No. 129599

In the

Supreme Court of Illinois

ANDREW W. LEVENFELD AND ASSOCIATES, LTD.
and STEPHEN J. SCHLEGEL, LTD.,

Plaintiffs-Appellants,

v.

MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III,

Defendants-Appellees.

On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-21-1638.
There Heard on Appeal from the Circuit Court of Cook County,
County Department, Chancery Division, No. 17 CH 15055.
The Honorable **Cecilia A. Horan**, Judge Presiding.

BRIEF AND SUPPLEMENTAL APPENDIX OF DEFENDANTS-APPELLEES. CROSS-RELIEF REQUESTED

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NATURE OF THE CASE

This is an action by two law firms, Stephen J. Schlegel, Ltd. and Andrew W. Levenfeld and Associates, Ltd. (together, the "Plaintiffs"), against their former clients, Maureen V. O'Brien ("Maureen") and Daniel P. O'Brien III ("Dan") (together, the "O'Briens"). The Plaintiffs represented the O'Briens in legal matters relating to family trusts and estates. The Plaintiffs entered into a two-page fee agreement with the O'Briens. SA 1-2; C 5335-36. In the circuit and appellate courts, the Plaintiffs admitted that their fee agreement violated Rule 1.5(e) of the Illinois Rules of Professional Conduct.[1] C 5333, 6165, 6177; Plaintiffs' Br. in App. Ct. at 29-30, 40-41. The Plaintiffs sought a *quantum meruit* award equal to the contingency fee specified in the fee agreement. C 388-418. They expressly disclaimed any alternative method for calculating the *quantum meruit* award. See *id.*

Following a bench trial, the circuit court of Cook County rendered a judgment in the Plaintiffs' favor and awarded them $1,692,390.60, which was equal to the contingency fee specified in the fee agreement and costs, minus the fees the O'Briens paid to another attorney. C 6291. On appeal, the judgment was reversed in part and affirmed in part. The appellate court held that the Plaintiffs could recover in *quantum meruit*, but that, due to the Plaintiffs' violation of Rule 1.5(e), the amount of the *quantum meruit* award could not be calculated based on the contingency fee specified in the fee agreement. *Andrew W. Levenfeld & Associates, Ltd. v. O'Brien*, 2023 IL App (1st) 211638, ¶¶ 45, 52, 56. There is no jury verdict. No issues are raised on the pleadings.

---

[1] Rule 1.5(e) has recently been renumbered as Rule 1.5(f). Because the circuit court's order, the appellate court's opinion and the Plaintiffs' brief all refer to the rule as Rule 1.5(e), the O'Briens will likewise refer to it as Rule 1.5(e).

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ISSUES PRESENTED FOR REVIEW

1. Did the appellate court correctly hold that a *quantum meruit* award to an attorney may not be based on a contingency fee agreement that violates Rule of Professional Conduct 1.5(e)?

2. Does the manifest weight of the evidence show that the attorneys in this case conferred no benefit on their clients?

3. Did the circuit court err in finding that the reasonable value of the attorneys' services in this case should be based on the contingency fee?

4. Did the attorneys waive or forfeit any other basis for recovery in *quantum meruit*?

STATEMENT OF JURISDICTION

This Court has jurisdiction over the Plaintiffs' appeal pursuant to Illinois Supreme Court Rules 301 and 315. See Ill. Sup. Ct. R. 301, 315. The Plaintiffs timely filed a petition for leave to appeal from the appellate court's opinion. That petition was allowed on September 27, 2023. This Court has jurisdiction to consider the O'Briens' request for cross-relief pursuant to Illinois Supreme Court Rule 318(a). See Ill. Sup. Ct. R. 318(a).

RELEVANT RULE OF PROFESSIONAL CONDUCT

Illinois Rule of Professional Conduct 1.5(f), which was numbered as Rule 1.5(e) during the proceedings below, states as follows:

> A division of a fee between lawyers who are not in the same firm may be made only if:
>
> (1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;
>
> (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

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(3) the total fee is reasonable.

See Ill. R. Prof. Conduct 1.5(e).

STATEMENT OF FACTS

I. The Fee Agreement

Maureen, her sister Margaret O'Brien Schulze ("Peggy"), and Peggy's husband Richard Schulze ("Richard") were the co-executors of Maureen and Peggy's parents' estates. C 5332-33; R 314-15. Dan is Maureen and Peggy's nephew. C 5332; R 304. Peggy and Richard had majority control of the estates' assets, which included several properties and businesses. C 1850-52; R 317-22. Disputes between Maureen, Dan, Peggy and Richard arose over whether Peggy and Richard were properly managing the estates' assets. See C 1851-52, 5332-33; R 322-23, 349, 361-62. Although Maureen and Dan each had an undisputed 25% interest in the estates' assets, Peggy and Richard stopped paying them their *pro rata* share of the assets, paid Peggy's son from estate assets, and denied Maureen access to the estates' information and records. *Id.*

By late 2015, Maureen and Dan "had little or no other means of income or support and needed money to survive." Appellants' Br. at 5 (citing C5333; R323-324). Maureen's home in Chicago had been foreclosed upon (R 324), her savings were exhausted, and she had little other income (R 1573). Maureen also had health issues and medical bills to pay. R 1581. Dan had relied on income from O'Brien family businesses, and without that income, he could not pay judgments that had been entered against him. R 323-24. He had no income except for a few thousand dollars earned from selling personal belongings on eBay. R 1641-44, 1646. Neither Maureen nor Dan could pay their own bills. R 324; see also Appellants' Br. at 5.

In July 2015, Maureen contacted attorney Stephen Schlegel to discuss the disputes over the O'Brien family businesses and management of the family estates. R 304-05, 1574. Schlegel

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told the O'Briens that he would only take their case if another attorney, Andrew Levenfeld, would agree to co-counsel the case with him. R 332, 1575, 1656; see also Appellants' Br. at 6.

In late October 2015, the parties entered into a two-page agreement. SA 1-2; C 5335-36. The agreement was dated October 29, 2015, and stated that it was entered between: (a) Andrew W. Levenfeld & Associates, Ltd; (b) Stephen J. Schlegel, Ltd.; (c) Maureen; and (d) Dan. SA 1; C 5335. The agreement referred to Levenfeld and Schlegel collectively as the "Attorneys," and referred to Maureen and Dan collectively as the "Clients." *Id*. This is the only agreement relating to the attorney-client relationship between the Plaintiffs and the O'Briens, and it is also the only agreement documenting the relationship between Levenfeld and Schlegel.

The agreement stated that the "Clients do hereby retain and employ the attorneys to represent them and protect and enforce any rights they may have now, or which arise in the future," in connection with Maureen's parents' estates "and various O'Brien family business entities." SA 1; C 5335.

Although the agreement recognized that Maureen and Dan "currently do not have liquid cash assets to provide for the bills for anticipated legal services and costs," it entitled the Plaintiffs to fees calculated in multiple ways, and it stated that the Plaintiffs would receive "whichever" fee was "greater." SA 1; C 5335.

First, the agreement described a "minimum" fee "calculable at an hourly rate of $300 per hour" for Levenfeld and Schlegel's time, "$250 per hour for associate attorney time, and $85 per hour for paralegal or paraprofessional time," in addition to reimbursement for costs. SA 1; C 5335. The "minimum fee" could not be less than $30,000. *Id.* The agreement stated that the O'Briens would be invoiced "[p]eriodically" for fees and expenses, and that the

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O'Briens would need to reduce "certain assets to liquid funds" to pay for the Plaintiffs' fees and expenses "prior to the end of the attorney-client relationship." *Id.*

Second, the agreement described a contingency fee measured by "15% of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients * * *."[2] SA 1; C 5335. The "assets recovered" would include "the fair market value of any property, real, personal, or inchoate, transferred from the Estates or businesses in which Clients currently own percentage interests, to the ownership of the Clients or either of them." SA 1-2; C 5335-36.

The agreement did not disclose how the Plaintiffs would divide the fees described in the agreement. SA 1-2; C 5333, 5335-36, 6246; see also R 1674. The Plaintiffs admitted that the agreement therefore violated Illinois Rule of Professional Conduct 1.5(e). C 6165, 6177, 6282; see also R 345-47, 1348-49.

At the trial in this case, Schlegel testified that he and Levenfeld "never had an agreement" on how to divide fees from the O'Briens, except "an agreement to agree based upon the circumstances that exist when it's all over and when there's something to divide." R 345-47. Notwithstanding the Plaintiffs' concession that their agreement with the O'Briens violated Rule 1.5(e), Schlegel further testified as follows:

> Well, number one, I'm not personally a believer or professionally convinced that the Rule 155 [*sic*] applies to circumstances such as this. That rule, as we all lawyers know, was primarily instituted as a result of referrals in personal injury and large damage cases to give clients the right to know that they could hire the lawyer without a referral to a lawyer that didn't do any work. And it was a matter of curing what I'll call the "ambulance-chasing" public policy in those cases primarily.

[2] Dan meant to propose a contingency fee of 10% of recoveries up to $10,000,000 and 15% of recoveries in excess of $10,000,000, which would incentivize the Plaintiffs to recover more than $10,000,000, but Dan mistakenly transposed the percentages and the Plaintiffs did not correct his misunderstanding. R 1672-73.

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> I don't wish to say that there's no application to cases that are not personal injury cases. Because that's clearly not the case. But in this case, we don't know how we're going to share them until we know what we did, what we had to pay for it, how it worked out, and sit down and do something fair.

R 346. Schlegel doubled down on his position during cross-examination, stating, "I don't believe [Rule 1.5(e)] was intended when it was passed to apply to circumstances such as this," and opining that "the passage of this rule was to avoid circumstances where one attorney refers a matter to another attorney" and a referral fee is undisclosed. R 888.

II. The O'Brien Estate Litigation

The Plaintiffs encouraged Maureen to resign as a co-executor of the estates shortly after the parties signed the fee agreement. See R 1268-69, 1274-76, 1600-01. The Plaintiffs told Maureen that if she did not resign, she would open herself up to "a lot of liability" for Peggy and Richard's mismanagement of the estates. R 1275-76, 1600. The Plaintiffs did not provide Maureen with any other basis for resigning. R 1601. They also never explained to Maureen that, by resigning as a co-executor, she would give up certain benefits (*id.*), which included a stipend, the right to have the estates pay for independent valuations of estate properties, the right to inspect the estates' books and records, and increased authority over the estates. See R 583-85, 1278-81, 1816-18, 1822. Maureen resigned as a co-executor in December 2015. C 4473; R 579, 1346.

The Plaintiffs next filed petitions to remove Peggy and Richard as co-executors due to their mismanagement of the estates. C 6102-03, 6266; R 358, 557, 579-80, 1346. The probate court denied the petitions, finding that the Plaintiffs were "in the wrong forum" and using "the wrong process" to pursue Maureen and Dan's claims. C 6130. The probate court told the Plaintiffs that they should have raised Maureen and Dan's claims in the chancery division and filed a citation to recover certain payments made from the estates instead of trying to remove Peggy and Richard as co-executors. C 6130, 6266.

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The Plaintiffs attempted to appeal from the probate court's rulings. C 4472-77, 6266; R 562-63. However, the Plaintiffs failed to timely file a notice of appeal from the order denying their petition to remove Peggy and Richard as co-executors of the father's estate, so that appeal was dismissed. C 4473, 6266; R 563-64, 740, 1807. The appellate court affirmed the probate court's denial of the petition with respect to the mother's estate, finding that the Plaintiffs' appellate briefs "fail[ed] to set forth well-reasoned legal arguments and otherwise violate[d] several provisions of Illinois Supreme Court Rule 341(h)." C 4473, 6266.

The Plaintiffs later filed a petition in the chancery division for an accounting, breach of fiduciary duties related to the estates' mismanagement, and a partition of certain estate properties. R 368. However, as the Plaintiffs later conceded at trial, there were issues with these pleadings as well. R 566-67. The Plaintiffs voluntarily withdrew one of the claims. *Id.* The chancery division dismissed two of the causes of action for failure to state a claim. *Id.* The sole remaining claim was severed and transferred to probate court. *Id.* In dismissing their initial pleading, the chancery division judge told the Plaintiffs: "This is the exact opposite of the way we were all taught how to plead things." C 6266; R 573-74. The Plaintiffs later attempted to file an amended pleading, but it was stricken. R 368.

