IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

DAVID A. ALEXANDER and MACLIN P. DAVIS, JR.,	)	
Plaintiffs/Appellees,	)	
	)	Davidson Chancery
	)	No. 91-4018-II(III)
VS.	)	
	)	Appeal No.
	)	01A01-9605-CH-00215
JULIA ANN WHITE INMAN,	)	
Defendant/Appellant.	)	

DISSENTING OPINION

This appeal involves the efforts of two lawyers to collect a $501,514.50 fee from a client in a divorce case. Fee disputes require careful and principled consideration because of the public's concern that judges might sympathize with their colleagues at the bar when it comes to fees and because of the legal community's concern that judges are unfamiliar with the economic realities of modern law practice. While I concur with the court's decision that the fee contract in this case is not enforceable, I cannot concur that the actual value of the lawyers' services should be calculated by simply adding together the highest and lowest reasonable fee supported by the proof and then dividing the result by two.[1] While averaging is simple and expeditious, it ignores the issues that courts must confront in cases of this sort.

I.

Julia Ann White Inman and Gordon Inman, two prominent residents of Williamson County, had been married for twenty-seven years when their marriage foundered in 1987. Their divorce litigation between 1987 and 1991 focused

[1]The lawyers presented evidence that their $501,514.50 fee was reasonable. The client presented evidence that a reasonable fee for the lawyers' services was $60,000. The majority used the following calculation to determine the value of the lawyers' services: $501,514.50 + $60,000 = $561,514.50 ÷2 = $280,757.25.

primarily on the division of their multi-million dollar marital estate. Mr. Inman had the same representation throughout the litigation. Ms. Inman changed her representation prior to trial and was represented by the same lawyers during the last three years of the divorce proceeding.

In December 1988, the Chancery Court for Williamson County valued the Inmans' marital estate at $8,000,000 and awarded Ms. Inman $2,300,200 in marital property - only $25,000 more than Mr. Inman's proposed division. This court modified the trial court's decision. In addition to awarding the divorce to Ms. Inman rather than to Mr. Inman, we increased the value of the marital estate to $8,850,000 and awarded Ms. Inman additional marital property worth $1,043,230. We also held that Ms. Inman was entitled to rehabilitative spousal support in the amount of $5,000 per month for three years and that Mr. Inman should pay fifty percent of Ms. Inman's legal expenses at trial and seventy-five percent of her legal expenses on appeal.[2] The Tennessee Supreme Court modified our decision in three material ways. First, it gave Mr. Inman the option of either conveying the contested real property to Ms. Inman or paying her its cash equivalent. Second, it vacated the spousal support award. Third, it determined that Mr. Inman would not be required to reimburse Ms. Inman for her legal expenses.[3]

Ms. Inman was not pleased with the outcome. She had anticipated receiving a larger portion of the marital estate, as well as spousal support and additional funds to defray part or all of her legal expenses. Less than two weeks after the Tennessee Supreme Court's final action in the case, Ms. Inman's lawyers sent her a letter requesting payment of $501,514.50 - fifteen percent of her total recovery. Noting that she had already paid $159,000, the letter requested that the remaining $342,514.50 be divided equally between her two lawyers of record. Ms. Inman declined to pay any additional fee.

The lawyers withdrew from representing Ms. Inman in September 1991. Three months later they filed suit in the Chancery Court for Davidson County

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[2]*Inman v. Inman*, App. No. 89-82-II, 1989 WL 122984 (Tenn. Ct. App. Oct. 18, 1989).

[3]*Inman v. Inman*, 811 S.W.2d 870 (Tenn. 1991).

seeking to recover the $342,514.50 balance remaining on their fee. Ms. Inman counterclaimed to recover the fee she had already paid. Following a three-day trial, a jury returned a $263,985 verdict in favor of Ms. Inman's former lawyers. Ms. Inman appealed, and in July 1995, this court vacated that judgment and remanded the case for a new trial because of erroneous evidentiary rulings and incomplete jury instructions.[4] We had no occasion to address the enforceability of the fee agreement or the reasonableness of the fee at that stage of the proceeding.

The parties elected not to retry the case before a jury. They decided instead to submit it to the trial court for decision based on the record of the first trial, including the previously excluded evidence, the lawyers' original time records, and a stipulation concerning Mr. Inman's legal expenses during the entire divorce litigation. In January 1996, the trial court filed a memorandum opinion concluding that Ms. Inman's former lawyers had failed to prove that their $501,514.50 fee was reasonable. After considering the evidence in light of the criteria in Tenn. S. Ct. R. 8, DR 2-106(B), the trial court concluded that the reasonable fee was $300,000. Because Ms. Inman had already paid $159,000, the trial court entered a judgment against her for $141,000.

