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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1170

Igbanugo Partners Int'l Law Firm, PLLC,
Appellant,

vs.

Emeka Kenneth Abosi,
Respondent.

Filed April 8, 2013
Affirmed as modified
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-11-5413

Herbert A. Igbanugo, Igbanugo Partners Int'l Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Emeka K. Abosi, St. Paul, Minnesota (pro se respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant law firm brought this action against respondent, a former client, for payment of fees. The district court awarded judgment to respondent. We affirm the

district court's determinations that appellant may not recover fees under contracts to which it was not a party, may not recover fees other than those agreed to in the contracts, and forfeited $500 by failing to maintain contact with respondent during his detention. We conclude that the district court erred in determining that appellant's representation of respondent at a plea colloquy amounted to misconduct and modify the district court's judgment accordingly.

FACTS

In 2000, respondent Emeka Abosi, an immigrant, first retained immigration attorney Herbert A. Igbanugo, then of the Blackwell Igbanugo P.A. law firm. Igbanugo successfully obtained a green card denoting lawful permanent resident status for respondent, who paid the agreed fee.

In January 2002, when respondent returned from a trip to Nigeria, airport customs officials found .7 grams of marijuana and rolling papers in his luggage. He was issued a $100 citation, which he paid through the mail, for the small amount of marijuana.

Respondent again left the United States; and when he returned in November 2002, he was detained because of the marijuana conviction. While detained, he admitted that he ate food cooked with marijuana while out of the country and that he has been convicted of three alcohol-related driving offenses. Immigration and Customs Enforcement (ICE) charged respondent with being an inadmissible or removable person and began deportation proceedings.

In March 2004, respondent contracted with Blackwell Igbanugo to represent him in connection with the deportation proceedings for $4,000. In August 2004, he

contracted with the firm to assist him with a status-adjustment application for $2,750; and in October 2005, he contracted for representation in connection with an appeal to the Board of Immigration Appeals (BIA) for $5,000. During 2004 and 2005, respondent paid attorney fees in the amount of $4,000.[1]

In April 2008, respondent contacted Igbanugo to help him vacate his marijuana conviction and pursue his appeal to the BIA. By that time, Igbanugo had left Blackwell Igbanugo and founded appellant Igbanugo Partners International Law Firm, PLLC. The parties agreed that Igbanugo would handle these two matters for $8,000.

In December 2008, Igbanugo secured the Hennepin County prosecutor's agreement to vacate the marijuana conviction in exchange for respondent's plea of guilt to the lesser charge of a nuisance misdemeanor. During the plea colloquy, respondent was examined by the prosecutor and answered "Yes" when asked if his luggage contained "some marijuana paraphernalia or marijuana, itself." As a result of this testimony, ICE again charged respondent with being an inadmissible person.

In July 2009, respondent contracted with Igbanugo Partners for representation in connection with a motion to the BIA to terminate removal proceedings for $2,500. The last contract between the parties was formed in August 2009 when respondent sought representation in connection with a motion to dismiss the new charge of inadmissibility for $2,850.

[1] Igbanugo testified that, over the years, he did some work for respondent on a pro bono basis and some for significantly reduced fees.

In September 2009, respondent was taken into custody by Homeland Security during a hearing on a motion to dismiss the new inadmissibility charge. Respondent was unable to contact Igbanugo, left a message at his office, and did not see or hear from him for three weeks. The following month, respondent's relatives contacted Igbanugo to discuss the situation. Igbanugo told them he had filed the dismissal motion but that it would be necessary to file a habeas corpus petition, at the cost of $5,000, in order to obtain respondent's release prior to the immigration judge's ruling. Respondent then terminated Igbanugo's representation. Between January 2007 and July 2009, respondent paid appellant attorney fees totaling $9,906.02.

In November 2010, Igbanugo Partners brought this action against respondent, alleging that respondent owed $17,160 under the contracts of October 2005, April 2008, July 2009, and August 2009. Respondent appeared pro se.

The district court concluded that (1) Igbanugo Partners cannot recover under the October 2005 contract between respondent and Blackwell Igbanugo because Igbanugo Partners is not a party to that contract;[2] (2) the three contracts between the parties total $13,350 ($8,000 + $2,500 + $2,850); (3) respondent paid all but $3,443.98 of this amount; (4) Igbanugo Partners forfeited $500 based on Igbanugo's failure to communicate with respondent during his three-week detention; (5) Igbanugo Partners forfeited the $500 for attending the plea colloquy and the $2,850 fee of the August 2009 contract because Igbanugo's representation during the plea hearing was deficient and led

[2] The district court addressed this issue sua sponte. Neither party referred to it either at the hearings or in writing.

to the new inadmissibility charge; and (6) Igbanugo Partners forfeited a total of $3,850, more than the $3,443.98 respondent owed. This appeal follows.

