



**In the Missouri Court of Appeals
Eastern District
DIVISION ONE**

PIVOT HOLDINGS, LLC AND DH ADVISORS,	)	No. ED108856
	)	
	)	
Appellants,	)	
	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	Cause No. 1222-CC00830
	)	
THE DANIEL AND HENRY COMPANY,	)	Honorable Michael F. Stelzer
	)	
Defendant,	)	Filed: April 20, 2021
	)	
and	)	
	)	
DEVEREUX MURPHY, LLC,	)	
	)	
Respondent.	)	

OPINION

I. Introduction

DH Advisors, LLC (“DHA”) appeals the judgment granting the motion of Devereux Murphy, LLC (“DM”) to enforce its attorney’s lien. In its seven points on appeal, DHA challenges both the right of DM to recover fees from DHA and the manner in which the trial court ordered payment of those fees. We conclude that none of these points have merit. The judgment was supported by substantial evidence, is not against the weight of the evidence, and does not misapply the law. We affirm.

II. Procedural and Factual Background

DHA is an insurance brokerage firm formerly affiliated with The Daniel & Henry Company (“D&H”), a collective of insurance brokerage firms and brokers. In November of 2011, DHA left D&H and attempted to move its business to Pivot Holdings, LLC f/k/a AHM Financial Group, LLC (“Pivot”).¹ Pivot and DHA entered into a Contribution Agreement setting out the terms of DHA contributing and Pivot acquiring DHA’s business. D&H tried to prevent this move, which ultimately led to DHA and Pivot engaging the DM law firm, who had represented Pivot years before in an unrelated matter. In February of 2012, DHA, Pivot and DM entered a Joint Defense, Common Interest and Confidentiality Agreement (“Joint Defense Agreement”), which provided that DHA and Pivot had a “mutuality of interest in a common and joint defense” and wanted to pursue a lawsuit against D&H with a single counsel. DHA and Pivot therefore “waived any conflict of interest that may result or exist as a consequence” of representation by one counsel, but retained their right to raise “any conflict of interest which may arise in the future;” there is also a clause relating to the specific conflict of interest that may arise if one client becomes a testifying witness. The Joint Defense Agreement also addressed confidentiality during this pursuit of DHA and Pivot’s “separate but common interest” and the sharing of otherwise privileged materials between the clients to best serve their “mutual interests.” The petition DM filed on behalf of Pivot and DHA in 2012 asserted counts on behalf of Pivot against D&H for money had and received and for tortious interference with a contract and counts on behalf of DHA against D&H for breach of contract and for tortious interference with a contract.

¹ AHM Financial Group, LLC changed its name to Pivot Holdings, LLC during the pendency of this case. For ease, we refer to this entity as “Pivot” irrespective of whether the reference relates to a time before or after the name change.

It is undisputed that the Joint Defense Agreement and the Contribution Agreement are silent on the matter of DM's attorney's fees. It is also undisputed that DM provided its legal services at an hourly rate and that the bills would be sent to Pivot. For years, DM sent Pivot the bills, Pivot paid the bills and there were no disputes. By late 2014, however, Pivot had stopped paying bills. In a December 20, 2014, internal email, Pivot discussed the fact that it was "out of money" and proposed they tell DM that Pivot could pay them the following November or "they can go contingent on DHA and we will offer them their current amount due plus 20%" unless DHA wants to "man up." Pivot forwarded that email to DM on December 22nd, explaining that it is "short on cash," and asked DM to consider deferred payment or the "contingent arrangement." DM responded the next day by email and copied DHA into this email chain. DM rejected Pivot's proposal and stated that "all parties need to make immediate arrangements to work through this." DM noted that trial was set in 19 days and it was unfair to ask DM to continue working on the case "if Pivot has no intention of paying." Later that day, Pivot replied that it did intend to pay and was going to ask DHA for "some help on this" to try to scrape together some money. DM wrote back again expressing confusion that Pivot and "the other partners of the Pivot ownership group" did not have sufficient resources to pay the outstanding fees.