Ms. Inman asserts on this appeal that the trial court's judgment lacks evidentiary support and that she should recover $99,000 of the fee already paid. Her former lawyers insist that they are entitled to the full balance remaining on their $501,514.50 fee. The court has affirmed the trial court's determination that the fee agreement is not enforceable. It has also found that Ms. Inman's former lawyers did not forfeit their right to a fee by entering into a contract for or by attempting to collect a clearly excessive fee contrary to Tenn. S. Ct. R. 8, DR 2-106. Accordingly, the court has determined that Ms. Inman's former lawyers are entitled to a quantum meruit recovery of "the reasonable cost of employing competent counsel to perform the services which were necessary and were performed by plaintiffs." Rather than determining and awarding these "reasonable costs," the court, in somewhat non sequitur fashion, has decided that the "value"

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[4]*Alexander v. Inman*, 903 S.W.2d 686 (Tenn. Ct. App. 1995).

of Ms. Inman's former lawyers' services is $280,757.25 and, therefore, that they should receive an additional $121,757.25.

II.

Lawsuits of this nature require careful attention to the decision-making process because it is the process itself that provides the assurance of fair and consistent results. They potentially involve three questions. The first is whether the lawyer has an enforceable fee agreement with his or her client. The resolution of this question entails consideration of the substance of the contract,[5] the contracting process itself,[6] and the size of the fee permitted by the contract.[7] If the court determines that the lawyer and the client have entered into an enforceable fee contract, it should award the lawyer the fee required by the contract.

A finding that a fee contract is not enforceable does not necessarily end the inquiry because lawyers may still be able to recover in quantum meruit for the actual value of their services even if the fee agreement with their client is not enforceable. A quantum meruit recovery is not, however, available to lawyers who are attempting to collect a "clearly excessive" fee. *White v. McBride*, ___ S.W.2d ___, ___ (Tenn. 1996).[8] Thus, upon concluding that a lawyer's fee contract is not enforceable on any ground other than that it requires the payment of a clearly excessive fee, the court must confront the second question - whether the fee the lawyer is seeking to collect is clearly excessive under the standards contained in Tenn. S. Ct. R. 8, DR 2-106(B).

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[5]Tenn. S. Ct. R. 8, DR 2-106(A) prohibits lawyers from entering into contracts for an illegal fee. Other types of fee arrangements may also be unenforceable even if they are not illegal. For example, a lawyer cannot enter into a contingent fee contract to seek additional alimony or child support if the fee is based on the amount of additional alimony or child support received.

[6]*See, e.g., Cooper & Keys v. Bell*, 127 Tenn. 142, 153, 153 S.W. 844, 847 (1913) (declining to enforce the contract because of the lack of evidence that the lawyers and their client had a mutual understanding concerning the fee).

[7]Tenn. S. Ct. R. 8, DR 2-106(A) prohibits lawyers from entering into an agreement for a clearly excessive fee.

[8]*White v. McBride*, App. No. 02S01-9510-PB-00104, 1996 WL 495006, slip op. at 16-17 (Tenn. Sept. 3, 1996).

A finding at any stage of the proceeding that the fee being sought is clearly excessive defeats the lawyer's claim. On the other hand, a finding that the fee is not clearly excessive shifts the focus of the inquiry to the quantum meruit theory and prompts the third question - what is the actual value of the services the lawyer rendered to the client? The answer to this question depends on the facts and equities of each case because no formula can be devised that will fit all cases.

Lawyers bear the burden of proving that they are entitled to a quantum meruit recovery. *See Arrow, Edelstein & Gross, P.C. v. Rosco Prods., Inc.*, 581 F. Supp. 520, 524 (S.D.N.Y. 1984); *In re Marriage of Malec*, 562 N.E.2d 1010, 1022 (Ill. App. Ct. 1990); *Johnson v. Insurance Co. of N. Am.*, 666 So.2d 1286, 1289 (La. Ct. App. 1996); *Calderon v. Navarette*, 800 P.2d 1058, 1060 (N.M. 1990). In order to prevail, they must prove (1) that they provided valuable services to the client, (2) that the client reasonably knew or should have known that the lawyer expected to be paid for the services, and (3) that it would be unfair or unjust to permit the client to benefit from the lawyer's services without paying for them. *See Castelli v. Lien*, 910 S.W.2d 420, 427 (Tenn. Ct. App. 1995).

