

**IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA**

Case No.: 2D2024-1634

L.T. No.: 13-006733-CI

THE LAW OFFICES OF KEVIN C. AMBLER, P. A.,
D/B/A AMBLER LAW GROUP,

Appellant,

v.

BAYFRONT SAME DAY SURGERY CENTER, LLC,
BAYFRONT ANESTHESIA SERVICES, P. A.,
BAYFRONT MEDICAL CENTER, INC., MICHAEL
J. ANTONELLI, D.O., JEFFREY I.
MARDER, M. D., ET AL.,

Appellees.

APPELLANT'S INITIAL BRIEF

Samuel J. Salaro, Jr. (FBN: #83460)

Caroline May Poor (FBN: #1018391)

LAWSON HUCK GONZALEZ, PLLC

1700 S. MacDill Ave., Ste. 300

Tampa, FL 33629

Telephone: (850) 825-4334

samuel@lawsonhuckgonzalez.com

caroline@lawsonhuckgonzalez.com

Counsel for Appellant

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STATEMENT OF THE CASE AND FACTS

This is an attorney fee dispute with a lengthy but simple history. The Law Offices of Kevin C. Ambler, P.A., d/b/a Ambler Law Group served as trial counsel for Appellees Ernest Dwayne Davis and Nicole Davis for more than six years in a medical malpractice action (on a contingent-fee basis) and on secondary legal matters (on an hourly-billing basis) related to injuries suffered by Mr. Davis. After the Davises unexpectedly terminated Ambler Law's representation, the firm acted to secure the payment of its attorney's fees and costs by filing a notice asserting both a charging lien reaching any funds the Davises received by verdict or settlement and a retaining lien reaching any of the Davises' property in the firm's possession. Three years later, the Davises obtained a final settlement in the malpractice action—the last settlement the case will produce—and then sought to extinguish the firm's charging lien through a motion for summary judgment claiming that a provision of Ambler Law's fee agreement was invalid. This was passing strange, because the counsel through whom the Davises made this argument agreed to the exact same provision earlier in the case.

Without undertaking any independent analysis, the trial court obliged the Davises and rendered a summary judgment discharging Ambler Law's charging lien. The trial court relied exclusively on an earlier order entered by a predecessor judge that declared Ambler Law's fee agreement unenforceable because a provision in the agreement highlighting the firm's charging and retaining lien rights somehow violated Florida Bar rules by penalizing the Davises for exercising their own rights to fire the firm. Problems were, the predecessor judge's order badly misapprehended the fee agreement, which merely disclosed lien rights any Florida lawyer has upon termination under judicial decisions independent of the agreement, ran roughshod over Ambler Law's due process right to present evidence at a hearing, and provided no explanation or authority supporting its decision.

When it granted summary judgment, the trial court relied on the predecessor judge's order notwithstanding Ambler Law's repeated objection that these defects required revisiting it. The trial court's response was a categorical refusal to exercise its discretion to reconsider the prior order without regard to the facts, issues, or

interests at stake. The trial court was clear: It “w[ould] not revisit an order entered by [the predecessor judge] in this case, period.”

The trial court has temporarily stayed its summary judgment order to allow this timely appeal to proceed without threat that it will be rendered largely futile by the disbursement of the remaining settlement proceeds, held in trust under a prior order of the trial court, subject to Ambler Law’s charging lien. The trial court’s reliance on the predecessor judge’s order was wrong on substance and process. This Court should reverse.

I. Ambler Law enters into a fee agreement with the Davises.

Appellant Ambler Law represents plaintiffs in medical malpractice actions. (*See* A.0001-47). Appellees are Ernest and Nicole Davis. (*See id.*). Mr. Davis is a mentally incapacitated adult, who suffered brain damage while in the care of various medical providers. (*See generally* A.0001-47). Mrs. Davis is his wife and plenary guardian. (*See* A.0001).

Ambler Law represented the Davises in a medical malpractice case against the providers for six years—from April 8, 2011 to November 28, 2017—and in legal matters ancillary to that representation. (A.0053-68; A.0145, A.0432). At the outset of the

attorney-client relationship, Ambler Law and the Davises entered into a fee agreement. (A.0053-68; A.0145, A.0432). The agreement consists of three documents: (1) a Disclosure of Terms of Engagement and Representation for Legal Services – Acknowledgment of Alternative Fee Structures in Medical Malpractice Case; (2) an Authority to Represent and Contract of Employment including Client’s Statement of Rights; and (3) a Statement of Client’s Rights for Contingency Fees. (A.0053-68).

The fee agreement provided for Ambler Law to be compensated for its work on the medical malpractice claims on a contingent-fee basis with a percentage of any recovery or settlement and for its work on ancillary matters, like guardianship and government benefits, on an hourly basis, which fees were also contingent in that they could be deferred to be recovered from any recovery or settlement as well.¹ (A.0474-79, A.0145).

¹ Although the trial court ordered the two petitions for court approval of the fee agreements and two orders granting the same discussed in this brief to be sealed, they never were and remain publicly available on the trial court’s docket. There is currently no confidential information contained in the petition or order, so these orders are included in the accompanying appendix.

As discussed below, Florida law grants attorneys a charging lien against a client's recovery or settlement and a retaining lien against client property in the attorney's possession to secure payment of fees and costs when an engagement is terminated prior to conclusion. Disclosing these judicially recognized rights, the agreement included a transfer/withdrawal provision that read in part:

If the file is transferred or withdrawn from Attorney, by the Client, it is understood and agreed that Attorney shall have a vested interest and lien based upon hourly compensation for all prior work performed by Attorney, calculated by multiplying the number of hours spent on the client's case times \$450 per hour, along with any paralegal/legal assistant time, billed at \$125 per hour, along with any paralegal/legal assistant time, billed at \$125 per hour, and any costs expended by Attorney, that are not paid at the time of termination by Client.

(A.470-71). The fee agreement and a later supplement (*see infra*) was subsequently approved by the trial court.

II. The trial court approves the fee agreement, twice.

On June 27, 2013, Ambler Law filed suit against the providers responsible for Mr. Davis's disabling condition. (*See generally* A.0001-47). Soon thereafter, the Davises sought court approval of Ambler Law's fee agreement and its contingency fee terms pursuant to rule 4-1.5 of the Rules Regulating the Florida Bar. (A.0049-52).

The trial court approved the agreement. (A.0069-71). At the time, Circuit Court Judge Jack Day was presiding over the case. (A.0071)

On June 22, 2016, the trial court accepted a settlement agreement between the Davises, represented by Ambler Law, and one of the 13 providers named as defendants in the malpractice case. (A.0435). After appointing a guardian ad litem and receiving his report, the trial court entered approved the settlement and the disbursement of attorney's fees and costs. (A.0435-36).

On February 21, 2017, the Davises moved for the trial court's approval of a supplement to Ambler Law's fee agreement that added the Davises current counsel, among others, as additional counsel to the case. (A.0072-76). Current counsel signed the supplement and initialed each page thereof, which included language incorporating the transfer/withdrawal provision of the fee agreement the trial court approved previously. (A.0089-92). The trial court approved the supplement. (A.0072-76, A.0096-99).