On December 30, 2014, Pivot forwarded another internal email to DM about D&H's interest in talking about settlement, noting that Pivot had suggested \$1.8 million but D&H was in the \$700,000-800,000 range. Pivot told DM that it was "inclined to reach agreement with D&H."

On January 5, 2015, DM emailed Pivot, copying DHA, saying "we have an irreconcilable conflict that must be addressed at once." DM explained that Pivot "has indicated it is going to settle this case" and instructed DM to cease preparing for the January 12th trial setting. On the

other hand, DHA “has indicated that it would like to proceed to trial in this matter in the event the Plaintiffs and Defendant are unable to settle the matter on satisfactory terms.”

Time is running very short because the necessary preparations must be undertaken immediately to properly prepare for trial. Therefore, unless I hear from both parties by 10:00am tomorrow--January 6th that both parties have resolved their differences, [DM] will have no alternative but to file a motion to withdraw on the grounds that co-plaintiffs have irreconcilable differences that necessarily require each party to have separate counsel.

DM expressed regret, but “the respective positions of the parties have left us no other alternative.”

The next morning, January 6, 2015, shortly after 10:00 a.m., DHA emailed DM, copying Pivot, saying DHA was “caught completely off guard” that Pivot had fired DM and wanted to clarify a few items: (1) DHA asked for at least a month to seek new counsel; (2) in the meantime, it told DM it expected it “to continue to protect DHA’s interests, particularly as it relates to [Pivot’s] attempt to settle out from under us and secure any offsets or credits against any future awards;” (3) DHA asserted it would not be responsible for any outstanding bills Pivot “has refused to pay,” claiming Pivot hired DM and agreed “with both of us that they would pay you” and that Pivot had broken its “agreement with us and failed to uphold their responsibility to pay your fees;” and (4) DHA asked for DM to gather its files as soon as possible in anticipation of inspection by new counsel.

DM wrote back within an hour to “clear up some items in your email.” First, despite being instructed to discontinue work on the case by Pivot, DM said DHA “was never unrepresented by [DM] and nothing has transpired that has adversely affected DHA in any way.” But, as to “continuing to represent DHA’s interests,” DM explained that once the trial court grants the motion to withdraw, DM can take no action on either party’s behalf. And, in response to DHA’s concern about Pivot settling, DM said it would “be surprised” if the case could settle

without DHA and explained that any settlement will “necessarily require” DHA’s signature. As to attorney’s fees, DM stated it will be asserting an attorney’s lien pursuant to statute, which “essentially provides that [DM] would receive its fees from any settlement proceeds.” DM said it would gather the files and assured DHA of its cooperation.

A few minutes later, DM emailed everyone again: “It is my understanding that the parties have been unable to resolve their irreconcilable differences.” DM explained that it had informed the trial court of this development and the necessity of DM having to withdraw so that each party can retain separate counsel, and the trial court told DM to file a motion to continue, which it would do later that day. DM stated it planned to file a formal motion to withdraw the following week. DM again expressed regret, but “it is impossible for us to have to answer to 2 masters that have conflicting intended courses of action.”

A few days later, on January 9, 2015, DHA emailed DM again for “more clarity.” DHA asserted that “notwithstanding the joint representation agreement,” when DM “undertook our representation it was with the understanding and condition that [Pivot] is solely responsible for all legal fees and costs.” “With this in mind, please confirm that whatever lien you are claiming for attorneys fees/costs is against [Pivot] only and that you are waiving any claim for attorneys fees and costs from all other plaintiff parties.” And, again, DHA insisted that until it hired new counsel, DM had an obligation to protect it from any adverse interests if Pivot accepts settlement and DHA goes to trial and asked it to confirm that DM would take whatever action needed to do so.

