

THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

Case No. 4D22-3360
L.T. Case No. 50-CA-2019-005331

KENNETH N. WOLINER, and
HOLISTIC FAMILY MEDICINE LLC,

Appellants,

v.

DAVID S. FURSTELLER, P.A., et al.

Appellees.

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

Appellee-Petitioner Curtis Carlson & Associates, P.A. (“Carlson”), doing business under the registered name “Carlson & Associates, P.A.,” submits the following statement of the case and of the facts because the initial brief of appellants Kenneth Woliner and Holistic Family Medicine (“HFM”) is not satisfactory.¹ Fla.R.App.P. 9.210(c).

1. The Nature of the Case

This is an appeal from a final judgment enforcing the charging liens of attorneys Carlson and Warren R. Trazenfeld, P.A. (“Trazenfeld”) arising from a legal malpractice case that Carlson prosecuted on behalf of Woliner (R. 2270-86). The trial court noted, and appellants do not dispute, that:

Carlson handled this legal malpractice action from beginning to end and obtained a significant settlement recovery for the Plaintiffs. There are no allegations that Carlson failed to handle this case properly or should have obtained a greater settlement amount. The Plaintiffs simply desire to avoid their obligation to pay the agreed upon fees to Carlson.

(R. 2271).

Woliner, a May 2021 law school graduate, and HFM, through its counsel, alleged multiple theories to avoid payment in what the trial court described as a scattergun approach. (R. 2028, 2277). Woliner and HFM

¹ Appellants have misstated numerous facts in their initial brief and provided record citations that do not support the propositions for which they are cited.

also submitted to the trial court 57 exhibits amounting to 447 pages of material, three memoranda of law, a five-page single spaced table of authorities, and a motion for rehearing, all of which were considered by the trial court. (R. 2270, 1113-22, 1138-57, 1488-1935, 1977-86, 2001-08, 2395-2417). Woliner and HFM also attended two evidentiary hearings where, if they wished, they could have called witnesses to testify, but did not at either hearing. (R. 2322-44, 3038-86).²

After giving Woliner and HFM every opportunity to present their defenses, and after considering all of the evidence presented and the memoranda of law, the trial court applied the holding of the Florida Supreme Court in *Daniel Mones, P.A. v. Smith*, 486 So.2d 559, 561 (Fla. 1986), and concluded that Carlson and Trazenfeld had shown they were entitled to enforcement of their charging liens and that the defenses raised by Woliner and HFM lacked merit. (R. 2270-83).

2. *Statement of the Facts*

The underlying case was an action for legal malpractice against attorneys who represented Woliner in a Florida Department of Health

² R. 3038-86 is a transcript that Woliner had created from a recording he surreptitiously made of the hearing of June 6, 2022. Because of his conduct and other factors, the trial court denied Woliner's motion to make the transcript, R. 3038-86, a record of the proceedings. (R. 3468-70). Yet, Woliner and HFM repeatedly cite this transcript in their initial brief as though it is an approved record of the proceedings.

(“DOH”) administrative proceeding that resulted in the revocation of Woliner’s license to practice medicine by the Florida Board of Medicine. (R. 0030-0045 at ¶¶ 1, 33, 35). HFM was not a party in the DOH proceeding. The revocation of Woliner’s medical license was affirmed on October 9, 2017. *Woliner v. Department of Health*, 277 So. 3d 54 (Table) (Fla. 1st DCA 2017).

Subsequently, Woliner contacted Warren R. Trazenfeld to review a potential legal malpractice claim against the attorneys who handled the administrative proceeding (the “working attorneys”) and against the attorneys who recommended that Woliner hire the working attorneys (the “referring attorneys”). (R. 1663-1665). Trazenfeld, with Woliner’s knowledge, asked Curtis Carlson to join them at an initial meeting on August 2, 2018, at Carlson’s office. (*Id.*).

After their initial meeting, Woliner, Trazenfeld, and Carlson signed a contingent fee agreement and a Statement of Client’s Rights, both of which Carlson sent to Woliner in fully executed form. (R. 1616-22).³ The fee agreement stated that Woliner engaged Carlson and Trazenfeld for the “prosecution of claims ... arising from the recommendation by [the referring

³ Woliner asserts that the Statement of Client’s Rights is a forgery because, after he signed it, the attorneys added signature blocks for their signatures and executed it.

attorneys] and the malpractice by [the working attorneys] in the handling of the matter of *Dep't of Health, Board of Medicine v. Kenneth Woliner, M.D.*"

(R. 1617 at § 1). The fee agreement set forth the compensation that Woliner agreed to pay:

As compensation for their legal services, Client agrees to pay the Attorneys the following:

(a) A contingency fee of 40% of any Recovery. As used herein, the term "Recovery" shall mean the gross amounts recovered through settlement, trial or otherwise, inclusive of attorney's fees; and

(b) An additional contingency fee of 5% of any Recovery in the event post-trial motions to vacate or reduce the jury verdict or an appeal are filed.

(*Id.* at § 2).⁴ The fee agreement also stated that the fees to be paid to the Attorneys shall be shared by Carlson and Trazenfeld in the following percentages: Carlson – 75%; Trazenfeld – 25%. (R. 1619 at § 14).

Before signing the fee agreement, Woliner consulted with an independent attorney about the terms of the proposed fee agreement. (R. 1685-86). At the time, Woliner was a second-year law student. (R. 1472 at ¶ 8).

⁴ Woliner signed a draft of the fee agreement that provided the attorneys were sharing the fee equally. That draft, which was not signed by Carlson or Trazenfeld, went through some edits, including the change of the sharing to 75%-25%. (R. 1444, 1619). Woliner, Carlson, and Trazenfeld signed the final version of the fee agreement containing the new sharing percentages. (*Id.*).

Carlson filed the original complaint on April 24, 2019. (R. 30-45). The complaint alleged claims against both the referring attorneys and the working attorneys. (*Id.*). The referring attorneys successfully moved to dismiss the original, amended and second amended complaints for failure to state a cause of action. (R. 77-91, 341-43, 382-415, 685-729). A final judgment was eventually entered in favor of the referring attorneys. (R. 730-32, 837-41, 871-72). In the meantime, the working attorneys filed answers and affirmative defenses to the complaints. (R. 470-74, 733-741).

Woliner appealed the final judgment in favor of the referring attorneys. (R. 842-49). Carlson prosecuted the appeal on Woliner's behalf. (R. 842-49, 1457).

After the appeal, Carlson negotiated a settlement, including the dollar amount to be paid to Woliner, which Woliner and the working attorneys agreed upon. (R. 972, 1125). Woliner was the only plaintiff in the case through the point where the settlement was reached, but before a written agreement was executed. (R. 904, 1125).