Quantum meruit recoveries are limited to the actual value of the services provided, not the price originally agreed upon for the services. *Warren Bros. Co. v. Metropolitan Gov't*, 540 S.W.2d 243, 247 (Tenn. Ct. App. 1976); *Cooksey v. Shanks*, 23 Tenn. App. 595, 598, 136 S.W.2d 57, 58-59 (1939). Thus, the courts will not award damages for a quantum meruit claim without some proof of the value of the services actually provided. *Bokor v. Holder*, 722 S.W.2d 676, 680-81 (Tenn. Ct. App. 1986); *Lawler v. Zapletal*, 679 S.W.2d 950, 955 (Tenn. Ct. App. 1984).

Courts have used a variety of approaches to calculate the actual value of a lawyer's services in quantum meruit cases. *See Mulholland v. Kerns*, 822 F. Supp. 1161, 1169 (E.D. Pa. 1993). Some courts use the same factors found in Tenn. S. Ct. R. 8, DR 2-106 used to set a reasonable fee in other contexts. *See, e.g., Law Offices of J. E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. Ct. App. 1993); *Anderson v. Anchor Org. for Health Maintenance*, 654 N.E.2d 675, 681-82 (Ill. App. Ct. 1995). Others focus primarily

on the documented number of hours the lawyer worked on the client's case and the lawyer's customary hourly charge. *See, e.g., O'Rourke v. Cairns*, 666 So. 2d 345, 349 (La. Ct. App. 1995). In the absence of an enforceable fee agreement, Tennessee courts have traditionally determined the reasonable value of a lawyer's services by considering the number of hours billed and the lawyer's customary hourly rate. *In re Estate of Davis*, 719 S.W.2d 526, 529 (Tenn. Ct. App. 1986); *Cummings v. Patterson*, 59 Tenn. App. 536, 542, 442 S.W.2d 640, 643 (1968).

The "by-the-meter" approach is not perfect because it does not necessarily take into consideration the numerous factors that could possibly enhance a lawyer's fee. *See Browning v. Peyton*, 123 F.R.D. 75, 78 (S.D.N.Y. 1988).[9] It does, however, incorporate several of the more common enhancement factors. A lawyer's hourly rate reflects, at least to some extent, the lawyer's skills, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541, 1547 n.11 (1984); *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988); Sharlene Lassiter, *What Is a Lawyer Really Worth?*, 25 Cumb. L. Rev. 23, 38 (1994-1995); Tenn. S. Ct. R. 8, DR 2-106(B)(7). It also reflects the rates customarily charged in a particular locality for similar services, *Glasscock v. Glasscock*, 403 S.E.2d 313, 315 (S.C. 1991); Tenn. S. Ct. R. 8, DR 2-106(B)(3), and can conceivably reflect the nature and length of a lawyer's professional relationship with a client. Tenn. S. Ct. R. 8, DR 2-106(B)(6).[10]

The other variable in this formula - the number of hours spent on the case - is likewise essential because a quantum meruit recovery must be based on the services provided. It also reflects, at least indirectly, enhancement factors such as the time and labor involved in the case because of its novelty or particular difficulty, Tenn. S. Ct. R. 8, DR 2-106(B)(1), the time limitations, if any, imposed on the lawyer by the client or the particular circumstances of the case, Tenn. S. Ct.

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[9]Alice Bradley & Bryan Essary, Note, *The Treatment of Attorneys' Fee Enhancements in Alabama and the Eleventh Ciruit: Justice! The Law! My Ducats and My Daughter!*, 20 Cumb. L. Rev. 769 (1989-1990) (general discussion of enhancement factors); George D. Hornstein, *Legal Therapeutics: The "Salvage" Factor in Counsel Fee Awards*, 69 Harv. L. Rev. 658, 660 (1956).

[10]Lawyers tailor their rates to attract and keep institutional clients such as banks, hospitals, or insurance companies who have an ongoing need for legal services and who, by the volume of their work, can provide a lawyer with cash flow to support the overhead of a practice. They may also adjust their rates as an accommodation for other reasons.

R. 8, DR 2-106(B)(5), and the lawyer's experience. Tenn. S. Ct. R. 8, DR 2-106(B)(7).[11]

III.