The next written communication with DHA was not until February 11, 2015. Meanwhile, in a February 3rd email from DM to Pivot, DM points out that it had agreed to represent both Pivot and DHA “due to their mutuality of interest” acknowledged in the Joint

Defense Agreement. DM reiterated how the irreconcilable conflict arose--Pivot deciding to settle and DHA not wanting to settle--explained that DM informed both parties and was “hopeful that our clients could get on the same page so that we could get this matter resolved to everyone’s satisfaction.” Having concluded the parties “could not resolve this, the rules of professional responsibility dictated that [DM] could not any longer serve 2 differing goals and objectives.” DM told Pivot that DHA had retained new counsel and DM would file its motion to withdraw the next day. DM also asked Pivot to contact DM to address the outstanding fees.

DM’s motion to withdraw was filed on February 5, 2015, asserting the “irreconcilable conflict” between DHA and Pivot. DM also filed a notice of attorney’s lien under § 484.130 in the amount of \$149,618.20 attaching to “any verdict, report, settlement, decision or judgment in Plaintiffs’ favor.”²

On February 11, 2015, DM sent a letter to DHA, enclosing a copy of the trial court order granting the motion to withdraw, and informing DHA that DM had filed its attorney’s lien. DM also asserted that the “lien on [DHA’s] cause of action attaches to a verdict, decision, settlement, or judgment in Pivot’s favor regardless of who actually receives the funds.” Notwithstanding the lien, DM asked DHA to “remit at your earliest convenience the monies owed for legal services rendered that you agreed to pay when this litigation was undertaken on Pivot’s and [DHA’s] behalf.”

New counsel entered their appearances for Pivot and DHA, the petition was amended, and the case proceeded to a jury trial in late 2015. Pivot and DHA each submitted a claim for tortious interference, and DHA submitted a breach of fiduciary duty claim. The jury entered verdicts in favor of DHA and against Pivot, but judgment was entered for DHA only on the

² All statutory references are to Mo. Rev. Stat. 2000.

breach of fiduciary duty claim in the amount of \$2.1 million. D&H and DHA appealed the judgment, but Pivot did not. During the pendency of the appeal, D&H and DHA reached a settlement agreement and jointly moved to dismiss their appeals. Pursuant to this Court's instructions upon dismissal, the trial court vacated the judgment against D&H, released the appeal bond D&H had filed, and ordered D&H to deposit \$160,000 into the court registry "to address the notice of attorney's lien filed in this lawsuit by [DM]." It is undisputed that the funds in the registry represent settlement proceeds belonging solely to DHA, not Pivot.

Thereafter, DM filed a motion to enforce its attorney's lien. Because Pivot was no longer a party to this action since the judgment pertaining to its claim had become final, it was granted leave to intervene in the attorney's lien proceedings. At an evidentiary hearing on DM's motion, the trial court heard testimony from Robert Devereux, former partner in the DM law firm,³ and from Jeffrey Mental, managing member of DHA. The emails, letters and written documents discussed above were admitted into evidence, along with DM's billing statements, to support its request for \$142,590.34 in fees representing unpaid bills.

Devereux testified about billing Pivot for fees on the D&H case and about the balance due. He agreed that DM had never spoken with DHA about unpaid fees until the conflict necessitating withdrawal arose. But, he said, during the entirety of the representation, DM never understood that Pivot "was solely responsible for the attorneys' fees incurred." Regarding the parties' disagreement over settlement, Devereux testified that although conflicts are always possible when representing two clients--which is why they addressed that in the Joint Defense Agreement--DM did not, at the outset of the representation, anticipate that any "specific

³ Robert Devereux's brother, Joseph Devereux, Jr., handled this matter until he passed away in September of 2013, after which Robert became involved. By the time of the evidentiary hearing, DM had dissolved its practice of law, operating only to collect on unpaid accounts.

particular conflict might arise between [DHA and Pivot].” Devereux explained they took on joint representation because these entities had a “common goal” to prevail in their claims against D&H; they “absolutely had the same interest and the same subject matter and the same stake” against D&H. Devereux testified that DM believed it needed to withdraw because Pivot “decided they needed to settle the case, and didn’t really care . . . what the settlement was,” while DHA was “unwilling to settle at all at any price.” Devereux said “it became untenable” for DM to serve two clients with such “divergent opinions” and “conflicting intended courses of action.” Devereux testified that DM met with Pivot and DHA about this problem prior to sending the emails about the clients’ irreconcilable differences.