After Woliner agreed to the settlement, he started to consider the tax implications of the settlement payment and sought the advice of Robert W. Wood, a tax attorney, to potentially lessen the tax burden. (R. 1683-86). Wood advised Woliner to add HFM—the entity that Woliner had created to manage his holistic medical practice—as a plaintiff and “allocate” a portion

of the settlement proceeds to HFM, even though HFM had been voluntarily dissolved five years earlier. (*Id.*, R. 930-31, 1130-31). Woliner then instructed Carlson to file a third amended complaint adding HFM as a co-plaintiff in the action. (R. 904-05).

Before filing the third amended complaint, Carlson informed counsel for the working attorneys that Woliner wanted to file a third amended complaint adding HFM and that, even though he would be filing the third amended complaint, the parties had “a deal” at the agreed upon dollar amount. (R. 1125, 904-05). Carlson further informed counsel for the working attorneys that a written settlement agreement would be executed simultaneously with the filing of a third amended complaint that added HFM as a co-plaintiff. (*Id.*). The adding of HFM as a co-plaintiff did not increase the agreed upon dollar amount of the settlement. (*Id.*). With that understanding, Carlson provided the working attorneys with a copy of the proposed third amended complaint, and the working attorneys consented to the filing of it. (R. 904-05). Within two weeks after the third amended complaint was filed, the settlement agreement between Woliner, newly added HFM, and the working attorneys was fully executed. (R. 1849-52). Woliner signed the settlement agreement on behalf of himself and as Manager of HFM. (R. 1850).

Woliner incorrectly asserts that the settlement agreement specified

how much the working attorneys were paying separately to Woliner and HFM. Initial Brief at 2-3, 38-39. The settlement agreement does *not* state how much the working attorneys agreed to pay to Woliner as opposed to HFM, but merely states that the payments will be paid to Carlson's Trust Account "for the benefit of HFM and Woliner." (R. 1842-54 at 1844 ¶¶ 2(a) and (b)). The settlement agreement includes language stating how "HFM and Woliner *plan to allocate* the Settlement Payments" between themselves followed by a chart showing that Woliner intended to allocate only 1.8% of the settlement proceeds to himself and 98.2% to HFM. (R. 1844-45 (emphasis added)). The working attorneys refused to agree to or endorse the chart or the allocations in it. (R. 1126).

Carlson provided no tax advice to Woliner and had nothing to do with the creation of the chart or the allocations in it.⁵ Woliner created the chart. (R. 1844-45). Jonathon O'Boyle, counsel for HFM, admitted to the trial court that Woliner's intended apportionment of "substantial sums for Holistic Family Medicine ... was done for tax purposes." (R. 3072).

After the settlement funds were paid to Carlson's trust account in accordance with the terms of the settlement agreement, Carlson sent Woliner a proposed closing statement on February 18, 2022 for Woliner's

⁵ The chart of proposed allocations was the idea of the tax attorney, Robert Wood. See R. 1685 ("Allocating damages can save taxes.").

approval. (R. 1445-46). The closing statement separately showed (a) the amount of the settlement proceeds, (b) the fee based on 40% of the recovery (less a \$5,000 reduction agreed to by the attorneys), (c) the amount of the additional fee of 5% for the appeal, (d) the exact amounts to be paid separately to Carlson and Trazenfeld, and (e) the amount of the remaining balance to be paid to “Kenneth Woliner,” with no mention of a payment to HFM. (*Id.*). After reviewing the closing statement, Woliner (on behalf of himself and HFM) agreed in writing to everything but the additional 5% fee. (R. 1444-45).⁶

Because Carlson and Woliner could not agree on the additional 5% fee, Carlson timely filed a notice of charging lien as Carlson & Associates, P.A. (R. 962-64). Carlson subsequently filed an amended notice of charging lien in the name of Curtis Carlson & Associates, P.A., as the owner of the registered business “Carlson & Associates, P.A.” (R. 2170-72).

After the charging lien was filed, Woliner and HFM shifted their position and asserted that either no fees were due under the fee agreement or no fees were due on 98.2% of the settlement recovery. (R. 1138-57).

⁶ Woliner’s objected to the additional 5% fee, claiming it was due only if the appeal was taken *after a jury trial*. However, he abandoned that theory and never raised that argument in the lower court. (R. 2275).

Appellants' defenses have not included any allegations in the lower court or in this appeal that Carlson failed to handle the underlying case properly or that the settlement should have been greater. (R. 2270-71).⁷

3. *The Course of Proceedings and Disposition in the Lower Tribunal*

a. *The first hearing on the charging liens.*

On March 1, 2022, Carlson filed a notice of charging lien. (R. 0962-64). The next day, Carlson filed a petition to enforce the charging lien, which attached the fee agreement and the Statement of Client's Rights as exhibits. (R. 0970-81).⁸

On March 3, 2022, the trial court entered an order setting the matter for Zoom hearing for March 21, 2022. (R. 997-1000). The order instructed

⁷ Appellants state that "Attorney Carlson refused to account for ... the undisputed portion of the settlement." Initial Brief at 5, *citing* R. 1920-21. That statement is false. The pages of the record cited by appellants for that statement are part of their Exhibit 45 that Woliner submitted to the trial court, but those pages do not support the statement that Carlson refused to account. (R. 1919-35 at 1920-21). However, the same exhibit includes an email that Carlson sent on April 8, 2020, to Woliner and O'Boyle showing that Carlson *did* provide an accounting consisting of its internal accounting record of its trust account as well as copies of its bank statements showing the deposits and the funds in the trust account. (R. 1924). In addition, the closing statement that Carlson sent to Woliner is itself an accounting of the funds. (R. 1445-46).

⁸ Curtis Carlson & Associates, P.A. was formed in 1991. (R. 1133-36). In 2015, the corporation registered the name "Carlson & Associates." (R. 1137). It renewed that name registration in 2020. (*Id.*). On March 21, 2022, the corporation registered the name "Carlson & Associates, P.A." by adding the "P.A." to the end of the existing registered name. (R. 1448).

that at least five days prior to the date of the hearing the “parties shall submit to the Court through e-Courtesy on the 15thcircuit.com website any and all documents the parties wish the Court to review or have in its possession for the hearing.” (R. 997).

Appellants state that Carlson “did not advise HFM or Woliner to obtain independent counsel.” Initial Brief at 3. The statement is false. On March 10, 2022, Mr. Carlson sent e-mails to Woliner that advised him to get independent counsel for himself and for HFM. (R. 2581 (“I recommend that you hire an attorney to counsel you.”); R. 2584 (“If Holistic Family Medicine LLC intends to appear, it must engage an attorney to appear on its behalf.”)). Four days later, attorney Jonathon O’Boyle filed a notice of appearance on behalf of HFM. (R. 1076-77).