The Plaintiffs obtained no favorable rulings for the O'Briens. R 587. The Plaintiffs also took no depositions. C 6266-67; R 548, 1442, 1621-22, 1682.

III. Settlement Negotiations in O'Brien Estate Dispute

At the outset, the Plaintiffs agreed that they needed an independent valuation of the estates' assets to determine the fair value of Maureen and Dan's respective 25% interests. R 723-24, 1363-64. But the Plaintiffs never hired an appraiser or a forensic accountant to perform an accounting. R 723-25, 1363-65. Instead, the Plaintiffs relied on tax documents, Maureen's estimated valuations of the estates' properties, and Google and Zillow searches

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performed by a "volunteer helper" (C 6289)—whom Schlegel met in a recreational handball league (R 940)—to speculate that the estates' value was somewhere between $40 million and $80 million. See C 6089; R 324-25, 727, 990, 1237, 1365-67. The Plaintiffs knew that Maureen had no experience as a licensed appraiser. R 727-28, 1366, 1439. The volunteer helper also had no experience valuing properties. R 971.

Despite their failure to obtain a professional valuation of the estates' assets, the Plaintiffs engaged in settlement negotiations with Peggy and Richard's attorney. See C 4208-11, 4217-18, 4221-22, 4228-29; see also R 723-25, 1363-65. Maureen told the Plaintiffs that maintaining possession of her home in Michigan, an estate asset, was an essential component of any settlement agreement. R 386, 616, 1216, 1615-16.

On November 30, 2015, just one month after the Plaintiffs began representing the O'Briens, Peggy and Richard sent Dan an offer to settle his claims for $6 million. C 4204-05; R 374-77, 604, 606-07, 1368-69. As part of that settlement offer, Peggy and Richard agreed to forgive Dan's liability for a portion of the estates' attorneys' fees and the estates' required charitable gift. C 4204-05. Levenfeld admitted the November 2015 settlement offer was not sent to the Plaintiffs; instead, it was sent to Dan "directly from Peggy and Richard." R 1369. After consulting with the Plaintiffs, Dan rejected the November 2015 offer. R 377.

The Plaintiffs did not engage in settlement discussions with Peggy and Richard's attorney until after Dan received the November 2015 offer. R 377. The Plaintiffs engaged in early settlement discussions consisting of "a couple of offers and suggestions back and [f]orth." See R 378-79. However, the record contains no written settlement demands or offers involving the Plaintiffs until September 2016, when Peggy and Richard's attorney sent the Plaintiffs a letter proposing to settle both Dan and Maureen's claims for $12 million cash and

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an agreement to release Maureen and Dan from liability for any share of the estates' attorney fees and required charitable gifts. C 4206-07. The Plaintiffs rejected that offer. R 380-81.

On April 5, 2017, the Plaintiffs sent Peggy and Richard's attorney a demand to settle all disputes for $18.3 million. C 4208-09. The letter also stated that Maureen would vacate her home in Michigan. C 4209. On April 11, 2017, Peggy and Richard rejected the offer and responded with a counter proposal to settle for $15.44 million, which included credits for the estates' attorneys' fees and charitable gifts, on the condition that Maureen would vacate her Michigan home. C 4210-11, 6091-92. The Plaintiffs rejected that offer. C 4217.

On April 18, 2017, the Plaintiffs offered to settle all disputes for $17.1 million. *Id.* This time, they included a proposal that Maureen would keep her home in Michigan. C 4218.

On April 21, 2017, Peggy and Richard's attorney sent an email to the Plaintiffs commenting that the "parties remain significantly far apart on the economic issues" and that certain aspects of the Plaintiffs' most recent settlement offer were "particularly discouraging." C 5952. Peggy and Richard's attorney also accused the Plaintiffs of "game playing" and pulling a "stunt" in the settlement negotiations. *Id.* He added that he had an "increasing expectation" that litigation was unavoidable. *Id.*

On May 1, 2017, Peggy and Richard's attorney sent the Plaintiffs an offer to settle for $16.25 million, which again included credits for the estates' attorneys' fees and charitable gifts, once again on the condition that Maureen give up her Michigan home. C 4221-22, 6093-64.

The Plaintiffs did not respond to the May 1 settlement offer, and on May 10, 2017, Peggy and Richard's attorney sent the Plaintiffs an email stating that "any and all settlement offers previously communicated by or on behalf of my clients are hereby withdrawn." C 4227, 6148; see also R 1377-78. Schlegel forwarded the email to the O'Briens and stated, "there is now no offer to settle any aspect of these matters." C 6147; see also R 1617-18.

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Maureen testified that she felt devastated when Peggy and Richard withdrew all the settlement offers, and she felt as though the Plaintiffs could not accomplish anything. R 1614-15, 1619. Dan was "deflated" and disheartened by the failed negotiations, and his confidence in the Plaintiffs' ability to secure a settlement was "less than zero." R 1684. On May 25, 2017, the O'Briens fired the Plaintiffs. R 1623; see also C 5334, 5375-76.

The O'Briens hired a new attorney, and on July 21, 2017, their new attorney settled the disputes for $16.85 million, which included an agreement that Maureen could keep her home. C 5334, 6270, 6280; see also R 1490-91, 1532. The $16.85 million settlement amount was not entirely payable in cash. Rather, that total settlement amount included credits for the estates' attorneys' fees, charitable gifts, and the value of Maureen's home and an adjoining lot. C 1886-87.

IV. The Plaintiffs' Pre-Billing Statements

After the O'Briens terminated the Plaintiffs, the Plaintiffs generated pre-billing statements to show their time spent working on the O'Brien matter. C 4235-353. According to Levenfeld's pre-billing statement, between October 6, 2015 and May 17, 2017, he spent approximately 640 hours on the O'Brien matter. C 4338-53, 6256.

According to Schlegel's pre-billing statement, between July 7, 2015 and May 25, 2017, Schlegel, his associate, and his unpaid "volunteer helper" collectively devoted over 2,400 total hours to the matter. C 4235-4337, 6256. The volunteer helper's time, however, accounted for more than 1,200 of those hours. C 6256.

The Plaintiffs also recorded more than 100 billable hours for work they completed after the O'Briens terminated them, including for work done in preparation for their lawsuit against the O'Briens. C 4325-36, 4353.

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V. The Plaintiffs' Claims Against the O'Briens

The Plaintiffs filed a lawsuit against the O'Briens for fees incurred in the probate-related matters. C 41-64. Their operative complaint alleged that they were entitled to recover the full amount of the contingency fee in *quantum meruit*. C 388-418.

The fee dispute proceeded to a bench trial. Before trial, the parties stipulated that the Plaintiffs never told the O'Briens how they would split the fees. C 5333, 6165, 6177, 6246. The O'Briens filed a motion *in limine* to bar the Plaintiffs from arguing that a *quantum meruit* award should be measured by the fee agreement. C 2247-52. The circuit court denied the motion. C 2255.

The Plaintiffs called John T. Brooks, a trusts and estates attorney, as an expert witness. R 1009-10, 1014. Brooks generally testified that the underlying probate and related matters were "very complex." R 1035. Brooks opined that the Plaintiffs were entitled to the full amount of their contingency fee as a *quantum meruit* award because of this complexity, because the Plaintiffs were "highly qualified," and because the Plaintiffs "spent somewhere in the neighborhood of over 3,000 hours over like 19 months" on the matter. R 1036-38; see also C 1858-59. Brooks never testified to any other basis for calculating a *quantum meruit* award. See generally R 1009-1197.

The O'Briens called David J. Feinberg, another trusts and estates attorney, to testify that he believed the Plaintiffs were not entitled to recover their contingency fee in *quantum meruit*. R 1745-47, 1776-77. Feinberg testified that the Plaintiffs lacked a valid litigation and negotiation strategy and violated Rule 1.5(e) by failing to notify the O'Briens how they would divide the fees. R 1776-77. Feinberg also explained that the probate matters should have proceeded as an uncontested action because the O'Briens' percentage interests in the estates

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were entirely undisputed. See R 1779-80. He also testified that no one disputed the validity of any of the wills or trust instruments. R 1780.

Because there was no risk of "zero recovery" for the O'Briens, Feinberg opined that there were several other reasonable alternatives to a contingency fee structure, including deferring hourly payments until a later date, interest accrual, seeking payment from the estate by filing a fee petition for work done on behalf of the estate, and late charges. R 1783, 1796-99, 1802. Feinberg testified that he had never heard of a case in which an attorney charged a contingency fee to a client who had an uncontested percentage interest in an estate's assets. R 1783-84. He explained that such a fee arrangement would never have been allowed in probate court. R 1801-02, 1818-19.

Feinberg also testified that a potential conflict of interest existed in representing Maureen as both a co-executor and an individual beneficiary of the estates. R 1786-87, 1790-91. He explained that a reasonable trusts and estates attorney would have recommended that Maureen hire separate attorneys to represent her in her separate capacities as co-executor and beneficiary. R 1790-91; see also C 2166. Feinberg testified that in this case, conflicts could have arisen for Maureen in her dual roles as beneficiary and co-executor because of the discord with her fellow co-executors. See R 1786-87, 1790-91. He stated that the Plaintiffs should have explained this conflict to Maureen but never did. See R 1790-91; see also C 2166. Brooks, the Plaintiffs' expert, also testified that representing Maureen in both her executor and beneficiary capacities may have presented a conflict of interest, and that he would not have represented a client in both capacities. R 1085.

Feinberg testified that it was a mistake to advise Maureen to resign as a co-executor of the estates, and it was something he had "never seen." R 1815-16, 1821. As a result of Maureen's resignation, Maureen lost several benefits that came with being a co-executor,

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including leverage and visibility within the court process, powers in resolving issues related to the administration of the estates' assets, access to information and records, a stipend, and the right to recover legal fees from the estate. R 1813-18, 1822. Feinberg explained that, to the extent the Plaintiffs were concerned about Peggy and Richard's mismanagement of the estates, they should have documented Maureen's dissent instead of advising her to resign as a co-executor. R 1816, 1819-21.

Feinberg opined that the Plaintiffs' lack of a coherent litigation and negotiation strategy ultimately harmed the O'Briens: the Plaintiffs did not obtain any favorable rulings, missed important filing deadlines, kept requesting continuances without substantively progressing in the litigation, failed to obtain independent valuations of the estates' assets, and relied on outdated tax information for their estimates of the estates' value. R 1806-08, 1811-14. Feinberg testified that as a result of the Plaintiffs' failure to obtain an independent valuation, the O'Briens were in an unfavorable bargaining position from the start of settlement negotiations. R 1813-15.

VI. The Circuit Court's Judgment

The circuit court entered judgment in the Plaintiffs' favor. C 6277-91. The circuit court first found that the Plaintiffs proved they were entitled to recovery in *quantum meruit*, rejecting the O'Briens' argument that the Plaintiffs provided no benefit to them. C 6281. The circuit court found that "global success on the matters undertaken is not the yardstick by which a benefit conferred should be measured in this case." C 6280-81. The circuit court found that the O'Briens' ultimate settlement was "based in significant part on the pressure Plaintiffs brought to bear on Peggy [through] their litigation efforts." C 6281.

The circuit court next held that the Plaintiffs' admitted violation of Rule 1.5(e) did not preclude them from recovering attorneys' fees in *quantum meruit*. See C 6282-83. The circuit

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court held that the Plaintiffs' violation was merely "technical" and emphasized that the O'Briens "understood they were being represented by lawyers at two different firms" and "understood both attorneys would be compensated." *Id.* The circuit court also held that the fee agreement "demonstrates the relationship between the parties" and "clearly identifies" that "both [Plaintiffs] expected to be compensated by [the O'Briens]." C 6283.

In determining the Plaintiffs' *quantum meruit* award, the circuit court referenced seven factors: (1) the Plaintiffs' skill and standing, (2) the time and labor required, (3) the nature of the cause and difficulty of the issues involved, (4) the novelty and difficulty of the subject matter, (5) the Plaintiffs' degree of responsibility in managing the case, (6) the usual and customary charge for this type of work in the community, and (7) the benefits resulting to the O'Briens. C 6289-91.

On the first factor (Plaintiffs' skill and standing), the circuit court found it was "undisputed" that the Plaintiffs "are highly qualified and skilled attorneys." C 6289.