III. The Davises unexpectedly terminate Ambler Law's representation, and Ambler Law files charging and retaining liens.

On October 5, 2017, after having represented the Davises for more than six years, including more than five years prosecuting their

medical malpractice action, and devoting over 6,000 hours of lawyer and paralegal time to the matter, Mrs. Davis emailed Ambler Law to terminate the representation. (A.0145). The Davises moved to substitute counsel shortly thereafter. (A.0100). On November 28, 2017, the trial court granted substitution of counsel. (A.0136-38).

In the meantime, seeking to preserve its rights to payment for its labor, on November 15, 2017, Ambler Law filed a Notice of Charging Lien and Retaining Lien on any amounts recovered by the Davises and any of the Davises property in its possession, including nearly \$250,000 the firm was holding in trust. (A.0111-15). The lien sought both fees related to the medical malpractice action and those for legal work on ancillary matters performed on an hourly basis but nonetheless contingent to the extent they were deferred pursuant to the agreement's terms. (*See* A.0113).

IV. The Davises settle with some of the providers.

On April 10, 2018, the Davises reached a settlement with three additional providers; they petitioned for a partial disbursement of those settlement funds on April 8, 2019. (A.0140-43). The Davises argued they had discharged Ambler Law for cause and that its fee should be limited to account for the termination. (A.0141-42). They

noted further that “a summary proceeding on the charging liens will not be ripe ... until additional discovery has taken place.” (A.0141).

V. Ambler Law moves to enforce its charging and retaining liens.

Ambler Law moved to enforce the charging and retaining liens against the Davises’ settlement on May 24, 2018. (A.0144-48). On May 30, 2018, the Davises filed a motion for protective order and a motion to compel a deposition and production of documents from Ambler Law. (A.0151-54). For the first time, the Davises raised the prospect that Ambler Law’s fee agreement might not be valid. (A.0152). Apparently still looking for a theory, the Davises did not provide a reason, stating only vaguely that “[t]here are many issues involved in the determination of Mr. Ambler’s demand for enforcement of charging and retaining liens, not the least of which are . . . the validity/legality of the contract.” (A.0152). They took this position despite the trial court’s having twice approved the fee agreement and despite their current counsel having agreed to it. (See A.0069-71, A.0096-99).

The trial court held a hearing on the Davises’ motions on June 8, 2018, (A.1094), during which it determined it could not move

forward on the enforceability of Ambler Law’s liens until it resolved the legality of the agreement. (A.1137-38). It ordered the parties to submit briefs on enforceability on June 25, 2018. (A.1142-43). And after the hearing, it rendered an order setting Ambler Law’s motion for enforcement of the charging lien and retaining lien for an evidentiary hearing on October 30 and 31, 2018. (A.0169).

VI. The trial court declares Ambler Law’s fee agreement unenforceable.

After the parties submitted their briefing directly to the trial court’s chambers (A.0441-42, A.0495-528), the trial court made an about-face on the evidentiary hearing. On August 23, 2018—before the scheduled evidentiary hearing—Judge Day sua sponte rendered an “Order on Enforceability of Fee Agreement.” (A.0172). The order stated that the trial court had reviewed the parties’ briefs and legal authority, “reviewed the court file at length, and conducted independent research on the question of enforceability of the fee agreement.” (*Id.*). Without any explanation, citation of authority, or even a citation to an applicable Florida Bar rule, the trial court concluded that the agreement “imposes a penalty for the Clients’ exercise of the right to seek new counsel, violating the Rules

Regulating the Florida Bar, and that it is therefore unenforceable.” (*Id.*). Although no party requested this relief, the trial court also vacated its two prior orders approving the fee agreement. (*See id.*).

Apart from declaring Ambler Law’s fee agreement invalid and vacating the prior approval orders, Judge Day’s order the order did “not reach any of the following questions: “1. Whether [Ambler Law] was terminated without cause; 2. If so, whether [Ambler Law] is entitled to any recovery in quantum merit; 3. Whether [Ambler Law] is entitled to any fees based upon work performed in non—contingency ‘ancillary matters.’” (*Id.*).

On September 7, 2018, Ambler Law moved for a rehearing, arguing that it had not been afforded a hearing—evidentiary or otherwise—or an opportunity to be heard on the arguments the Davises raised for the first time in their memorandum. (A.0173-80). It further argued that the fee agreement did not violate Florida Bar rules and offered the expert affidavit of Timothy Chinaris, a former Ethics Director of The Florida Bar, who opined that the agreement was consistent with Florida Bar rules and honored Ambler Law’s obligation to provide notice and disclose the terms of the fee arrangement with its clients. (A.0174, A.0183-90).

While that motion was pending, Ambler Law filed a notice of appeal from the order invalidating its fee agreement on September 20, 2018. (A.0200). After the Davises objected on grounds that the rehearing motion was unauthorized because the order on the fee agreement was non-final, the trial court denied Ambler Law's motion for rehearing on October 27, 2018. (A.0204, 0296). On November 1, 2018, this Court dismissed the appeal as being taken from a non-final, non-appealable order. (A.0207-08).

On August 22, 2019, Ambler Law sought reconsideration of the order invalidating its fee agreement. (A.0209-19). It highlighted that the trial court entered the order without a hearing and, by vacating the two approval orders, granted remedies no one had sought. (A.0211-12). The trial court held an un-noticed hearing, (*see* A.1151, A.1164), on October 18, 2019—now with successor Circuit Court Judge Thomas Ramsberger presiding after Judge Day's retirement—at which the Davises argued that Ambler Law was not entitled to reconsideration of Judge Day's order. (*See* A.1151, A.1154-56).

The trial court ordered the parties to attend a 15-minute pretrial conference to address what would be needed for Ambler Law's motion for reconsideration and to figure out how long a hearing to unravel

the issues would take. (See A.1161-62, A.1164). Although the Davises have asserted that the trial court then denied the motion for reconsideration (see A.0276), there is no written order to that effect.

VII. The Davises reach a final settlement with the remaining providers.

Meanwhile, the malpractice action proceeded to a final settlement with the remaining providers, which the trial court approved on June 26, 2020. (A.0281-82). The trial court noted that “Plaintiffs acknowledge in the settlement statement that ... they may be responsible for additional attorneys’ fees if the Court determines that the charging lien[] currently asserted by . . . Kevin Ambler, Esquire [is] valid and which will be adjudicated at a later date.” (*Id.*).