Mentel testified on behalf of DHA. He described DHA as being “secondary” in DM’s representation in the D&H case, that Pivot was “primary” and would “control how the case would go.” He agreed that DM represented DHA, but denied they had an obligation to pay. Mentel believed there was an agreement between Pivot, DHA *and* DM that Pivot would be solely responsible for DM’s fees. He testified that this was discussed in negotiations of the Joint Defense Agreement, at which DM was present, but agreed that term was not included in that or any other document.

The trial court entered judgment granting DM’s motion to enforce the attorney’s lien. The trial court found there was “no express written agreement regarding fees” between DM, DHA, and Pivot. The trial court also found that there was “no express written agreement that DHA would not be responsible or liable for attorney’s fees incurred on its behalf,” finding that DM was not a party to the arrangement between DHA and Pivot under which Pivot was to pay DM’s fees. Because there was no evidence of an express agreement, the trial court found that DHA’s and Pivot’s “promise to pay the reasonable value of [DM’s] services is implied.”

The trial court also found no evidence to support DHA's argument that DM had forfeited its right to compensation for its services because it withdrew without just cause. The trial court found that because Pivot wanted to settle and told DM to stop working on the case, but DHA did not want to settle, there was conflict of interest justifying DM's withdrawal. On this record, the trial court found, forfeiture of the fee was not warranted.

The trial court concluded that \$123,777.84 was "the reasonable value for the services rendered to Plaintiffs," based on the complexity of the case, the customary legal fees in St. Louis, the rate charged and the hours billed.⁴ The trial court ordered the clerk of the court to pay DM that amount out of the court registry "in full satisfaction of the lien."

This appeal follows.

III. Standard of Review

As in all court-trying cases, a judgment enforcing an attorney's lien is presumed correct and will be affirmed unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 366 S.W.3d 41, 47 (Mo. App. S.D. 2012) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

IV. Discussion

Under the attorney's lien statute, § 484.130, DM's right to compensation is governed by the "agreement, express or implied" it had with its clients.⁵ On appeal, DHA claims it had an

⁴ After the evidentiary hearing, DHA requested that the trial court "divide" DM's time entries between Pivot and DHA, arguing that at most 50% of the billed time could be attributed to services provided to DHA. DHA also argued that the time entries submitted by DM included services provided in other matters and instances where "two attorneys billed for the service." The trial court agreed that the requested "amount and scope" of fees was "excessive" and cut them by \$18,813 for "seemingly duplicative work." The trial court did not apportion the fees by client.

⁵ Section 484.130 states:

express agreement with DM that only Pivot would be obligated to DM for its fees and, therefore, the trial court erred in imposing an implied agreement for DHA to pay those fees. In any event, DHA argues, DM forfeited its right to recover fees when it withdrew from the case based on a foreseeable conflict of interest between its two clients. DHA also argues that by ordering payment of the entire amount of fees from its settlement proceeds, without dividing the amount by client, the trial court ordered DHA to pay for services that only benefited Pivot. Imposing joint liability on DHA for Pivot's fees, it argues, was improper because there was no evidence that it had intended to be jointly obligated for those fees. For the following reasons, we find that none of these arguments have merit.

A. Right to Recover Fees

Points I, II, and III raise against-the-weight-of-the-evidence and no-substantial evidence challenges. To show that a particular finding is not supported by substantial evidence, DHA must identify the favorable evidence on that proposition and demonstrate why it and the reasonable inferences drawn therefrom do not have probative force, such that the trial court could not reasonably make that finding. *See Houston v. Crider*, 317 S.W.3d 178, 187 (Mo. App. S.D. 2010). "We view the evidence and the reasonable inferences drawn from the evidence in the light most favorable to the judgment, disregard all evidence and inferences contrary to the judgment, and defer to the trial court's superior position to make credibility determinations." *Id.* at 186. Reliance on contrary evidence has no place in a no-substantial-evidence challenge, and failure to identify the favorable evidence in the record is also fatal. *Id.* at 186, 187-88.

