to the judgment.

Obviously, we reverse. The trial court lacks jurisdiction to modify a judgment we affirmed.

FACTS

Attorneys Chad Biggins and Michael K. Newlee represented Jeffrey L. Madison in an action against a manufacturer to recover sales commissions. Madison agreed to pay as attorney fees 40 percent of any recovery. But there was no enforceable agreement for a division of the fees between the attorneys.

Eventually, the manufacturer agreed to pay \$775,000 in settlement of the action, 40 percent of which is \$310,000. This precipitated a dispute over the division of the fees between Biggins on one side and Madison and Newlee on the other. Biggins sued Madison and Newlee for breach of contract, quantum meruit and interference with contract. Newlee cross-complained against Biggins for quantum meruit.

Prior to trial, the court ordered Biggins, who had possession of the settlement check, to distribute 60 percent of the proceeds to Madison. Of the remaining 40 percent, the court ordered Biggins to distribute \$50,000 to himself and \$25,000 to Newlee. The court ordered Biggins to place the \$235,000 balance in a blocked interest-bearing bank account.

The case was tried to a jury. The jury found: (1) Madison breached his contract with Biggins and awarded \$26,689.11 in damages; (2) the reasonable value of Biggins' services is \$232,500 and Newlee's services \$77,500; (3) Newlee interfered with Biggins' contract with Madison and awarded Biggins \$100,000 against Newlee.

On April 30, 2009, the trial court entered judgment as follows: Biggins against Madison in the amount of \$259,189.11 plus costs, and Biggins against Newlee in the amount of \$22,500. The \$22,500 judgment was calculated by reducing the \$100,000 judgment awarded to Biggins against Newlee by the \$77,500 awarded to Newlee against Biggins.

After the judgment was entered, the trial court released the entire \$235,000 in the blocked account to Biggins. Both Newlee and Biggins appealed. In *Biggins I*, we reversed the \$100,000 award against Newlee for interference with contract on the ground that Newlee's actions were privileged. In all other respects we affirmed the judgment and awarded Newlee costs on appeal.

On remand, Newlee proposed the following judgment: Judgment for Biggins against Madison in the amount of \$26,689.11 for breach of contract and \$232,500 for attorney fees. Judgment for Newlee against Biggins in the amount of \$77,500, plus interest of \$38,152.55 and costs of \$27,242.37 on the action in quantum meruit, plus costs to Newlee for prevailing in Biggins' action against Newlee.

Over Biggins's objection, the trial court entered judgment as proposed by Newlee.

Thereafter, Biggins made an ex parte motion to amend the judgment. He argued that because Newlee worked for Madison, Newlee should recover his fees from Madison. Biggins purported to show mathematically why Newlee's judgment against Biggins would deprive Biggins of the full amount of the fees awarded by the jury's verdict.

Apparently convinced by Biggins' argument, the trial court amended the judgment to award Newlee judgment against Madison, instead of Biggins, in the amount of \$52,500. The amount was calculated by reducing the \$77,500 awarded by the jury, by the \$25,000 Newlee received before trial.

DISCUSSION

I.

Newlee contends the trial court erred in amending the judgment on his cross-complaint by substituting Madison for Biggins as the party against whom the judgment is rendered.

In *Biggins I*, we reversed the \$100,000 judgment in favor of Biggins and affirmed the \$77,500 judgment in favor of Newlee. All the trial court was required to do on remand was remove the judgment in favor of Biggins against Newlee and enter judgment for Newlee against Biggins in the amount of \$77,500.

An unqualified affirmance sustains the judgment and ends the litigation. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 853, p. 916.) The trial court cannot modify the judgment, and further proceedings are improper. (*Ibid.*) A trial court's modification of a judgment after affirmance is void. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.)

We have no quarrel if the trial court wishes to state the amount of the judgment as \$52,500 instead of \$77,500 to take into account the \$25,000 Newlee acknowledges receiving prior to trial. The change is merely formal. But we cannot imagine a more substantive change than substituting one judgment debtor for another. The change constitutes an abrogation of the original judgment and entry of a new and different judgment. That is inappropriate when the original judgment was affirmed. The inappropriateness becomes even more pronounced when the change results in a judgment being entered against a person who was not a party to the cause of action.

To add to the confusion, Biggins argues Newlee has no standing to appeal. Biggins relies on the rule that a party is not aggrieved by a decision which is most favorable to him under the facts of the case. (Citing *Cline v. Cline* (1935) 4 Cal.App.2d 626.) Biggins claims Newlee has a favorable judgment against Madison.

But Newlee's judgment against Madison is void. (*Griset v. Fair Political Practices Com.*, *supra*, 25 Cal.4th at p. 701.) Newlee is entitled to the judgment against Biggins that we affirmed.

We must reverse to reinstate the judgment against Biggins.

II.

Even if we had not affirmed the judgment against Biggins, reversal would still be required.

In *Biggins I*, we rejected Biggins' argument that Newlee's action for fees was properly against Madison, not Biggins. Madison paid all the fees he owed in the underlying action when 40 percent of the settlement proceeds was retained by the attorneys. We determined that Newlee's quantum meruit action for a portion of the fees was properly brought against Biggins.

Under the doctrine of law of the case, a principle or rule stated by a reviewing court that is necessary for the court's decision must be applied throughout all later proceedings in the same case. (*Water Replenishment Dist. of So. California v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1071.) The law of the case applies even where it subsequently appears the stated principle or rule is wrong. (9 Witkin, *Cal. Procedure, supra*, § 459, p. 515.)

In any event, we were not wrong. Biggins uses specious mathematical reasoning involving percentages in an attempt to show that a judgment against him, instead of Madison, is wrong. But the math is quite simple, involving nothing more complicated than addition and subtraction.

The jury found that the reasonable value of Biggins' services on the underlying case is \$232,500. But Biggins received \$50,000 prior to trial and \$235,000 that was distributed to him from the blocked account for a total of \$285,000. Thus Biggins received in attorney fees \$52,500 more than the jury found as the reasonable value of his services.

On the other side, the jury found as the reasonable value of Newlee's services \$77,500. But Newlee received only \$25,000. It is no mere coincidence that Newlee has received \$52,500 less and Biggins has received \$52,500 more than

what the jury determined as the reasonable values of their respective services on the underlying case.

It makes no sense to shift the burden of paying what Newlee is owed from Biggins to Madison. Biggins has been overpaid, and Madison has paid all he owes.

The judgment shall be as Newlee proposed on remand: Judgment for Biggins against Madison in the amount of \$26,689.11 for breach of contract and \$232,500 for attorney fees. Judgment for Newlee against Biggins in the amount of \$77,500, plus interest of \$38,152.55 and costs of \$27,242.37 on the action in quantum meruit, plus costs to Newlee for prevailing in Biggins' action against Newlee.

The judgment is reversed. Costs are awarded to Newlee.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

Hinshaw & Culberson LLP, Filomena E. Meyer for Defendant and
Appellant Michael K. Newlee.

Chad Biggins, in pro. per, for Plaintiff and Respondent.