On the second factor (time and labor required), the circuit court noted that the Plaintiffs' time records showed that "attorneys Levenfeld, Schlegel and Schlegel's staff, including an attorney and a volunteer helper, spent in excess of 3000 hours (excluding post-termination billing) working on [the O'Briens'] behalf over approximately 19 months." *Id.*

On the third factor (nature of the cause and difficulty of the issues involved), the circuit court determined that the O'Briens' probate matter was complex. *Id.*

On the fourth factor (novelty and difficulty of the subject matter), the circuit court found that the probate matter "required expertise in federal and state court litigation and estate and trust expertise" and found it relevant that Schlegel would not have accepted the O'Briens' case without Levenfeld's assistance. C 6289-90.

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On the fifth factor (the Plaintiffs' degree of responsibility in managing the case), the circuit court found that the Plaintiffs were responsible "for the entirety of the underlying legal matters until the date of their termination." C 6290.

On the sixth factor (usual and customary charges in the community), the circuit court noted Schlegel's trial testimony that his "usual and customary rate for complex litigated matters" ranged between $450 and $600 per hour. *Id.* Meanwhile, in the fee agreement, Schlegel had set his hourly rate at $300. SA 1; C 5335. The circuit court did not address that discrepancy. See C 6290. The circuit court noted Schlegel's trial testimony that he charged $250 per hour for his associate's time and $85 per hour for paralegal and paraprofessional time. *Id.* The circuit court further recognized that Levenfeld never testified about his normal hourly rate. *Id.* The circuit court made no finding about whether Schlegel's rate or Levenfeld's rate was usual or customary in the legal community. See *id.*

On the seventh factor (benefits resulting to the client), the circuit court found that the Plaintiffs provided "all, or nearly all, of the leverage needed to consummate" the O'Briens' settlement. *Id.*

The circuit court then found "that the amount of the contingency fee is a reasonable fee" for the Plaintiffs' *quantum meruit* award (C 6291), echoing the Plaintiffs' argument that "their recovery should be calculated by reference to the [fee agreement]" (C 6290). Accordingly, the circuit court awarded the Plaintiffs $1,692,390.60, which was calculated by: (i) awarding an amount equal to the contingency fee ($2,185,000.00), (ii) awarding expenses claimed by the Plaintiffs ($7,390.60), and (iii) subtracting $500,000.00 that the O'Briens paid to the attorney who settled the case. C 6291.

The circuit court was "persuaded" by *Will v. Northwestern University*, 378 Ill. App. 3d 280 (2007), *Wegner v. Arnold*, 305 Ill. App. 3d 689 (1999), and *In re Estate of Kelso*, 2018 IL App

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(3d) 170161, in which "the courts found that the entire contingency fee amounted to a reasonable fee even though the contingency fee contracts had been terminated." C 6290. The circuit court reasoned that "[i]n those cases, like here, the attorneys were fired shortly before settlement and the results obtained were substantially attributable to their efforts." *Id.* The circuit court found it "inconsequential" that no settlement offer was pending at the time the Plaintiffs were discharged. C 6291. The circuit court surmised that, because the successor counsel for the O'Briens was able to negotiate a settlement "very shortly after Plaintiffs were terminated," the settlement "can only be understood to have been based cumulatively upon Plaintiffs' negotiations." *Id.*

Finally, the circuit court acknowledged that the O'Briens "elicited testimony from Schlegel and his colleagues which calls into question whether the hours recorded by the firm were accurate and whether they inappropriately expected to receive payment for work performed by a volunteer." *Id.* Nevertheless, the circuit court found this testimony to be "immaterial * * * because the [*quantum meruit*] award is not based on recorded hours." *Id.*

VII. The Appellate Court's Opinion

The O'Briens appealed from the circuit court's judgment, arguing that: (a) the circuit court should not have based the *quantum meruit* award on the contingency fee due to the fee agreement's violation of Rule 1.5(e); (b) the Plaintiffs achieved nothing for the O'Briens and conferred no benefit on them at all; and (c) the circuit court awarded the Plaintiffs far more than they were entitled to receive in *quantum meruit*. See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶ 3. After briefing and oral argument, the appellate court reversed the circuit court's judgment in part and affirmed it in part. *Id.*, ¶¶ 4, 56-57.

The appellate court first ruled that the circuit court erred by basing the *quantum meruit* award on the contingency fee. *Id.*, ¶ 45. "Plaintiffs concede that their contingent fee agreement

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with defendants violated Rule 1.5(e) because it did not specify the share of the fee each lawyer would receive," the appellate court explained. *Id.*, ¶ 37. The appellate court reasoned that "[a]llowing an attorney to skirt the rule's requirements and indirectly enforce an unlawful fee agreement through *quantum meruit* recovery would lead to an unjust and absurd result and render the rule superfluous." *Id.*, ¶ 44. The Plaintiffs had argued that cases cited by the O'Briens were distinguishable because they arose from disputes between attorneys. The appellate court rejected this distinction because the "purpose of Rule 1.5(e) is to protect the client, so it certainly applies to situations where an attorney seeks to recover fees against a client on the basis of *quantum meruit* just as it applies to disputes between attorneys trying to enforce their undisclosed fee-splitting agreements." *Id.*, ¶ 43. The Plaintiffs relied on cases where a discharged attorney received a *quantum meruit* award based on a contingency fee. The appellate court distinguished those cases "because they involved situations where the clients fired counsel *and* the underlying contingency fee agreements were not voidable based on a violation of the Rules of Professional Conduct." (Emphasis in original.) *Id.*, ¶ 44. In this case, by contrast, "the contingency fee agreement was unenforceable *ab initio* because it violated Rule 1.5(e)." *Id.*

The appellate court next affirmed the circuit court's judgment that the Plaintiffs conferred a benefit on the O'Briens, reasoning that the underlying disputes settled approximately two months after the Plaintiffs were terminated. *Id.*, ¶¶ 1, 47-52.

The appellate court did not reach the third issue raised by the O'Briens because, based on its rulings on the first two issues, it remanded the case to the circuit court with instructions to render a new *quantum meruit* award. *Id.*, ¶ 54.

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VIII. The Plaintiffs' Petition for Leave to Appeal

The Plaintiffs filed a petition for leave to appeal from the appellate court's opinion. That petition asserted the existence of a "Fee-Sharing Agreement" between Levenfeld and Schlegel and a separate "Attorney-Client Fee Agreement" between the O'Briens and the Plaintiffs. Appellants' Petition at 14-22. The Plaintiffs argued that the appellate court "erred in holding that the failure to obtain client consent to a Fee-Sharing Agreement between two law firms jointly representing a client renders the Attorney-Client Fee Agreement entered into between the law firms and client unenforceable as a matter of law." *Id.* at 4. This Court allowed the Plaintiffs' petition. See Sep. 27, 2023 Petition Disposition.

ARGUMENT

I. The appellate court correctly held that a *quantum meruit* award may not be based on a fee agreement that violates Rule 1.5(e).

Even though the "language of Rule 1.5(e) is simple and straightforward," *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 24, the Plaintiffs admittedly violated it. The fee agreement did not identify "the share each lawyer will receive," see Ill. R. Prof. Conduct 1.5(e)(2), and the O'Briens were never told in any other way how the Plaintiffs would divide the fees. In fact, while the Plaintiffs agreed to divide the O'Briens' fees in *some* manner, they chose to defer their decision about which attorney would receive what percentage of the fees until "it's all over" and "there's something to divide." R 347. The Plaintiffs apparently *still* do not know how they will divide any fees. *Id.*

The Plaintiffs concede that, if this were a dispute between them over sharing the O'Briens' fees, their fee-sharing agreement would be void and unenforceable. Appellants' Br. at 26. They further concede that their fee-sharing agreement "should not be given effect via a quantum meruit claim." *Id.*

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They argue that the appellate court erred for two reasons: (a) their invalid agreement to share a contingency fee is somehow separate or severable from the contingency fee itself, even though both were memorialized in the same two-page fee agreement with the O'Briens; and (b) even if the contingency fee were unenforceable, a *quantum meruit* award still may be based on it. Both arguments are wrong.

First, the contingency fee is not severable from the agreement to divide that fee. There is one contract in this case. The Plaintiffs perform no severability analysis and cite no case for the proposition that these material terms of the fee agreement are severable from one another. Both the contingency fee and the fee-sharing arrangement were essential terms of the agreement. No case supports the Plaintiffs' attempt to distinguish between the fee and the agreement to share it. The Plaintiffs complain that the appellate court's holding is somehow unfair to attorneys and even speculate that the appellate court's opinion will force attorneys to increase their fees. This fearmongering is baseless. To avoid an undesirable outcome, attorneys need only follow the simple and straightforward requirements of Rule 1.5(e).

Second, as the appellate court correctly reasoned, if the contingency fee could not be enforced as a matter of public policy in a contract action, an attorney should not be allowed to collect the contingency fee indirectly through a *quantum meruit* action. The California Supreme Court addressed this issue and squarely rejected the argument that an attorney who failed to disclose a fee-split to his client "should be allowed to accomplish indirectly a division of fees under the guise of a *quantum meruit* claim." *Chambers v. Kay*, 29 Cal. 4th 142, 162, 56 P.3d 645 (Cal. 2002). The Plaintiffs do not argue that *Chambers* was wrongly decided or that it is inconsistent with Illinois law. Instead, the Plaintiffs try to distinguish *Chambers* on the basis that it was a dispute between attorneys, not a dispute between attorneys and their clients.

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As the appellate court correctly held, however, that distinction does not justify a different result. See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶ 43. In fact, that distinction cuts *against* the Plaintiffs' arguments because Rule 1.5(e) was intended to protect clients' rights, not lawyers' remedies. See *Donald W. Fohrman & Associates, Ltd. v. Marc D. Alberts, P.C.*, 2014 IL App (1st) 123351, ¶ 35 (Rule 1.5(e) "embodies this state's public policy of placing the rights of clients above and beyond any lawyers' remedies in seeking to enforce fee-sharing agreements") (quoting *Romanek v. Connelly*, 324 Ill. App. 3d 393, 399 (2001)); see also *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 52 ("A single focus animates our rules of professional conduct and the common law of this state: the client's best interest.") (quoting *Albert Brooks Friedman, Ltd. v. Malevitis*, 304 Ill. App. 3d 979, 985-86 (1999)).

If the Plaintiffs' position were correct, the public policy underlying Rule 1.5(e) would be defeated. The Plaintiffs concede that their fee-sharing agreement is unenforceable because it violates Rule 1.5(e). Appellants' Br. at 32. Yet the Plaintiffs contend that they can obtain the contingency fee in *quantum meruit* and divide that recovery between themselves in some manner that was never disclosed to their clients. That is precisely the same outcome prohibited by Rule 1.5(e). An opinion permitting that outcome would give unscrupulous lawyers a roadmap for evading the rule's requirements without consequence.

The O'Briens therefore ask this Court to vindicate the public policy on which Rule 1.5(e) is based, to protect clients' right to choose which attorneys will represent them and how those attorneys will be compensated, and to affirm the appellate court insofar as its opinion reversed the circuit court's judgment.

A. The standard of review is *de novo*.

The standard of review is *de novo*. See *In re Karavidas*, 2013 IL 115767, ¶ 36 (the interpretation or application of the Rules of Professional Conduct is reviewed *de novo*). The

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Plaintiffs attempt to invoke a more deferential standard of review for the circuit court's judgment (see Appellants' Br. at 25), but they simultaneously complain that the appellate court "created a broad rule of universal application that is entirely disconnected from the equities of any given case" (*id.* at 26). In other words, the Plaintiffs complain about the application of a legal rule. Accordingly, the standard of review is *de novo.*

B. In this case, it is impossible to sever the contingency fee from the agreement to share that fee.

1. The Plaintiffs concede that their fee-sharing agreement is void and could not be enforced either in contract or in *quantum meruit.*

There is only one agreement in this case. It is the two-page fee agreement between both Plaintiffs and the O'Briens. SA 1-2; C 5335-36. The Plaintiffs do not dispute that it violates Rule 1.5(e) because it does not disclose how much or what percentage of the fees each Plaintiff would receive. The Plaintiffs further concede that "Illinois law has long held that such a failure [to comply with Rule 1.5(e)] renders the fee-sharing agreement itself unenforceable," and that "Illinois law would support the conclusion that terms of the fee-sharing agreement should not be given effect via a quantum meruit claim * * *." Appellants' Br. at 26. In other words, all parties agree that the Plaintiffs' agreement to share fees received from the O'Briens is void, and that the fee-sharing agreement cannot be "given effect via a *quantum meruit* claim," meaning that a *quantum meruit* award may not be based on the fee-sharing agreement.

