

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1898**

Toua P. S. Xiong, et al.,
Appellants,

vs.

Timothy Verne Dubbles, et al.,
Defendants,

Eric Valen,
Respondent.

**Filed July 1, 2013
Affirmed
Smith, Judge**

Ramsey County District Court
File No. 62-CV-11-1530

Stephen S. Eckman, Eckman, Strandness & Egan, P.A., Wayzata, Minnesota (for appellants)

Scott Wilson, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

Appellants challenge the district court order granting respondent's petition for attorney liens on their settlement proceeds from injuries they sustained in an uninsured-

motorist accident. Appellants argue that (1) the district court lacked jurisdiction to hear the petition, (2) they were deprived of the formalities of an evidentiary hearing, (3) the district court erred by binding a third party to the judgment without perfected service, and (4) the district court erred by ordering a contingency fee division rather than engaging in a quantum meruit analysis. We affirm.

FACTS

In December 2007, appellants Toua Xiong and Sue Her sustained injuries in an automobile collision with an uninsured motorist. In January 2008, both retained respondent Eric Valen to represent them in a possible personal-injury action. In late 2010, Xiong and Her discharged Valen and secured Stephen Eckman as their new counsel. On October 18, 2010, Valen served notice of an attorney's lien on Xiong and copied Eckman. On November 5, 2010, Valen took the same action with regard to Her and again copied Eckman.

Valen contended that he accrued 60.55 billable hours representing Xiong and his case-management system contained 391 entries pertaining to his case. Valen arbitrated the loss of Xiong's no-fault benefits and negotiated a separate wage-loss action to a settlement. Valen noted that he received adequate compensation for these endeavors and that his alleged lien on Xiong's file was for separate work. In June 2010, Valen secured a report from Xiong's surgeon. Valen prepared and submitted a six-page policy-limit demand letter to Xiong's insurer. Valen's investigative efforts generated \$1,616.43 in unreimbursed expenses. On Her's behalf, Valen estimated 12.6 billable hours and asserted that his office staff generated 39 letters relevant to Her's potential claim. Valen

contended that his work generated a \$7,000 settlement offer and that he had prepared pleadings and organized discovery to the point that Her's claims were ready for formal service.

On February 24, 2011, appellants, while represented by Eckman's firm, filed their action for uninsured motorist injuries against the uninsured driver and American Family Mutual Insurance Company. On March 12, 2012, Eckman sent a letter informing Valen that the case had settled. Eckman and Valen proceeded to have unproductive conversations regarding Valen's alleged liens. On March 20, 2012, the district court formally dismissed appellants' cases against the uninsured driver and American Family, with prejudice, based on the stipulated settlement.

On April 18, 2012, despite unsuccessful attempts to learn about the terms of the settlement, Valen wrote to American Family to remind them of their obligations regarding settlement assets in light of his attorney liens. American Family responded that it had inadvertently overlooked the liens, had issued the settlement checks to Eckman's firm, and that the checks had already cleared their bank. In late May, Valen wrote to Eckman inquiring about the status of the liens. Eckman responded that his clients were "not enthusiastic about paying" Valen. Eckman also informed Valen that his inquiries regarding the settlement, distribution of funds, and the amount of time Eckman spent on the cases was "not germane." The attorneys never reached an amicable resolution. On June 29, 2012, Valen filed a petition to "Determine Attorney's Liens and for Entry of Judgment."

On July 31, 2012, the district court heard arguments on Valen's petition. Valen argued that he properly filed the liens and that a summary determination was appropriate. Appellants, arguing that they appeared solely to challenge jurisdiction, contended that jurisdiction was lacking, that the lien filings did not meet statutory requirements, and that a full evidentiary hearing should occur to determine Valen's claims in quantum meruit. American Family took no position on the liens because it had secured a release via the settlement. The district court granted Valen's petition and entered judgment. The district court concluded that jurisdiction was proper, that it could make a lien determination on a summary basis, that Valen's pre-litigation work qualified for compensation under the statute, that Valen was not required to file notification of a UCC security interest for this type of claim, and that Valen was entitled to his out-of-pocket expenses plus one-third of Eckman's firm's attorney fees from appellant's settlement proceeds. This appeal followed.