On June 28, 2020, Ambler Law filed an emergency motion for rehearing, reconsideration, modification or vacation of the trial court’s approval of the settlement and disbursement of funds. (A.0283-95). It argued, among other things, that the order deprived Ambler Law of its rights because it had been excluded from a hearing considering the settlement and potentially allowed for disbursement of settlement funds without consideration for Ambler Law’s claim to the funds or protection of Ambler Law’s rights. (A.0290-93). The trial

court denied Ambler Law’s motion but ordered that the disputed funds be held in trust and retained jurisdiction of all matters relating to Ambler Law’s fee dispute. (A.0309-10). As to the medical malpractice action, the trial court entered a final order of dismissal with prejudice on July 9, 2020. (A.0311-12). In that order, the trial court again specifically retained jurisdiction of Ambler Law’s attorney fee claims.” (A.0312).²

On January 14, 2022, Ambler Law filed an amended notice of charging lien, again noticing its charging lien and retaining lien. (A.0324-28). The notice reiterated that Ambler Law claimed an amount encompassing the reasonable value of its fees and costs through its termination. (A.0325-26). It noted that the fees and costs would be based on Ambler Law’s normal hourly rate and hours expended and that the liens include compensation Ambler Law is due for non-contingency fee work on ancillary legal matters. (A.0326). It

² On July 9, 2020, Ambler Law appealed the trial court’s order. (A.0314-17). The order was per curiam affirmed on October 27, 2021. (A.0323).

further asserted entitlement to quantum meruit fees. (*Id.*) On January 30, 2022, the Davises responded to the notice. (A.0330-39).

VIII. The trial court grants the Davises summary judgment against Ambler Law, discharging the charging lien.

On March 23, 2024, the Davises moved for summary judgment seeking to discharge of Ambler Law’s charging lien. (A.340-43). They argued principally that Ambler Law did not have an enforceable contract with the Davises because Judge Day held Ambler Law’s fee agreement unenforceable. (A.340-43). On April 11, 2024, Ambler Law responded in opposition to the Davises’ motion for summary judgment.³ (A.0431-56) Among other things, Ambler Law argued that Judge Day’s order was wrong on the merits and should be revisited. (A.0443).

The Court heard some argument regarding the summary judgment motion on April 30, 2024. (A.0813, A.0853). At the hearing, the trial court announced that it would not revisit *any* order Judge Day entered in the case under any circumstances:

³ Ambler Law experienced technical difficulties with the Florida Courts’ E-portal on April 10, 2024, the deadline for his response, but was able to resolve the issues to file a “corrected” version of the response the following day. (*See* A.0431, A.0822-25). The trial court agreed to consider the corrected response nonetheless. (A.1033).

This Court will not revisit an order entered by Judge Day in this case, period. It doesn't matter how far back it goes. When I took -- I took over this Division 19 from Judge Day, so I know when the transition occurred. And I want to be very clear going forward for all counsels. I am not revisiting an order entered by Judge Day in this case. The order speaks for itself. So, Mr. Ambler, to the extent that you're giving me history to somehow create argument about what Judge Day 's order should mean or should not mean, or whether to reconsider what Judge Day did or did not do, no. The order is simple, straightforward, plain reading and I 'm not revisiting it.

(A.0906). The parties scheduled a follow up hearing. (A.0841).

On June 21, 2024, Ambler Law filed a supplemental memorandum of law, expanding on the issue of severability in consideration of the trial court's pronouncement that it would not under any circumstances reconsider Judge Day's order invalidating the fee agreement. (A.0916-22).

On June 26, 2024, the trial court held a follow-up hearing on the Davises' Motion for Summary Judgment. (A.1004). At the hearing, the trial court denied consideration of Ambler Law's supplemental memorandum because it believed it sought to revisit Judge Day's order finding the fee agreement unenforceable:

I have made it clear throughout the many proceedings that I have had -- and to use a different phrase, I am not readdressing something that Judge Day ruled upon, period. I have said that in many different ways through the

course of these proceedings. Mr. Ambler, I am going to deny consideration of your response filed on April 21.

(A.1026). The trial court orally ruled that it would grant the Davises' motion for summary judgment, relying exclusively on Judge Day's order invalidating Ambler Law's fee agreement. (A.1071).

On July 12, 2024, the trial court rendered its written order granting the Davises' motion for summary judgment. (A.0998-1000). It held that Ambler Law cannot establish a charging lien because it "cannot demonstrate that there is a valid and binding attorney's fee contract with the [Davises]" because "Circuit Judge Jack Day's Order ... clearly and unequivocally states that the Ambler Law Group's attorney fee contract with the Plaintiffs is vacated." (A.0999).

The summary judgement order effectively discharged Ambler Law's charging lien, so the trial court ordered the funds being held in trust for the charging lien be "disbursed immediately." (A.0999). The trial court noted that its summary judgment order only applied to the charging lien, not Ambler Law's claimed retaining lien, and ordered that Ambler Law continue to hold the roughly \$250,000 that might be subject to the retaining lien in trust. (A.1000).

On July 15, 2024, Ambler Law timely noticed this appeal. (A.1085). The trial court has since stayed its order up to and including a conference scheduled for October 23, 2024. (A.1175-76).

SUMMARY OF THE ARGUMENT

The trial court's summary judgment order discharging Ambler Law's charging lien and directing immediate disbursement of the last remaining settlement proceeds that might be applied toward Ambler Law's long-outstanding fees and costs for over six years of legal services must be reversed for reasons of substance and process.

Substantively, the order relies exclusively on Judge Day's prior order—which was non-appealable—invalidating Ambler Law's fee agreement. That was not a valid basis to discharge Ambler Law's lien because Judge Day's order was wrong as a matter of law. On its face, the transfer/withdrawal provision of the fee agreement did *not* penalize the Davises' exercise of their right to replace counsel. It just advised them of Ambler Law's lien rights under common law, rights it enjoyed regardless of what the fee agreement said. The fee agreement gave Ambler Law no greater rights than the common law afforded it, and the mere disclosure that such rights exist cannot penalize or deter the Davises' exercise of the right to counsel.

The best evidence that the Davises were neither penalized nor deterred is that their current counsel agreed to the allegedly illegal contract provision, the Davises later terminated Ambler Law's representation, they did so with no apparent concern about being penalized, and in fact no penalty was inflicted. All Ambler Law did was try to enforce its charging lien rights in accord with law. The Davises' complaint about the so-called penalty provision arose only *after* Ambler Law sought to enforce its lien and the Davises were incentivized to find a way to avoid paying its fees and costs.

What is more, the transfer/withdraw provision was hardly central to the fee agreement. Instead of leaving Ambler Law without security for years of fees and costs, the trial court should have severed the transfer/withdrawal provision and enforced the rest of the agreement. And failing that, the trial court should have recognized that Ambler Law had a right to recoup its fees and costs independent of its written contract on an implied-contract, quantum-meruit theory. Standing alone, that quantum-meruit right—which applies when a lawyer's express contract is ruled invalid—was more than enough to support a charging lien.

Procedurally, Judge Day’s order was rendered after the he sua sponte cancelled an evidentiary hearing and tried, without explanation as to why, to resolve the question of contract validity solely on the papers. As a result, the trial court lacked critical factual context to make its decision—among other things, how was the provision explained to the Davises, how did the Davises understand it, and did it really affect their decision—and Ambler Law was denied its due process right to defend the validity of its fee agreement. Further still, Judge Day’s order was plainly vulnerable on the merits, and instead of exercising its discretion to determine whether reconsideration was warranted under the facts and circumstances of this case, the trial court, with Judge Ramsberger presiding, persisted with a blanket refusal to consider the issue at all.