2. The contingency fee is not severable from the fee-sharing agreement.

The Plaintiffs' entire argument therefore boils down to a rhetorical magic trick—an attempt to turn one agreement into two. In their petition for leave to appeal, the Plaintiffs referred to the "Fee-Sharing Agreement" and the "Attorney-Client Fee Agreement" as if they were two separate agreements. See, *e.g.*, Appellants' Petition at 1. They are not. There is a single

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agreement in this case. SA 1-2; C 5335-36. Similarly, in their brief, the Plaintiffs confusingly argue that "the Appellate Court improperly premised its ruling on the idea that an attorney-client fee agreement is rendered void and unenforceable *ab initio* where lawyers fail to obtain client consent to a fee-sharing agreement." Appellants' Br. at 26. But, again, there is one agreement, not two.

That two-page agreement does not contain separate provisions about the fee-sharing agreement and the contingency fee. Rather, both the contingency fee and the "minimum attorneys fees" are described on the first page of the agreement (SA 1; C 5335), and the agreement generally states that both "Attorneys" were retained to provide legal services to the O'Briens, both "Attorneys" would work on the O'Briens' legal matters, and both "Attorneys" would be entitled to the fees described in the agreement (SA 1-2; C 5335-36). The Plaintiffs cannot sever the contingency fee from their agreement to share that fee, and the entire fee agreement is therefore unenforceable.

a. The Plaintiffs forfeited any severability argument.

Despite bearing "the burden of persuasion on appeal," *Yamnitz v. William J. Diestelhorst Co.*, 251 Ill. App. 3d 244, 250 (1993), the Plaintiffs never explain why they believe there are two separate agreements or why the single agreement here should be deemed severable. The Plaintiffs raise no argument, under the severability test normally used by Illinois courts, that the contingency fee is severable from the Plaintiffs' agreement to share that fee, and the Plaintiffs made no such argument in the circuit court, in the appellate court, or in their petition for leave to appeal. The Plaintiffs have therefore forfeited any such argument. See *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 43 (applying forfeiture rule); *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 92 (2010) ("several issues raised by the

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plaintiffs in their brief before this court have been forfeited because plaintiffs failed to raise them in the circuit court, appellate court, or in their petition for leave to appeal").

b. The Plaintiffs' agreement to share the O'Briens' fees cannot be severed from the remainder of the fee agreement because it was "essential to the bargain."

Even if the Plaintiffs had preserved that argument, it would fail. The fee agreement contains no severability clause. SA 1-2; C 5335-36. "The absence of a severability clause tends to indicate that a contract is entire and not severable." 17A Am. Jur. 2d Contracts § 395. Even if the fee agreement contained a severability clause, the Plaintiffs' agreement to share the O'Briens' fees still could not be severed from the remainder of the agreement because it was "essential to the bargain." *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 47 (2006) (describing the standard for severability).

In *Kepple & Co. v. Cardiac, Thoracic & Endovascular Therapies, S.C.*, 396 Ill. App. 3d 1061 (2009), the appellate court explained the legal test for severability as follows:

> The current status of the law on severability of a contract, as set forth in section 184 of the Restatement (Second) of Contracts, is that when some portion of a contract is unenforceable as against public policy, "a court may nevertheless enforce the rest of the agreement in favor of a party who did not engage in serious misconduct if the performance as to which the agreement is unenforceable is not an essential part of the agreed exchange." [Citations.] The rationale for this rule is that " 'complex, multipart agreements on which there may have been significant reliance should not be void as a whole solely because some small part is against public policy' [citation] because, absent great inequality or misconduct involving an essential term of the contract, doing so would frustrate the contractual expectations of the parties." [Citation.] Thus, the initial inquiry as to the issue of severability is whether the unenforceable term is an essential part of the contract.

Id. at 1066; see also *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 39 (applying this standard; child custody terms were essential to, and intertwined with, other terms in a postnuptial agreement and could not be severed from them).

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Even overlooking whether the Plaintiffs engaged in "serious misconduct," and even further overlooking the inequality in the parties' bargaining power, the Plaintiffs concede that their agreement to share fees was essential to the bargain. In their own words, "Schlegel told Dan and Maureen that he would not represent them unless they agreed that Levenfeld would serve as his co-counsel and thereby jointly represent them." Appellants' Br. at 6 (citing R 332, 1575, 1656). The Plaintiffs' agreement to share the work and the legal fees was the heart of this agreement. Admittedly, without that agreement, Schlegel would have refused to represent the O'Briens at all. See *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 39 (terms were inseverable because their removal "would change the nature of the parties' overall bargain substantially, to the point that we cannot conclude that without them the parties would have entered into" the agreement).

Nothing is more essential to an attorney-client fee agreement than which attorneys will represent the clients and how they will be paid. That is precisely why Rule 1.5(e) requires attorneys to make full disclosure of that information to their clients in writing under the circumstances presented here. See Ill. R. Prof. Conduct 1.5(e). And the fee agreement here was not a "complex, multipart agreement[]," only one "small part" of which violated public policy. See *Kepple & Co.*, 396 Ill. App. 3d at 1066. This fee agreement was only two pages long, and it exclusively discussed the fees that the O'Briens would owe both Plaintiffs. SA 1-2; C 5335-36. The fee-split and the contingency fee were not even addressed in separate paragraphs or sections of the same contract. The same language in the fee agreement describes the contingency fee and says that both "Attorneys" collectively would receive it, without specifying how they would share it. *Id.* Both subjects were addressed in exactly the same language in this two-page contract.

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The Plaintiffs were jointly and simultaneously retained by the O'Briens in the same agreement that both describes the contingency fee and says that both "Attorneys" would share in it. Accordingly, it would be impossible to enforce the contingency fee provision without also enforcing the fee-split. If the contingency fee (or a *quantum meruit* award based on it) is awarded to the Plaintiffs, they will divide the money in whatever way they deem "fair," with no prior notice to, or consent from, their now-former clients. That is precisely the same outcome as if the fee-sharing agreement were fully enforced. Thus, attempting to sever the fee-split from the contingency fee is a doomed exercise.

For similar reasons, in *Kepple & Co.*, 396 Ill. App. 3d at 1066, the appellate court held that an illegal fee-sharing provision in a medical services contract was not severable from the remainder of that contract. There could be "no dispute that the fee-sharing clause is an essential part of the services contract" because "the promise to perform medical billing and collection services for a percentage of the amount collected is the very essence of the services contract." *Id.* (affirming award of summary judgment because "the remaining provisions of the services contract are not severable from that unenforceable provision and the entire contract, including the nonsolicitation clause, is void and unenforceable," citing Restatement (Second) of Contracts § 184(1), Comment a, at 30 (1981)). Likewise, in this case, the "very essence" of the fee agreement was the Plaintiffs' agreement to perform legal services for the O'Briens in exchange for fees that the Plaintiffs would share. SA 1-2; C 5335-36. Moreover, in *Kepple & Co.*, the illegal fee-sharing provision was inseverable from the remainder of the services agreement notwithstanding a severability clause in that agreement. See 396 Ill. App. 3d at 1062. The fee agreement here did not even contain a severability clause, so the illegal fee-sharing provision here is even more clearly inseverable than the one in *Kepple & Co.*

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Other cases are in accord. See *Practice Management, Ltd. v. Schwartz*, 256 Ill. App. 3d 949, 955 (1993) (illegal fee-sharing provision in a management agreement was "so intertwined" with the remainder of that contract "that severance is impossible" and enforcing the contract "would undermine the policy considerations in prohibiting fee splitting" in the medical profession); *Kane v. Option Care Enterprises, Inc.*, 2021 IL App (1st) 200666, ¶ 36 (agreeing with the argument "that Illinois courts do not enforce the rest of a contract when the offensive portion is a term as essential as payment"). In short, the Plaintiffs assert that the appellate court's opinion is "without precedent" (Appellants' Br. at 31), but in fact there is ample precedent for the proposition that an illegal fee-sharing agreement is not severable from the remainder of the contract in which it appears.

The Plaintiffs heavily rely on an easily distinguishable case, *Bennett v. GlaxoSmithKline LLC*, 2020 IL App (5th) 180281. Appellants' Br. at 41-43. Despite never citing this case in the appellate court, the Plaintiffs argue that *Bennett* "stands for the proposition * * * that although public policy interests require rendering unenforceable fee-sharing agreements that violate the fee-splitting provisions in Rule 1.5(e), the violation should not result in a fair, reasonable and agreed fee structure set forth in an attorney-client fee agreement also being rendered void *ab initio* and unenforceable on public policy grounds or otherwise." Appellants' Br. at 43.

That argument fails. As discussed above, this case involves no "fee-sharing agreement" that is in any way distinct from the "attorney-client fee agreement." There is only one agreement in this case, and its provisions are not severable. SA 1-2; C 5335-36. In *Bennett*, by contrast, there were at least two agreements: (a) a fee-sharing agreement between two attorneys, Baum and Johnson, which was memorialized in an email string between them (see 2020 IL App (5th) 180281, ¶ 56); and (b) a representation agreement between Johnson and each of his clients (*id.*, ¶¶ 62, 64-65). The fee-sharing agreement was held unenforceable

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because it did not comply with Rule 1.5(e). *Id.*, ¶ 56. This holding, of course, is entirely consistent with the appellate court's opinion.

The Plaintiffs argue, however, that *Bennett* did not *also* invalidate the separate representation agreement between Johnson and each of his clients. Appellants' Br. at 42-43. That is unsurprising because the *Bennett* opinion does not suggest that any of Johnson's clients requested that relief or challenged the validity of the representation agreement at all. A case that the Plaintiffs *did* cite in the appellate court (see Plaintiffs' Br. in App. Ct. at 32) suggests that such a challenge by one of Johnson's clients may have succeeded if it were made. See *United States ex rel. Figurski v. Forest Health Systems*, No. 96 C 4663, 1999 WL 1068659, *1-2 (N.D. Ill. Nov. 17, 1999) (contingency fee agreements were unenforceable due to attorneys' failure to obtain client consent to a fee-sharing agreement in violation of then-Rule 1.5(f)).

Even if such a claim had been made in *Bennett*, moreover, there are clear factual distinctions between *Bennett* and this case. In *Bennett*, the fee-sharing agreement was an entirely separate contract from the representation agreement, the clients were not parties to the fee-sharing agreement, and the representation agreement apparently complied with the Rules of Professional Conduct. See 2020 IL App (5th) 180281, ¶¶ 56, 62, 64-65. The invalidity of the fee-sharing agreement therefore did not affect the clients' duty under the rule-compliant representation agreement to pay the specified contingency fee to the attorney named in the representation agreement.

Here, by contrast, there is one contract between both attorneys and both clients, and that contract says that both attorneys will receive certain fees but does not specify the fee-split. SA 1-2; C 5335-36. If the O'Briens were to pay the contingency fee to the Plaintiffs, they presumably would have no choice but to defer to any agreement between the Plaintiffs about a "fair" fee-split (R 346), even if the O'Briens felt that the Plaintiffs' fee-split was inappropriate.

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And if the Plaintiffs could not agree between themselves on a fee-split, the O'Briens would be stuck in a dispute between their former attorneys over what type of fee-split would be "fair"—a dispute that could have been avoided if the Plaintiffs had simply finalized an agreement on their fee-split at the outset of their representation of the O'Briens and obtained the O'Briens' written consent to that fee-split in compliance with Rule 1.5(e). In short, the Plaintiffs chose how to structure the agreement in this case, they chose to structure it very differently than in *Bennett*, and they must bear the consequences of their choice not to follow Rule 1.5(e).

c. The Plaintiffs' arguments, if accepted, would eviscerate the public policy on which Rule 1.5(e) is based.