D E C I S I O N

The interpretation and application of Minnesota Statute section 481.13, governing attorney liens, forms the foundation of this appeal. *See* Minn. Stat. § 481.13, subs. 1-2 (2012). "Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court. *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998), *review denied* (Minn. May 29, 2001)). The interpretation of a statute presents a question of law, which this court reviews de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). If the statutory meaning is

unambiguous, the district court interprets the language and applies the text's plain meaning. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010). A statute is only ambiguous when it is subject to more than one reasonable interpretation. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). We interpret statutes as a whole with effect given to all of their provisions, and "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Id.* (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). Our interpretation is in light of a statute's surrounding sections to avoid conflicting interpretations. *Schroedl*, 616 N.W.2d at 277. The ultimate goal of statutory construction and interpretation is to avoid absurd results and unjust consequences. *Id.* at 278. Finally, our interpretation aims to ascertain and effectuate the intention of the legislature. *Brua*, 778 N.W.2d at 300.

Although attorney-charging liens existed at common law, they are now wholly governed by statute. *Vill. of New Brighton v. Jamison*, 278 N.W.2d 321, 324 (Minn. 1979). "[T]he general theory behind [lien rights is] that a successful plaintiff should not be permitted the whole of any judgment secured by the services of his attorney without paying for those services." *Schroeder, Siegfried, Ryan & Vidas v. Modern Elec. Prods., Inc.*, 295 N.W.2d 514, 516 (Minn. 1980). Liens apply only to services rendered for the particular cause of action or proceeding and not to a client's general account. *Id.* An attorney lien is not extinguished until it is satisfied. *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 26 (Minn. App. 1987) (concluding that a lien, once formed, is not extinguished until satisfied and that the entry of judgment on the underlying cause of action has no effect on the lien's validity).

We address the contended procedural bars to Valen’s claim for attorney liens before addressing the arguments on the merits.¹

I.

Appellants contend that, because the district court dismissed the underlying litigation, it lacked jurisdiction. The district court determined that its jurisdiction derived from section 481.13, subdivision 1(c), which states that a lien may be determined “summarily by the [district] court under this paragraph on the application of the lien claimant or of any person or party interested in the property subject to the lien.” We review jurisdictional challenges de novo. *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007).

Appellants’ jurisdictional assertion is definitively foreclosed. We have previously interpreted an amendment to section 481.13 that updated the phrasing regarding how and when a lien may be established. The legislature changed the wording from “in the action or proceeding” to “by the court under this paragraph.” *See N. States Power Co. v. Gas Servs., Inc.*, 690 N.W.2d 362, 365 (Minn. App. 2004). We concluded that “the legislature intended that the statute henceforth would empower a court to establish and determine liens without regard to whether or not the action or proceeding in which the fees were incurred was before that court.”² *Id.* at 365-66. It is equally clear that the dismissal of

¹ Because Valen filed two separate liens, one against Xiong and another against Her, we refer to his liens in the plural form despite the fact that the district court fashioned singular relief.

² In *N. States Power Co.*, not only had the underlying litigation been resolved, but it also had been resolved in federal court. Regardless, the state district court had jurisdiction to resolve the petition for the claimed attorney lien. 690 N.W.2d at 364-65.

the underlying litigation here had no effect on Valen’s liens. *See Williams*, 415 N.W.2d at 26 (concluding that a lien, once formed, is not extinguished until satisfied and that the entry of judgment on the underlying cause of action has no effect on the lien’s validity). Appellants are not entitled to relief on this ground the dismissal of their underlying litigation extinguished the district court’s jurisdiction over the Valen’s alleged liens is incorrect.

II.

Appellants contend that the district court erred by not granting them an evidentiary hearing after rejecting their jurisdictional argument. We disagree.

“Minnesota caselaw has long characterized attorney-lien actions as summary proceedings.” *Thomas A. Foster & Assoc., LTD v. Paulson*, 699 N.W.2d 1, 6 (Minn. App. 2005). Looking at the plain language of the statute, it specifically provides that the district court will “summarily” establish and determine the amount of an attorney lien upon application of the lien claimant. Minn. Stat. § 481.13, subd. 1(c); *see also In re L-tryptophan Cases*, 518 N.W.2d 616, 622 (Minn. App. 1994) (holding that district court may establish and enforce lien in one summary action); *Gaughan v. Gaughan*, 450 N.W.2d 338, 343 (Minn. App. 1990) (noting that “proceedings under Minn. Stat. § 481.13 retain their summary nature”), *review denied* (Minn. Mar. 16, 1990).