D E C I S I O N

Igbanugo Partners argues that respondent's failure to pay fees breached the contracts between the parties. "Whether an act or omission constitutes a material breach of a contract is a fact question." *Sitek v. Striker*, 764 N.W.2d 585, 593 (Minn. App. 2009), *review denied* (Minn. July 22, 2009). This court reviews a district court's factual findings for clear error. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

Igbanugo Partners contends that the district court erred by determining that it cannot recover amounts outstanding under the October 2005 contract between respondent and Blackwell Igbanugo. Igbanugo Partners also asserts that the district court's findings regarding the amount of unpaid fees under the three contracts between the parties and the forfeiture findings are clearly erroneous. We address each argument in turn.

I. Igbanugo Partners is not entitled to enforce the October 2005 contract.

"Only a party to a contract may move to enforce it." *Veerkamp v. Farmers Coop. Creamery*, 573 N.W.2d 715, 717 (Minn. App. 1998) (citing *N. Nat'l Bank of Bemidji v. N. Minn. Nat'l Bank of Duluth*, 244 Minn. 202, 208, 70 N.W.2d 118, 123 (1955) for the proposition that "stranger to contract has no rights under contract"). Igbanugo Partners agrees that it was not a party to the October 2005 contract but contends that it has a right to enforce it because it "assumed the rights and responsibilities over [respondent's] case

after Blackwell Igbanugo dissolved" and "Blackwell Igbanugo assigned or conveyed its interest in the October 28, 2005 contract to Igbanugo Partners." We disagree.

Igbanugo Partners cites two documents as evidence of the purported assignment. The first is a "NOTIFICATION OF NEW FIRM NAME" issued by Blackwell Igbanugo, which stated that "the Immigration & Nationality Law and International Trade Practice Groups of the law firm of Blackwell Igbanugo P.A. became a separate entity and adopted the new firm name, [Igbanugo Partners]." This language does not support the inference that an assignment was created; it says only that two practice groups were separating. *See Minn. Mut. Life Ins. Co. v. Anderson*, 504 N.W.2d 284, 286 (Minn. App. 1993) (stating that the assignor must manifest an intent to transfer rights under a contract to create a valid assignment) (citing *Guar. State Bank of St. Paul v. Lindquist*, 304 N.W.2d 278, 280-81 (Minn. 1980)), *review denied* (Minn. Oct. 19, 1993).

The second document on which Igbanugo Partners relies is a notice titled "WE'RE MOVING!" that reiterates some of the information in the "New Firm Name" document and gives Igbanugo Partners' new address. Igbanugo Partners offers no support for its argument that a change of address implies an assignment of contractual rights.

The district court did not err in concluding that Igbanugo Partners cannot recover under the October 2005 contract.

II. The district court did not clearly err in finding that the unpaid fees under the contracts between the parties total $3,443.98.

Igbanugo Partners challenges the district court's finding that respondent paid $9,906.02 of the $13,350 owed under the three contracts between the parties, arguing that

$4,000 of that amount was paid to Blackwell Igbanugo. But the record evidence shows that, between 2007 and 2009, respondent made payments in the amount of $9,906.02.[3] Because Igbanugo Partners' calculation of respondent's payments is incorrect, its calculation of how much respondent still owes is also flawed. The district court correctly found that $3,443.98 is still owed.

Igbanugo Partners next argues that it is entitled to recover fees for services Igbanugo performed outside of the three contracts. Each contract covered attendance at two master calendar hearings and one individual hearing. The district court found that while each contract provides that Igbanugo Partners may bill an additional $500 for each master calendar hearing after the first two and an additional $750 for each individual hearing after the first one, Igbanugo Partners "has not produced billing records or independent evidence demonstrating if any master calendar and individual hearings were held in excess of the amount covered by the flat fees contained in the contracts." We agree. For the period of the relevant contracts between the parties—April 2008 to July 2009— Igbanugo Partners submitted evidence that Igbanugo attended a master hearing on April 9, 2008; a master hearing on April 30, 2008; a master hearing on September 23, 2009; an individual hearing on October 22, 2009; a custody-redetermination hearing on September 29, 2009; a master hearing on September 29, 2009; and a master hearing on

[3] Specifically, Igbanugo Partners produced receipts for $1,000 on January 17, 2007; $1,398.48 on February 14, 2007; $500 on May 17, 2007; $600 on July 27, 2007; $300 on September 21, 2007; $300 on October 19, 2007; $300 on December 5, 2007; $307.54 on April 22, 2008; $700 on July 30, 2008; $1,000 on August 11, 2008; $1,100 on February 26, 2009; $800 on April 17, 2009; $700 on April 20, 2009; $500 on July 29, 2009; and $400 on July 1, 2009: a total of $9,906.02.