The Plaintiffs assert that the appellate court's opinion "runs counter to established public policy." Appellants' Br. at 35. Yet the Plaintiffs expressly acknowledge that attorneys who agree to share fees must "strictly comply with Rule 1.5(e)" because that rule is "designed to protect the client." Appellants' Br. at 37 (quoting *Esposito*, 2016 IL App (2d) 151148, ¶ 11, *aff'd*, 2017 IL 121297). The Plaintiffs agree that "[p]ublic policy strongly supports" the rule that fee-sharing agreements are void if they violate Rule 1.5(e) (Appellants' Br. at 36), and they agree that this rule leads to greater accountability by giving clients control "over not only which lawyers have responsibility for handling their legal matters, but to what degree." *Id.* at 37 (citing *Phillips v. Joyce*, 169 Ill. App. 3d 520, 529 (1988)).

Against this public policy, the Plaintiffs offer nothing but speculation that, if the appellate court's opinion were affirmed, clients will "utilize technical violations of ethical rules to avoid their own responsibilities" (Appellants' Br. at 36), the "freedom to contract" will be endangered (*id.* at 39), there will be "frequent litigation" (*id.*), and lawyers will charge "higher fees" (*id.*).

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Aside from the fact that this bare speculation is supported by nothing in the record, there is no such thing as a "technical" violation of Rule 1.5(e). As this Court explained more than two decades ago with respect to then-Rule 1.5(f):

> The requirement of a writing ensures that the scope and terms of each lawyer's representation are defined, thus preventing or minimizing uncertainties and disputes. [The client's] general understanding that both [attorneys] were to be compensated for their services does not fulfill the rule's mandatory writing requirement. For this reason, we cannot agree with the Boards' assessment of respondents' violation of Rule 1.5(f) as a mere technicality.

In re Storment, 203 Ill. 2d 378, 398 (2002); see also *Donald W. Fohrman & Associates, Ltd.*, 2014 IL App (1st) 123351, ¶ 39 ("the fee-sharing provisions of the Rules are not guide posts, but mandatory"); *Figurski*, 1999 WL 1068659, *2 ("The Illinois Rules of Professional Conduct do not provide that attorneys may bend the rules, or break them just a bit.").

This violation of Rule 1.5(e) is not a mere technicality because it deprived the O'Briens of important rights that the rule was intended to protect. This fee agreement, in fact, presents the most serious imaginable violation of Rule 1.5(e). This was not an inadvertent oversight or a case of sloppy documentation. The Plaintiffs deliberately structured this relationship so their clients would have no awareness of, and no opportunity to refuse to consent to, how the fees would be divided. The Plaintiffs deferred their decision on how to divide the fees until after the contingency was realized, at which point the O'Briens would have no choice but to passively accept whatever fee-split the Plaintiffs dictated. Even that scenario assumes that the Plaintiffs *could* reach an agreement between themselves on how to divide the fees. What would happen if the Plaintiffs could not reach an agreement on a "fair" division of the contingency fee? The O'Briens would then be stuck in the middle of a dispute between the Plaintiffs, and the O'Briens' receipt of any recovery would be delayed until that dispute between the Plaintiffs were resolved. Rule 1.5(e) was designed to avoid placing clients in such a difficult and powerless position.

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Under the rule, the Plaintiffs should have reached an agreement at the outset on how the fees would be shared, they should have disclosed that agreement to the O'Briens, and the O'Briens should have been presented with the option of either (a) agreeing to that arrangement and confirming their agreement in writing, or (b) refusing to agree, in which case they could have either tried to negotiate some other arrangement or sought other legal representation.

Schlegel may believe that the rule was intended for "ambulance chas[ers]" who earn referral fees (R 346), but that self-serving belief rests on a total misunderstanding of the rule. Information about the division of fees "may affect the client's level of confidence in the attorneys and is indispensable to the client's ability to make an informed decision regarding whether to accept the fee division and whether to retain or discharge a particular attorney," regardless of whether a fee-split occurs in the context of a referral or some other type of arrangement. *Chambers*, 29 Cal. 4th at 157 ("the protection afforded by the rule's written consent requirement" is no less necessary where "attorneys from separate law firms seek to divide both the work and the fees in a particular matter").

In addition, there is an easy answer to the Plaintiffs' fearmongering about more fee disputes and higher fees. There is no valid reason why attorneys cannot easily comply with Rule 1.5(e). That rule's requirements are "simple and straightforward." *Esposito*, 2017 IL 121297, ¶ 24. Indeed, aside from their subjective belief that the rule was intended to apply primarily to "ambulance-chas[ers]" (R 346), the Plaintiffs offer no excuse for their failure to comply with the rule.

The Plaintiffs further assert that, prior to the appellate court's opinion in this case, "no published Illinois decision stood for the proposition that a violation of Rule 1.5(e) for failure to disclose a fee-splitting arrangement would also automatically render the otherwise fair, reasonable and ethical fee agreement between lawyer and client void and unenforceable *ab*

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initio." Appellants' Br. at 35. In the appellate court, however (see Plaintiffs' Br. in App. Ct. at 32), the Plaintiffs cited a case holding precisely that. *Figurski*, 1999 WL 1068659, *1-2 (contingency fee agreements were unenforceable because clients were not notified how their attorneys would share fees, in violation of then-Rule 1.5(f)).

Moreover, the Plaintiffs cite no fewer than five cases for the proposition that "lawyers' failure to obtain client consent to a fee-splitting agreement in violation of Rule 1.5(e) renders the fee-splitting agreement between lawyers unenforceable." Appellants' Br. at 35 (citing *Naughton v. Pfaff*, 2016 IL App (2d) 150360, ¶ 1; *Donald W. Fohrman & Associates, Ltd.*, 2014 IL App (1st) 123351, ¶ 1; *Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 22; *Thompson v. Hiter*, 356 Ill. App. 3d 574, 590 (2005); and *Schneiderjon v. Krupa*, 162 Ill. App. 3d 192 (1987)).

The Plaintiffs are trying to eviscerate precisely that rule. They are attempting to collect a *quantum meruit* award that was calculated based on the contingency fee, and they will split that money based on whatever they deem "fair," with zero prior approval or input from their now-former clients. That is exactly what the rule is intended to prevent. Rule 1.5(e) sets forth a "checklist in which each of the enumerated items must be crossed off before moving to the next, and all must be checked off before the fees may be divided." *Esposito*, 2017 IL 121297, ¶ 35. Under the second enumerated item in that simple and straightforward checklist, "the client has to agree to the referral and fee-sharing arrangement, *including how much each lawyer will get*, and the client's agreement must be confirmed in writing." (Emphasis added.) *Id.* The O'Briens never agreed to any terms on "how much each lawyer will get" and never had the opportunity to either agree or disagree with any such terms. This violation of the rule is not harmless. Rather, allowing attorneys "to proceed with fee-splitting arrangements without the client's written agreement or knowledge would put the client at a severe disadvantage in the lawyer-client relationship." *Christensen v. Eggen*, 577 N.W.2d 221, 225 (Minn. 1998).

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Finally, the Plaintiffs' argument that a violation of the Rules of Professional Conduct should not bar an attorney from recovering *something* in *quantum meruit* (Appellants' Br. at 33-35) is a straw man. The appellate court did not hold that the Plaintiffs' violation of Rule 1.5(e) bars them from any recovery at all in *quantum meruit*, only that a *quantum meruit* award may not be based on the contingency fee. See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶¶ 34-45. The Plaintiffs attempt to blur this distinction by saying that the appellate court "fashioned a new rule under which it reversed the trial court's award based on the ethical violation" (Appellants' Br. at 35), omitting that the appellate court remanded this case to the circuit court with instructions "to render a *quantum meruit* award based on the relevant factors involved in determining the reasonable value of the services rendered." See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶ 56.[3]

d. Attorneys cannot delegate their duty to comply with the Rules of Professional Conduct to their own clients.

The Plaintiffs heavily emphasize that the O'Briens signed the fee agreement, understood that the Plaintiffs would share fees in some way, and expressed some indifference to how the fees were shared. Appellants' Br. at 16, 32, 34. As this Court held in *Storment*, however, the mere fact that a client had a "general understanding" that both attorneys would be compensated does not satisfy the requirements of Rule 1.5(e). See 203 Ill. 2d at 398 (strict compliance with Rule 1.5 is mandatory even if "the purposes of the rule were sufficiently served by the client's knowledge of the fee terms"). The Plaintiffs cite no authority for the proposition that their clients could absolve them of their failure to comply with the Rules of

[3] The Plaintiffs should recover nothing in *quantum meruit* because their work never benefited the O'Briens, the Plaintiffs failed to prove the reasonable value—if any—of their services, and the Plaintiffs waived and forfeited any *quantum meruit* claim based on anything other than the contingency fee, as discussed below.

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Professional Conduct, or that their clients had a duty to ensure that the Plaintiffs were complying with the rules. The O'Briens are not attorneys. It was not their responsibility to remind or prompt the Plaintiffs to comply with the Rules of Professional Conduct. Even if the O'Briens expressed some indifference in the abstract to how the Plaintiffs would share fees, that does not necessarily mean they would remain indifferent if they were told what the fee-split would be.

By failing to disclose the terms of the fee-split, the Plaintiffs deprived their clients of the right to make an *informed* choice in the matter. See *Donald W. Fohrman & Associates, Ltd.*, 2014 IL App (1st) 123351, ¶ 55 (Rule 1.5(e) strictly requires the client to be "informed" of the fee-split). The O'Briens never had the opportunity to make an *informed* choice as to whether any particular fee-split was appropriate.

By faulting the O'Briens for not zealously advocating for their own interests in the attorney-client relationship, moreover, the Plaintiffs conveniently overlook the "inequality of the bargaining power between the attorney and client" under the circumstances presented here and the resulting "potential for abuse." *In re Spak*, 188 Ill. 2d 53, 67 (1999). The inequality of bargaining power was particularly pronounced here because the O'Briens faced desperate financial straits, had difficulty meeting even their basic personal financial needs, and urgently needed representation in a dispute where enormously valuable rights were at stake. Appellants' Br. at 5.

C. Because the fee agreement is void as a matter of public policy, a *quantum meruit* award cannot be based on the contingency fee.

The Plaintiffs next contend that, even assuming the fee agreement is unenforceable as a matter of public policy, the circuit court still should have been allowed to "consider[]" it in calculating the *quantum meruit* award. Appellants' Br. at 44-48. The circuit court did far more than merely consider the contingency fee. The circuit court awarded the exact amount of the

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contingency fee, minus fees the O'Briens paid to the attorney who successfully negotiated a settlement, because that is the only basis the Plaintiffs offered to calculate their *quantum meruit* award. C 6291. The Plaintiffs expressly disclaimed any other theory of recovery. See C 388-418.

If a contract violates public policy, it cannot be enforced indirectly through a *quantum meruit* award that is calculated based on the unenforceable contract's terms. Allowing such an outcome would violate exactly the same public policy that rendered the contract unenforceable. See *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 366 (1997) (agreement's invalidity as a matter of public policy "precludes [a litigant] from obtaining relief on a *quantum meruit* theory for work it performed in furtherance of the agreement"); *Power Dry of Chicago, Inc. v. Bean*, 2022 IL App (2d) 210043, ¶ 47 (same; citing *First National Bank of Springfield*). As the appellate court correctly held in this case, if the Plaintiffs were allowed to obtain a *quantum meruit* award that is calculated based on the contingency fee, they would obtain the same result as if their fee agreement were fully enforceable. *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶¶ 44-45. That would create an easy route for evading Rule 1.5(e), and the rule would be rendered a nullity. *Id.*, ¶ 44.

The Plaintiffs complain that a court of equity normally has broad discretion to tailor relief to specific facts (Appellants' Br. at 44), but it is well established that if a fee-sharing agreement violates Rule 1.5(e), it cannot be enforced through a breach of fiduciary duty theory arising from a joint venture. *Naughton*, 2016 IL App (2d) 150360, ¶ 64; *Bennett*, 2020 IL App (5th) 180281, ¶ 58 ("The provision of Rule 1.5(e) requiring a client's written consent to fee sharing between counsel of different firms applies regardless of the theory of recovery asserted."). There is no reason to treat another equitable remedy, *quantum meruit*, any differently. See *Chambers*, 29 Cal. 4th at 162 (rejecting the contention that a *quantum meruit*

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award could be based on an enforceable fee-sharing agreement). The Plaintiffs complain about "a broad rule unrelated to the facts of each individual case" (Appellants' Br. at 45), but that is the nature of a public policy—in this case, one embodied in a Rule of Professional Conduct that, by its plain terms, applies to all cases where lawyers who are not in the same firm agree to share fees. See Ill. R. Prof. Conduct 1.5(e).