A summary proceeding is “any proceeding by which a controversy is settled . . . in a prompt . . . manner, without the aid of a jury.” *Boline v. Doty*, 345 N.W.2d 285, 289 (Minn. App. 1984), *superseded by statute*, Minn. Stat. § 481.13, subd. 1(c) (2002) (quotation omitted) (eradicating the distinction between establishment and enforcement

of attorney liens by summary disposition). According to *Black's Law Dictionary*, “summary” is an adjective defined as being short, concise, and without the usual formalities. 1573 (9th ed. 2009). Characteristically, a summary proceeding is immediate and abridges formal procedures. *Foster*, 699 N.W.2d at 6-7.

Despite the summary nature of an attorney-lien proceeding, we observe that the statute is silent as to permissible defenses that may be raised during such a hearing. We have specifically held that due process requires that parties have a meaningful opportunity to be heard. *Gaughan*, 450 N.W.2d at 343; *Boline*, 345 N.W.2d at 289. However, we have also clarified the type of issues requiring more procedural process than that afforded in a summary disposition. Additional safeguards are required when parties intend to litigate “complex questions of professional misconduct and legal malpractice.” *Foster*, 699 N.W.2d at 7-8. “Litigating the number of hours worked, the reasonableness of an hourly fee, or the existence of a contract in the first instance is not unduly burdensome in a summary proceeding before a district court.” *Id.*

We are unaware of any dispute between appellants and Valen relating to complex questions or legal malpractice. On our review, this is a dispute as to the number of hours worked and proper compensation. Such a dispute readily qualifies for summary determination. We also note that nothing prevented appellants from producing evidence at the summary proceeding, making legal argument, or challenging Valen’s assertions.³

³ Appellants argued that they did not participate in the evidentiary hearing, beyond noting their jurisdictional objection, because such participation would have constituted submission to the district court’s jurisdiction and thereby waived their jurisdictional objections. Appellants’ jurisdictional argument was not one of personal jurisdiction, but

Valen took full opportunity to make his case. The district court proceeded properly and did not violate appellants' procedural due-process rights.

III.

Appellants next contend that the district court erred by levying liens against a third party, namely, their attorney's law firm, and that Valen failed to properly perfect his liens under the statute. The district court awarded Valen a one-third share of the contingency fee received by the firm of Eckman, Strandness & Egan from the proceeds of appellants' settlement. We address these arguments in turn.

A.

Appellants contend that their attorneys' law firm is a third party to this action and cannot be required to satisfy an attorney lien without particular procedural safeguards being observed. However, their contention misconstrues the nature of a third party and the attorney lien statute. Because Valen properly notified appellants of his lien claims upon his discharge and attorney Eckman was appearing only as the representative of appellants, he was not a third party to the action.

First, although section 481.13, subdivision 1(a), authorizes a petition for a lien against third parties, Valen did not bring such a petition. Instead, he brought a petition

one that suggested the district court was divested of its authority to hear the case due to the underlying dismissal. Subject matter jurisdiction grants a district court "[j]urisdiction over the nature of the case and the type of relief sought." *Black's Law Dictionary* 931 (9th ed. 2009). Lack of subject matter jurisdiction may be raised at any time by the parties or sua sponte by the district court and cannot be waived. *Marzitelli v. City of Little Can.*, 582 N.W.2d 904, 907 n.20 (Minn. 1998). Appellants' contention that their participation in the evidentiary hearing would have subsequently forfeited their right to object on jurisdictional grounds is incorrect.

directly against appellants. Second, according to *Black's Law Dictionary*, one becomes a third party when he or she is attached to “litigation as a third-party defendant.” 1617 (9th ed. 2009). Here, Valen never joined attorney Eckman to the action and never sought lien satisfaction directly from Eckman’s firm. In other cases, where we have determined that a law firm constituted a third party under the statute, the attorney lien sought satisfaction from the law firm directly. *See, e.g., Thomas B. Olson & Assocs. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 911-913 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). Eckman’s argument that his representation of appellants rendered him a third party to the action is a red herring.

B.

