NORFLEET *v.* STEWART.

Opinion delivered October 21, 1929.

1. ATTORNEY AND CLIENT—EVIDENCE OF RELATIONSHIP.—In a suit against an attorney to recover money alleged to have been paid in compromise of a judgment for damages and converted by the attorney, evidence *held* sufficient to warrant a finding that the attorney was a member of a firm which plaintiff had engaged to defend certain actions for damages for which the firm had been paid a specified fee.
2. ATTORNEY AND CLIENT—GOOD FAITH.—A fiduciary relationship exists between an attorney and client, and the confidence which the relationship begets requires the attorney to act in the utmost good faith.
3. ATTORNEY AND CLIENT—DEALINGS WITH CLIENT.—An attorney must not only not misrepresent any fact to his client, but there must be an entire absence of concealment or suppression of any facts within his knowledge which might influence his client.

4. ATTORNEY AND CLIENT—FAIRNESS OF TRANSACTION—BURDEN OF PROOF.—The burden of establishing the fairness of a transaction between attorney and client is upon the attorney to show, not only that no advantage was taken, but that he gave his client all the information and advice about the matter that was necessary to enable the client to act understandingly.
5. ATTORNEY AND CLIENT—DEALINGS WITH CLIENT.—Actual fraud in transactions between attorney and client is not necessary to give the client a right to redress, since a breach of duty constitutes constructive fraud, and is sufficient.
6. ATTORNEY AND CLIENT—OBLIGATION TO CLIENT.—An attorney, member of a firm engaged to defend a civil action for damages for a specified fee, had no right to demand an additional fee before effecting a compromise, since it was his duty to effect a settlement without asking or imposing as a condition therefor that he should be paid an additional fee.

Appeal from St. Francis Chancery Court; *George M. LeCroy,* Chancellor on exchange; affirmed.

STATEMENT OF FACTS.

Appellee brought this suit in equity against appellant to recover the sum of $1,000, alleged to have been paid appellant to be used in the compromise or settlement of a judgment for damages against appellee, and which was converted by appellant to his own use. Appellant defended the suit on the ground that the $1,000 sued for had been paid him for legal services in the compromise and settlement of said judgment for damages against appellee.

The evidence in the record may be stated in brief form as follows: H. L. Pugh killed Julius Jolly, and suit was brought against him and against I. B. Stewart, his son-in-law, for damages. Pugh employed the following lawyers to defend him in the suit for damages, and in any criminal prosecution that might be brought against him: Mann & Mann, Norfleet & Norfleet, and R. J. Williams. He agreed to pay each firm $750 for all legal services in all the courts. In the civil suit a judgment was obtained for the sum of $11,741, and an appeal was taken to the Supreme Court. A conference of the attorneys was called in the office of S. H. Mann. M. B. Norfleet, Sr., had died since the trial in the circuit court,

and his son, M. B. Norfleet, Jr., attended the conference of attorneys. After discussing the general merits of the appeal, and apportioning the work of preparing the brief among the different attorneys for appellee, they began to talk about compromising the case. All the attorneys thought it advisable to do so. Because of the fact that Mann and Williams had each instituted some legal proceedings against one of the attorneys for the plaintiff in the damage suit, it was deemed advisable to get M. B. Norfleet, Jr., to attempt to bring about the compromise and settlement. He went to Memphis, where the attorneys for the plaintiff in the damage suit resided, and took up the matter with them. No compromise was effected, but the attorneys for the plaintiff agreed to go to Forrest City the next day, and take up the matter with their client. The conference resulted in a compromise whereby $9,000 was paid to the attorneys for the plaintiff in the damage suit, and $1,000 was paid to M. B. Norfleet, Jr. These facts are undisputed.

According to the testimony of the attorneys for the plaintiff in the damage suit, the plaintiff first offered them $5,000, and finally said that his client might be willing to pay as much as $8,000 or possibly $9,000 in settlement. Appellant said that the settlement would have to be for a greater sum of money than was to be paid to the plaintiff in the damage suit. The attorneys for the plaintiff did not know what this additional sum was to be for. They did not like the idea of the settlement showing the payment to them of a greater sum than was actually received by them. The judgment was finally compromised and settled for the sum of $9,000, which was paid to the attorneys for the plaintiff. At the time this was done, appellant told attorneys for the plaintiff that there was no need to have any further question about the recital in the settlement of a larger sum. He said that his client had agreed to pay the sum of $1,000 to him for an attorney's fee for effecting the settlement. Appellant never received any part of the

$9,000 from the attorneys for the plaintiff, and neither they nor their client received any of the $1,000 which appellant said was to be paid to him for an attorney's fee.