The compensation of an attorney or counselor for his services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor, and the proceeds thereof in whosoever hands they may come; and cannot be affected by any settlement between the parties before or after judgment.

An against-the-weight-of-the-evidence challenge presupposes the existence of substantial evidence supporting the proposition in question, but, nevertheless, “challenges the probative value of that evidence to induce belief in that proposition when viewed in the context of the entirety of the evidence before the trier of fact.” *Id.* at 186. While contrary evidence is part of the weighing process in an against-the-weight challenge, the failure to accurately identify all of the favorable evidence strips that process of “any analytical value or persuasiveness.” *Id.* at 189.

Express or Implied Fee Agreement

In its first two points on appeal, DHA challenges the trial court’s finding that there was no agreement to which DM was a party that expressly absolved DHA of an obligation to pay for the legal services it received from DM. Rather, the trial court found that only Pivot and DHA had agreed to the arrangement under which only Pivot was obligated to pay DM’s fees. DHA contends this finding is not supported by substantial evidence and is against the weight of the evidence. We disagree.

To determine whether there was an express agreement regarding fees, we look for the essential elements of a contract: offer, acceptance, consideration, and mutuality; that is, “whether there was a meeting of the minds and mutual assent to the essential terms of the agreement.” *Woodson v. Bank of America, N.A.*, 602 S.W.3d 316, 323 (Mo. App. E.D. 2020). Mutuality “is determined by looking at both the intentions of the parties as expressed or manifested in their words or actions, and the circumstances surrounding the parties’ relationship.” *Id.* Mutuality of understanding between the lawyer and the client is necessary, as is true in all contractual relationships, to protect both parties. *See In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005).

DHA argues that the only favorable evidence tending to show there was no express agreement is the lack of a written fee agreement and the lack of any terms regarding fees in the

Joint Defense Agreement or the Contribution Agreement. DHA argues the mere absence of written fee terms does not tend to prove there was *no* fee agreement, only that it was not included in any writing. DHA argues there is no reason DM's fees would be addressed in the Contribution Agreement entered only between Pivot and DHA prior to retaining DM. Likewise, it argues, the Joint Defense Agreement was intended only to address the parties' agreement to "protect shared information" and not intended to address details--such as fees--of DM's representation. But the absence of written terms is *not* the only evidence supporting the conclusion that DM did not expressly agree that, or assent to an agreement under which, DHA was relieved of responsibility for its legal fees. The email exchange in late December of 2014 and early January of 2015, when construed in the light most favorable to the judgment, is probative evidence on this issue.

For instance, when Pivot told DM it was out of money and asked to make other arrangements for paying DM--suggesting it could ask DHA to help--DM responded that "all parties" needed to work through this issue. It is reasonable to infer from this exchange that DM believed *all* parties, including DHA, were responsible for and should participate in paying the fees. Pivot did nothing to dispel that belief by responding that it would get DHA involved. When DHA asserted that it was not responsible for fees on January 6th DM responded by stating it was asserting a lien that would attach to any settlement, which settlement it believed could not occur without DHA. And, when a few days later DHA asked DM to "confirm" that its only claim for fees is against Pivot and that it is waiving any claim for fees as to anyone else, DM did not confirm that arrangement. Rather, the next communication referencing this particular issue is DM's letter of February 11th asking DHA to remit monies owed for the legal representation DM undertook on behalf of Pivot and DHA. The reasonable inference from this exchange is that DM did not confirm DHA's understanding of the fee agreement, it rejected it. Moreover, Devereux

testified that at no point during the entirety of its representation of Pivot and DHA did DM understand that Pivot was to be solely responsible for payment of the legal fees. The above evidence is substantial and demonstrates the parties did not have a meeting of the minds that DHA was absolved of any responsibility to pay for DM's legal services.

