MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STEPHEN W. HOLADAY, P.C., and STEPHEN W. HOLADAY,

Appellants,

v.

TIEMAN, SPENCER & HICKS, L.L.C.,

Respondent.

DOCKET NUMBER WD82792

Date: July 7, 2020

Appeal from:

Buchanan County Circuit Court
The Honorable Roger M. Prokes, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin and Thomas N. Chapman, Judges

---

Attorneys:
Mark T. Kempton, Thomas B. Kempton, Samuel R. Kempton, Sedalia, Edward D. Robertson, Jefferson City, for Appellant.
Robert E. Murphy, St. Joseph, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STEPHEN W. HOLADAY, P.C., and STEPHEN W. HOLADAY, Appellants,
v.
TIEMAN, SPENCER & HICKS, L.L.C., Respondent.

WD82792 Buchanan County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin and Thomas N. Chapman, Judges

Stephen W. Holaday and Stephen W. Holaday, P.C. (collectively, "Appellants") appeal the circuit court's judgment awarding Tieman, Spencer, & Hicks, LLC, ("Respondent") damages in the amount of $427,777.77 for Holaday's breach of fiduciary duty and tortious interference with a business expectancy.

AFFIRMED.

Division One holds:

(1) The circuit court did not err in awarding damages to Respondent for its counterclaim alleging breach of fiduciary duty and tortious interference. Respondent's claim does not state a cause of action for a violation of a fee splitting agreement but, rather, a breach of fiduciary duty and a tortious interference with a business expectancy. Although the calculation of the damages incurred from Holaday's breach of fiduciary duty relates to fees he ultimately received, those damages for deception and non-disclosure are not a "division" of fees as contemplated by Rule 4–1.5(e); therefore, the circuit court did not err in awarding damages to Respondent without regard for the provisions of Rule 4–1.5(e).

(2) The circuit court did not err in awarding Respondent damages equal to two-thirds of the Doe and Smith contingency fees. The purpose of a damages award is to make the injured person whole by money compensation. The court's award was based on evidence indicating that Holaday placed his self-interest above his duty of honesty to Respondent by misrepresenting and concealing the potential value of the Doe and Smith cases. Spencer and Tieman testified that, if Holaday had provided accurate information, they would have placed those cases on the carve-out list to protect their two-thirds interest in any future recovery and would not have agreed to Holaday's withdrawal from the firm if he refused to include the two cases on the carve-out list.

(3) We need not address Appellants' points alleging error relating to the award of damages on Respondent's cause of action for tortious interference with a business expectancy. Although Respondent prevailed on two theories, it recovered only one sum for the damages. A plaintiff may not be made more than whole or receive more than one full recovery for the same harm. Because the court's award of damages is fully and independently supported by the theory of breach of fiduciary duty, we do not need to determine whether the award is also supported by the theory of tortious interference with a business expectancy.

(4) The circuit court did not err in entering judgment in favor of Respondent on its counterclaim for breach of fiduciary duty because Holaday was ethically required to notify Doe and the Smiths of (1) a material change in their representation; and (2) that they had an unqualified right to terminate Respondent without cause. While Holaday and Respondent had an obligation to inform Doe and the Smiths of the material change in representation, and Doe and the Smiths had the right to continue with the attorney of their choosing, these facts did not excuse Holaday's then-existing breach of his fiduciary duty owed to his partners.

(5) The circuit court did not err in refusing to find that Respondent is judicially estopped from asserting its claim for a share of the Doe and Smith fees due to positions Respondent took in previous disputes with another law firm and firm member. The facts presented in this case differ quite substantially from the previous disputes. Neither of the previous disputes involved an allegation of professional misconduct or a breach of an associated fiduciary duty.

Opinion by: Lisa White Hardwick, Judge July 7, 2020

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.