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MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KATHERINE J. DUHAMEL,)	
)	
Appellant,)	
)	
v.)	Case No. 2D19-258
)	
MICHAEL D. FLUKE and MICHAEL D.)	
FLUKE, P.A.,)	
)	
Appellees.)	
_____)	

Opinion filed May 1, 2020.

Appeal from the Circuit Court for Pasco
County; Alicia Polk, Judge.

Jessie L. Harrell of The Harrell Firm,
Jacksonville, for Appellant.

Brooke Elvington, Dunedin, for Appellees.

BLACK, Judge.

Katherine J. Duhamel appeals an order imposing a charging lien in favor of the law firm of her former attorney, Michael D. Fluke, P.A., for attorney's fees incurred in connection with Ms. Duhamel's dissolution of marriage. Because the trial court erred in imposing a charging lien against assets distributed to Ms. Duhamel in the final

judgment of dissolution that her former attorney, Michael Fluke, had no hand in securing, we reverse.

Ms. Duhamel retained Mr. Fluke in December 2014, and he filed the petition for dissolution in April 2015. In August 2016 the court entered an order granting Ms. Duhamel's request for temporary alimony and related relief. Not long after entering the temporary relief order, in October 2016, the court entered an order permitting Mr. Fluke to withdraw and substituting Marian McCullough as new counsel of record for Ms. Duhamel. Shortly before the October order was entered, Mr. Fluke filed a notice of attorney charging lien. In February 2017 the court entered an order permitting Ms. McCullough to withdraw from the case and allowing Ms. Duhamel to proceed pro se. From that point forward Ms. Duhamel was not represented by an attorney in the underlying proceedings. The final judgment of dissolution was entered in September 2018, and Mr. Fluke filed a motion shortly thereafter to impose and adjudicate the charging lien. In the motion, Mr. Fluke indicated that Ms. Duhamel "received the fruits of [his] services" but did not specifically identify the nature of those "fruits." He concluded the motion by stating that "[Ms. Duhamel] was awarded assets in equitable distribution" and requesting "that payment be issued to [him] prior to the distribution of any assets from the Former Husband to [Ms. Duhamel]."

An evidentiary hearing was held on Mr. Fluke's motion to impose the charging lien on January 7, 2019. Ms. Duhamel represented herself. Mr. Fluke repeatedly testified at the hearing that he did not deal with any matters concerning equitable distribution as he was "off the case before [they] ever got to [equitable distribution]." And in closing Mr. Fluke argued that the "fruits of [his] labor" were limited

to those stemming from the temporary relief order. Despite these assertions, he requested that the charging lien attach to the retirement funds distributed to Ms. Duhamel pursuant to the equitable distribution of the final judgment. Just before rendering its ruling, the trial court stated that equitable distribution was not at issue, noting that Mr. Fluke did not draft the proposed equitable distribution. And in granting the charging lien, the trial court specifically found that the financial relief secured by Mr. Fluke for Ms. Duhamel was the temporary relief. Nonetheless, the written order provides that "Michael D. Fluke, P.A., is entitled and granted a charging lien in the amount of \$18,466.66" and that "[n]o funds shall be distributed by the Former Husband to [Ms. Duhamel] before this Charging Lien is fully satisfied." An amended final judgment was entered nunc pro tunc to the date of the original final judgment to reflect the reservation of jurisdiction as to the charging lien.

We review de novo the trial court's order granting the charging lien. See Greenberg Traurig, P.A. v. Starling, 238 So. 3d 862, 864 (Fla. 2d DCA 2018).

"A charging lien is an attorney's equitable right to have costs and fees owed for legal services secured by the judgment or recovery in the lawsuit." Newton v. Kiefer, 547 So. 2d 727, 728 (Fla. 2d DCA 1989); see also Lochner v. Monaco, Cardillo & Keith, P.A., 551 So. 2d 581, 583 (Fla. 2d DCA 1989). "It is not enough to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services." Correa v. Christensen, 780 So. 2d 220, 220 (Fla. 5th DCA 2001).

