



Higgins v. Beaty

242 N.C. 479 (1955) | Cited 6 times | Supreme Court of North Carolina | June 30, 1955

Appellant in brief filed in this Court states only two questions as being involved on this appeal.

The first: "Where an attorney accepts employment to represent a client in specific matters at a specified fee, and before the matters are completed the attorney is discharged by the client, may the attorney recover of the client the full contract fee, or only the reasonable value of his services to the date of his discharge?" While no North Carolina decision is cited, and we find none, treating of this particular subject, the majority of decided cases in other jurisdictions hold to the view that in such case in an action for breach of contract the correct measure of damages is the entire agreed fee. Counsel for appellant concedes that this is true, but cites other cases holding that the measure of damages in such a case is the reasonable value of services rendered to the date of the discharge.

The theory of the trial in case in hand was in accordance with the rule first above stated. And this Court holds that this is the sounder view.

In this connection text writers say that "Where the employment of an attorney is under an express valid contract stipulating for the compensation which the attorney is to receive for his services, such contract is, generally speaking, conclusive as to the amount of such compensation." 5 Am. Jur. 378, Attorney at Law Section 195.

Moreover, it seems to be held generally that an attorney, before he undertakes employment by a client, may contract with reference to compensation for his services; that no confidential relation then exists and the parties deal with each other at arm's length; that such contracts are not within the rule of presumption against the attorney which obtains in contracts between the attorney and client after the

relation has been established; that a contract made under such circumstances is as valid and unobjectionable as if made between other persons not occupying fiduciary relations, and who are, in all respects, competent to contract with each other. 5 Am. Jur. 356, Attorney at Law Section 159.

Again, we find it said: "If . . . the action is for damages for breach of the contract in which a definite compensation is fixed, the measure of recovery is . . . held to be the full contract price agreed upon . . . provided, in the case of an employment for a fixed time, that the attorney remained ready and willing to perform, and capable of doing so, during the period of the contract." 5 Am. Jur. 382, Attorney at Law Section 202.



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The second question: "Did the trial court's statement of certain of plaintiff's contentions, as set out in the record, amount to the expression of an opinion as to the credibility of witnesses and weight of the evidence, which is prohibited by G.S. 1-180?" A reading of the record discloses that the trial judge stated contentions, not only those made by plaintiffs, but those made by the defendant. And there is nothing in the record and case on appeal to show that the contentions as stated by the judge were not actually made by the respective parties. Error in this respect is not made to appear.

Hence in the trial below, we find

No Error.

Disposition

No Error.