Prior to the March 21 hearing, Woliner demanded that Carlson put all of the settlement proceeds in the court registry, including the 55% that would have been Woliner’s portion of the settlement proceeds. (R. 2496). Carlson spoke with O’Boyle, and O’Boyle agreed that it was “silly” to put the funds in the court registry and incur the court registry fees. (*Id.*)

At the hearing on March 21, 2022, Woliner argued the hearing should be continued because he needed more time to obtain counsel for himself. (R. 2425-27). Woliner claimed that his sister’s law firm would not agree to

represent him until Carlson withdrew.⁹ (*Id.*). Woliner made no mention of needing funds to hire an attorney. (*Id.*). The trial court accommodated Woliner and set the date for the continued hearing for April 21, 2022, for 30 minutes. (*Id.* at 2430; R. 1197-1200). Woliner and HFM did not object or say they needed more time when the trial court announced that the hearing would be set for 30 minutes. (R. 2430-36).

Before the hearing concluded on March 21, Mr. Carlson raised the issue of where the settlement funds should be kept:

Mr. Carlson: ... Your Honor, I just want to mention, I've got a lot of money in my IOTA trust account. And I'd like an order stating that it can remain in my trust account until, you know, further order of court.

The Court: Absolutely. I mean, I think that's what has to happen.

Mr. Woliner: Excuse me, Your Honor.

The Court: Yes.

Mr. Woliner: May I object to that order just because there's an element of fraud that's been alleged in this case. And I think that the money would be actually a lot more secure if it was in the court registry.

(R. 2430-31). After further discussion, the trial court ruled, "we're going to

⁹ Carlson offered at the hearing, "If Mr. Woliner will give me a substitution of counsel, I will sign it." (R. 2430). Woliner never supplied a stipulation for substitution of counsel. Carlson subsequently withdrew, but Woliner still did not engage counsel for himself. (R. 2038-39).

keep it in Mr. Carlson's account at this time ... until further court order." (R. 2431). Woliner did not ask that any portion of the funds be paid to him or HFM at this hearing. (R. 2430-31).

b. The second hearing on the charging liens.

After the March 21 hearing, the trial court entered two orders scheduling the next hearing, first for April 21 and then for April 22, 2022. (R. 1197-1200; R. 1204-07). The first order instructed the parties again to submit "any and all documents" via e-Courtesy they wished the court to consider five days before the hearing. (R. 1198). The second order made it clear that the parties would be permitted to present testimony at the hearing if they so desired, as it required the parties to submit witness and exhibit lists and memoranda of law at least seven days before the hearing. (R. 1205). Woliner and HFM understood that they could call witnesses to testify about potential issues of fact at the April 22 hearing. (Initial Brief at 6; R. 2001).

Prior to the April 22 hearing, Woliner and HFM submitted for the trial court's review: (1) their third memorandum of law setting forth their arguments and defenses to the charging liens, (2) a table of authorities listing five pages of single-spaced authorities, (3) a witness and exhibit list,

and (4) 57 exhibits comprised of 447 pages of material.¹⁰ (R. 1977-86; 1458-69; 1488-1935, 2001-08).

For each of their 57 exhibits, Woliner included additional argument and commentary about the supposed content or meaning of each exhibit in both the body of the exhibit list and on the cover page for each exhibit. For example, for Exhibit 28, Woliner included this statement on both the exhibit list and the cover page for the exhibit: “Robert W. Wood, Five Key IRS Rules on How Lawsuit Settlements are Taxed, published July 1, 2019 (describing how legal malpractice lawsuits are ‘personal injury lawsuits ...).” (R. 1464 and R. 1683). Woliner’s commentary to the trial court about Exhibit 28 is incorrect as Wood’s article makes no mention of legal malpractice lawsuits. *See generally* R. 1683-86.

Carlson and Trazenfeld did not object to any of Woliner’s and HFM’s 57 exhibits or to the arguments or commentaries on the cover pages of the 57 exhibits that Woliner uploaded. All of appellants’ 57 exhibits were evidence in the record received and considered by the trial court. (R. 2270). Carlson also uploaded several exhibits for the hearing. (R. 1435-57). Woliner and HFM did not object to any of Carlson’s exhibits.

¹⁰ Woliner’s and HFM’s exhibits are numbered 1 through 45, including Exhibits 30(a) through 30(m), for a total of 57 exhibits. Appellants’ witness list included Woliner, Curtis Carlson, and Warren Trazenfeld.

At the hearing on April 22, Woliner and HFM did not have any witnesses present other than Woliner himself.¹¹ (R. 2323). When Carlson finished its presentation of argument and evidence, about ten minutes remained in the allotted time for the hearing, but Woliner and HFM did not use the time to either make argument or begin calling witnesses. (R. 2339). Instead, Woliner asked for the hearing to be continued to another day, saying “[t]here’s a lot to go through here.” (*Id.*) Once again, the trial court accommodated Woliner and HFM, and said an hour would be appropriate for the next hearing that would be set for June 6, 2022. (R. 2339-40). Woliner and HFM did not object at that time to the next hearing being set for one hour. (*Id.*)

Before the April 22 hearing ended, there was additional discussion about the funds in Carlson’s trust account. In the meantime, Woliner had decided he wanted the 55% portion disbursed to him:

Mr. Carlson: Mr. Woliner wants me to pay out of the trust a portion that is - - that would be due to him. And the order that you’ve already entered says that I cannot release any funds until further order of Court.

The Court: All right. So do you want to release that?

Mr. Carlson: **Yes**, but I’d like - - and I’d also like to release the funds to me that are not contested, but, you know ...

¹¹ Although Woliner did not request their presence or subpoena them, Curtis Carlson and Warren Trazenfeld were present. (R. 2323).

The Court [interrupting Mr. Carlson]: So, we won't release any of the funds until 6/6, when we have the hearing, okay?

(Emphasis added). (R. 2342). At that point, Woliner and HFM did not raise any objection to the funds remaining in Carlson's trust account nor did he say he needed the funds to hire an attorney. (*Id.*).

On April 25, 2022, the trial court issued an order setting the continuation of the evidentiary hearings for June 6, 2022. (R. 2015-18). The order again instructed the parties to upload "any and all documents" they wanted the trial court to review before the hearing. (*Id.*).

On April 27, 2022, Woliner and HFM filed a motion styled as Motion to Modify the Court's March 21, 2022, *Ore Tenus* Injunction, asserting that order instructing Carlson to hold the settlement proceeds until further order constituted an injunction. (R. 2025-2030). The motion to modify came on for hearing on May 5, 2022. (R. 2490-2505). At the hearing, Curtis Carlson again reiterated that he simply wanted an order allowing him to disburse the undisputed portion of the settlement proceeds to Woliner. (R. 2498). Based thereon, the trial court concluded, "it sounds like the 55 percent [i.e., the portion to be paid to Woliner from the settlement proceeds] is not disputed by anybody. Okay? So it sounds like that can be disbursed." (R. 2499). Carlson immediately disbursed 55% of the settlement proceeds to Woliner. (R. 2239-41).

c. The third hearing on the charging liens.

