

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

EDILMA CABRERA VASQUEZ

)

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VS.

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W.C.C. No. 2021-04006

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B. J.'S SERVICE COMPANY, INC.

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FINAL DECREE OF THE APPELLATE DIVISION

This matter came to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee's prior attorney concerning the denial of his request to apportion the counsel fee awarded in the lump sum settlement. Upon consideration thereof, the claim of appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and orders contained in the order entered on July 21, 2021, and the order and decree entered on February 10, 2022, be, and they hereby are, affirmed.

Entered as the final decree of this Court this 1<sup>st</sup> day of May 2025.

PER ORDER:

/s/ Nicholas DiFilippo  
Administrator

ENTER:

/s/ Olsson, J.

/s/ Conte, J.

/s/ Lazieh, J.

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on a claim of appeal filed by the employee's previous attorney, John M. Harnett, Esq., in which he objects to the trial judge's denial of his request to apportion the counsel fee awarded in the commutation of the employee's weekly workers' compensation benefits. After a review of the record and the relevant statutes and case law, and consideration of the arguments put forth by Attorney Harnett and the employee's current attorney, we find that the Workers' Compensation Court lacks the jurisdiction to address the apportionment of the counsel fee in this matter. The attorney's appeal is, therefore, denied.

A brief discussion of the background of this matter includes information obtained from court filings in this case as well as from the Statement of the Case and Reasons of Appeal filed by Attorney Harnett.

On June 9, 2017, Edilma Cabrera Vasquez ("the employee") sustained a work-related injury during the course of her employment with B. J.'s Service Company, Inc. ("the employer"). She began receiving weekly benefits for partial incapacity on June 10, 2017 pursuant to a

Memorandum of Agreement. Attorney Harnett represented the employee for almost three (3) years, from July 12, 2017 to June 3, 2020. During that time period, Attorney Harnett filed a number of petitions on behalf of the employee and was successful in obtaining additional benefits and other relief. Sometime in May 2020, Attorney Harnett obtained a settlement offer in the amount of Thirty Thousand (\$30,000) Dollars; however, the employee did not accept the offer.

On or about June 3, 2020, the employee changed attorneys and Stephen J. Dennis, Esq., began representing the employee. On June 4, 2020, Attorney Harnett filed a notice of claim of lien with Attorney Dennis and Beacon Mutual Insurance Company, the employer's workers' compensation insurer. The lien was for the amount of Six Thousand (\$6,000) Dollars, which represented twenty percent (20%) of the settlement offer of Thirty Thousand (\$30,000) Dollars.<sup>1</sup>

Since he began representing the employee, Attorney Dennis has filed four (4) petitions on her behalf, which were pending at the time that the parties filed a petition on July 8, 2021 for a lump sum settlement in the amount of Forty Thousand (\$40,000) Dollars. On July 16, 2021, the trial judge held a hearing on the petition for commutation and entered an order approving the settlement in the amount of Forty Thousand (\$40,000) Dollars and a counsel fee of Eight Thousand (\$8,000) Dollars to be paid to Attorney Dennis from that settlement.

On September 21, 2021, Attorney Harnett filed an Objection to the Entry of the Final Decree as well as a Motion for Hearing on the Assessment of Counsel Fees. In that motion, Attorney Harnett requested that the court award him a counsel fee of Six Thousand (\$6,000) Dollars from the Eight Thousand (\$8,000) Dollar total attorney's fee. Following a brief hearing, the trial judge entered an order on February 10, 2022 denying the motion on the ground that the

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<sup>1</sup> R.I. Gen. Laws § 28-33-25(d) provides that the award of an attorney's fee in a petition for a lump sum settlement, or commutation, is capped at twenty percent (20%) of the total amount of the settlement.

Workers' Compensation Court does not have jurisdiction to address the issue. On the same day, the trial judge entered the final decree regarding the commutation, which states that all payments approved by the trial judge in the order entered on July 16, 2021 have been made, including the attorney's fee paid to Attorney Dennis. Attorney Harnett then filed his appeal to the Appellate Division.