I will now apply the foregoing procedure and principles to this case.

ENFORCEABILITY OF THE FEE AGREEMENT

The first question involves the enforceability of the fee agreement. I concur with the court's conclusion that the fee agreement between Ms. Inman and her former lawyers is not enforceable. My decision rests on two grounds. First, Ms. Inman's former lawyers failed to prove that they reached a mutual understanding with Ms. Inman with regard to their fee. *See Cooper & Keys v. Bell*, 127 Tenn. at 153, 153 S.W. at 847. Second, the former lawyers failed to prove how entering into a fee agreement containing a cap equal to fifteen percent of her total recovery was in Ms. Inman's best interests or that Ms. Inman would have been unable to compensate them had they billed by the hour.

POTENTIAL EXCESSIVENESS OF THE FEE

The second question concerns whether the fee sought is "clearly excessive." I likewise concur with the court's conclusion that Ms. Inman's former lawyers did not enter into a fee agreement that was clearly excessive on its face and were not attempting to collect a fee that was clearly excessive in violation of Tenn. S. Ct. R. 8, DR 2-106(A). This conclusion warrants further explanation.

The concept of a "clearly excessive" fee derives from the American Bar Association's Code of Professional Responsibility. Thus, a lawyer's attempt to collect a clearly excessive fee is "an ethical transgression of a most flagrant sort." *White v. McBride*, ___ S.W.2d at ___.[12] The concept is most frequently construed in a disciplinary context, and courts in other jurisdictions have labeled fees as

[11]An experienced lawyer can usually avoid spending unnecessary time on matters that are not likely to be productive in advancing the client's interests.

[12]*White v. McBride*, *supra*, slip op. at 16.

clearly excessive in the following illustrative circumstances: (1) where the fee was grossly out of proportion with the fees charged for similar services by other lawyers in the same locale;[13] (2) where a lawyer induced a client to pay for unnecessary services;[14] (3) where a lawyer submitted reconstructed time records in an attempt to collect a fee equal to a disallowed contingent fee;[15] (4) where a lawyer solicited a fee for work already paid for;[16] (5) where a lawyer attempted to collect a fee exceeding an authorized amount;[17] or (6) where the lawyer attempted to collect a fee that is unexplainedly disproportionate to the amount in controversy.[18]

Each of these cases leaves the unmistakable impression that the lawyer's proffered justification for the fee is unworthy of belief and that the lawyer put his or her desire to have money ahead of any realistic evaluation of the appropriate compensation earned for services rendered. They illustrate one commentator's observation that the concept of a clearly excessive fee grew out of cases in which the fee being sought was so far out of relation to the services rendered or to the benefit conferred as to constitute a misappropriation of the client's funds. Charles Wolfram, *Modern Legal Ethics* § 9.3, at 517 n.39 (Practitioner's ed. 1986).

The *White v. McBride* decision comports with these illustrative cases. I do not construe it as an attempt by the Tennessee Supreme Court to regulate or even discourage arguably high fees. In fact, the court acknowledged the existence of a range of permissible fees and the permissibility of fees at the "upper end" of that

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[13]*In re Brown*, 511 N.E.2d 1032, 1033-34 (Ind. 1987); *Salsbury v. Salsbury*, 658 So. 2d 734, 739 (La. Ct. App. 1995).

[14]*In re Tobin*, 628 N.E.2d 1268, 1270 (Mass. 1994).

[15]*In re Conduct of Barber*, 904 P.2d 620, 629-30 (Or. 1995).

[16]*Attorney Grievance Comm'n v. Kovotki*, 569 A.2d 1224, 1236 (Md. 1990).

[17]*People v. Walker*, 832 P.2d 935, 936 (Colo. 1992); *Iowa Prof.'l Ethics Conduct Bd. v. Evans*, 537 N.W.2d 783, 785 (Iowa 1995) (lawyer inflated value of the estate in order to circumvent the statutory fee cap); *In re Lempesis*, 362 S.E.2d 10, 11 (S.C. 1987).

[18]*Florida Bar v. Mirabole*, 498 So. 2d 428, 429 (Fla. 1986) (fee eight times the amount in controversy); *Disciplinary Proceedings Against Bult*, 469 N.W.2d 653, 654 (Wis. 1991) (fee amounting to sixty percent of the amount in controversy where the lawyer could not explain how the fee was computed).

range. *White v. McBride*,___ S.W.2d at ___.[19] Thus, a fee can be high yet not be clearly excessive.