The summary judgment order is unsustainable on both merits and methodology. It should be reversed.

STANDARD OF REVIEW

Ambler Law appeals from the trial court’s order granting a summary judgment holding its charging lien unenforceable. That order expressly and exclusively relied on Judge Day’s prior order deeming Ambler Law’s fee agreement “unenforceable” as a matter of

law—*i.e.*, by applying unspecified Rules Regulating the Florida Bar to the written contract, without taking evidence. (A.0172). The standard of review is *de novo*. *See Franks v. Bowers*, 116 So. 3d 1240, 1249 (Fla. 2013) (holding severability of illegal portion of contract “based on written materials before the Court ... is a pure question of law subject to *de novo* review”); *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000) (holding that orders granting summary judgment are reviewed *de novo*); *Anderson v. Taylor Morrison of Fla., Inc.*, 223 So. 3d 1088, 1091 (Fla. 2d DCA 2017) (holding that order determining enforceability of arbitration contract is reviewed *de novo*).

ARGUMENT

I. The trial court erred as a matter of law by holding that Ambler Law’s fee agreement, which codified its common-law charging and retaining lien rights, was unenforceable.

As a matter of law, the trial court erred in granting summary judgment on Ambler Law’s charging lien for three separate reasons: (1) the transfer/withdrawal provision in Ambler Law’s fee agreement was not an unenforceable penalty because it merely advised the Davises the charging and retaining-lien rights Ambler Law enjoyed under existing precedent; (2) to the extent the transfer/withdrawal

provision was unenforceable, it was also severable from the balance of the agreement; and (3) the trial court abused its discretion by failing to exercise any discretion concerning reconsideration of Judge Day's order declaring Ambler Law's fee agreement unenforceable.

Some background may be helpful. Florida law recognizes two different liens securing an attorneys' right to payment of fees and costs. The first is a charging lien, which secures the client's obligation to pay fees and costs in a contingent-fee case. See *Richman Greer Weil Brumbaugh Mirabito & Christensen, P.A. v. Chernak*, 991 So. 2d 875, 878 (Fla. 4th DCA 2008). The charging lien is an "equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit." *Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertrnik, P.A. v. Baucom*, 428 So. 2d 1383, 1384 (Fla. 1983); *Miles v. Katz*, 405 So. 2d 750, 752 (Fla. 4th DCA 1981) (same). The lien "attaches to the judgment but relates back and takes effect from the time of the commencement of the services rendered in the action," *Miles*, 405 So. 2d at 752, recognizing that a client cannot evade the obligation to pay for services rendered in a contingent-fee case. See *In re Warner's Est.*, 35 So. 2d 296, 298–

99 (Fla. 1948); *see also Mineo Salcedo L. Firm, P.A. v. Cesard*, 333 So. 3d 222, 227–28 (Fla. 2d DCA 2022).

When a lawyer whose representation has been terminated in a contingent-fee case seeks to enforce a charging lien, the recovery is on a “modified quantum meruit” basis. *Naftzger v. Elam*, 41 So. 3d 944, 946 (Fla. 2d DCA 2010). The discharged attorney receives “the reasonable value of his services rendered prior to discharge, limited by the maximum contract fee as long as the contingency occurs.” *Id.* (quoting *Rosenberg v. Levin*, 409 So. 2d 1016, 1021-22 (Fla. 1982)).

The second lien that protects a lawyer’s right to payment is a retaining lien, which is a lien *not* upon a judgment or settlement, but upon client property in the lawyer’s possession—*e.g.*, funds held in trust or client files. *See Daniel Mones, P.A. v. Smith*, 486 So. 2d 559, 561 (Fla. 1986). Retaining liens are distinguished from charging liens in that they “cover[] the balance due for all legal work done on behalf of the client regardless of whether the property is related to the matter for which the money is owed to the attorney.” *Id.* It applies in both to contingent-fee and hourly cases. *E.g.*, *Foreman v. Behr*, 866 So. 2d 705, 706-07 (Fla. 2d DCA 2003) (example of hourly case).

So, Ambler Law had two liens to secure payment of its fees and costs from the Davises, a charging lien for its contingent-fee work against any settlement in the malpractice case and a retaining lien against any of the Davises' property Ambler Law held.

A. The trial court legally erred in concluding that Ambler Law's fee agreement was unenforceable.

Here, the trial court granted summary judgment to the Davises on Ambler Law's charging lien, directed the disbursement of settlement funds to which the charging lien attached, and reserved a decision on Ambler Law's retaining lien. So, the question is whether the summary judgment on the charging lien was proper.

To establish its entitlement to summary judgment, the Davises had to show there was no material factual dispute as to at least one of the elements of a charging lien: (1) an express or implied contract between attorney and client; (2) an express or implied understanding that payment is dependent upon recovery or will come from the recovery; (3) an attempt by the client to avoid paying the fee or a dispute as to the amount; and (4) timely notice. *See Baucom*, 428 So. 2d at 1385; *see also Newton v. Kiefer*, 547 So. 2d 727, 728 (Fla. 2d DCA 1989). The Davises could not satisfy that burden because each

element was obviously met: Ambler law had a contract with them; payment was dependent on them achieving a recovery, which they did; they attempted to avoid paying the fee by asserting that Ambler Law was fired for cause and owed nothing; and Ambler Law timely noticed its charging lien. (A.0111-15). The trial court was obligated to deny the Davises' motion. See Fla. R. Civ. P. 1.510(a); *Carter v. Blue House Painting and Remodeling, LLC*, 367 So. 3d 618, 620 (Fla. 2d DCA 2023) (discussing new summary judgment rule).

Instead, the trial court granted summary judgment on the mistaken conclusion that there was no genuine dispute as to the existence of a valid contract. (A.0999-1000). It reached that conclusion only by refusing to reconsider Judge Day's prior (non-appealable) order declaring the fee agreement "unenforceable" because its "transfer/withdrawal" provision "impose[d] a penalty for the [Davises'] exercise of the right to seek new counsel." (A.0172). That order—which was rendered without an evidentiary hearing, and which upended not one but two prior orders finding the fee agreement valid—was wrong on its face. The transfer/withdrawal provision did not penalize the Davises for seeking new counsel: It merely informed them of Ambler Law's pre-existing rights to charging and retaining

liens in the event of termination and non-payment notwithstanding a recovery, which were rights Ambler Law had regardless of what the fee agreement said.

The Rules Regulating the Florida Bar recognize that attorney-client fee agreements are generally enforceable. See R. Reg. Fla. B. 4-1.5(d). Indeed, “[f]ee agreements between attorneys and clients are governed by the law of contracts,” *Moore v. State Farm Mut. Auto. Ins. Co.*, 916 So. 2d 871, 875 (Fla. 2d DCA 2005), and contract law “indulge[s] the presumption that *all contracts are lawful...*” *Janet Realty Corp. v. Hoffman's, Inc.*, 17 So. 2d 114, 116 (1943) (emphasis added); see also *Neiman v. Galloway*, 704 So. 2d 1131, 1132 (Fla. 4th DCA 1998) (“[T]he law should not presume that the parties intended to form an illegal contract...”). So, Judge Day’s order should have begun by *presuming* that Ambler Law’s fee agreement was legal and fully enforceable—including, as here, through a charging lien.