Appellants urge us to accept their argument that the work Valen completed prior to filing their action is not eligible for an attorney lien. Section 481.13 provides for two types of liens—one on the cause of action and the other on judgments. *See* Minn. Stat. § 481.13, subd. 1(a)-(b). However, “the two types of liens are not mutually exclusive, and both sections may apply.” *Williams*, 415 N.W.2d at 25. Subdivision 1 of the attorney-lien statute provides, in part:

(a) An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney’s client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding.

Minn. Stat. § 481.13, subd. 1. In applying this section, the district court rejected appellants' argument that, because Valen's work preceded the filing of the cause of action, his liens were not subject to the statute. The district court, utilizing dicta from the supreme court, interpreted the phrase "proceeding" as a "comprehensive term meaning the action of proceeding a particular step or series of steps, adopted for accomplishing something." *See Modern Elec.*, 295 N.W.2d at 516 (quotation omitted). If we accept the district court's definitional analysis, it would foreclose appellants' argument that Valen's pre-litigation work is ineligible for compensation under the attorney-lien statute.

While appellants attempt to distinguish *Modern Elec.* because its ultimate holding was narrowed to a determination that the attorney-lien statute applied to an attorney's work in pursuing the application of a patent before the United States Patent Office, the supreme court's dicta analyzing the meaning of the word "proceeding" is directly applicable. *See id.* It is undeniable that Valen's pre-litigation work in preparing appellants' cases ultimately aided in their eventual recovery and was thus a part of the "proceeding." As a result, Valen is eligible to seek compensation under the attorney-lien statute for his work that triggered the "proceeding" that eventually led to appellants' recovery.

C.

Appellants contend that Valen did not properly perfect his liens as required by the statute. The district court concluded that "Valen had no duty to perfect his lien by filing security interests under the UCC, as required by subdivision 2 of the statute. Valen's claim falls under subdivision 1." We agree.

The attorney-lien statute requires additional filing requirements, namely, perfection of the lien but only when subdivision two applies. That section, aptly titled “Perfection of lien,” attaches when the claimed lien is against the client’s interest in real or personal property. *See* Minn. Stat. § 481.13, subd. 2(a)-(b). Because Valen’s claim was asserted against the monies appellants obtained from their settlement, as a result of their uninsured motorist accident, it is clear that subdivision 1 applies. *See* Minn. Stat. § 481.13, subd. 1(a)(2) (lien valid upon the interest of attorney’s client in any money or property involved in or affected by the proceeding). Bolstering this conclusion is the fact that it applies the plain meaning of the statutory language to the facts. *See Brua*, 778 N.W.2d at 300.

Because Valen commenced the proceeding, sought compensation from his former clients’ interest settlement proceeds that stemmed from that proceeding, and served notice of his claim upon appellants, his liens were proper under subdivision 1. Because subdivision 1 provides the district court the authority to determine the amount of the liens “summarily,” the district court did not err by determining that perfection of Valen’s liens under subdivision 1 was not required. As a result, Valen’s claim was proper against appellants due to his investigatory work on their claims, which attorney Eckman took over following Valen’s discharge.

IV.

As there is no procedural bar to Valen’s asserted liens, we address appellants’ challenge to the merits and calculation of the liens ordered by the district court. Because we have determined that subdivision 1 of the attorney-lien statute applies to these facts,

we analyze the lien amounts under that statute's guidance. The district court determined, after outlining factors for attorney-fee determinations, that "[Valen] is entitled to 1/3 of the attorney's fees paid to Eckman plus payment of his out of pocket expenses."

Determining the proper amount of an attorney lien is within the discretion of the district court. See Minn. Stat. § 481.13, subd. 1(c); *Ashford v. Interstate Trucking Corp. of Am.*, 524 N.W.2d 500, 503 (Minn. App. 1994). The reasonable value of attorney fees is a question of fact. *Id.* at 502. We review a district court's findings on this issue for clear error. *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973). However, when considering whether the district court employed the proper method to calculate the amount of an attorney lien, we utilize a de novo standard. *In re L-tryptophan*, 518 N.W.2d at 619.