The third hearing on the charging liens was held on June 6, 2022, via Zoom. A court reporter was not present. Without asking permission or notifying the participants, about seven minutes after the hearing started Woliner began recording the proceedings using a feature on his computer. (R. 2658-59). Much later, Woliner had a court reporter create a transcript from the illicit recording, which he then filed in the trial court and is found at R. 3038-3086. The trial court denied appellants' motion to make this transcript an official record of the court. (R. 3468-70). Appellants cite this unofficial transcript repeatedly in the initial brief. As a result, Carlson finds itself needing to cite this unofficial transcript to refute the false statements that appellants make about the June 6 hearing and their inaccurate citations to this transcript.

Woliner and HFM did not have any witnesses present at the June 6 hearing other than Woliner himself, even though they understood they could present testimony at the hearing. (R. 3039). During the hearing, Woliner and HFM did not call any witnesses to testify even though Woliner, Curtis Carlson and Warren Trazenfeld were present. Instead, Woliner used his time to argue using a PowerPoint presentation which contained the arguments and documents that were in his and HFM's three memoranda of law. (R. 2601-30). O'Boyle also used his time to make argument and did

not call any witnesses to testify. (R. 3070-72).¹² At the end of the hearing, Mr. Trazenfeld noted that a court reporter had not been present, but Woliner remained silent about his recording of the proceedings. (R. 3075).

Woliner and HFM assert that the trial court admitted at the end of the June 6 hearing that one hour had not been enough time to hear from everyone. Initial Brief at 9. That is incorrect. The trial court heard from everyone, and the comment, “I wasn’t sure if one hour was going to be enough time,” was not an acknowledgement that one hour was not enough time, but rather a statement that one hour had been enough time. In either event, Woliner and HFM did not ask for more time or a continuation of the hearing to another date so they could present testimony or make further argument. (R. 3070-76).

Appellants claim that at the onset of the June 6 hearing, “Woliner noted his objections to the procedure being non-evidentiary,” *citing* to R. 3046-47. That is not true. What Woliner actually said was, “I’m saying right at the beginning and I’ve said all along that this would be an evidentiary hearing.” (R. 3046). Thus, Woliner confirmed that he understood the hearings were evidentiary and, while he was free to call

¹² Woliner later acknowledged that his goal at the June 6 hearing was to present argument “**geared towards preserving error.**” (R. 2404 (emphasis added)).

witnesses, he did not call any witnesses, including himself. (R. 3070).

Appellants also claim that at the conclusion of the June 6 hearing, “Woliner timely objected that he had not been given sufficient time to present his case, and requested additional time.” Initial Brief at 8, *citing* R. 3063, 3069. That statement is also false. What actually happened is that Woliner stated, “if I run out of time I’m objecting.” (R. 3063). He then continued with his presentation, which consisted of arguing from his PowerPoint slides. (R. 3063-70, 2139-46). Later, the trial court asked Woliner how much time he had left in his presentation. (R. 3069). Woliner responded, “[a]bout seven [minutes.]” (*Id.*). Woliner eventually finished his presentation, at which point he stated, “I’ll turn it over to the attorneys here, Mr. O’Boyle and everyone else.” (R. 3070). The trial court did not limit Woliner’s time, and Woliner was able to finish his presentation. (*Id.*). At the conclusion of the hearing, neither Woliner nor O’Boyle asked for more time to continue the hearing to another day, or the opportunity to call witnesses to testify. (R. 3075-76).

d. The fourth hearing relating to the charging liens.

After the hearing on June 6, 2022, Woliner and HFM filed a motion to settle the record. (R. 2139-2146). In their motion, they attached only the PowerPoint slides that Woliner showed during the June 6 hearing and nothing else. *Id.* Woliner did not reveal in that motion that he had secretly

recorded the June 6th hearing. (*Id.*).

On July 12, 2022, Woliner and HFM filed a motion to dismiss Carlson's petition to enforce its charging lien for lack of jurisdiction (R. 2154-69). The essence of the motion was a theory that the petition to enforce a lien cannot be brought in the name of a registered business name, but has to be brought in the name of the owner of the fictitious business name. (*Id.*).

In response, on July 14, 2022, Curtis Carlson & Associates, P.A., as owner of the registered fictitious name Carlson & Associates, P.A. filed a notice of charging lien in the name of Curtis Carlson & Associates, P.A. (R. 2170-72). On July 22, 2022, Carlson filed a joinder in the petition to enforce the charging lien that read, "Petitioner Curtis Carlson & Associates, P.A., which does business as Carlson & Associates, P.A. ("Carlson"), in furtherance of its Notice and Claim of Attorney's Charging and Retaining Lien filed on July 14, 2022, hereby joins in and adopts by reference as its own the Petition of Carlson & Associates, P.A." (R. 2202-2204). Woliner and HFM have never asserted the notice of lien filed by Curtis Carlson & Associates, P.A. was untimely or did not relate back.

A hearing was held on August 10, 2022, on appellants' motion to settle the record of the June 6th hearing. At the August 10th hearing, the trial court denied Woliner's and HFM's motion to settle the record, without

prejudice, as their motion was deficient on its face. (R. 2268-69). At the hearing, Woliner still did not mention that he had secretly recorded the June 6th hearing. (R. 3102-22).

At this August 10th hearing, the trial court also denied Woliner's and HFM's motion to dismiss Carlson's petition to enforce the charging lien for lack of jurisdiction. (R. 2267).

e. The fifth hearing relating to the charging liens and the final judgment.

On August 11, 2022, the trial court entered the final judgment enforcing Carlson's and Trazenfeld's liens that is the subject of this appeal. (R. 2270-86). On August 26, 2022, Woliner and HFM filed a motion for rehearing. (R. 2395-2417). Carlson filed a verified response. (R. 2557-2589).

Woliner and HFM continued their effort to settle the record of the June 6th hearing. On September 19, 2022, in a new motion to settle the record of the June 6th hearing, appellants revealed for the first time that Woliner had secretly recorded the June 6th hearing. (R. 2655-65 at 2658-59). They attached to their motion an "unofficial" transcript that had been made from the recording and the affidavit of Woliner admitting he recorded the hearing without permission. (*Id.*, R. 2724-2764).

At a hearing on February 15, 2023, the trial court denied (1)

appellants' motion for rehearing, and (2) appellants' motion to settle the record. (R. 3468-70, 3471-72). As to the motion to settle the record, the court ruled:

It was determined by the Court and uncontroverted by the parties, including Kenneth Woliner, that Mr. Woliner surreptitiously recorded the zoom hearing held on June 6, 2022, and it was conducted without any of the attendees' knowledge, including, but not limited to, the Court. There was not an official court reporter present, opposing counsel disagrees with making the transcript an official record from this surreptitious recording and there is no authority directly on point which dictates how a Court should handle a surreptitious recording when a Court reporter was not present and the recording was made without anybody's knowledge. Mr. Woliner never, despite having the opportunity to do so, notified the Court during that hearing that he was recording and he did not impart this knowledge to the Court until the instant motion was heard. Therefore, the Court is unable to settle and approve the record....