But instead, Judge Day’s order summarily determined on the face of the documents that the “transfer/withdrawal” provision of the fee agreement penalized the Davises for seeking new counsel. Although Judge Day’s order stated that it was based on “independent research,” it failed to explain why that research required invalidating

the fee agreement in whole or in part: It provided no analysis explaining how the transfer/withdrawal provision penalized the Davises, cited no authority holding that a transfer/withdrawal provision like the one here inhibited that right, and cited no Florida Bar rule Judge Day believed the contract might have violated.

The conclusion that the transfer/withdrawal provision “imposes a penalty for the Clients’ exercise of the right to seek new counsel” could only have hinged upon Rule 4-1.5(a). That rule provides that “[a] lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost.” R. Reg. Fla. B. 4-1.5(a). A fee is “clearly excessive” when “a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the lawyer.” R. Reg. Fla. B. 4-1.5(a)(1).

But there was nothing overreaching or unconscionable about the transfer/withdrawal provision in this case. Upon termination by the Davises, Ambler Law had well-established legal rights to a charging lien against any judgment or settlement and a retaining lien against any property of the Davises in its possession. The

transfer/withdrawal provision did no more than place the Davises on notice of those rights, explaining:

[i]f the file is transferred or withdrawn from Attorney by the Client it is understood and agreed that Attorney shall have a vested interest and lien based upon hourly compensation for all prior work performed by Attorney, calculated by multiplying the number of hours spent on the client's case by \$450 an hour, along with any paralegal/legal assistant time, billed at \$125 per hour, and any costs expended by Attorney, that are not paid at the time of termination by Client.

(A.470-71).

There's nothing wrong with that. To begin with, Judge Day's order did not find that the hourly rates in the agreement were themselves "clearly excessive" or "unconscionable." See *Riveiro v. J. Cheney Mason, P.A.*, 82 So. 3d 1094, 1098 (Fla. 2d DCA 2012) (reversing order imposing charging lien where trial court "made no finding as to the reasonable hourly rate"); *Kusick v. Kusick*, 944 So. 2d 1081, 1083 (Fla. 2d DCA 2006) (holding that order awarding fees "must contain specific findings" on reasonableness). Indeed, the order could *not* have made that finding as a matter of law because Judge Day refused to hold an evidentiary hearing before declaring the fee agreement invalid and thus lacked any evidentiary basis upon

which to deem the rates unreasonable. See *Zumpf v. Countrywide Home Loans, Inc.*, 43 So. 3d 764, 766 (Fla. 2d DCA 2010) (“Reasonable attorney’s fees’ generally ... require a hearing.”); *Dralus v. Dralus*, 627 So. 2d 505, 508-09 (Fla. 2d DCA 1993) (remanding for evidentiary hearing on reasonableness of fee secured by charging lien). Judge Day’s order invalidating the agreement cannot have rested on a determination that the hourly rates themselves operated as a penalty; otherwise, it is reversible on that basis alone.

Beyond stating rates, however, all the transfer/withdrawal provision did was explain Ambler Law’s rights to a charging lien against a recovery and a retaining lien against client property: In the event Ambler Law’s representation was terminated, it had lien rights to the extent of its unpaid fees and expenses. On its face, the transfer/withdrawal provision does not confer upon Ambler Law any right to immediate payment irrespective of any settlement or judgment; rather, merely provided notice of lien rights Ambler Law already enjoyed under existing law independent of the fee agreement. For that reason, it can’t be said to penalize the Davises for anything. Cf. *Bayshore Royal Co. v. Doran Jason Co. of Tampa, Inc.*, 480 So. 2d 651, 652 (Fla. 2d DCA 1985) (holding that release of right to

commission was not a penalty because it was consideration for the contract). Charging and retaining liens don't punish the client for firing counsel; they just ensure counsel is paid for his or her work.

As the former Florida Bar Ethics Director explained, all the transfer/withdrawal provision did was put the Davises on notice of Ambler Law's preexisting legal rights. (See A.0189). That's important because the Bar rules *do require* lawyers to reasonably inform their clients regarding "the fee and cost arrangements." R. Reg. Fla. B. 4-1.5(e)(1). Consistent with that obligation, the transfer/withdrawal provision ensured the Davises understood that if they terminated Ambler Law—which they did—the firm had lien rights. (A.470-71). That complies with the Bar rules; it does not violate them.

Indeed, we've been unable to find any Florida case holding that a fee agreement setting out a lawyer's lien rights violates Rule 4-1.5(a) by penalizing the client for retaining new counsel. Although the Davises have previously relied on *Florida Bar v. Hollander*, 607 So.2d 412 (Fla. 1993), and *Guy Bennett Rubin, P.A. v. Guettler*, 73 So. 3d 809 (Fla. 4th DCA 2011), those cases instead showcase why the transfer/withdrawal provision in Ambler Law's fee agreement does not violate the rule. (See A.0278-79).

Hollander was a disciplinary proceeding in which the referee found, among other ethical breaches, that the lawyer demanded a clearly excessive fee in violation of Rule 4-1.5(a). See 607 So. 2d at 413-14. Like Ambler Law’s fee agreement here, the contingent-fee agreement in *Hollander* provided that on termination or withdrawal, the law firm’s fee would be determined on an hourly-rate basis. *Id.* at 413. But in addition, the agreement also contained provisions—not included in Ambler Law’s agreement—that (1) required all hourly fees to “promptly” paid and all expenses to be “immediately” paid upon termination or withdrawal and (2) entitled the lawyer to an *additional* fee, expressed as a percentage, on top of the hourly fee the client had to pay “promptly.” *Id.* at 414-15. The supreme court approved the discipline under Rule 4-1.5(a) because “[t]he agreement on its face *allowed Hollander to collect twice for the same work*, and thus, the agreement *had the effect of intimidating a client* from exercising the right to terminate representation.” 607 So. 2d at 415 (emphasis added).

Guy Bennett Rubin is to much the same effect. That case was a law firm’s suit to recover attorneys’ fees under a contingent-fee agreement after the law firm—at the clients’ instruction—voluntarily

dismissed the clients' claims. *See* 73 So. 3d at 810. The agreement there provided that if the clients abandoned the claims that were the subject of the suit—such that the contingency of a recovery would never occur—or terminated the representation, the clients were required “to immediately thereafter pay LAW FIRM accrued hourly legal fees.” *Id.* at 811. The Fourth District held that a termination clause in a contingent-fee contract that requires immediate payment “if the client abandons or dismisses the claim violates Rule 4-1.5 on its face” and that such provisions have “the potential ... for chilling a client’s right to change counsel.” *Id.* at 813.