Ms. Inman's former lawyers are attempting to recover a high fee in this case. To support their claim, they presented three prominent Nashville lawyers with extensive domestic relations practices who stated their opinions that the fee being requested was reasonable. These lawyers did not testify about the going rates for divorce work in Williamson County. Accordingly, their testimony was not responsive to Tenn. S. Ct. R. 8, DR 2-106(B)(3) which permits the courts to consider "the fee customarily charged in the locality for similar services." Even though we could disregard these opinions altogether with regard to the actual value of the services Ms. Inman received, *In re Estate of Davis*, 719 S.W.2d 526, 529 (Tenn. Ct. App. 1986), they establish that the fee being sought by Ms. Inman's former lawyers is at the upper end of the range of permissible fees for cases of this sort.

The parties in this case have a good faith disagreement concerning the value of the legal services rendered by Ms. Inman's former lawyers. Messrs. Alexander and Davis believe that they are entitled to a premium fee in a high stakes divorce fought all the way to the Tennessee Supreme Court where only a minuscule number of divorce cases ever get considered. They, like the attorneys who testified on their behalf, may have overvalued the results of their work. But they have demonstrated to my satisfaction that this fee, while exceedingly high, is not clearly excessive under the factors in Tenn. S. Ct. R. 8, DR 2-106(B).

ACTUAL VALUE OF THE SERVICES

The third question relates to the actual value of the services provided by Ms. Inman's former lawyers. The trial court erroneously treated this case as if it were one in which the lawyers were requesting the court to set a "reasonable fee" for their services. In reality, Ms. Inman's former lawyers had already decided that their $501,514.50 fee was reasonable and were seeking a judgment against Ms. Inman for the balance of the fee they believed she was contractually obligated to pay. A lawyer's suit against a client for an unpaid fee differs significantly from

[19] *White v. McBride*, supra, slip op. at 12.

a proceeding requiring a trial court to set a reasonable fee in accordance with some contractual provision allowing for the recovery of a reasonable fee[20] or as part of a divorce proceeding.[21] *See Alexander v. Inman*, 903 S.W.2d at 705 n.30.

Under the facts of this case, the actual value of the services Ms. Inman received should be based on the hours worked and the lawyers' customary hourly fee, even though Messrs. Alexander and Davis are not relying on the hourly billing provision in their fee agreement. The percentage relied on by Messrs. Alexander and Davis bears no relation to the value of the services to Ms. Inman.

Had Ms. Inman's three principal lawyers billed her at their regular hourly rate[22] for the work they actually performed, their fee would have been $166,252.50.[23] In the context of a quantum meruit claim, the former lawyers have the burden of proving that the actual value of their work was three times higher than their normal hourly rate. Even though they received a second chance to produce this evidence, they did not do so. Accordingly, they have not proved that they are entitled to a fee greater than what they would normally receive had they been billing by the hour at their customary hourly rate.

This conclusion is in harmony with the factors in Tenn. S. Ct. R. 8, DR 2-106(B). Ms. Inman's former lawyers have reputations and skills that enable them to command high fees. They accepted employment shortly before a scheduled

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[20]*See, e.g., Wilson Mgt. Co. v. Star Distribs. Co.*, 745 S.W.2d 870, 873 (Tenn. 1988); *United Medical Corp. v. Hohenwald Bank & Trust Co.*, 703 S.W.2d 133, 134 (Tenn. 1986).

[21]*See, e.g., Conners v. Conners*, 594 S.W.2d 672, 676 (Tenn. 1980) (rejecting the common belief that lawyers representing the wife in a divorce case were entitled to a fee equal to ten percent of the total alimony awarded to the wife); *Ligon v. Ligon*, 556 S.W.2d 763, 768-69 (Tenn. Ct. App. 1977) (vacating an attorney's fee award for one of Ms. Inman's former lawyers equal to ten percent of the total alimony award).

[22]Mr. Alexander's normal hourly rate was $250/hour. Mr. Williams's normal hourly rate was $150/hour. Mr. Davis's normal hourly rate during this time varied between $200 and $255/hour. In the absence of more specific proof, I have calculated Mr. Davis's rate at $225/hour.