According to the testimony of S. H. Mann and R. J. Williams, they understood that M. B. Norfleet, Sr., and M. B. Norfleet, Jr., were law partners. All three firms participated in the trial of the damage suit against Pugh and Stewart, but M. B. Norfleet, Sr., mainly represented his firm. M. B. Norfleet, Jr., was present a part of the time at the trial, and sat with the counsel for the defendants in the case. He also went with them to a hospital at Memphis, before the trial, to see Mr. Pugh, and to take steps about getting a continuance of the case. At the time of the settlement, it was suggested that Mr. Norfleet go to Memphis to try to effect a settlement of the case, because Mann and Williams each had suits against one of the attorneys for the plaintiff in the damage suit, and it was thought best to send young Norfleet. They testified that they understood he was acting as one of the attorneys in the case, just as they were. They finally effected a compromise for $9,000, and Norfleet demanded $1,000 in addition for the expenses of the settlement. He was asked, what the expenses were, and said that he could not tell them that, for it was confidential, or words to that effect. Several times he was asked about what he was going to do with the $1,000, and he told them that he just couldn't tell them about that, but that it would have to be paid if the settlement was made.

According to the testimony of I. B. Stewart, the lawsuit was revived in his name as administrator of the estate of L. J. Pugh, deceased, and he attended to the suit all the way through, including the compromise and settlement. Pugh had given the firm of Norfleet & Norfleet a note for $750 for their legal services in the damage suit, and this was to include their fee in the Supreme Court, if the case went there. Pursuant to the directions of L. J. Pugh before he died, Mrs. I. B. Stewart gave a check payable to Norfleet & Norfleet for $750 in payment

of their fee. The check was indorsed "Norfleet & Norfleet." The check which was given to M. B. Norfleet, Jr., for $1,000 contained a recital that it was for attorney's fees, services rendered to date. Norfleet also signed a receipt for the $1,000, that it was in full payment and satisfaction of all services rendered in the aforementioned damage suit. Stewart asked Norfleet what the $1,000 was paid to him for, and Norfleet replied that it was for the expenses of settling the suit. Stewart asked him what kind of expenses. Norfleet again replied that it was to settle the suit, and the suit could not be settled without it. Stewart then paid him the $1,000 in order to obtain a settlement of the suit.

According to the testimony of M. B. Norfleet, Jr., he and his father had a limited partnership. They used the name of Norfleet & Norfleet on their office stationery, and had their offices together. Each had his own private room, which opened into a common reception room. M. B. Norfleet, Sr., alone was employed in the damage suit by Pugh. He admitted writing to Stewart that the $750 included all attorney's fees which would be received if the case was carried to the Supreme Court, but said that he wrote the letter at the instance of his father. Appellant wrote all the letters of his father, and usually signed them Norfleet & Norfleet, by M. B. Norfleet, Jr. He also admitted receiving the check for $750 and collecting it, but stated that this was done at the request of his father, who was careless in money affairs, and that the sum collected was immediately placed to the credit of his mother, as directed by his father. He admitted that he went to Memphis with the other attorneys in the case for the purpose of seeing about getting a continuance of the case, but said that he did this at the request of his father, and not as one of the attorneys in the case. He also admitted being present at the trial of the case for a part of the time, but stated that this was because he was interested in his father, and not because he was one of the attorneys. He also admitted being present at the conference

of attorneys about preparing the damage suit for the Supreme Court, and stated that, at the solicitation of the other attorneys, he undertook to effect a settlement and compromise of the damage suit. He demanded, and they agreed to pay him, the sum of $1,000 for his legal services in effecting the settlement. He denied having told the attorneys for the plaintiff in the damage suit that the settlement would have to show a greater sum of money than was to be paid to the plaintiff in the damage suit. He stated that he told the attorneys for appellee that he could settle the damage judgment on the following terms: $9,000 to be paid the plaintiff in the damage suit, and $1,000 to be paid appellant. He denied telling them that the $1,000 was to be used for expenses in effecting the settlement, and said that he told them that the receipt would speak for itself. He admitted telling them that the $1,000 would have to be paid in order to effect the settlement.

The chancellor found the issues in favor of appellee, and it was decreed that appellee should recover from appellant said sum of $1,000, with the accrued interest. The case is here on appeal.

Robinson, House & Moses and *C. W. Norton,* for appellant.

Coleman & Riddick, for appellee.

HART, C. J., (after stating the facts). The theory of appellee was that appellant was a member of the firm of Norfleet & Norfleet, who had been employed as attorneys by Pugh in the civil damage suit, and that, under the terms of the employment, the firm would continue to represent the appellee in the damage suit until the case was settled or decided in the Supreme Court of the State of Arkansas.

On the other hand, it was the contention of appellant that he was not a member of the firm of Norfleet & Norfleet, and that it was distinctly agreed that he should receive the sum of $1,000 for his legal services in effecting a compromise and settlement of the judgment against appellee in the damage suit.

Thus it will be seen that the record presents for our consideration the question of whether or not appellant was one of the attorneys for appellee in the damage suit, and, if so, what duties he owed to his client in effecting the settlement. The chancellor made a general finding of fact in favor of appellee, and this included the finding that appellant was a member of the firm of Norfleet & Norfleet, and was one of the attorneys for appellee at the time the compromise and settlement were effected. Appellant admits that his father was to continue as attorney for appellee if the case was carried to the Supreme Court. He denies, however, that he was a member of the firm.