In his reasons of appeal, Attorney Harnett argues that the trial judge erred in failing to recognize that the Workers' Compensation Court has the jurisdiction and authority to hear and adjudicate counsel fee disputes between attorneys arising out of petitions for lump sum settlements. He asserts that according to Rhode Island General Laws § 28-30-1(a), the Legislature has given the court "the jurisdiction that may be necessary to carry out its duties under the provisions of the workers' compensation act, chapters 29 — 38 of this title. . . ." In addition, Rhode Island General Laws § 28-35-11 states that all questions arising under the Workers' Compensation Act shall be determined by the court. In support of this proposition, Attorney Harnett cites the cases of *Gomes v. Bristol Mfg. Corp.*, 95 R.I. 126, 184 A.2d 787 (1962) and *Fallon v. Skin Medicine & Surgery Ctrs., Inc.*, 713 A.2d 777 (R. I. 1998). However, both these cases are inapplicable to the present dispute between the two (2) attorneys in this matter.

The decision of the Rhode Island Supreme Court in *Gomes, supra*, addressed an employer's constitutional equal protection challenge to Rhode Island General Laws § 28-35-32 which provides that the Workers' Compensation Court shall award counsel fees and costs to employees who successfully prosecute or defend petitions filed at the court. In its discussion of the constitutional issue, the Court noted that under the statute, the Workers' Compensation Court makes the final determination as to the *amount* of the attorney's fee. We acknowledge that the

statute provides the court with the authority to determine the *amount* of the attorney's fee to be awarded to the attorney who successfully prosecutes or defends a petition. It does not follow, however, that the court has the authority to determine the apportionment of a fee awarded in a commutation between successive attorneys.

In *Fallon, supra*, the Rhode Island Supreme Court considered whether the Workers' Compensation Court awarded the employee's attorney an appropriate fee in accordance with the guidelines set forth in their decision in *Annunziata v. ITT Royal Elec. Co.*, 479 A. 2d 743 (R.I. 1984). The Court noted that great deference is accorded to the trial judge's discretion in the award of counsel fees. Again, the Court's statements in these decisions do not confer any authority upon the Workers' Compensation Court regarding the division of a fee between attorneys.

Attorney Harnett contends that the Workers' Compensation Court is the only court with jurisdiction to adjudicate this dispute and cites the decision of the Superior Court in the matter of *DeCarvalho v. Travelers Ins. Co.*, C. A. No. 79-1618, 1979 WL 196180 (November 26, 1979), in support of this contention. At the time of that decision, Rhode Island General Laws § 28-33-3 (1968 Reenactment), provided that contingent fees of attorneys in workers' compensation matters were subject to the approval of the Workers' Compensation Commission. In *DeCarvalho*, the Superior Court expressed its opinion that the Workers' Compensation Commission was the appropriate forum for the resolution of an action by an attorney requesting a portion of a counsel fee that had been awarded to another attorney after a commutation. The attorney alleged that he had an agreement with the subsequent attorney that he would receive half of any counsel fee awarded. Obviously, in the case before this appellate panel, there was no agreement between the attorneys regarding the apportionment of any potential fee awarded if

there was a settlement. In addition, we would also note that the statute the Superior Court relied on, § 28-33-3, was repealed in 2004.

The Workers' Compensation Court is a statutory creation and its jurisdiction and the rights of the parties that come before the court are strictly governed by the provisions of the Workers' Compensation Act. *Woods v. Safeway System, Inc.*, 102 R.I. 493, 495, 232 A.2d 121, 122 (1967). Attorney Harnett has not cited any statutory provision granting the Workers' Compensation Court the jurisdiction to apportion fees between successive attorneys or enforce an attorney's lien.

There is a provision in the Workers' Compensation Act that in fact clearly limits the jurisdiction of the court regarding counsel fee disputes between attorneys. In 2022, subsequent to the filing of this appeal but prior to oral argument, the Legislature enacted Rhode Island General Laws § 28-35-12(b)(3), which is directly applicable to this disagreement. In a situation in which attorneys cannot agree on an appropriate division of a counsel fee, the statute provides an avenue for settlement by submission of the matter to the court's mediation program. In the present matter, the attorneys took advantage of this opportunity, but were unable to reach an amicable resolution. If the mediation is unsuccessful, the statute requires the dismissal of the petition, "*with no further action by the court.*" R.I. Gen. Laws § 28-35-12(b)(3) (emphasis added). Had the Legislature intended for this court to conduct evidentiary hearings and rule on fee disputes, that language would have been included in this section of the Act at the time it was amended. In fact, the plain meaning of the quoted provision states just the opposite. Furthermore, if, as Attorney Harnett suggests, the court already had jurisdiction to hear these matters, the statute would have been unnecessary. Considering this language, we are constrained to find that this court lacks jurisdiction to adjudicate disputes of this type.