Mitchell v. Coleman, 868 So. 2d 639, 641 (Fla. 2d DCA 2004) (emphasis added); see Szurant v. Aaronson, 277 So. 3d 1093, 1094 (Fla. 2d DCA 2019) ("A charging lien judgment in a dissolution action . . . is limited only to property recovered by the client in

the dissolution action as a result of the attorney's efforts."). A charging lien may attach to assets awarded as part of the equitable distribution, see Mitchell, 868 So. 2d at 641; Menz & Battista, PL v. Ramos, 214 So. 3d 698, 700 (Fla. 4th DCA 2017), as well as to an award of alimony, see Tucker v. Tucker, 165 So. 3d 798, 800 (Fla. 4th DCA 2015). However, "[a]n attorney's charging lien should not be enforced against an award of . . . alimony if to do so would deprive a former spouse of daily sustenance or the minimal necessities of life." Tucker, 165 So. 3d at 800 (quoting Dyer v. Dyer, 438 So. 2d 954, 955 (Fla. 4th DCA 1983)); accord Litman v. Fine, Jacobson, Schwartz, Nash, Block & England, P.A., 517 So. 2d 88, 92 n.5 (Fla. 3d DCA 1987) ("[A]n alimony award designed to provide 'daily sustenance and the minimal necessities of life' . . . [is] not [an] award[] against which the lien can be enforced." (citations omitted)).

Ms. Duhamel first contends that it is not readily evident from the trial court's order whether the charging lien was imposed against her alimony award or against the assets distributed to her as part of the equitable distribution and that if imposed against her alimony award the trial court erred because it failed to make any findings regarding whether the imposition of the charging lien would deprive her "of daily sustenance or the minimal necessities of life." See Tucker, 165 So. 3d at 801 ("[W]e reverse and remand on this issue and instruct the trial court to determine whether the enforcement of the charging lien against the alimony award in this case would deprive Former Wife of daily sustenance or the minimal necessities of life."). Although the trial court's written order could have been more clear in this regard, it does indicate that the charging lien shall impact the distribution of funds from the former husband to Ms. Duhamel, and as pointed out by Mr. Fluke, alimony is not distributed. Cf. id. at 800

(concluding that the charging lien order providing that the attorney's lien extended to " any and all payments, stock transfers or property provided to the Former Wife prior to their transfer' . . . invariably includes Former Wife's alimony award" (emphasis added)); see generally Mitchell, 868 So. 2d at 641 (concluding that judgment stating that "[a] charging lien is hereby imposed against the Former Husband, FRANZ EDWARD MITCHELL, in favor of the Law Office of Jeanne L. Coleman in the amount of \$49,751.77" was "overly broad because it does not limit the lien to property recovered by Mr. Mitchell as a result of Ms. Coleman's efforts in the dissolution action"). Moreover, it is apparent from Mr. Fluke's written motion as well as his closing argument that he was requesting that the charging lien attach to the assets distributed to Ms. Duhamel as part of the equitable distribution of the final judgment. Notwithstanding the foregoing, Ms. Duhamel further contends that to the extent that the charging lien attached to assets awarded as part of the equitable distribution, it is erroneous since Mr. Fluke had no hand in procuring those assets for her. On that point we agree.

The law clearly provides that a charging lien only attaches to the "fruits" flowing from the attorney's efforts. See Mitchell, 868 So. 2d at 641 ("[T]he lien will attach only to the tangible fruits of the services." (emphasis added) (quoting Correa v. Christensen, 780 So. 2d 220, 220 (Fla. 5th DCA 2001))); Rudd v. Rudd, 960 So. 2d 885, 887 (Fla. 4th DCA 2007) (same); Litman, 517 So. 2d at 92 (same); cf. Rochlin v. Cunningham, 739 So. 2d 1215, 1217 (Fla. 4th DCA 1999) ("The fact that the final settlement agreement included some terms that were negotiated by [the attorney] does not mean that she produced a positive judgment for Cunningham [for purposes of obtaining a charging lien]. The record shows that no settlement was reached while [the

attorney] represented Cunningham mainly because of the advice concerning the child support."); Pasin v. Kroo, 412 So. 2d 43, 44 (Fla. 3d DCA 1982) (holding that it was error to impose a charging lien on money received by the client from the sale of the condominium where the attorney unsuccessfully defended the client in a suit for specific performance of the condominium sale contract). In light of the testimony and argument presented at the hearing, as well as the finding made by the trial court in granting the motion to impose the charging lien that the only financial relief secured by Mr. Fluke for Ms. Duhamel was the temporary relief awarded years before the entry of the final judgment, there was no basis for the trial court to impose the charging lien against assets distributed to Ms. Duhamel in the equitable distribution since Mr. Fluke's efforts—by his own admission—had no impact on Ms. Duhamel's procurement of those assets. After all, "[a] charging lien cannot be imposed merely because the attorney provided legal services." Robert C. Malt & Co. v. Carpet World Distribs., Inc., 861 So. 2d 1285, 1287 (Fla. 4th DCA 2004). Accordingly, we reverse the order granting the charging lien.

Reversed.

CASANUEVA and SLEET, JJ., Concur.