Nor is the trial court's finding on this issue against the weight of the evidence. DHA's against-the-weight challenge fails for the same reason the no-substantial evidence challenge does: the failure to correctly identify all the evidence favorable to the judgment. DHA contends that the way DM handled the unpaid bills dispute in the late December and early January emails is evidence *contrary* to the judgment, showing that DM expressly agreed that DHA would *not* be responsible for fees. But, as we concluded above, when viewed in the light most favorable to the judgment, those communications and the reasonable inferences therefrom are evidence *favorable* to the judgment. DHA's failure to accurately identify all of the favorable evidence strips its analysis of the weight of the evidence of any "value or persuasiveness." *Id.* at 189.

Moreover, the other evidence DHA relies on as "contrary"--namely, the fact that DM was aware of Pivot's and DHA's arrangement and dealt only with Pivot regarding the bills--does not lessen the probative value of the favorable evidence on this proposition. It was still reasonable under the totality of the evidence--including DM's rejection of DHA's assertion that it was not obligated to pay--for the trial court to conclude that DM had not expressly agreed that only Pivot was responsible for its fees.

DHA also points to a 2015 petition DM filed against Pivot in St. Louis County to recover the same unpaid fees sought here, claiming there are allegations therein that show DM's express agreement that only Pivot was responsible for payment.⁶ DHA contends that DM is bound by the

⁶ Prior to the hearing on the lien, the St. Louis County case was stayed pending the outcome of this case and has since been dismissed without prejudice.

allegation therein as admissions of fact. Allegations of facts, as opposed to conclusions of law, may constitute an admission by the pleader that obviates the need for any evidence on that issue. *See generally Adams v. Le Bow*, 172 S.W.2d 874, 880 (Mo. App. 1943); *see also Acetylene Gas Co. v. Oliver*, 939 S.W.2d 404, 409 (Mo. App. E.D. 1996); *but see Frick's Meat Products, Inc. v. Coil Construction of Sedalia Inc.*, 308 S.W.3d 732, 738 (Mo. App. E.D 2010) (“allegation of a legal conclusion in a pleading, such as the existence of a valid and enforceable contract, is not an admission of fact that is binding on the party”). But here, while DHA did offer the petition into evidence, it did *not* argue to the trial court that the statements therein constituted admissions of fact binding on DM. Nor did it rely solely on that petition as proof that DM had agreed DHA would not be responsible to pay its legal fees. Rather, DHA introduced *other* evidence on that issue, including documents and Mentel’s testimony. Moreover, DHA did not object when DM introduced evidence on the issue, including Devereux’s testimony that DM never understood Pivot was solely responsible for DHA’s legal fees, contrary to the supposed admissions in the St. Louis County petition. Under these circumstances, DM is not bound by the statements in that petition in this case. *See Hobbs v. Director of Revenue*, 109 S.W.3d 220, 222–23 (Mo. App. E.D. 2003) (finding that admission was not binding when adversary introduces contrary evidence at trial or when admission is denied by pleader at trial without objection from adversary).

In sum, the evidence showed there was no express agreement between DM and DHA to absolve DHA of responsibility for paying DM for its services. The trial court’s conclusion on this issue is supported by substantial evidence and is not against the weight of the evidence. In the absence of an express contract regarding attorney’s fees, “the universal rule” is that a “promise to pay the reasonable value of an attorney’s services is implied.” *Roberds v. Sweitzer*, 733 S.W.2d 444, 447 (Mo. banc 1987) (internal quotation marks and citations omitted); *see also*

Craig v. Jo B. Gardner, Inc., 586 S.W.2d 316, 325 (Mo. banc 1979). Thus, the trial court correctly imposed an implied promise in this case. Points I and II are denied.

We turn now to whether DM forfeited the right to compensation under that implied promise when it withdrew its representation before trial based on the conflict of interest between Pivot and DHA.