Section 28-35-12(b)(3) concludes with the proviso that an aggrieved attorney is not precluded from pursuing any other available action if the mediation fails. Rhode Island General Laws §§ 9-3-1, 9-3-2, and 9-3-3 provide for the creation and enforcement of attorneys' liens through the Superior Court. In fact, Attorney Harnett has taken such action in this matter. The case of *Lovett Scheffrin Harnett et al. v. Law Office of Stephen J. Dennis et al.*, PC-2022-01101, is pending in the Superior Court, where the parties have engaged in discovery and have availed themselves of the Superior Court rules and procedures. Pursuant to the statute, the Superior Court is the appropriate venue for resolution of this disagreement.

Accordingly, the reasons of appeal filed by Attorney Harnett are denied and dismissed. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a proposed version of which is enclosed, shall be entered on May 1, 2025.

Lazieh, J., concurs.

Conte, J., concurs in a separate opinion.

ENTER:

/s/ Olsson, J.

/s/ Lazieh, J.

Conte, J., Concurring.

While I agree with the majority relative to the denial and dismissal of this matter on jurisdictional grounds, there are also ethical considerations that need to be addressed as well. Attorney John M. Harnett represented the employee, Cabrera Vasquez, and he was able to obtain a settlement offer in the amount of Thirty Thousand Dollars (\$30,000). Attorney



Harnett represented Cabrera Vasquez from July 12, 2017 until June 3, 2020, at which point he was discharged by Cabrera Vasquez as the attorney of record in this matter. Cabrera Vasquez hired new counsel, Attorney Stephen J. Dennis, who negotiated a commutation settlement in the amount of Forty Thousand Dollars (\$40,000), which Cabrera Vasquez accepted.

The trial judge heard the commutation settlement and entered an Order on July 16, 2021 approving the commutation and awarding a counsel fee in the amount of twenty percent (20%), or Eight Thousand Dollars (\$8,000) to the "Petitioner's attorney," with the balance of Thirty-two Thousand Dollars (\$32,000) payable to Cabrera Vasquez. The trial judge entered a Final Decree in this matter on February 10, 2022. Attorney Harnett appealed to this Appellate Division seeking to be compensated by way of the enforcement of an attorney's lien in this matter. In his appeal, Attorney Harnett is seeking to be awarded a counsel fee in the amount of six thousand dollars (\$6,000.00) which represents twenty percent (20%) of the thirty thousand-dollar (\$30,000.00) settlement offer that he had obtained prior to his discharge.

Unfortunately, however, the specific remedy sought by Attorney Harnett – that is to be compensated based upon a percentage of a settlement offer received prior to being discharged – is ethically impermissible. The Rhode Island Supreme Court Ethics Advisory Panel has had more than one occasion to address the issue of fee division disputes amongst attorneys. In Ethics Advisory Panel Opinion #93-37, essentially the same set of facts was in dispute. In that matter, the successor attorney believed that the predecessor attorney was entitled to be compensated on a "quantum meruit" basis, and as such, sought an itemization of the legal services rendered by the predecessor attorney. The predecessor attorney would

not comply with the itemization request, and instead demanded a fifty percent (50%) split of the counsel fee.

The Panel opined:

The fees should be divided according to quantum meruit; the fair value of services rendered before the attorney's termination of representation. Both attorneys should try to reach an agreement on the reasonable value of services prior to the termination and if that fails, then a court or the Fee Arbitration Unit of the Rhode Island Bar Association may have to make the determination.

Furthermore, in In Ethics Advisory Panel Opinion #89-21, the Panel opined:

It is well settled in this and other jurisdictions that when a client who has retained an attorney on a contingent fee basis, discharges that attorney prior to reaching an agreement as to settlement, the discharged attorney is only entitled to payment for services rendered on a *quantum meruit* basis.

The Panel has repeatedly stated the same opinion in many other similarly disputed attorneys' fee matters. *See* Ethics Advisory Opinions #92-61; #92-52; #90-13; *see also* General Informational Opinion #4, issued on May 23, 1991. Moreover, the attorneys in this matter were provided an opportunity to resolve the fee division dispute by way of mediation per the newly enacted statute in Rhode Island General Laws § 28-35-12(3). Unfortunately, however, this matter could not be amicably resolved.

Accordingly, Attorney Harnett's specific request to be compensated in the amount of Six Thousand Dollars (\$6,000), which represents twenty percent (20%) of a settlement offer he received prior to his discharge, is denied and his appeal in this matter is dismissed.

/s/ Conte, J.