The Plaintiffs acknowledge that *Chambers* "stands for the proposition that a trial court may not render an award in *quantum meruit* by reference to a fee-splitting structure agreed to between lawyers but unethical and unenforceable because it was never disclosed to the clients" (Appellants' Br. at 45), and they do not argue that *Chambers* is inconsistent with Illinois law or that it should not be followed here. Instead, the Plaintiffs argue that *Chambers* is distinguishable. *Id.* at 46-47. The purported distinction appears to be this: *Chambers* was a dispute between two attorneys over a fee-split, while in this case, the two attorneys are working together to collect a *quantum meruit* award from their former clients in an amount based on the contingency fee. *Id.* For three reasons, this is a distinction without a difference.

First, the "Rules of Professional Conduct apply to all claims for fee sharing, regardless of whether the claim is asserted against the client or another attorney." *Thompson*, 356 Ill. App. 3d at 590.

Second, the fact that this is a dispute between attorneys and their former clients *heightens* the policy concerns underlying Rule 1.5(e). That rule exists to protect clients' rights, not attorneys' remedies. See *Esposito*, 2017 IL 121297, ¶ 38 (the fee-sharing rules exist "in order to preserve a client's right to be represented by the attorney of his or her choosing"); *Donald W. Fohrman & Associates, Ltd.*, 2014 IL App (1st) 123351, ¶ 35 ("Rule 1.5 'embod[ies] this state's public policy of placing the rights of clients above and beyond any lawyers' remedies in seeking to enforce fee-sharing agreements.' ") (quoting *Romanek*, 324 Ill. App. 3d at 399).

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Third, the Plaintiffs again assume that the fee-split is severable from the contingency fee. It is not. The fee-split and the contingency fee were essential terms of the same deal, as discussed above, and the contingency fee cannot be enforced without reference to the fee-split. The O'Briens cannot pay the contingency fee (or a *quantum meruit* award based on it) without knowing whom they should pay and in what amounts—*i.e.*, the fee-split that was never disclosed to the O'Briens during the attorney-client relationship. The Plaintiffs may never reach any agreement on a "fair" division of fees between them, and if the O'Briens were to pay the entire contingency fee to one Plaintiff, the other would surely complain. Thus, the fee-split and the contingency fee are intertwined because of how the Plaintiffs chose to structure the attorney-client relationship and their relationship with one another.

The Plaintiffs baldly assert that the fee-split was "entirely unrelated" to the contingency fee (Appellants' Br. at 39), but they never explain why those terms are "entirely unrelated" to one another, and they never cite any legal authority to support that assertion. Arguments that are not supported by citations to legal authority are forfeited. See *In re Estate of Feinberg*, 2014 IL App (1st) 112219, ¶ 29.

Finally, the Plaintiffs cite *Rhoades v. Norfolk & Western Railway Co.*, 78 Ill. 2d 217 (1979), for the proposition that a *quantum meruit* award may be based on a contingency fee. Appellants' Br. at 47. In *Rhoades*, the fee agreement did not violate any ethical rules or any public policy. See 78 Ill. 2d at 222-26. The fee agreement in this case violated Rule 1.5(e). In addition, *Rhoades* did not hold that the attorney in that case was entitled to a *quantum meruit* award measured by the contingency fee specified in the fee agreement, and in fact this Court raised the possibility that such an award might "raise a question of excessive fees." *Id.* at 229.

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D. The Plaintiffs bore no risk of non-payment.

The Plaintiffs argue that, under the fee agreement, they bore a risk of non-payment. Appellants' Br. at 6-8. That is untrue. The Plaintiffs included an alternative to a contingency fee in their fee agreement to ensure they would be paid regardless of the outcome of the O'Briens' claims. Specifically, the Plaintiffs structured the fee agreement so that the O'Briens would pay the greater of the continency fee and a "minimum" fee, and the minimum fee could not be less than $30,000. SA 1; C 5335. The Plaintiffs further specified in the fee agreement that the O'Briens must reduce "certain assets to liquid funds" to pay for the Plaintiffs' fees and expenses "prior to the end of the attorney-client relationship." *Id.* The Plaintiffs make no mention of the "minimum" fee, or their requirement that the O'Briens reduce their assets to liquid funds, in their brief.

II. The circuit court's judgment should be reversed in its entirety because the Plaintiffs failed to prove that their services benefited the O'Briens at all.

The Plaintiffs failed to prove that the "various actions" they undertook on the O'Briens' behalf (Appellants' Br. at 11) measurably benefited the O'Briens at all. Consequently, the circuit court's judgment should be reversed in its entirety; to the extent the appellate court reversed the circuit court's judgment in part, its opinion should be affirmed on this alternative ground; and to the extent the appellate court affirmed the circuit court's judgment in part, its opinion should be reversed.

Quantum meruit literally means "as much as he deserves," and it describes a cause of action seeking to recover the reasonable value of services non-gratuitously rendered where no contract exists. *Bernstein & Grazian, P.C. v. Grazian and Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010). To recover on their *quantum meruit* claim, the Plaintiffs were required to prove that: (1) they performed a service to benefit the O'Briens; (2) they performed that service non-gratuitously; (3) the O'Briens accepted the service; and (4) no contract existed to prescribe

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payment for the service. See *id.* However, " '[t]he mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor.' " *Id.* (quoting *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 9 (2004)). "Instead, the burden is on the provider, who 'must show that *valuable* services' were furnished by him." (Emphasis added.) *Id.* (quoting *Hayes Mechanical, Inc.*, 351 Ill. App. 3d at 9). The benefit must be measurable. *Id.* (quoting *Van C. Argiris & Co. v. FMC Corp.*, 144 Ill. App. 3d 750, 753 (1986)).

The Plaintiffs provided no measurable benefit or valuable service to the O'Briens. To the contrary, the manifest weight of the evidence shows that the Plaintiffs' services were of no benefit to the O'Briens.

A. The circuit court's factual findings are reviewed under a manifest weight of the evidence standard, and its legal rulings are reviewed *de novo.*

The issue of whether the Plaintiffs proved the elements of their *quantum meruit* claim is subject to a manifest weight of the evidence standard of review. *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 978-79. A judgment is against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent or the trial court's finding appears to be arbitrary and unsubstantiated by the evidence. *Id.* at 976. The circuit court's resolution of a legal issue, however, is reviewed *de novo*. *Samour, Inc. v. Board of Election Commissioners of City of Chicago*, 224 Ill. 2d 530, 542 (2007). The circuit court erred as a matter of law by shifting the burden of proof, and its factual findings on this issue were against the manifest weight of the evidence.

B. The Plaintiffs failed to prove that their unsuccessful litigation efforts benefited the O'Briens.

The circuit court first found that the Plaintiffs benefited the O'Briens because they "reviewed thousands of documents, formulated a litigation strategy, and engaged in multiple lawsuits on [the O'Briens'] behalf." C 6280. But the court offered no explanation for why the

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Plaintiffs' document review, in and of itself, conferred a benefit on the O'Briens. The Plaintiffs did not use those documents in any depositions, any successful pleadings, or any settlement correspondence. The mere fact that the Plaintiffs "reviewed" documents offered nothing of value to the O'Briens. See *First National Bank of Springfield*, 179 Ill. 2d at 365-66 (preparation of reports did not confer any benefit because they were never used; "Because the Foundation has failed to show that its activities conferred any benefit on the Mollets, its *quantum meruit* claim necessarily fails."). Similarly, that the Plaintiffs devised a "litigation strategy" and represented the O'Briens in lawsuits has no inherent value. The Plaintiffs could not satisfy their burden merely by establishing that they performed work for the O'Briens. See *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 979. They had to prove that their work was valuable to the O'Briens. See *id.* On that point, the evidence is clear: the Plaintiffs failed the O'Briens at every step of the litigation.

The Plaintiffs did not achieve any of their litigation objectives. See C 6266-68; R 587. The Plaintiffs voluntarily withdrew one of the O'Briens' claims. R 566-67. The chancery court dismissed two other claims altogether and severed and transferred another. *Id.* When the Plaintiffs tried to replead, their amendment was stricken. R 368, 574. Their petitions to remove Peggy and Richard as co-executors failed both in the circuit court and in the appellate court. C 4472-73, 6130, 6266; see also R 563-64, 1350. After the dismissal of one of those petitions, the Plaintiffs failed even to file a timely notice of appeal. C 4473, 6266; R 563-64, 1807. The Plaintiffs did not take a single deposition in any of the matters in which they represented the O'Briens. C 6266-67; R 548, 1442, 1621-22, 1682. The only substantive motion on which the Plaintiffs "prevailed" was the motion to remove Maureen as co-executor of the estates—a strategy that harmed the O'Briens by, for example, depriving Maureen of her stipend, the right to have the estates pay for independent valuations of estate properties, the right to inspect the

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estates' books and records, and increased authority over the estates. See R 583-85, 1278-81, 1816-18, 1822.

The Plaintiffs' litigation tactics did not simply fail. They failed spectacularly. For example, the probate court rebuked the Plaintiffs for using "the wrong forum" and "the wrong process" to pursue relief for the O'Briens. C 6130. The chancery court, in a scathing assessment of the Plaintiffs' performance, stated: "This is the exact opposite of the way we were all taught how to plead things." C 6266; R 573-74. The appellate court held that the Plaintiffs' work product on the O'Briens' behalf "fail[ed] to set forth well-reasoned legal arguments and otherwise violate[d] several provisions of Illinois Supreme Court Rule 341(h)." C 4473. The Plaintiffs failed even to file a timely notice of appeal from a significant adverse ruling. C 4473, 6266; R 563-64, 740, 1807. In short, the evidence overwhelmingly establishes that the Plaintiffs' litigation tactics provided no benefit to the O'Briens. The Plaintiffs did not achieve a single meaningful goal. R 587.

The circuit court found that "global success" was "not the yardstick by which a benefit conferred should be measured in this case." C 6280-81. But the O'Briens never argued that "global success" was a prerequisite to any *quantum meruit* recovery. Instead, they argued that because the Plaintiffs' litigation strategy was a global failure, their services did not benefit the O'Briens. There is no evidentiary basis for any finding that the global failure of the Plaintiffs' litigation efforts benefited the O'Briens in any way.

In fact, the Plaintiffs' legal advice harmed the O'Briens. The Plaintiffs advised Maureen to resign as a co-executor of the estates and thereby caused her to forfeit a number of important rights and benefits. See R 583-85, 1278-81, 1816-18, 1822. Resigning was unnecessary. Maureen could instead have simply dissented from decisions made by the other

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co-executors. R 1816, 1819-21. The O'Briens therefore would have been materially better off without the Plaintiffs' legal advice.

C. The Plaintiffs failed to prove that their unsuccessful settlement efforts benefited the O'Briens.

The circuit court speculated that the ultimate settlement "clearly" resulted from the Plaintiffs' "litigation efforts." C 6281 (Emphasis added.) ("The ultimate settlement amount was clearly based in significant part on the pressure Plaintiffs brought to bear on Peggy [*through*] *their litigation efforts*."). The circuit court's emphasis on the Plaintiffs' "efforts" is telling—the Plaintiffs may have made efforts, but they achieved no results. Setting aside that Peggy could hardly be under any "pressure" from the Plaintiffs' "litigation efforts" where those efforts failed at every turn (often with a stern admonition from the court), the circuit court did not cite any evidence to support its finding. See C 6277-91. Rather, the circuit court's finding rested on unsupported speculation and a misapplication of the law.

First, the circuit court erroneously faulted the O'Briens for "present[ing] no alternative theory for why Peggy eventually agreed to settle" (C 6281), thus improperly shifting the Plaintiffs' burden of proof to the O'Briens. See *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 979 (the burden rests with the party seeking restitution). It was not incumbent on the O'Briens to prove that their settlement was *not* the result of the Plaintiffs' efforts. The Plaintiffs were required to prove that the settlement *was* the result of their efforts. The circuit court's analysis was based on an erroneous application of the law, and its judgment therefore should be reversed. See, *e.g.*, *Wayne County Press, Inc. v. Isle*, 263 Ill. App. 3d 511, 513 (1994) (reversing judgment because "the trial court improperly shifted the burden of proof").

Second, the circuit court's opinion rests on speculation that because the O'Briens settled their claims shortly after terminating the Plaintiffs, the Plaintiffs' litigation and negotiation efforts—though admittedly unsuccessful—must have been somehow beneficial.

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See, *e.g.*, C 6281 (the settlement was "clearly based in significant part" on the Plaintiffs' "litigation efforts" because the settlement occurred "[l]ess than two months after Plaintiffs were terminated"). The appellate court affirmed this finding based on similar speculation that the settlement must have resulted from the Plaintiffs' efforts because it occurred relatively soon after the Plaintiffs were terminated. See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶ 51.

This speculation is insufficient to support a damages award. See *Union Tank Car Co. v. NuDevco Partners Holdings, LLC*, 2019 IL App (1st) 172858, ¶ 30 (vacating damages award following a bench trial because the award was "too speculative"). The Plaintiffs were required to present evidence showing that the O'Briens' settlement resulted from their work. See *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 980 (that someone "may have benefitted in some way from" the attorney's work "is not, in and of itself, enough to support an award to [the attorney] under *quantum meruit*. * * * Instead, [the attorney] was required to provide at least some evidence to show the reasonable value of his work * * *"). The Plaintiffs did not present any such evidence. Their expert did not tie any favorable ruling or successful litigation tactic to any settlement offer. And because the Plaintiffs took no depositions, their expert did not and could not point to any testimonial admissions that caused Peggy and Richard to settle. C 6266-67; R 548, 1442, 1621-22, 1682. Peggy, Richard, and their attorney never testified about what motivated their settlement decisions. *Cf. Wegner*, 305 Ill. App. 3d at 695 (discharged attorney's opposing counsel in the underlying matter testified that he recommended a settlement based on the discharged attorney's "pleadings, investigation, discovery, and depositions done prior to the date of discharge"). No settlement offer was pending at the time the Plaintiffs were terminated. See C 4227, 5334, 6081 ("there is now no offer to settle any aspect of these matters").

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The circuit court asserted that the Plaintiffs "obtained progressively larger settlement offers" over the course of "19 months." C 6281. But the O'Briens' settlement was not the result of a months-long campaign by the Plaintiffs to pressure Peggy and Richard into settling. Rather, the evidence shows that Dan, without the Plaintiffs' intervention, received a significant written settlement offer directly from Peggy and Richard in November 2015, barely a month after the Plaintiffs began representing the O'Briens and before the Plaintiffs did much work on the O'Briens' behalf. C 4204-05; R 374-77, 1368-69.

The evidence further shows that prior to April 2017, the Plaintiffs engaged only in sporadic settlement discussions that, by Schlegel's own admission, consisted of "a couple of offers and suggestions back and [f]orth" which led to a single written settlement offer in September 2016. See R 377-79. The Plaintiffs rejected that offer. See R 380-81. Settlement negotiations did not resume until April 2017, when the Plaintiffs sent Peggy and Richard two demand letters over the course of less than two weeks. The Plaintiffs' letters were woefully deficient; they did not point to any facts, documents, authorities, legal strategy, or any other basis for the O'Briens' demands. See C 4208-09, 4217-18; see also 381-82, 385-86. Peggy and Richard responded to the Plaintiffs' cursory settlement correspondence by withdrawing all offers and accusing the Plaintiffs of "game playing" and pulling a "stunt." C 4227, 5952; see also R 648-49, 1377-78. Thereafter, the Plaintiffs did not obtain any new offers to settle the O'Briens' claims. C 5334; R 590, 648-49, 1377-78. The Plaintiffs were never able to secure a settlement for the O'Briens. See *id.*

In sum, the circuit court erroneously shifted the burden of proof to the O'Briens and speculated that the Plaintiffs must have provided some measurable benefit to the O'Briens. The manifest weight of the evidence shows that the Plaintiffs did not and could not prove that their efforts conferred any measurable benefit on the O'Briens. The circuit court's judgment

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should therefore be reversed in its entirety, and the appellate court's opinion should be reversed to the extent that it affirmed the circuit court's judgment in part. To the extent that the appellate court reversed the circuit court's judgment in part, its opinion should be affirmed on this alternative ground.

III. The Plaintiffs failed to prove the reasonable value of their services.

Even if the Plaintiffs had met their burden to prove that they conferred a benefit on the O'Briens, they did not offer any admissible evidence that would have allowed the circuit court to quantify the value of such a benefit. *Quantum meruit* recovery is limited to the *reasonable* value of the services provided. *Vandenberg v. RQM, LLC*, 2020 IL App (1st) 190544, ¶ 34. "The attorney bears the burden of establishing the value of his services." *Id.*

The Plaintiffs failed to meet their burden to prove the reasonable value of their services. The circuit court could not base a *quantum meruit* award on the unlawful contingency fee (as discussed above), it performed no lodestar analysis, and its references to the hours recorded by the Plaintiffs and their volunteer helper likewise provide no basis for the nearly $1.7 million *quantum meruit* award. For this additional reason, which the appellate court did not reach (see 2023 IL App (1st) 211638, ¶ 54), the circuit court's judgment should be reversed in its entirety; to the extent the appellate court reversed the circuit court's judgment in part, its opinion should be affirmed on this alternative ground; and to the extent the appellate court affirmed the circuit court's judgment in part, its opinion should be reversed.

A. The circuit court's factual findings are reviewed under a manifest weight of the evidence standard, and its legal rulings are reviewed *de novo*.

The circuit court's factual findings are reviewed under a manifest weight of the evidence standard. *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 978-79. The circuit court's legal rulings, however, are subject to *de novo* review. *Samour, Inc.*, 224 Ill. 2d at 542.

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B. The circuit court legally erred by relying on cases where lawyers followed the Rules of Professional Conduct and secured favorable settlements.

The circuit court's ruling that the contingency fee represented the "reasonable value" of the Plaintiffs' services rested on cases in which attorneys received the value of a valid contingency fee under a *quantum meruit* theory after the attorneys successfully negotiated a settlement on the clients' behalf but were subsequently terminated. C 6290 (citing *Will*, 378 Ill. App. 3d 280; *Wegner*, 305 Ill. App. 3d 689; *Kelso*, 2018 IL App (3d) 170161; and *Rhoades*, 78 Ill. 2d 217). The Plaintiffs now cite several of these cases, as well as *DeLapaz v. SelectBuild Construction, Inc.*, 394 Ill. App. 3d 969 (2009), and *Whalen v. Shear*, 190 Ill. App. 3d 84 (1989), to argue that the circuit court was "permitted to award as quantum meruit damages the entire contingent fee." (Appellants' Br. at 28.) This is wrong as a matter of law.

First, none of these cases awards an attorney the value of a contingency fee in *quantum meruit* where that attorney violated the Rules of Professional Conduct or where the fee agreement was otherwise unlawful. See *Will*, 378 Ill. App. 3d at 283-84; *Wegner*, 305 Ill. App. 3d at 691; *Kelso*, 2018 IL App (3d) 170161, ¶ 9; *Rhoades*, 78 Ill. 2d at 222-26; *DeLapaz*, 394 Ill. App. 3d at 971; *Whalen*, 190 Ill. App. 3d at 86.

The Plaintiffs are not limited to a *quantum meruit* theory solely because the O'Briens terminated them. They are forbidden from collecting the contingency fee because their fee agreement violated the Rules of Professional Conduct and is therefore unenforceable. That alone distinguishes cases where an attorney received a *quantum meruit* award based on a contingency fee. The contingency fee agreements in those cases complied with the Rules of Professional Conduct. The fee agreement in this case did not, so it should not be indirectly enforced through a *quantum meruit* award that is based on the agreement's terms.

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One of the cases cited by the Plaintiffs illustrates the distinction. In *DeLapaz*, an attorney sought a contingency fee but lacked any written contingency fee agreement with his client. *DeLapaz*, 394 Ill. App. 3d at 972-73, 976-77. Unsurprisingly, the lack of a written contingency fee agreement doomed his efforts to obtain the contingency fee, and he was limited to a *quantum meruit* recovery based on the number of hours he spent on the case multiplied by a reasonable hourly rate. *Id.* Like the attorney in *DeLapaz*, the Plaintiffs never had an enforceable contingency fee agreement, so they should not have been awarded an amount based on the contingency fee.

Second, the cases on which the circuit court relied involve clients who terminated their attorneys after the attorneys secured favorable settlements for their clients. In *Will*, the client terminated the attorney three months after the attorney negotiated a settlement offer that the court ultimately ordered the plaintiff to accept. 378 Ill. App. 3d at 306. The settlement "was exactly the amount which [the terminated law firm] negotiated." *Id.* In *Kelso*, the attorney "obtained the maximum recovery available" for his client and was discharged "after the settlement was reached, when the case was all but completed." 2018 IL App (3d) 170161, ¶¶ 6, 7. In *Wegner*, the terminated attorney "obtained the maximum gross benefit available to the client" (*i.e.*, the policy limit) before the client terminated him. 305 Ill. App. 3d at 695. The terminated attorney also submitted evidence to support his *quantum meruit* claim: an affidavit from opposing counsel stating that he recommended his client settle at the policy limit based on the terminated attorney's work. *Id.* In other words, the settlement was exactly what the terminated attorney negotiated, and it was "solely attributable" to his work. *Id.* Similarly, in *Whalen*, the plaintiff settled his claim for "the exact same amount" the terminated attorney had negotiated. 190 Ill. App. 3d at 86. In *Rhoades*, the attorney did not obtain a settlement, but this

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Court expressed doubt that any *quantum meruit* award could be based on the contingency fee described in the fee agreement. See 78 Ill. 2d at 229.

Here, the Plaintiffs achieved no settlement. By Schlegel's own admission, there was "no offer to settle any aspect of the [O'Briens'] matters" after May 10, 2017, when Peggy and Richard withdrew "any and all settlement offers previously communicated" to the Plaintiffs. C 6081. Further, the circuit court's finding that "there were no significant changes in the pre-termination settlement offer terms to the post-termination acceptance terms" (C 6290) is at odds with the undisputed evidence. One of Maureen's primary concerns was her ability to keep her home, which was an asset of the estates. See R 386, 616, 1216, 1615-16. The Plaintiffs never obtained an offer that would allow her to do so. See C 4210-11, 4221, 6091-93. The O'Briens' next attorney did. See C 1886-87.

The circuit court acknowledged that "there was no settlement offer pending at the time Plaintiffs were discharged," but held that fact to be "inconsequential" because "demands and offers were made and withdrawn with regularity." C 6291. That statement finds no support in the record. There was no evidence that settlement offers were "withdrawn with regularity," or that they were withdrawn at any time before May 10, 2017. More fundamentally, the circuit court suggested that it did not consider the timing and sequence of settlement offers to be relevant. Yet the primary basis for the circuit court's finding that the O'Briens' settlement was attributable to the Plaintiffs was that the settlement occurred "very shortly after Plaintiffs were terminated." *Id.* The circuit court never resolved this glaring inconsistency in its reasoning.

Attorneys are not entitled to their fees on a contingency basis simply because they were discharged shortly before the conclusion of the litigation. See *Vandenberg*, 2020 IL App (1st) 190544, ¶¶ 36, 37 ("None of these cases suggest that a circuit court is required to award fees on a contingency amount basis." (citing *DeLapaz* 394 Ill. App. 3d at 976, *Will*, 378 Ill.

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App. 3d at 306, 317, and *Wegner*, 305 Ill. App. 3d at 697)). A contingency fee "often represents a windfall" that bears "little relation to the true value of the time a firm has spent on a case." *Id.* at ¶ 36. The value of a contingency fee here, where the contingency fee agreement is unenforceable under any circumstance, would be a "windfall" indeed, even deducting the fees paid to successor counsel.

Finally, the circuit court erred as a matter of law by shifting the burden to the O'Briens to "set forth an alternative method of calculating fees." C 6290. It was the Plaintiffs' burden to establish the reasonable value of their services. *Vandenberg*, 2020 IL App (1st) 190544, ¶ 34. The circuit court's judgment should be reversed because it rested on an improper shift in the burden of proof. *Wayne County Press, Inc.*, 263 Ill. App. 3d at 513.

C. The circuit court's application of the *quantum meruit* factors was against the manifest weight of the evidence.

Aside from relying on inapposite authority to support its findings, the circuit court erred in applying the factors courts must use to determine the reasonable value of an attorney's services. Those factors are: the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client. *Vandenberg*, 2020 IL App (1st) 190544, ¶ 34 (quoting *Will*, 378 Ill. App. 3d at 304). The Plaintiffs failed to present evidence on one of these factors, and the other factors strongly weigh against the amount the circuit court awarded.

1. Time and Labor Required

The circuit court found that the "Plaintiffs' time records reflect that attorneys Levenfeld, Schlegel and Schlegel's staff, including an attorney and a volunteer helper, spent in

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excess of 3000 hours (excluding post-termination billing) working on [the O'Briens'] behalf over approximately 19 months." C 6289.

But there is no dispute that nearly half of the "3000 hours" were recorded by Schlegel's unpaid volunteer, who was not an attorney or a paralegal, had no formal paralegal training, and performed only "clerical and administrative" tasks. R 702. Each of the volunteer helper's nearly identical 173 billing entries was for exactly seven hours of "file upkeep" and other administrative tasks. See C 4244-4320; R 955-56. Courts routinely reject attorneys' efforts to recover fees for clerical and administrative tasks, even when the clerical or administrative tasks were not performed by volunteers. See, *e.g.*, *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 108 (affirming exclusion of administrative tasks from attorneys' "reasonable baseline hours").[4]

Moreover, the measure of recovery in *quantum meruit* is "the reasonable value of the work." *Bernstein & Grazian, P.C.*, 402 Ill. App. 3d at 979. The Plaintiffs themselves did not believe the volunteer helper's "clerical and administrative" tasks were worth compensating, and apparently the volunteer was willing to work for free. There is no basis for forcing the O'Briens to compensate the Plaintiffs for the volunteer's work when even the Plaintiffs deemed the "reasonable value" of that work to be zero. The Plaintiffs should not have been awarded a windfall for work that cost them nothing.

The circuit court acknowledged that the O'Briens "elicited testimony from Schlegel and his colleagues which calls into question whether the hours recorded by the firm were accurate and whether they inappropriately expected to receive payment for work performed

[4] In the appellate court, the Plaintiffs relied on *Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, to justify their attempt to recover money for work performed by a volunteer. But that case reviewed a sanctions award under Ill. Sup. Ct. R. 137, not a *quantum meruit* award. *Id.*, ¶ 68 (explaining that Rule 137 sanctions are "penal in nature").

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by a volunteer." C 6291. The circuit court found this "immaterial," however, because the *quantum meruit* award was "not based on recorded hours." *Id.* But the circuit court expressly emphasized the "3000 hours" the Plaintiffs allocated to the O'Briens' matter as a basis for the *quantum meruit* award. C 6289. Thus, while the circuit court may not have calculated the Plaintiffs' fees using a lodestar method, its finding that the *quantum meruit* award was "not based on recorded hours" is at odds with the rationale used to support the fee award. On the one hand, the circuit court emphasized the "3000 hours" the Plaintiffs (or, in large part, their unpaid helper) devoted to the O'Briens' matter as a justification for the *quantum meruit* award, while on the other hand, the circuit court dismissed as "immaterial" evidence showing that the 3000-hour figure was unreasonable (*see id.*).

2. Skill and Standing

As discussed at length above, the Plaintiffs demonstrated little skill in the O'Briens' legal matters. They did not obtain any favorable legal rulings. They missed a notice of appeal filing deadline. C 4473, 6266; R 563-64, 740, 1807. Courts criticized them for practicing "the exact opposite of the way we were all taught." C 6266; R 573-74.

3. Nature of the Cause

There was no risk of zero recovery for the Plaintiffs because their fee agreement guaranteed a minimum payment regardless of the outcome of the underlying litigation. SA 1; C 5335.

4. The Subject Matter's Novelty or Difficulty

Even assuming that the underlying litigation was potentially complex, there is no evidence that the Plaintiffs performed work that was novel or difficult. The Plaintiffs, in fact, took no case to trial, and they did not take even a single deposition (C 6266-67; R 548, 1442, 1621-22, 1682).

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5. Attorney's Degree of Responsibility in Managing the Case

The Plaintiffs were entrusted with responsibility for managing the O'Briens' legal matter, but as discussed in detail above, the evidence showed that the Plaintiffs did not even come close to adequately discharging their responsibilities to the O'Briens. They could not even be trusted to meet the deadline for filing a notice of appeal. C 4473, 6266; R 563-64, 740, 1807.

6. Usual and Customary Charge in the Community

The Plaintiffs did not present any evidence regarding the usual and customary charge in the community for the work they performed for the O'Briens. Instead, Schlegel testified to his own usual and customary rate, with no explanation as to why that rate is consistent with rates customarily charged in the community. See R 337-39. Levenfeld offered no testimony at all about his customary rate. The Plaintiffs could not meet their evidentiary burden if they did not put forth any evidence.

Additionally, the "usual and customary rate" to which Schlegel testified at trial—up to $600 per hour—was *twice as high* as the $300-per-hour rate specified for Schlegel's work in the fee agreement. Compare R 338 with SA 1, C 5335. The Plaintiffs argued that "their recovery should be calculated by reference to the [fee agreement]" because it "reflects the parties' own views as to what would be fair and reasonable." C 6290. The circuit court agreed with the Plaintiffs on that issue generally, and yet the circuit court disregarded a term of that agreement—*i.e.*, Schlegel's hourly rate—in favor of a much higher rate to which Schlegel testified.

7. Benefits Resulting to the Client

The circuit court also erred in finding that the benefits the Plaintiffs provided the O'Briens merited a fee award that was based on the unlawful contingency fee. As set forth

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above, the Plaintiffs provided no measurable benefit to the O'Briens. Their litigation efforts not only failed but were harshly criticized by multiple courts. Their settlement efforts not only failed but resulted in Peggy and Richard withdrawing all offers. The net benefit of the Plaintiffs' representation was zero.

For all of these reasons, the circuit court's *quantum meruit* award rested on a misapplication of the law, and it was also against the manifest weight of the evidence. The circuit court's judgment should therefore be reversed in its entirety, and the appellate court's opinion should be reversed to the extent that it affirmed the circuit court's judgment in part. To the extent that the appellate court reversed the circuit court's judgment in part, its opinion should be affirmed on this alternative ground.

IV. The Plaintiffs both waived and forfeited any *quantum meruit* claim based on hourly rates or on any other basis independent of their unlawful fee agreement.

The appellate court's opinion should be reversed to the extent that it remanded this case to the circuit court with instructions to render a new *quantum meruit* award. See *Andrew W. Levenfeld & Associates, Ltd.*, 2023 IL App (1st) 211638, ¶ 56. The Plaintiffs both forfeited and expressly waived any claim to a *quantum meruit* award that is not based on the contingency fee. See *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 320 n.2 (2008) (explaining the difference between waiver and forfeiture). In the circuit court, the Plaintiffs affirmatively waived any *quantum meruit* claim that was not based on the contingency fee. R 1555 ("We are seeking a recovery based on the contingency, *not the time records*." (emphasis added)). The Plaintiffs also forfeited any *quantum meruit* claim based on time records or any other basis independent of the fee agreement by failing to make such a claim in the circuit court. See C 6216 ("Plaintiffs ask this Court to apply the agreed-to contingency rate contained in the fee agreement when determining what constitutes a fair and reasonable fee."). Under comparable circumstances, attorneys who sought a *quantum meruit* award based on a contingency fee forfeited any *quantum*

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meruit award based on time records. See *Vandenberg*, 2020 IL App (1st) 190544, ¶ 48 (law firm that unsuccessfully sought recovery based on a percentage of its client's settlement forfeited any right to claim fees based on hours billed, because allowing the law firm "to now pursue a claim that it clearly chose to reject below would be to give the firm the proverbial second bite at an apple and ignore the rules of forfeiture"). Similarly, in this case, the Plaintiffs should not be allowed a second bite at the apple. The Plaintiffs chose to base their *quantum meruit* claim on the terms of a fee agreement that they knew violated Rule 1.5(e). Because that claim fails for the reasons stated above, the circuit court's judgment should have been reversed in its entirety, and the Plaintiffs should not be allowed an opportunity to prove an entirely different *quantum meruit* claim on remand.

CONCLUSION

Defendants-Appellees Maureen V. O'Brien and Daniel P. O'Brien III respectfully request that this Court: affirm the appellate court's opinion insofar as it reversed the circuit court's judgment in part; reverse the appellate court's opinion insofar as it affirmed the circuit court's judgment in part; reverse the circuit court's judgment in its entirety; and award any other relief that this Court deems proper.

Respectfully submitted,

/s/ John M. Fitzgerald
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 53 pages.

/s/ John M. Fitzgerald
John M. Fitzgerald

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SUPPLEMENTAL APPENDIX

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Fee Agreement, dated October 29, 2015 (C 5335 V3) ....SA 1

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Joint Stipulated Facts
Exhibit A

O'BRIEN_001947

FILED DATE: 7/23/2021 3:59 PM 2017CH15055

AGREEMENT

This Agreement is made between ANDREW W. LEVENFELD & ASSOCIATES, LTD., STEPHEN J. SCHLEGEL, LTD. ("Attorneys"), MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III ("Clients") on this 29th day of October, 2015.

Attorneys agree to represent Clients in their claims to enforce their rights in and to the Estates of Mary P. O'Brien and Daniel O'Brien Sr., now both deceased, and various O'Brien family business entities as to which they both own interests.

The Clients do hereby retain and employ the attorneys to represent them and protect and enforce any rights they may have now, or which arise in the future, in connection with their relationship with the Estates of Daniel and/or Mary P. O'Brien and various O'Brien family business entities.

Clients do not have a current retainer deposit with the attorneys, who reserve the right to ask for such in the future, should they believe it to be necessary for any reason.

Clients agree to pay minimum attorneys fees calculable at an hourly rate of $300 per hour for Andrew W. Levenfeld's and/or Stephen J. Schlegel's time, $250 per hour for associate attorney time, and $85 per hour for paralegal or paraprofessional time. Time shall be recorded in 1/10-hour increments. Clients shall also be responsible to reimburse the attorneys when billed all reasonable and necessary costs such as filing and service fees, court reporter and witness fees, and for all expenses reasonably incurred in the performance of services including, but not limited to, messenger or overnight delivery services, travel costs and unusually large copying jobs requiring extra clerical time.

Periodically and on request at any reasonable time, the attorneys will generate invoices for fees and expenses. It is understood and agreed that the matters being undertaken are expected to involve a substantial amount of professional time, services and risk. Clients currently do not have liquid cash assets to provide for the bills for anticipated legal services and costs. The parties to this agreement mutually acknowledge that the reduction of certain assets to liquid funds will be necessary from time to time to pay for all of the work done professionally on behalf of the clients prior to the end of the attorney-client relationship.

The minimum fee to be charged in any event for time spent prior hereto, and hereafter shall be the sum of $30,000.

The total fees to be charged shall be either 15 % of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients, or the amount of charges made for time expended, whichever is greater. The term "assets recovered" shall mean the fair market value of

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any property, real, personal, or inchoate, transferred from the Estates or businesses in which Clients currently own percentage interests, to the ownership of the Clients or either of them.

Any party hereto may terminate this agreement upon reasonable advance notice. Attorneys are under no obligation to undertake or continue to provide legal services on any matter, should they deem such services to be in conflict with the interests of another client or legal ethics, or should clients fail to make any payment to the firm when due. Termination of this agreement will not dispel the client(s) obligation to pay for all work done prior to the end of the attorney-client relationship.

IN WITNESS WHEREOF, the parties hereto have subscribed this agreement, effective the day first above written.

ANDREW W. LEVENFELD & ASSOCIATES, LTD.

By: [signature]

STEPHEN J. SCHLEGEL, LTD.

By: [signature]

CLIENTS

By: [signature]

By: [signature]

This agreement may be executed in individual counterparts.

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

ANDREW W. LEVENFELD AND ASSOCIATES, LTD. and STEPHEN J. SCHLEGEL, LTD., *Plaintiffs-Appellants,* v. MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III, *Defendants-Appellees.*	)	No. 129599

The undersigned, being first duly sworn, deposes and states that on December 6, 2023, there was electronically filed and served upon the Clerk of the above court the Brief and Supplemental Appendix of Defendants-Appellees. Cross-Relief Requested. On December 6, 2023, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ John M. Fitzgerald
John M. Fitzgerald

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ John M. Fitzgerald
John M. Fitzgerald

SUBMITTED - 25477632 - John Fitzgerald - 12/6/2023 8:55 AM