The Court permits Mr. Woliner to make his transcript of the June 6, 2022 hearing, part of the case file, and attach an affidavit regarding exactly what occurred at the hearing, including, that the hearing was recorded without notifying the attendees.

(R. 3468-70). Woliner has never filed such an affidavit. But, Woliner and HFM nevertheless have cited the unapproved, unofficial transcript, R. 3038-86, liberally in the initial brief. See *e.g.* Initial Brief at 7, 8, 9, and 18.

STANDARD OF REVIEW

“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.” *Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1980). The failure to provide appellate court with either transcript or proper substitute for a transcript, as appellants have failed to do for the June 6 hearing, is generally fatal because the appellate court is unable to evaluate allegations that error exists in the trial court's findings but instead must presume such findings are correct. *Hirsch v. Hirsch*, 642 So.2d 20, 21 (Fla. 5th DCA 1994); *All Am. Soup & Salad, Inc. v. Colonial Promenade*, 652 So.2d 911, 912 (Fla. 5th DCA 1995).

An order on a charging lien is reviewed under an abuse of discretion standard. *Afrazeh v. Miami Elevator Co. of Am*, 769 So.2d 399, 401 (Fla. 3rd DCA 2000) (order on charging lien will not be disturbed “absent a clear abuse of discretion”); *Lopez v. Hernandez*, 291 So.3d 1007, 1009 (Fla 5th DCA 2020) (“We review a trial court’s decision to award a charging lien to an attorney for abuse of discretion.”); *Menz & Battista, PL v. Ramos*, 214 So.3d 698, 699 (Fla. 4th DCA 2017) (“We review trial court orders on attorney’s fees for an abuse of discretion.”). The standard of review of the trial court’s interpretation of law is *de novo*. *Menz*, 214 So.3d at 699.

SUMMARY OF ARGUMENT

The trial court correctly denied appellants' motion to make Woliner's transcript created from a secret recording of the June 6th hearing an official transcript. Therefore, appellants are unable to meet their burden of establishing reversible error to overcome the presumption of correctness afforded to the trial court's decision. *King v. Giardina*, 368 So.3d 546 (Fla. 1st DCA 2023) ("The burden of properly presenting a case to this court for review ... must remain squarely upon the litigant, whether represented by counsel or not."). Without a transcript of the June 6, 2020, hearing an appellate court cannot "reasonably conclude that the trial court so misconceived the law as to require reversal." *Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1979).

The trial court utilized an efficient and fair process to resolve the lien dispute and ensure due process by (a) ordering the parties to upload any exhibits they desired the trial court to review in advance of the hearings, (b) ordering the parties to file memoranda stating their arguments, and (c) accommodating Woliner's and HFM's request for an evidentiary hearing by giving them close to an hour over the span of two hearings to call witnesses to testify. The fact that Woliner and HFM decided to use their time at the hearings to repeat their arguments, instead of calling witnesses, was their choice and does not take away from the fact that appellants were

afforded fair notice and a real opportunity to be heard. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 948 (Fla. 2001) (“Procedural due process requires both fair notice and a real opportunity to be heard.”); *Mid-Continent Casualty Co. v. R.W. Jones Constr., Inc.*, 227 So.3d 785, 788 (Fla. 5th DCA 2017) (“Due process is flexible and calls for such procedural protections as the particular situation demands.”).

The trial court did not abuse its discretion in enforcing the charging liens because substantial competent evidence supports the trial court’s judgment and the conclusion that Carlson established the four elements required under *Daniel Mones, P.A. v. Smith*, 486 So.2d 559, 561 (Fla. 1985). Woliner signed the fee agreement with Carlson and Trazenfeld, he agreed to the terms of the settlement and, afterwards, he decided purely for tax purposes to add HFM to the case even though it would not increase the amount of the settlement and to funnel 98.2% of the settlement proceeds to HFM. Before the fee dispute arose, Woliner (on behalf of himself and HFM) agreed that Carlson and Trazenfeld were entitled to a percentage fee calculated on the entire settlement proceeds, but disputed the additional fee of 5%. After the fee dispute arose, Woliner dropped his dispute as to the additional fee of 5% but, instead, tried to use his tax avoidance scheme essentially to argue that “he finessed a 98.2% reduction in fees” by adding

HFM as a party. (R. 2280). Woliner and HFM, however, failed to meet the “heavy burden ... to show why, in equity and good conscience, [the attorneys’] charging lien should not be secured and enforced” in its entirety. *Zimmerman v. Livnat*, 507 So.2d 1205, 1207 (Fla. 4th DCA 1987).

Even if HFM still existed five years after its voluntary dissolution, Woliner agreed to the settlement amount before HFM was added as a party. The trial court correctly concluded that the substance of the settlement was that Woliner was the real party interest, the settlement was for Woliner, and adding HFM to the case was an afterthought for tax purposes. (R. 2280-81). *Constance v. Constance*, 366 So.2d 804, 807 (Fla. 3rd DCA 1979) (“That equity regards substance and not form is a time-honored maxim by which the true ownership of property may be pursued.”).

Under section 865.09(9), Fla.Stat., an action may be maintained either in the name of a registered business or the owner of that business. Here, the charging lien proceeding was brought in both the name of the registered business and the owner of the business. Woliner and HFM have admitted that “[a]fter registering the fictitious name, ‘Carlson & Associates, P.A.’, Mr. Curtis Carlson (as a natural person), or Curtis Carlson & Associates, P.A. (as a legal person), became eligible to maintain actions in Florida Courts.” (R. 2413). Thus, no error was committed by the trial court in enforcing Carlson’s charging lien.

ARGUMENT

1. *The judgment entered by the trial court should be affirmed because appellants have failed to provide a record of the proceedings of the hearing held on June 6, 2022.*

“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.” *Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1980). The failure to provide the appellate court with either transcript or proper substitute for a transcript, as appellants have failed to do for the June 6 hearing, is generally fatal because the appellate court is unable to evaluate allegations that error exists in the trial court's findings but instead must presume such findings are correct. *Hirsch v. Hirsch*, 642 So.2d 20, 21 (Fla. 5th DCA 1994); *All Am. Soup & Salad, Inc. v. Colonial Promenade*, 652 So.2d 911, 912 (Fla. 5th DCA 1995).

Appellants have failed to meet their burden of establishing reversible error to overcome the presumption of correctness afforded to the trial court's decision. *King v. Giardina*, 368 So.3d 546 (Fla. 1st DCA 2023) (“The burden of properly presenting a case to this court for review ... must remain squarely upon the litigant, whether represented by counsel or not.”). Without a transcript of the June 6, 2022, hearing an appellate court cannot “reasonably conclude that the trial court so misconceived the law as to require reversal.” *Applegate*, 377 So.2d at 1152.