In cases where an attorney is discharged, an award of attorney fees cannot be based on the terminated contingency agreement. *Trenti, Saxhaug, Berger, Roche, Stephenson, Richards, & Aluni, Ltd. v. Nartnik*, 439 N.W.2d 418, 421 (Minn. App. 1989), *review denied* (Minn. Jul. 12, 1989). Therefore, Valen's one-third contingency arrangement with appellants is irrelevant. A discharged attorney may only recover fees for services provided based upon the reasonable value of the services rendered, or quantum meruit. *Lawler v. Dunn*, 145 Minn. 281, 284-85, 176 N.W. 989, 990 (1920).

Appellants contend that the district court's award constitutes error because it failed to utilize a quantum meruit calculation. However, we have previously stated that "[t]he concept of quantum meruit does not require that attorneys be paid on an hourly basis. Such a rigid rule would not allow due consideration to the relevant circumstances

surrounding either a discharge or a withdrawal.” *Ashford*, 524 N.W.2d at 503. Interestingly, *Ashford* has facts very similar to this case with the noted exception that the attorney in that case withdrew rather than being discharged. The *Ashford* court identified six factors that aid a district court in apportioning a client’s recovery between two law firms that worked on a given case:

Specifically, among other factors, the court looked at: (1) the length of time each firm spent on the case; (2) the proportion of funds invested by each firm; (3) the quality of representation; (4) the result of each firm’s efforts; (5) the viability of the claim at transfer; [and] (6) the amount of recovery realized.

Id. In *Ashford*, the case settled for \$25,000, but we determined that appellant’s requested relief of \$20,000 was excessive and that the district court was justified in equally dividing the one-third contingency fee of the subsequent law firm. *Id.* at 504. Given the *Ashford* court’s guidance that a strict hourly computation would not allow for adequate consideration of all aspects of a discharge or withdrawal, appellants’ contention that the district court erred by not engaging in a quantum meruit analysis is flawed. In actuality, both in *Ashford* and in the present case, the district court’s analysis may have sounded in quantum meruit but simply eschewed an hourly calculation based on the facts of the case. The facts of this present case bolster this inference. The record is replete with Valen’s attempts to ascertain the nature of the settlement proceeds (their amount, location, etc.). Appellants’ subsequent attorney consistently rebuffed his efforts. Valen was informed that his former clients were not enthusiastic about the idea of paying him and that his inquiries into the amount of the settlement or the amount of work rendered by attorney

Eckman were “not germane.” Further, appellants’ attorney submitted no evidence at the hearing before the district court.

Due to the unresponsiveness of appellants’ subsequent attorney, the precise location and status of the settlement proceeds remains largely unknown. However, it is undisputed that Valen properly served both appellants and Eckman with notice of his liens. A lien is not extinguished until satisfied. *See Williams*, 415 N.W.2d at 26. As a result, it was proper for the district court to fashion relief assuming that Eckman comported with the rules of professional responsibility. *See Minn. R. Prof. Conduct 1.15(b)(ii)* (if attorney fees are disputed by a third party claiming entitlement, attorney who receives funds into their trust account must leave disputed portion in trust account until resolution of dispute). The settlement proceeds belonged to appellants as part of their settlement and were held in trust by Eckman. Valen’s attorney liens targeted the settlement proceeds of his former clients, which the district court properly adjudicated.

We remain mindful of the maxim that a successful plaintiff is not permitted the whole of any judgment secured through the work of an attorney without paying for those services. *See Modern Elec.*, 295 N.W.2d at 516. It is also troubling that appellants challenge the award of a one-third share of their attorney’s contingency fee, when their own actions prevented the district court from ascertaining relevant information. Had Eckman provided Valen with more information regarding the settlement or the calculation of his firm’s fees, the district court could have fashioned a more traditional

award. Nevertheless, given the limited evidence presented, all by Valen, the district court acted within its discretion in fashioning the amount and form of the attorney liens.⁴

Affirmed.

⁴ We note that the district court's reliance on the factors listed in *L-tryptophan* was in error. *L-tryptophan* includes exclusionary language that suggests its factors do "not apply to cases in which a discharged attorney sues a client." 518 N.W.2d at 621. However, given the district court's authority under the statute to summarily determine the amount of the lien, the *Ashford* court's guidance that the district court must be able to consider the unique facts of an attorney's discharge, and the limited record available to the district court to make its determination, its citation to these factors does not constitute reversible error. The district court's final determination was equitable in light of the record.