Forfeiture of Fee

The general rule is that a lawyer who withdraws from a case without justifiable cause before termination of a case forfeits his right to compensation for the services he rendered. *International Materials Corp. v. Sun Corp.*, 824 S.W.2d 890, 894 (Mo. banc 1992). “Mandatory withdrawal for ethical considerations is one factor a court may consider in determining whether or not there is justifiable cause so as to permit a recovery of compensation.” *Id.* at 895. But complete forfeiture of a fee is only warranted “when a lawyer’s clear and serious violation of a duty to a client is found to have destroyed the client-lawyer relationship and thereby the justification for the lawyer’s claim to compensation.” *Id.*; *see also* Restatement (Third) Of The Law Governing Lawyers § 37 (2000). “Forfeiture is generally inappropriate when the lawyer has not done anything willfully blameworthy, for example, when a conflict of interest arises during a representation because of the unexpected act of a client or third person.” Restatement (Third) Of The Law Governing Lawyers § 37 (2000); *see also International Materials*, 824 S.W.2d at 895 (“where an unforeseeable conflict of interest arises after the attorney accepts the client's case, the award of a fee is permissible”).

The trial court cited the standards set out in *International Materials* and found that DM had just cause to withdraw based on the clients’ conflicting positions regarding settlement and

that forfeiture of DM's fee was inappropriate on this record. In its third point on appeal, DHA contends this finding was not supported by substantial evidence. We disagree.

DHA claims there was no evidence this conflict of interest was unforeseeable, citing the fact that the parties acknowledged the potential for conflicts in the Joint Defense Agreement. It claims that, under the Rules of Professional Conduct relating to settlements involving two clients, the agreement contemplated this particular settlement conflict between Pivot and DHA. But Devereux testified that DM did not envision this particular conflict at the outset because these parties' interests were absolutely aligned at that point. The trial court was free to believe that testimony.

In any event, to the extent the conflict was foreseeable, as DHA acknowledges, forfeiture of the fee was only warranted if the trial court also found that DM's conduct in handling that conflict was a serious dereliction of its duties that destroyed the relationship with DHA and its right to compensation. *See International Materials Corp.*, 824 S.W.2d at 895. DHA contends the email chain in early January of 2015 regarding DM's withdrawal showed that DM violated its duties of loyalty and trust by "[f]orcing [DHA] to agree to settle, threatening to withdraw with less than 24 hours' notice if [DHA] refuses to settle, with knowledge that [DHA] is not interested in settling, and withdrawing based on a conflict inherent in the representation since the outset." First, even if those emails could reasonably be construed as forceful threats, that would be evidence *contrary* to the trial court's conclusion that forfeiture was not warranted, and reliance on evidence contrary to the judgment is misplaced in this no-substantial-evidence challenge. *See Houston*, 317 S.W.3d at 186. Second, construed as they must be--in the light favorable to the judgment--those emails, along with Devereux's testimony, *support* the trial court's conclusion that forfeiture of the fee is not warranted here.

For instance, when the conflict arose, Devereux testified he met with DHA and Pivot prior to sending the emails. In those emails, DM did not force DHA to accept settlement; it asked the parties to resolve their differences. Nor did DM present an ultimatum with a less than 24-hour deadline. Rather, it explained that time was of the essence with the trial date approaching and that ethical mandates would require withdrawal if the two clients continued to have such divergent intentions. When it became clear the conflict could not be resolved, Devereux explained why it could not continue to represent them both and they would each have to retain separate counsel. Meanwhile, DM sought and was granted a continuance of the trial date, continued communicating with the clients about deadlines and the parameters of its withdrawal, and cooperated in the transfer of the case to new counsel. Foreseeable or not, the evidence showed that DM's handling of the conflict once it arose did not violate any duty of loyalty or trust nor destroy the attorney-client relationship such that complete forfeiture of its fees was warranted.

The trial court's conclusion that DM had just cause to withdraw and that forfeiture of fee was not appropriate in this case is supported by the substantial evidence. Point III is denied.

Having found that DM had a right to recover its fees, the trial court determined that \$123,777.84 was "the reasonable value of services rendered to Plaintiffs," meaning Pivot and DHA collectively, and entered judgment against "Plaintiffs" in that amount. The clerk of court was ordered to pay that amount from DHA's settlement funds deposited into the court registry by D&H in full satisfaction of the attorney's lien. We proceed now to address the propriety of ordering fees in this manner.