2. *The trial court did not abuse its discretion in enforcing Carlson’s charging lien.*
 - a. *Substantial competent evidence exists to support the finding that Carlson met the burden of proof under Mones.*

By this appeal, Woliner is attempting to avoid his obligation to pay the attorneys what is owed to them. The attorney’s 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 & Zavertnik, P.A. v. Baucom, 428 So.2d 1383, 1384 (Fla. 1983). Charging liens have been recognized at common law in Florida for nearly 170 years. *See, e.g., Carter v. Davis*, 8 Fla. 183 (1858); *Carter v. Bennett*, 6 Fla. 214 (1855); *Randall v. Archer*, 5 Fla. 438 (1854). In *Bennett*, the Florida Supreme Court explained:

While our courts hold members of the bar to strict accountability and fidelity to their clients, they should afford them protection and every facility in securing them their remuneration for their services. An attorney has a right to be remunerated out of the results of his industry and *his lien* on these fruits is founded in equity and justice.

Bennett, 6 Fla. at 258 (emphasis in original).

“The law is settled in this jurisdiction that a litigant should not be permitted to walk away with his judgment and refuse to pay his attorney for securing it.” *In re Warner’s Estate*, 35 So.2d 296, 298-99 (Fla. 1948). “An attempt to evade payment of an attorney’s fee comes in poor grace after

the work is done, the results accomplished and there is no question of bona fides.” *In re Barker’s Estate*, 75 So.2d 303, 304 (Fla. 1954). Here, the work was done and the results accomplished *before* HFM was added as a party.

“[T]he requirements for the imposition of a charging lien are few and simple.” *Litman v. Fine, Jacobson, Schwartz, Nash, Block & England, P.A.*, 517 So.2d 88, 91 (Fla. 3rd DCA 1987). A proceeding to enforce a charging lien is a summary proceeding where “the attorney must show: (1) an express or implied contract between attorney and client; (2) an express or implied understanding for payment of attorney’s fees out of the recovery; (3) either an avoidance of payment or a dispute as to the amount of fees; and (4) timely notice.” *Daniel Mones, P.A. v. Smith*, 486 So.2d 559, 561 (Fla. 1986). Because none of those facts were disputed, competent substantial evidence existed to support the trial court’s conclusion that all four *Mones* elements were established by Carlson. (R. 2276).

b. Woliner’s main argument is that the trial court erred in failing to find that his tax avoidance scheme served as a means to reduce Carlson’s fees by 98.2%.

The only *Mones* element that appellants dispute is that HFM—an entity that Woliner insisted be added as a party *after* a settlement was reached, purely for tax reasons, and five years after HFM was dissolved in 2017—had no written agreement to pay the attorneys. Because Woliner decided—again for tax reasons—to funnel 98.2% of the settlement

proceeds to HFM, Woliner and HFM argue that trial court erred in applying the charging liens to 98.2% of the settlement recovery. Initial Brief at 22-23.

Appellants' position ignores equity, justice, and the facts. First, based on the evidence presented, a written fee agreement with HFM was unnecessary because Woliner executed a fee agreement, and he was the real party interest. (R. 2280-81). The substantial competent evidence showed that the settlement funds belonged to Woliner, not HFM. (*Id.*).

"That equity regards substance and not form is a time-honored maxim by which the true ownership of property may be pursued." *Constance v. Constance*, 366 So.2d 804, 807 (Fla. 3rd DCA 1979). The trial court correctly concluded that the substance of the settlement was that the true owner of the property was Woliner, and adding HFM to the case was an afterthought for tax purposes. (*Id.*).

Second, a proceeding to enforce a charging lien is a proceeding in equity. *Nichols v. Kroelinger*, 46 So.2d 722, 744 (Fla. 1950); *Mineo Salcedo Law Firm, P.A. v. Cesard*, 333 So.3d 222, 234 (Fla. 4th DCA 2022). As such, "the equitable defense of unclean hands may be asserted against a party challenging a charging lien." *Mineo*, 333 So.3d at 234. "[I]f a party is found to have unclean hands, the court has more latitude to fashion its remedy." *Id.* Because "[t]he charging lien is ... based on equitable principles; the client should not be allowed to appropriate the whole of a

judgment, award or decree if the attorney who has secured it has not been compensated.” *Dowda and Fields, P.A. v. Cobb*, 452 So.2d 1140, 1142 (Fla. 5th DCA 1984). Carlson secured the settlement before it was even contemplated that HFM could be added to the case for tax purposes. Adding HFM did not increase the settlement amount. To paraphrase *Dowda*, equity will not allow Woliner to funnel 98.2% of the settlement proceeds to HFM to avoid paying Carlson after working for close to four years and securing the significant settlement.

The circumstances were analogous to *Zimmerman v. Livnat*, 507 So.2d 1205 (Fla. 4th DCA 1987), where the attorney represented a wife in a divorce proceeding. The husband and wife, “whether with malice aforethought or through oversight,” structured a settlement where the wife ended up with the joint assets located in a foreign country and none of the assets located in the United States, thereby leaving no assets upon which the charging lien could attach. *Id.* at 1207. The *Zimmerman* Court stated, “[t]o say the least, this is an unfair circumstance. Plainly, here, a heavy burden should be placed on the original litigants to show why, in equity and good conscience, appellant's charging lien should not be secured and enforced.” *Id.*

The appellants submitted no evidence to the trial court to meet that heavy burden of showing why, in equity and good conscience, Carlson’s

lien should not be secured and enforced against the entire settlement recovery. Here, the trial court reached an entirely appropriate remedy given the undisputed facts. The trial court recognized Woliner's and HFM's inequitable conduct in trying to finesse a 98.2% reduction of the attorneys' fees. (R. 2280).

Third, Woliner as the Managing Member of HFM, agreed in writing that the fee agreement applied to HFM. As the trial court concluded:

By agreeing to the draft closing statement (and later dropping the argument about the additional 5% fee for the appeal), Woliner agreed on behalf of HFM that the 40% fee and the additional 5% fee applied to HFM as well. By instructing Carlson to add HFM as a plaintiff, Woliner agreed on behalf of HFM that the fee agreement applied to HFM in all respects.

(R. 2281).

A dissolved limited liability corporation can act only through its manager or members. § 605.04074(1), Fla.Stat. Woliner, as Manager of HFM, acted for HFM when he agreed in writing that the attorneys were entitled to a percentage fee calculated on the entire settlement proceeds (and never presented his argument about the 5% fee to the trial court). (R. 1444-45). Thus, HFM did sign a writing that satisfied the requirements of Rule 4-1.5(f), R. Regulating Fla. Bar.