It is easy to see how the fee agreements in *Hollander* and *Guy Bennett Rubin* might be understood to punish the client for seeking new counsel or abandoning a claim. The agreements in each case gave the lawyer a power over the client the lawyer *did not otherwise have* that was designed to be invoked *only if the client exercised those rights* and that had ascertainable effects fairly characterized as coercive. The law does not grant lawyers a right to double fees when a contingency representation is terminated. Nor does it grant lawyers a right to “immediate” or “prompt” payment of hourly fees if a contingent-fee agreement is terminated or a client abandons a claim.

These provisions grant the lawyers something more than the law allows and gives them the ability to hold the client's feet to the fire.

In contrast, the law does grant a lawyer lien rights in a client's recovery or a client's property in the lawyer's possession to secure payment. And that is all the transfer/withdrawal provision in Ambler Law's fee agreement described. It gave Ambler Law no power over the Davises' decision-making, and it contained none of the features that caused the agreements in *Hollander* and *Guy Bennett Rubin* to violate Rule 4-1.5(a).

To the extent there's any question, the parties' own conduct confirms that no one understood the termination/withdrawal provision to operate as a penalty. *Cf. Jantzen v. Cotner*, 513 So. 2d 683, 684 n.2 (Fla. 3d DCA 1987) (observing that parties' practice under a contract can guide its interpretation). If they had, the Davises' counsel would not have agreed to the provision, the Davises likely would not have terminated Ambler Law, Ambler Law would have demanded the Davises immediately pay all of its hourly fees on termination and, if that failed, sued the Davises to recover those fees, as the law firm in *Guy Bennett Rubin* did. But Ambler Law not only didn't do that, it also did not attempt to apply the nearly \$250,000 it

was holding in trust to its fees and costs. Instead, Ambler Law promptly filed and served notice of its liens and awaited a final resolution of the case and a judicial decision on its rights.

It remains only to note that the trial court's refusal to reconsider Judge Day's order invalidating Ambler Law's fee agreement cannot save its later summary judgment order. The summary judgment order explicitly and exclusively depends on Judge Day's order—which was non-final and non-appealable when rendered—so Judge Day's order is subsumed in the grant of summary judgment. *See City of Tampa v. Addison*, 979 So. 2d 246, 252 n.5 (Fla. 2d DCA 2007). And even if that wasn't the case, a trial court lacks discretion to refuse reconsideration of an order of a predecessor judge that was wrong as a matter of law—as Judge Day's order was—so the trial court's reliance on that legally incorrect order is reversible at all events. *See Nunez v. Universal Prop. & Cas. Ins. Co.*, 325 So. 3d 267, 272 n.5 (Fla. 3d DCA 2021) (holding that successor judge has the “obligation to consider and to correct” a legally incorrect interlocutory order of a predecessor judge); *Raymond, James & Assocs., Inc. v. Zumstorchen Inv., Ltd.*, 488 So. 2d 843, 845 (Fla. 2d DCA 1986) (noting successor judge's “obligation” to correct erroneous order of predecessor judge).

The transfer/withdrawal provision was not a penalty, and Ambler Law's fee agreement is an enforceable contract sufficient to sustain its charging lien. The trial court erred in holding otherwise.

B. Even if the transfer/withdrawal provision was unenforceable, it is severable from the balance of the agreement.

Even if the transfer/withdrawal provision could be construed as a penalty, the fee agreement remains enforceable. As a matter of law, the trial court should have severed the unenforceable term and enforced the balance of Ambler Law's fee agreement. *See Lackey v. Bridgestone/Firestone, Inc.*, 855 So. 2d 1186, 1188 (Fla. 3d DCA 2003) ("We will not hold that the inclusion of the unenforceable terms voids the entire contract."); *Corvette Shop & Supplies, Inc. v. Coggins*, 779 So.2d 529, 531 (Fla. 2d DCA 2000) (declining to invalidate agreement even though it contained violations of the Bar rules).

The standard contract rule is that a contract provision is severable "if it does not go to the 'essence' of the agreement and, 'with the illegal portion eliminated, there remain valid legal obligations.'" *4927 Voorhees Rd., LLC v. Tesoriero*, 291 So. 3d 668, 671 (Fla. 2d DCA 2020) (quoting *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 478 (Fla. 2011)); *see also Lackey*, 855 So. 2d at 1188 (similar).

The transfer/withdrawal provision in Ambler Law's fee agreement does not go to the essence of the contract. It merely describes the results in the event of termination or withdrawal before the full and final resolution of the malpractice case, describing the same lien rights Ambler Law has under existing Florida law. See *Daniel Mones*, 486 So. 2d at 561; *Richman Greer*, 991 So. 2d at 878.

The essence of the fee agreement, by contrast, was that Ambler Law would provide legal services in exchange for a contingent fee on the medical malpractice action and an hourly-rate fee on ancillary legal matters. Cf. *Wilderness Country Club P'ship, Ltd. v. Groves*, 458 So. 2d 769, 772 (Fla. 2d DCA 1984) (explaining that price terms generally go to the essence of the contract). Severing the transfer/withdrawal provision would not affect these core features of the Davises' agreement with Ambler Law because Ambler Law's right to a charging lien would exist anyway and the provision does not touch on any of the parties' underlying rights and obligations.

As the Florida Bar's former Ethics Director explained:

Significantly, the facts in this case demonstrate that ALG took the exact same actions that it would have taken if the Authority to Represent did not contain the Provision. The firm acted to protect and enforce the rights that it had under common law - nothing more, nothing less. The

inclusion of the Provision in the Authority to Represent did nothing to affect the firm's rights under common law or how it acted in this case.

(A.189). So, even if the transfer/withdrawal provision did violate rule 4-1.5(a) in this instance, that defect does not go to the essence of the fee agreement and should properly be severed to preserve the contract's enforceability. The trial court erred by declining to do so.

C. The trial court erred by failing to reconsider Judge Day's order invalidating Ambler Law's fee agreement.

Although the summary judgment order is wrong on its merits as described above, the Court need not reach the merits to reverse. When rendering summary judgment, the trial court categorically refused to reconsider Judge Day's order invalidating Ambler Law's fee agreement just because it wasn't going to reconsider any of Judge Day's prior decisions at all. That refusal was error because a trial court abuses its discretion when it refuses to exercise that discretion.

Until final judgment, a successor judge has the power to vacate or modify the interlocutory orders of his predecessor. *Tingle v. Dade Cnty. Bd. of Cnty. Comm'rs*, 245 So. 2d 76, 78 (Fla. 1971); *see also Deaterly v. Jacobson*, 313 So. 3d 798, 801–02 (Fla. 2d DCA 2021). While the decision to reconsider a prior order is generally a

discretionary one, *see Wortman v. Wortman*, 186 So. 3d 69, 70 (Fla. 1st DCA 2016), there still must be “logic and justification for the result.” *Huff v. State*, 569 So. 2d 1247, 1249 (Fla. 1990) (quoting *Canakaris v. Canakaris*, 382 So.2d 1197, 1203 (Fla.1980)).