November 9, 2009 (by which time Igbanugo Partners no longer represented respondent). In other words, Igbanugo attended four of the six contracted-for master hearings, one of the three contemplated individual hearings, and one unspecified hearing. And Igbanugo's testimony that he "appeared in court in [respondent's] cases countless times, maybe 10-15 times, something like that" is not supported by billing invoices, time sheets, or other documents.

Our careful review of the record persuades us that the district court did not clearly err by finding that Igbanugo Partners failed to show that respondent had any liabilities to Igbanugo Partners other than those imposed by the three contracts.

III. Igbanugo Partners has not forfeited all of the payments due under the parties' contracts because of misconduct.

At the plea colloquy held in connection with the vacation of respondent's marijuana conviction, Igbanugo did not object to or prevent respondent from answering the prosecutor's question whether respondent's luggage contained "some marijuana paraphernalia or marijuana, itself" to establish the factual basis for the nuisance plea. Because ICE used this testimony to support its 2009 charge of inadmissibility, the district court concluded Igbanugo's conduct did not meet his professional obligations and Igbanugo Partners therefore forfeited the cost of opposing the new charge ($2,500) and the cost associated with the plea colloquy ($500).

Igbanugo Partners argues that letting the prosecutor examine respondent, without objection, to obtain the factual basis for the nuisance guilty plea is not misconduct warranting forfeiture of his attorney fees. We agree. First, Igbanugo says his decision to

proceed in this manner was "a 'trial strategy' type decision negotiated by [himself] and the prosecutor as the best way to get the [district] court to accept the vacatur [of the marijuana conviction] and plea [to misdemeanor public nuisance]." Second, the prosecutor had to establish a factual basis for the reduced charge, and carrying a piece of luggage in and of itself is not sufficient to sustain a nuisance conviction. Third, it is unclear why Igbanugo should have anticipated that ICE would use respondent's testimony about facts of which ICE was already aware as the basis for another inadmissibility charge. While, in retrospect, Igbanugo's strategy may not have been prudent, it does not rise to the level of misconduct to support a forfeiture determination.

The district court's determination that Igbanugo Partners forfeited $500 of the fees associated with respondent's 2009 detention presents a closer question. The court found:

> 18. [Respondent] was detained at the September 23, 2009 hearing by Homeland Security. Igbanugo then served motion papers requesting a bond hearing on September 23, 2009.
> 19. After [respondent] was taken into custody, [he] attempted to contact Igbanugo by telephone. Igbanugo was not available.
> 20. Igbanugo testified that he was on a business trip outside of Minnesota when [respondent] called. Upon his return, Igbanugo testified that he called the jail and directed [respondent] to call him. Igbanugo testified that [respondent] never returned his call.
> 21. [Respondent] credibly testified that he called Igbanugo repeatedly, but that Igbanugo never returned [respondent's] telephone call[s].
> 22. [Respondent] credibly testified that he was unaware of the request for a bond hearing made by Igbanugo on [respondent's] behalf.
> . . . .
> 26. Igbanugo did not travel to Sherburne County [where respondent was detained] to explain this situation to

> [respondent]. Igbanugo testified that he had already explained the process to [respondent]. Further, Igbanugo testified that [respondent] had stopped paying Igbanugo for his services, [which] led [Igbanugo] to the decision not to visit [respondent] while he was in custody.

The record supports these findings. Igbanugo acknowledged on cross-examination that he was not in contact with respondent for 20 days. The district court concluded that Igbanugo violated Minn. R. Prof. Conduct 1.4, which requires an attorney to "keep the client reasonably informed about the status of the matter" and to "promptly comply with reasonable requests for information." Igbanugo Partners argues that a "personal 'hand-holding' visit" was not necessary because respondent "was made aware at the time he was taken into custody that a motion would be filed with the Immigration Court to request his release." We are not persuaded. Respondent testified that he was not aware that such a motion had been filed and that, for 20 days, he remained in jail hearing nothing from his lawyer. While we make no determination as to whether Igbanugo's conduct violates the rules of professional conduct, we conclude that the district court did not err in determining that Igbanugo Partners is not entitled to recover $500 of the fee associated with the 2009 ineligibility charge. *See Rice v. Pearl*, 320 N.W.2d 407, 411 (Minn. 1982) (stating that any attorney "who breaches his duty to his client forfeits his right to compensation").

In sum, the district court erred in concluding that Igbanugo Partners forfeited the fees for representing respondent at the plea colloquy and in connection with the second

inadmissibility charge. We affirm the district court in all other respects but modify the judgment to award Igbanugo Partners $2,943.98 of the fees owed by respondent.

Affirmed as modified.