Fourth, substantial competent evidence supported the trial court's finding that HFM no longer existed at the time of the settlement. Woliner's

argument is that a dissolved corporation continues to exist until it submits a statement of termination to the Florida Secretary of State. Initial Brief at 36-7. That is not correct. Under section 605.0709(7), Fla.Stat., a dissolved limited liability company “that has completed winding up *may* deliver to the department for filing a statement of termination.” (Emphasis added). The statute states “*may*,” not “*shall*” or some other word connotating a requirement necessary to terminate the existence of the corporation. No section of Chapters 605 through 607 provides that a corporation continues to exist until it files a statement of termination, as appellants claim.

The correct statement of the law is that a dissolved corporation ceases to exist when it completes winding up.¹³ Section 605.0709(1), Fla. Stat. Woliner and HFM, however, presented no evidence such as minutes, resolutions, tax returns, or written communications showing that HFM was still winding up its affairs five years after it dissolved. Further, they have not argued that they wanted to present testimony to support that notion but were denied that opportunity by the trial court. Initial Brief at 18-20. Given the evidence of HFM’s voluntary dissolution in 2017 and the lack of contrary evidence from appellants, the trial court was well within its

¹³ Section 605.0709(1), Fla.Stat., states that “a dissolved limited liability company shall wind up its activities and affairs and ... the company continues after dissolution only for the purpose of winding up.”

discretion to conclude that HFM no longer existed.

3. *Woliner and HFM were afforded due process.*

The trial court conducted an efficient and orderly procedure consistent with the nature and demands of a charging lien proceeding that ensured due process for all participants. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 948 (Fla. 2001). In *Mid-Continent Casualty Co. v. R.W. Jones Constr., Inc.*, 227 So.3d 785, 788 (Fla. 5th DCA 2017), the court explained:

Courts do not evaluate the specific parameters of procedural due process by fixed rules of law, but rather by the requirements of the particular proceeding. Due process is flexible and calls for such procedural protections as the particular situation demands. Further, a party must have an opportunity to be heard at a meaningful time and in a meaningful manner.

Id. (internal citations and quotation makes omitted); *Carillon Cmty.*

Residential v. Seminole County, 45 So.3d 7, 9 (Fla. 5th DCA 2010) (The proceeding itself must only be “essentially fair.”), *citing Gilbert v. Homar*, 520 U.S. 924 (1997). Given the facts and the circumstances, the trial court was exceedingly accommodating of appellants and their requests, which resulted in a fair proceeding that afforded Woliner and HFM due process.

Pursuant to the trial court’s orders, appellants submitted to the trial court: (a) 57 exhibits consisting of 447 pages of material along with appellants’ argument and commentary on the cover pages of the 57

exhibits, (b) three separate memoranda of law containing argument, and (c) a five-page, single spaced table of authorities. (R. 1485-1935, 1138-57, 1458-68, 1469-84, 1977-86, 2001-08). The trial court reviewed and considered everything that was submitted by appellants. (R. 2270).

In addition to presenting exhibits, memoranda, and a table of authorities, appellants had the opportunity to call witnesses to testify at the April 22 and June 6 hearings but opted not to. At the April 22 hearing, instead of using the time available, Woliner asked to reconvene to a later date so that he could absorb and counter what Carlson had discussed.¹⁴ At the June 6 hearing, Woliner and O'Boyle chose to use their time to repeat the arguments contained in their memoranda. That was their choice. The trial court did nothing to prevent them from calling witnesses. At the end of the June 6 hearing, appellants did not ask for more time or request another hearing to call witnesses to testify.

Appellants' protestations about the need for an evidentiary hearing are contrived. The initial brief fails to identify any factual dispute that needed to be resolved through an evidentiary hearing. Although the initial brief includes a heading, "Appellants Were Prepared to Present Evidence

¹⁴ Woliner and O'Boyle already knew what Carlson's arguments were going to be, having received Carlson's memoranda of law and exhibits, and should have been prepared to go forward at the April 22 hearing.

of Facts Contested by the Parties,” the initial brief does not detail a single issue of fact following that heading that was essential to a determination of either the liens or the defenses. Instead, appellants list four “arguments intended to be presented but which were not entertained by the L.T,” three of which applied to Carlson and one to Trazenfeld. Initial Brief at 18-20. Appellants’ claim that the trial court did not entertain these four arguments is false; the trial court *did* entertain all four arguments and found they had no merit.¹⁵

It is fundamental that an argument about what the facts mean does not mean the facts are contested. A review of appellants’ three arguments as to Carlson show that the facts were not contested and the trial court would have properly denied an evidentiary hearing to address those arguments. Appellants’ first argument is that the lawyers signed the Statement of Client’s Rights after Woliner signed it and, therefore, it is a forgery. Initial Brief at 18-20. It was not in dispute that the attorneys executed the Statement after Woliner did, which is not unusual or

¹⁵ At the June 6, 2022, hearing, the trial court entertained Woliner’s use of his PowerPoint presentation to make argument that addressed (1) the Statement of Client’s Rights is a supposed forgery, R. 2624-29; (2) the misidentification of Carlson & Associates, P.A., R. 2602, 2621-22; (3) the supposed withdrawal of Trazenfeld, R. 2618; and (4) the supposed unclean hands of Carlson of holding the funds pursuant to the order of the court, R. 2606-07.

remarkable. The fact that Carlson and Trazenfeld signed the Statement after Woliner does not impact the enforcement of the charging liens for several reasons.¹⁶ First, the second sentence of the Statement states, “This Statement is not a part of the actual contract between you and your lawyer.” (R. 1621). The charging lien derives from the fee agreement, not the Statement. Second, by adding their signatures, the lawyers did not change a single word of the body of the Statement. Third, the Statement is only required in claims for personal injury or property damage or loss of services resulting from personal injuries and was not required in this instance. R. Regulating Fla. Bar 4-1.5(f)(4)(A)(i). Fourth, both the fully executed fee agreement and Statement were sent to Woliner, and he raised no issue about it. (R. 1616-22).

No testimony was needed to assist the trial court in determining that the Statement was not a forgery. A forgery is a writing which falsely purports to be the writing of another. *Rushing v. State*, 684 So.2d 856, 857 (Fla. 5th DCA 1996); *State v. Escobedo*, 404 So.2d 760, 764 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 464 (Fla.1982). The writing must be made with intent to injure or defraud. *Id.* The Statement was not a forgery under

¹⁶ The signature block for the attorneys was inadvertently missing from the version signed by Woliner. It was added, executed, and forwarded to Woliner in fully executed form. (R. 1616-22).

any stretch of the imagination, and the trial court correctly so decided.

Appellants' second argument is that Carlson & Associates, P.A. is a "misidentified" corporation that dissolved in 1991. Initial Brief at 18-20. Appellants' theory is that "there [was] already existing a Florida Profit Corporation named Carlson & Associates, P.A. that was administratively dissolved; under section 607.1405(1), Florida Statutes, [it] continues its corporate existence." Initial Brief at 16. The prior Carlson & Associates, P.A. was an accounting firm that was dissolved in 1991. (R. 1147-48). Woliner's misidentification theory was that he possibly entered into a fee agreement with the entity that was dissolved thirty years earlier, not with Carlson. (*Id.*).