We are of the opinion that the chancellor was justified in finding him to be a member of the firm of Norfleet & Norfleet. They had a common reception room, and private offices opening into it. Appellant admitted that they were employed in some cases together, and that he did all of his father's typewriting. Their stationery carried the name of Norfleet & Norfleet as a firm, with the names of the individual members on each side of the firm name. Appellant did some work in connection with the trial of the damage suit. He went with the other attorneys in the case to Memphis to see about a continuance of the case. The firm name was signed to the pleadings in the case. Appellant was present for a part of the time at the trial. He was understood to be a member of the firm, and was, on that account, called into conference about preparing the brief, and later acting for appellee in trying to effect a compromise and settlement of the judgment. He accepted the payment of $750 fee in the name of Norfleet & Norfleet as a firm, and carried on all the correspondence about the matter as if he was a member of the firm of Norfleet & Norfleet. Under these circumstances, it was natural for appellee to understand that he was a member of the firm of Norfleet & Norfleet and consequently one of the attorneys in the case. All the attendant facts tended to show that he was a member of the firm, and the chancellor was justified in so finding.

This brings us to a consideration of what were his duties about effecting the settlement and compromise. A fiduciary relation exists between attorney and client, and the confidence which the relationship begets between the parties makes it necessary for the attorney to act in the utmost good faith. He must not only not misrepresent any fact to his client, but there must be an entire absence of concealment or suppression of any facts within his knowledge which might influence the client, and the burden of establishing the fairness of the transaction is upon the attorney. This rule is of universal application, and is recognized by all of the text-writers on the subject.

The question was the subject of a thorough discussion and review of the authorities in the case of *Thweatt* v. *Freeman,* 73 Ark. 575, 84 S. W. 720. The court quoted with approval from other decisions that all transactions between attorney and client, to be upheld in a court of equity, must be in the utmost good faith, and the burden is on the attorney to show not only that no advantage was taken, but that he gave his client all the information and advice about the matter that was necessary to enable the client to act understandingly. In such cases the attorney must show that the transaction was perfectly fair and that it was entered into with such an understanding of the matter as would enable the client to know thoroughly the scope and effect of it. In other words, the attorney must show the transaction to have been the "pure, voluntary, and well-understood act of the client's mind, otherwise a court of equity will undo it as having been unduly obtained."

In the earlier case of *Jett* v. *Hempstead,* 25 Ark. 462, this court recognized that it was the duty of an attorney to advise the client promptly whenever he has any information to give which it is important that his client should receive.

The rule is on the ground of public policy, and prevails though the attorney may not intend to deceive, and

acts in good faith. Actual fraud in such cases is not necessary to give the client a right to redress. A breach of duty is constructive fraud, and is sufficient. *Baker* v. *Humphrey,* 101 U. S. 494.

This rule was recognized and applied in *Maloney* v. *Terry,* 70 Ark. 189, 66 S. W. 919, 72 S. W. 570, where it was held that chancery has jurisdiction of a suit by a client to have his attorney declared a trustee, where the attorney, in settling a claim against the client, fraudulently procured and retained a greater sum than was paid to settle the claim, although an action at law for money had and received would also lie.

The reason for the rule is clearly and comprehensively stated in *Baker* v. *Humphrey,* 101 U. S. 494, as follows:

"The legal profession is found wherever Christian civilization exists. Without it, society could not well go on. But, like all other great instrumentalities, it may be potent for evil as well as for good. Hence the importance of keeping it on the high plane it ought to occupy. Its character depends upon the conduct of its members. They are officers of the law, as well as the agents of those by whom they are employed. Their fidelity is guaranteed by the highest considerations of honor and good faith, and to these is superadded the sanction of an oath. The slightest divergence from rectitude involves the breach of all these obligations. None are more honored or more deserving than those of the brotherhood who, uniting ability with integrity, prove faithful to their trusts and worthy of the confidence reposed in them. Courts of justice can best serve both the public and the profession by applying firmly upon all proper occasions the salutary rules which have been established for their government in doing the business of their clients."

The instant case calls for an application of the rule. According to the testimony of the appellant himself, he misconceived his duty to his client, and thought he could deal with them at arm's length. He admits that

he was asked what he was going to do with the $1,000, but stated that it would have to be paid to him for his legal services before he would effect the settlement. This condition he had no right to impose. Under the authorities above cited, it was his duty to have effected the settlement without asking or imposing as a condition therefor that he should be paid an additional compensation. It does not make any difference whether he intended to defraud his client or not. Equity treats the case as one of constructive fraud, and it was his duty to have made a full and fair disclosure of everything connected with the settlement to his client, and to advise his client that the settlement could be made without the payment of an additional fee to him. His employment kept him from imposing such a condition to effect the settlement.

In this view of the matter no useful purpose could be served by a further discussion and review of the testimony. We deem it sufficient to say that it becomes our duty, in the application of the well-settled rule on the subject above announced, to declare that the decree of the chancellor was correct, and it will therefore be affirmed.