That means that the exercise of discretion must be “informed by facts and circumstances of the particular case....” *Freeman v. State*, 65 So. 3d 553, 556 (Fla. 2d DCA 2011). “An uninformed exercise of discretion is, by definition, arbitrary, fanciful, or unreasonable.” *Id.* It follows that “a trial court *must exercise its discretion where discretion has been provided*; a refusal to so exercise is error” *Boykin v. Garrison*, 658 So. 2d 1090, 1090 (Fla. 4th DCA 1995) (emphasis added). Thus, this Court has reversed a trial court’s dispositive order when the trial court categorically refused to reconsider a predecessor judge’s order even though the trial court “would have been well within his prerogatives to disagree.” *Keathley v. Larson*, 348 So. 2d 382, 385 (Fla. 2d DCA 1977).

The same thing is true here. Notwithstanding Ambler Law’s repeated requests and arguments that the trial court look behind Judge Day’s order and see that it was incorrect, the trial court made clear beyond any doubt that there were no circumstances under

which it would do so: “I am not readdressing something that Judge Day ruled upon, *period*.” (A.0906) (emphasis added). The trial court’s blanket announcement that it would not exercise its discretion was itself an abuse of discretion. *See Boykin*, 658 So. 2d at 1090 (holding that blanket refusal to accept certain types of pleas was an abuse); *Kraft v. State*, 156 So. 3d 1116, 1118 (Fla. 4th DCA 2015) (granting mandamus “to compel the trial court to exercise its discretion” where it refused to consider release pending sentencing); *Barrow v. State*, 27 So. 3d 211, 218 (Fla. 4th DCA 2010) (“It is an abuse of discretion for a trial judge to *refuse* to exercise discretion, to rely on an inflexible rule for a decision that the law places in the judge's discretion”), *approved*, 91 So. 3d 826 (Fla. 2012). At a minimum, then, this Court should reverse for the trial court to reconsider Judge Day’s order and address the summary judgment motion accordingly.

II. The trial court violated due process by vacating prior orders approving Ambler Law’s fee agreement where no party requested that relief and invalidating the fee agreement without an evidentiary hearing.

Judge Day’s order invalidating Ambler Law’s fee agreement—upon which the summary judgment order hinged—violated due process (1) by granting unrequested requested relief vacating two

prior orders and (2) by failing to hold an evidentiary hearing on whether the fee agreement violated Rule 4-1.5(a). On these bases, this Court should reverse and remand for an evidentiary hearing on proper pleadings specifying the relief requested.

First, Judge Day’s order invalidating Ambler Law’s fee agreement denied due process by holding, sua sponte and without any notice, that “the prior orders of October 3, 2013 and February 21, 2017, approving the [agreement] are hereby VACATED.” (A.0172). It is black-letter law that due process “prevent[s] a trial court from deciding matters not noticed for hearing and not the subject of appropriate pleadings.” *Land Dev. Servs., Inc. v. Gulf View Townhomes, LLC*, 75 So. 3d 865, 871 (Fla. 2d DCA 2011) (quoting *Mizrahi v. Mizrahi*, 867 So.2d 1211, 1213 (Fla. 3d DCA 2004)). As such, “a trial court lacks jurisdiction to decide matters which are not the subject of appropriate pleadings and notice.” *Dep’t of Env’t Regul. v. Montco Rsch. Prod., Inc.*, 489 So. 2d 771, 773 (Fla. 5th DCA 1986).

When Judge Day rendered the order invalidating the fee agreement, the question of whether his prior orders approving that agreement would be upheld was not in play. The only motions before the Court were Ambler Law’s motion to enforce its charging

lien and the Davises' discovery motions. The Davises hadn't filed a motion seeking to undo the prior orders approving the fee agreement, and Ambler Law did not have any notice that they were on the chopping block. The order vacating the prior orders was unrequested.

To be sure, the enforceability of the fee agreement was before Judge Day on Ambler Law's motion to enforce its charging lien—an enforceable contract being an element of the lien—but vacating the prior orders raised important questions independent of whether the fee agreement was lawful. For example, were the prior orders *approving* the fee agreement final for purposes of rule 1.540 of the Florida Rules of Civil Procedure? *Compare Mahany v. Wright's Healthcare & Rehab. Ctr.*, 194 So. 3d 399, 400-01 (Fla. 2d DCA 2016) (noting jurisdictional decision to treat order *denying approval* of fee agreement as nonfinal) *with In re Buggs ex rel. Rengifo*, 122 So. 3d 519, 519-20 (Fla. 1st DCA 2013) (exercising appellate jurisdiction over order denying approval without comment). If they were final, was there a rule 1.540 basis to authorize vacating the orders? *See Bank One, Nat'l Assn. v. Batronie*, 884 So. 2d 346, 348 (Fla. 2d DCA 2004). If they were not final, were there reliance or other interests that militated in favor of Judge Day exercising his discretion to leave the

prior orders intact and decide only the enforceability of the charging lien? None of these questions were litigated and decided because nobody asked the trial court to vacate the prior orders.

Accordingly, the decision to vacate the prior orders approving the fee agreement violated due process. *See also Kerrigan, Estess, Rankin & McLeod v. State*, 711 So. 2d 1246, 1249 (Fla. 4th DCA 1998) (“[T]he trial court denied Petitioners due process when it sua sponte ruled unenforceable the contingent fee contract on which those liens were based, without notice and an opportunity for the parties and counsel to be heard”); *Lochner v. Monaco, Cardillo & Keith, P.A.*, 551 So. 2d 581, 583 (Fla. 2d DCA 1989) (holding, in charging lien dispute, that “the trial court erred in entering a money judgment against the appellant without notice”).

Second, Judge Day’s order violated due process because it held Ambler Law’s fee agreement unenforceable without giving it an opportunity to present evidence. *See, e.g., Page v. Bank of Am., N.A.*, No. 2D2023-0588, 2024 WL 3351551, at *2 (Fla. 2d DCA Jul. 10, 2024) (holding that “the attorney’s fees award violated ... due process rights” when fees were granted “without the promised posttrial evidentiary hearing”); *In re K.H.*, 928 So. 2d 1291, 1294 (Fla. 2d DCA

2006) (holding, when trial court terminated protective services supervision, that “the Father was entitled to due process by being afforded an evidentiary hearing”). The question of whether Ambler Law’s fee agreement operated as a “penalty” on the Davises right to retain new counsel necessarily hinged on questions that would be informed by evidence—whether the Davises considered the transfer/withdrawal provision when they discharged Ambler law, whether the Davises felt coerced or restrained in that decision by the existence of the provision, whether the provision operated in practice as a penalty on the retention of new counsel, and what an expert might say about the provision, among other things. But Ambler Law never received an opportunity to hash those issues out at an evidentiary hearing because the trial court unilaterally cancelled it and decided the question of enforceability on the papers.