No contested facts existed as to whether Woliner signed a fee agreement with an entity that dissolved 30 years earlier and the trial court quickly dispatched the misidentification theory. (R. 2281-83). Section 607.1405(1), Fla.Stat., provides that a dissolved corporation may not "carry on any business except that appropriate to wind up and liquidate its business and affairs." Therefore, the prior, dissolved corporation could NOT enter into a new fee agreement because that would amount to carrying on business. Further, section 607.1405(5), Fla.Stat., provides that name of a dissolved corporation is "available for assumption or use" by another entity 120 days after the effective date of dissolution. Therefore, Carlson was

free to register the names Carlson & Associates and Carlson & Associates, P.A. and to enter into fee agreements under those names sometime in 1992 at the latest. Therefore, the trial court would have been correct had it denied an evidentiary hearing on this argument.

Appellants' third argument is that Carlson has unclean hands because it complied with the trial court's order to retain the funds in its trust account. Initial Brief at 18-20. The facts regarding this argument are not contested and do not amount to unclean hands. *Hensel v. Aurilio*, 417 So.2d 1035, 1038 (Fla. 4th DCA 1982).

At the March 21 hearing the trial court ordered Carlson to hold the funds "until further court order," rather than putting the funds in the court registry as Woliner had wanted. (R. 2430-31). Although the trial court ordered Carlson to hold the funds in its trust account "until further court order," Carlson was willing to disburse the 55% to Woliner *as long as* the trial court entered an order permitting him to do so. (R. 2342 ("[T]he order that you've already entered says that I cannot release any funds until further order of Court"); R. 2498 ("I want an order allowing me to disburse it.")). Since the trial court ordered Carlson to hold the funds in its trust account "until further court order," it is impossible for appellants to suggest any contested facts exists and, therefore, even if appellants had asked for an evidentiary hearing on this argument, the trial court would have been

correct to deny that request.¹⁷

4. *The charging lien can be enforced in either the name of the registered business or in the name of the owner of the registered business; here it was done by both.*

Woliner and HFM argue that the charging lien could not be prosecuted by a registered business. Initial Brief at 41. The Fictitious Name Act, section 865.09, Fla.Stat., provides otherwise.

“The Fictitious Name statute was enacted for the purpose of providing notice to anyone dealing with a person operating under a fictitious name with the name and address of the real party in interest.” *Cor-Gal Builders, Inc. v. Southard*, 136 So.2d 244, 246 (Fla. 3rd DCA 1962); *Jackson v. Jones*, 423 So.2d 972, 973 (Fla. 4th DCA 1983), *review denied*, 436 So.2d 99 (Fla.1983) (“[T]he purpose of the statute is to advise one litigant of the identity and whereabouts of another litigant.”); *Robinson & St. John Adver. and Pub. Relations, Inc. v. Lane*, 557 So.2d 908, 909 (Fla. 1st DCA 1990). (“Section 865.09 is designed to provide notice to the public, and especially to creditors, of the identities of persons who are doing business under fictitious names for the purpose of protecting creditors from fraud and

¹⁷ Woliner never argued to the trial court that he needed the settlement funds in order to engage a lawyer to defend against the charging liens. Counsel was hired for HFM, Woliner would not have had access to the funds if they were deposited to the court registry, and he has still not hired counsel despite receiving the funds in May of 2022.

deceit.”); *Solomon v. Betras Plastics, Inc.*, 550 So.2d 1182, 1185 (Fla. 5th DCA 1989) (“The purpose of the fictitious name statute is to provide *record notice* of the real party in interest to those who currently or potentially may deal with a business.” (Emphasis in original)).

Woliner plainly had notice who he was dealing with when he signed the fee agreement. He does not dispute this. It is implausible for Woliner to argue that Carlson intended to injure or even confuse anyone by dropping his first name, Curtis, from his firm’s legal name. Indeed, if it was his intent to confuse or injure anyone, Carlson has done a pretty poor job of it. He has remained in the same location for more than 20 years (which was the office where Woliner first met Curtis Carlson), included his picture on his website providing photographic proof of his identity, and included his name, address, phone number, Florida Bar number, year admitted to the Bar and law school alma mater in the Florida Bar attorney lookup, where anyone can check out an attorney who has been admitted to The Florida Bar. (R. 2571).

Curtis Carlson & Associates, P.A. filed its own notice and claim of lien. (R. 2170-72). It also filed a joinder in and adopted the petition to enforce charging lien as its own. (R. 2202-04). Under these circumstances, non-compliance with the statute (even if true) is irrelevant because the failure to register a fictitious name does not prevent the owner

of the name from enforcing a lien entered into in the fictitious name. In *Jackson v. Jones*, 423 So.2d 972, 973 (Fla. 4th DCA 1982), this Court held:

If an individual is doing business under a fictitious name and, without complying with the [fictitious name] statute, brings a contract or tort action in which he is involved in his individual capacity then compliance is irrelevant to the cause of action and non-compliance with the statute has no effect on the litigation.

See also *Medsen Dev., Inc. v. Bryant*, 376 So.2d 423 (Fla. 3rd DCA 1979).

Similarly, in *Premier Finishes, Inc. v. Maggiras*, 130 So.3d 238, 241 (Fla. 2nd DCA 2013), a contractor entered into a construction contract using its unregistered fictitious name. *Id.* at 241. Later it asserted a construction lien when it had not been paid by the property owner. *Id.* The property owner argued that the construction contract was void because the fictitious name was not registered. *Id.* The court held “if Premier Finishes was the real entity using [a] fictitious name when entering into the contract, it is the actual party to the contract or the contractor pursuant to section 713.01(08) and is entitled to proceed with a claim of lien against the Owner.” *Id.* Therefore, when Woliner refused to pay, Curtis Carlson & Associates, P.A. was entitled to proceed in its own name.

“A contract entered into under a fictitious name is valid and enforceable.” *Premier Finishes*, 130 So.3d at 241; section 865.09(9)(b), Fla.Stat. “[T]he failure to comply with the registration requirements does

not impair the validity of any contract entered into by the party conducting business under an unregistered fictitious name.” *Worm World, Inc. v. Ironwood Productions, Inc.*, 917 So.2d 274, 275 (Fla. 1st DCA 2005).

Therefore, Carlson may enforce its lien in its own capacity.

Even if an action is brought in the name of an unregistered business, the proper course for the court is to abate the action until the name is registered. *Jackson*, 423 So.2d at 973, *citing Cor-Gal Builders, Inc. v. Southard*, 136 So.2d 244 (Fla. 3rd DCA 1962); *Roth v. Nautical Engr. Corp.*, 654 So.2d 978, 980 (Fla. 4th DCA 1995). Here, before the trial court ruled, Curtis Carlson & