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**IN THE SUPREME COURT OF MISSISSIPPI
THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

FILED

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**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

JACK W. HARANG,

Appellant,

v.

CASE No. 2008-^{CR}TS-01701

PAT M. BARRETT, JR.,

Appellee.

ON APPEAL FROM CHANCERY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

IN THE MATTER OF THE GUARDIANSHIP ESTATE
OF DYLAN N. BAKER, A MINOR CHILD

CIVIL ACTION, FILE NO. 07-0073 PR-W

BRIEF OF THE APPELLANT

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Plaintiffs/Appellants**

**IN THE SUPREME COURT OF MISSISSIPPI
THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

JACK W. HARANG,

Appellant,

v.

CASE No. 2008-TS-01701

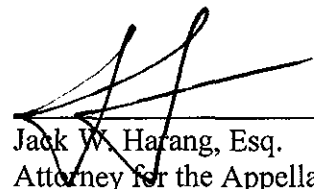
PAT M. BARRETT, JR.,

Appellee.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Jack W. Harang, Esq., Appellant
2. Pat M. Barrett, Jr., Appellee
3. The Honorable Williams,, Chancery Court Judge for Pearl River County, Mississippi
4. Brian Baker, Maternal Grandparent of Dylan N. Baker
5. Gina Baker, Maternal Grandparent of Dylan N. Baker



Jack W. Harang, Esq.
Attorney for the Appellant

STATEMENT REGARDING ORAL ARGUMENT

The Appellant herein, Jack W. Harang respectfully submits that Oral Argument would aid the Court in the resolution of this Appeal.

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STATEMENT OF THE ISSUES

- I. Whether the Trial Court erred in deciding that it did not have to recognize the existing Contingency Fee Contract in this matter and, as such, only equitable principals control the division of Attorney's Fees in this case.
- II. Whether the Trial Court erred in Pat M. Barrett Jr., ninety percent (90%) of the total amount of Attorney's fees recovered in this case and awarding Jack W. Harang ten percent (10%) recovered in this case and further refusing to recognize the Joint Venture Agreement between Pat M. Barrett, Jr., and Jack W. Harang.
- III. Whether the Trial Court erred in denying the Motion for Approval and Recognition of Attorney's Contingency Fee Contract filed by Jack W. Harang in this case.

STATEMENT OF THE CASE

This matter arises as a result of a suit initiated by the Maternal Grandparents, Brian Baker and Gina Baker of the minor child, Dylan N. Baker to recover for the wrongful death of his mother as a result of the negligence of the Norfolk Southern Railroad. On April 1, 2002 Brian Baker and Gina Baker executed a contingency fee contract with Jack W. Harang, an attorney licensed to practice law in the State of Louisiana to pursue their claim on behalf of the minor child, Dylan N. Baker, as set forth above. Additionally, Mr. Harang, through his employees and/or agents compensated by him, interviewed witnesses and performed an investigation of the underlying facts surrounding the accident which formed the basis of the wrongful death suit against Norfolk Southern Railroad. In order to assist him with the representation in pursuit of this case, Mr. Harang, associated Mr. Barrett, an attorney licensed to practice law in the State of Mississippi. Mr. Barrett did not however, enter into any contingency fee contract with the Bakers. On March 9, 2007, shortly before trial, the parties in the original claim, Brian Baker and Gina Baker on behalf of the minor child, Dylan N. Baker and Norfolk Southern Railroad agreed to settle the case. This settlement was approved by the Chancery Court by Order herein on August 30, 2007. On May 9, 2008 Pat M. Barrett, Jr., filed a Motion for Attorney's Fees and an opposition to that was timely filed by Jack W. Harang. On June 6, 2008, a motion was filed by Jack W. Harang for Approval and Recognition of Attorney's Contingency Fee Contract.

On May 21, 2008, the Honorable Johnny Williams conducted a hearing on the motion for Pat M. Barrett, Jr., for Attorney's fees and the motion filed by Jack W. Harang for Approval and Recognition of his Attorney's Contingency Fee Contract. On July 1, 2008, an Order was entered on Mr. Barrett's Motion for Attorney's Fees awarding Mr. Barrett ninety percent (90%)

of the total amount of the attorney's fees recovered in this case and awarding Mr. Harang ten percent (10%) of the attorney's fees recovered in this case. The Court further denied Mr. Harang's Motion for Approval and Recognition of his Attorney's Contingency Fee Contract. This Appeal followed.

STATEMENT OF FACTS

On April 1, 2002, Brian Baker and Gina Baker executed a Contingency Fee Contract with Jack W. Harang, an attorney licensed to practice law in the State of Louisiana to pursue their claim on behalf of the minor child, Dylan N. Baker to recover for the wrongful death of his mother as a result of the negligence of the Norfolk Southern Railroad. Immediately thereafter, witnesses were interviewed and an investigation was conducted on the underlying facts surrounding the accident which formed the basis of the wrongful death suit against Norfolk Southern Railroad. After several months and after it was determined that there was a basis to pursue a claim against Norfolk Southern Railroad, Mr. Harang associated Pat M. Barrett, Jr., an attorney licensed to practice law in the State of Mississippi. Mr. Barrett did not have a contingency fee contract with the Bakers and all work conducted by him was done so through his association with Mr. Harang pursuant to the Contingency Fee Contract executed by the Bakers with Mr. Harang. Thereafter, Mr. Harang's active participation in this case was interrupted as a result of his displacement by Hurricane Katrina.

ARGUMENT

The propriety of the trial court's entry of the order dated July 1, 2008, is at issue on this appeal. In reviewing such an order, this Court conducts a *de novo* review of the evidence in the record. *Townsend v. Estate of Gilbert*, 616 So. 2d 333,335 (Miss. 1993).

The trial court relied on *Sunnyland Contracting Company, Inc. v Davis*, 775 So. 2d 638 (Miss. 1954), when deciding that it did not have to recognize the existing contingency fee contract and as such, only equitable principals control the division of attorney's fees in this case, regardless of the terms of the contract and whether or not said contract adequately sets forth the representation in this matter.

I. Whether the trial court erred in deciding that it did not have to recognize the existing contingency fee contract in this matter and, as such only equitable principals control the division of attorney's fees. In relying on *Sunnyland*, supra, the trial court totally disregarded that the provisions of Mississippi Rules of Professional Conduct, Rule 1.5(c), which requires that all contingency fee contracts "shall be in writing and shall state the method to which the fee is to be determined".

There is no provision in the Mississippi Rules of Professional Conduct or Juris Prudence of the State which recognize an oral contingency fee contract between a client and an attorney. Yet, in refusing to recognize Mr. Harang's contract and awarding Pat Barrett, Jr., ninety (90%) of a forty percent (40%) contingency fee on the monies collected on behalf of the minor, Dylan N. Baker, the trial court has done just that.

Sunnyland, supra, is inapplicable to the facts of this case as the court in *Sunnyland* actually recognized the contingency fee contract but reduced the attorney's fee from fifty percent (50%) to thirty-three and one-third (33 1/3%) in a workman's compensation case. There is simply no support in *Sunnyland* for a court to completely disregard an attorney's contingency

fee contract which the client, the attorney, and associated attorneys have worked pursuant to for several years.

Mr. Harang introduced the expert opinion of Michael Martz who served as General Counsel for the Mississippi Bar from 1986-2004 in matters involving professional responsibility and attorney discipline. His opinion further supports that a requirement that contingency fee contracts in Mississippi must be in writing.

II. Whether the trial court erred in granting Pat M. Barrett, Jr., ninety (90%) of the total amount of attorney's fees recovered in this case and awarding Jack W. Harang ten (10%) of the attorney's fees recovered in this case and further refusing to recognize the Joint Venture Agreement between Pat M. Barrett, Jr., and Jack W. Harang.

In Mississippi, as in most other jurisdictions, peer referral fee agreements, in which one attorney obtains a client and sends a client to another lawyer, without performing any services and without assuming joint responsibility for the representation, are prohibited. As stated, in Mississippi, attorney's fees may be split between and among lawyers not in the same firm on one or two bases: a.) Services performed with the clients knowledge and consent; or, b.) joint responsibility within the written agreement from the client. The testimony submitted at trial supports the proposition that Mr. Harang and Mr. Barrett were joint venturers, with Mr. Harang's responsibility for trial and being responsible for the trying of the case, should such trial be necessary. This was in addition to the services rendered of investigating the case and questioning witnesses prior to any legal proceeding being filed.

Additionally, the assumption of joint responsibility basis (trial preparation and trial itself) does not require that the attorney be actively involved in providing legal services at every stage of the prosecution of the client's case. In addition, joint responsibility does not require that the

attorney participate in decision making process in the prosecution of the case. In addition, neither services performed, nor joint responsibility would preclude an equitable split of attorney's fees if the case did not control, if trial was ever contemplated.

III. Whether the trial court erred in denying the Motion for Approval and Recognition of Attorney's Contingency Fee Contract filed by Jack W. Harang in this case.

There is no dispute that on April 1, 2002 Brian Baker and Gina Baker executed a contingency fee contract with Jack W. Harang on behalf of the minor, Dylan N. Baker to pursue a claim against Norfolk Southern Railroad as the result of the death of Dylan N. Baker's mother. The original complaint filed in the Circuit Court of Pearl River County, Mississippi, on the wrongful death case was filed by both Mr. Barrett and Mr. Harang. As Mr. Barrett had no contractual relationship with the Bakers all actions taken by Mr. Barrett was pursuant that the authority that he was granted through the contract executed with Mr. Harang and to whom he had been associated. Mississippi Rules of Professional Conduct is clear and unambiguous as it states:

Rule 1.5 (c) "A fee may be contingent upon the outcome of the matter for which the services rendered, except, in matter in which a contingent fee is prohibited by paragraph (b) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that occlude to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyers shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination."

The refusal by the trial court to recognize the written contingency fee contract Jack W. Harang is contrary to the law and allows that Mr. Barrett to collect a contingent fee where he has


no written contract with the client nor is there a written contingent fee contract with counsel that associate him recognized by the court.

CONCLUSION

Based on the facts and case law set out above it is clear that the trial court was in error in refusing to grant Mr. Harang's Motion for Approval and Recognition of an Attorney's Contingency Fee Contract and the trial court was further in error when it awarded Pat M. Barrett, Jr., the ninety percent (90%) of the total amount of attorney's fees recovered and awarded Jack W. Harang ten percent (10%) of the total amount of attorney's fees recovered.

Accordingly, Jack W. Harang respectfully states that this Court should reverse the trial court's order as prayed for herein.

Respectfully submitted,

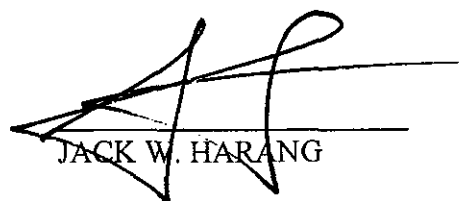


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been served upon counsel of record via facsimile, this 12 day of Jan, 2009.

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JACK W. HARANG