[23]Ms. Inman's former lawyers presented time records showing 1,275 hours of work on Ms. Inman's behalf. Of this total, 803.6 hours were performed by Ms. Inman's three principal lawyers, and 471.4 hours were performed by other persons working under Mr. Davis's supervision. Mr. Davis spent 379.50 hours on Ms. Inman's case; while Messrs. Alexander and Williams spent 172.65 and 251.65 hours respectively. Based on their normal hourly rate and their claimed time, Mr. Alexander's fee would have been $43,162.50; Mr. Williams's fee would have been $37,747.50; and Mr. Davis's fee would have been $85,342.50.

trial, and these time limitations required them to temporarily forego other employment in order to prepare for trial. The record contains no direct proof concerning these matters, and in any event, the time constraints did not exist after the conclusion of the trial in mid-November 1988.[24] Other circumstances weigh against these potentially enhancing factors. The issues in this case were neither novel nor difficult, and the case did not require extraordinary skill to try effectively.[25] The results, as the trial court noted, were adequate but not particularly exceptional for Ms. Inman.

In addition, the record lacks substantiation for some of the services performed and indicates that some of the services may have been unnecessarily duplicative. The examples of the lack of substantiation and duplication are discussed in more detail in our earlier opinion. *Alexander v. Inman,* 903 S.W.2d at 702-03. Lawyers are not entitled to recover in quantum meruit for unsubstantiated or duplicative services. Ms. Inman's former lawyers could have provided further substantiation for their services after we remanded this case but did not do so. Accordingly, the evidence justifies limiting the quantum meruit recovery to the time Ms. Inman's three former principal lawyers spent on her case.

This court has lived with this case, not as long as counsel for the parties, but long enough. Having had this case and other related matters for adjudication for some years now and having reviewed this record a number of times from different perspectives, a judgment based on the substantiated time spent by Ms. Inman's three principal lawyers multiplied by their customary hourly rate best reflects the actual value of the legal services Ms. Inman received. In light of the undisputed proof that she had already paid her former lawyers $159,000, I would modify the judgment to require Ms. Inman to pay her former lawyers $7,252.50.

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[24]There is no evidence that Messrs. Alexander and Davis suffered any permanent loss of employment as a result of representing Ms. Inman. Mr. Williams testified that he lost some potential employment because of Mr. Inman's prominence in Williamson County business circles; however, Mr. Williams is not a party to this case. Only Messrs. Alexander and Davis are seeking to recover a fee in this proceeding.

[25]Adding a request for divorce on the grounds of Mr. Inman's adultery required little additional work or skill since Mr. Alexander had already obtained this information by virtue of his firm's representation of another divorce client. *See Alexander v. Inman,* 825 S.W.2d 102 (Tenn. Ct. App. 1991).

IV.

Ms. Inman is also seeking to recover part of the $159,000 fee she has already paid her former lawyers. Relying on her proof that a reasonable fee in this case would have been, $60,000, she asserts that she is entitled to recover $99,000 plus prejudgment interest. I find that she has not carried her burden of proof for two reasons. First, a $60,000 fee would compensate her lawyers at approximately one-third of the normal hourly rate for their substantiated time. Second, setting the fee at that level fails to make an adequate allowance for the time constraints facing the lawyers when they were hired and the lawyers' reputation and skill.

The *White v. McBride* decision provides no additional support for Ms. Inman's claims. The Tennessee Supreme Court intended *White v. McBride* to provide clients with a shield against their lawyers' efforts to recover clearly excessive fees. It did not intend to provide clients with a sword to obtain refunds of fees already paid.

The record contains indirect evidence that the $159,000 Ms. Inman has already paid her lawyers is appropriate. First, Ms. Inman's legal expenses would have been $166,252.50 had her lawyers billed her at their normal hourly rate for their actual documented time. Second, Mr. Inman paid his lawyers $160,000 for comparable services during the same proceeding. Accordingly, no reasonable lawyer familiar with the facts of this case would conclude that the $159,000 Ms. Inman has already paid her former lawyers is clearly excessive.

V.

In summary, I have concluded that the fee agreement between Ms. Inman and her lawyers is not enforceable and that Ms. Inman's former lawyers are not attempting to collect a clearly excessive fee. Based on the facts of the case, I have also concluded that the actual value of the legal services Ms. Inman received in this case is $166,252.50 and, therefore, that Ms. Inman's former lawyers are entitled to a judgment equal to the difference between the actual value of their services and the fees Ms. Inman has already paid. Therefore, I would reduce the trial court's judgment from $141,000 to $7,252.50.

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WILLIAM C. KOCH, JR., JUDGE