That was plainly wrong, as courts—this Court included—have routinely recognized that an evidentiary hearing is necessary to determine whether to enforce an attorney’s charging lien. *E.g.*, *Dralus*, 627 So. 2d at 508-09 (remanding for evidentiary hearing on reasonableness of fee); *see also, e.g., Benitez v. Eddy Leal, P.A.*, 272 So. 3d 506, 509-10 (Fla. 3d DCA 2019) (holding that evidentiary

hearing was required to determine whether there was an express or implied contingent-fee agreement); *Hernandez v. Alonso*, 660 So. 2d 349, 350 (Fla. 3d DCA 1995) (holding that evidentiary hearing was required to determine whether lawyer's withdrawal was justified). Because the order invalidating Ambler Law's fee agreement was rendered without an evidentiary hearing—and thus without due process—the trial court's summary judgment order violates due process as well and should be reversed.

III. The trial court erred in directing the immediate disbursement of funds because Ambler Law remains entitled to a charging lien in quantum meruit.

Even if the transfer/withdrawal provision in Ambler Law's fee agreement rendered the entire agreement unenforceable, its decision to direct the immediate distribution of funds to the Davises without making any provision for Ambler Law's uncompensated fees and costs was error. Notwithstanding the invalidity of the fee agreement, Ambler Law was entitled to a charging lien securing its fees and costs in quantum meruit. See *Brickell Place Condo Ass'n. v. Joseph H. Ganguzza & Assoc's, P.A.*, 31 So. 3d 287, 290 (Fla. 3d DCA 2010) (holding that attorneys could "file a charging lien ... on the basis of

quantum meruit” after contingent fee arrangement was deemed to violate R. Reg. Fla. Bar 4-1.5).

“When a fee agreement between attorney and client fails to comply with the Rules Regulating the Florida Bar, the attorney is entitled to recover on the basis of quantum meruit.” *King v. Young, Berkman, Berman & Karpf, P.A.*, 709 So. 2d 572, 574 (Fla. 3d DCA 1998); *see also Chandris, S.A. v. Yanakakis*, 668 So. 2d 180, 186 (Fla. 1995) (same); *Katz v. Frank, Weinberg & Black, P.L.*, 268 So. 3d 773, 777 (Fla. 4th DCA 2019) (same); *Salter v. St. Jean*, 170 So. 2d 94, 95–96 (Fla. 3d DCA 1964) (same). An entitlement to quantum merit can sustain the imposition of a charging lien for the fees and costs associated with an attorney’s representation of a former client. *See, e.g., Rosenthal, Levy & Simon, P.A. v. Scott*, 17 So. 3d 872, 874 (Fla. 1st DCA 2009) (approving a quantum meruit charging lien); *Courtney v. Hall-Edwards*, 134 So. 3d 543, 544–45 (Fla. 3d DCA 2014) (quashing an order denying a quantum meruit fee award to a discharged attorney who sought to enforce a charging lien); *Geico Gen. Ins. Co. v. Steinger, Iscoe & Greene-II, P.A.*, 275 So. 3d 775, 776 (Fla. 3d DCA 2019) (considering the negligence of counsel in failing to protect law firm’s charging lien for quantum meruit fees); *Buckley*

Towers Condo., Inc. v. QBE Ins. Corp., No. 07-22988-CIV, 2011 WL 13161212, at *1 (S.D. Fla. Apr. 5, 2011) (considering a charging lien file on the basis of quantum meruit).

That result makes perfect sense. After all, the applicable requirement for a charging lien is that there have been an “express or implied agreement” that the lawyer’s fees and costs will be paid from any recovery in the underlying case. (*See supra*). And quantum meruit is simply a contract “implied in fact.” *JD Dev’t I, LLC v. ICS Contractors, LLC*, 351 So. 3d 57, 60 (Fla. 2d DCA 2022); *see also Rite-Way Painting & Plastering, Inc. v. Tetor*, 582 So. 2d 15, 17 (Fla. 2d DCA 1991). It follows that a contract implied in fact can and does constitute an implied agreement giving rise to a charging lien.

Here, Judge Day’s order invalidating Ambler Law’s fee agreement explicitly declined to reach the issue of whether Ambler Law was entitled to quantum meruit recovery or any additional fees on the basis of its hourly work. (A.0172). Nevertheless, when it granted summary judgment, it also ordered the immediate disbursement of funds held in trust without considering whether Ambler Law’s charging lien against those funds—the last funds the

case would produce—was supported on a theory of quantum meruit. (A.0998-1000).

A claim for quantum meruit based on a contingency arrangement arises when the contingency occurs. *Rosenberg v. Levin*, 409 So. 2d 1016, 1022 (Fla. 1982). “If the client fails in his recovery, the discharged attorney will similarly fail and recover nothing.” *Id.* Here, the contingency has occurred, the Davises have reached a final settlement of the last claims remaining in the malpractice case. (A.0281-82). Ambler Law is entitled to maintain its charging lien against that recovery on a quantum meruit theory.

CONCLUSION

No matter how one looks at it, Ambler Law was entitled to a charging lien against the settlement funds the trial court ordered disbursed. The transfer/withdrawal provision in Ambler Law’s fee agreement was not unenforceable to begin with; even if it was unenforceable, it was severable from the balance of the fee agreement; and even if it was not severable, a charging lien was available on an implied-contract, quantum-meruit theory. At all events, Ambler Law was entitled to—but was denied—its due process rights to fair notice and an opportunity to present evidence.

Accordingly, this Court should reverse the trial court's summary judgment order and remand for further proceedings.

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Respectfully submitted:

/s/ Samuel J. Salaro, Jr.

Samuel J. Salaro, Jr. (FBN: #83460)

Caroline May Poor (FBN: #1018391)

LAWSON HUCK GONZALEZ, PLLC

1700 S. MacDill Ave., Ste. 300

Tampa, FL 33629

Telephone: (850) 825-4334

samuel@lawsonhuckgonzalez.com

caroline@lawsonhuckgonzalez.com

michelle@lawsonhuckgonzalez.com

leah@lawsonhuckgonzalez.com

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Florida Courts E-Portal, and a copy of said document has been served via the Florida Courts E-Portal on August 20, 2024 to:

Kevin Ambler
Ambler Law Group
400 N Tampa St Ste 1500
Tampa, FL 33602-4716
kevin@amblerlaw.com

Counsel for Ambler Law Group

Paul Gionis
Gionis, Lilly & Romero, PLLC
777 S. Harbour Island Blvd Suite
128
Tampa, FL 33602
pgionis@gionislilly.com
carissa@gionislilly.com

Counsel for Ambler Law Group

John Patrick Flanagan, Jr.
710 Oakfield Dr Ste 101
Brandon, FL33511-4931
patflan@verizon.net

Mac A. Greco, Jr.
Andrew J. Wozniak
Isaac R. Ruiz-Carus
Greco & Wozniak, P.A.
501 N. Morgan Street, Suite 200
Tampa, Fl 33602-3905
isaac@gwlawpa.com
rachelm@grecowozniakpa.com

Counsel for Appellants

Lori Balona
Lori A. Balona, P.A.
PO Box 3122
Brandon, FL 33509-3122
lori.balona@gmail.com

Counsel for Lori Balona

/s/ Samuel J. Salaro, Jr.
Attorney

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and because the word count from the word-processing system used to prepare this document is 9,569.

/s/ Samuel J. Salaro, Jr. _____
Attorney