B. Payment of Fees

Points IV and VI challenge the trial court’s application of law. We review these claims of error *de novo*. See *Golf Club of Wentzville Community Homeowners Association v. Real Homes, Inc.*, 616 S.W.3d 339, 342 (Mo. App. E.D. 2020). In its fourth point, DHA argues that the trial court misapplied the law by ordering payment of the entire amount of DM’s fees, including those for services provided to Pivot, because it held DHA jointly liable for Pivot’s fees without any evidence that DHA and Pivot intended to be so jointly obligated. Rather, DHA argues in its sixth point, the trial court was required to specify how much of the \$123,777.84 represented the reasonable value of services provided to DHA alone and order only that amount paid out of the settlement funds in the court registry. We disagree.

Joint Liability

“Where two or more persons undertake the performance of an obligation, the *presumption* is that the undertaking was joint.” *Schubert v. Trailmobile Trailer, L.L.C.*, 111 S.W.3d 897, 902–03 (Mo. App. S.D. 2003) (internal citations omitted, emphasis added). When “two or more promisors are jointly bound to fulfill” obligations under a joint contract, either of them “may be charged with the entire liability under the contract.” *Id.* Moreover, an “agreement between promisors that their liability shall be several does not affect the rights of the promisee, where the promisee intends that their liability shall be joint and is justified in such intention.” *Illinois Fuel Co. v. Mobile & O.R. Co.*, 8 S.W.2d 834, 840 (1928) (internal quotation and citations omitted).

Here, DHA and Pivot jointly engaged DM to pursue their mutual interest in prosecuting claims against D&H, as evidenced by the Joint Defense Agreement. The trial court found that by accepting DM’s legal services, the “Plaintiffs,” meaning Pivot and DHA, had impliedly promised to pay DM the reasonable value of those services. In this context, that implied promise

to pay for the joint representation is presumed to be a joint obligation. The fact that Pivot and DHA had a different arrangement *between themselves* does not overcome that presumption in this case.⁷ It is evident from the record that DM expected and intended, justifiably, to be able to recover fees from either of the two clients that received its services under the Joint Defense Agreement.

Apportionment of Fees

Similarly, we find no merit in DHA's assertion that Missouri law required the trial court to consider and make a separate finding of the reasonable value of the services with respect to each client in this case. None of the cases cited by DHA in support of this proposition even address the payment of attorney fees when multiple *clients* are represented by a single attorney, much less impose any such requirement on the trial court to apportion fees by client. Rather, the cited cases involve multiple *attorneys* and address how to determine which lawyers receive what fees. *See Craig*, 586 S.W.2d at 320; *Plaza Shoe Store, Inc. v. Hermel, Inc.*, 636 S.W.2d 53, 54 (Mo. banc 1982); *Roberds*, 733 S.W.2d at 447; *International Materials Corp.*, 824 S.W.2d at 890.

DHA failed to demonstrate that ordering payment of the entire amount of fees paid from its settlement process without apportioning the fees between Pivot and DHA was a misapplication of the law. Points IV and VI are denied.

C. Moot Points on Appeal

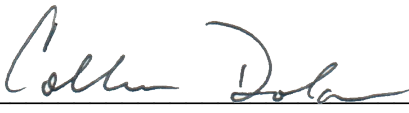
Points V and VII are both premised on this Court reversing the judgment. In its fifth point, DHA asserts that if we conclude DHA has no liability to DM for its fees, then it would be a misapplication of law to use DHA's settlement proceeds to satisfy this judgment as to Pivot. In

⁷ Whether DHA has a claim for reimbursement against Pivot pursuant to this arrangement is, of course, an entirely separate matter not before us in this case.

its seventh point on appeal, DHA contends the trial court erred by not staying the payout order pending appeal, arguing it “may have no ability to recoup the funds from [DM],” which is now defunct, “should [DHA] prevail in this appeal.” Because we find DHA *is* liable to DM for fees and has *not* prevailed on appeal, Points V and VII are denied as moot.

V. Conclusion

For the foregoing reasons, the judgment is affirmed.



Colleen Dolan, P.J.

Robert M. Clayton III, J., concurs.
Kelly C. Broniec, J., concurs.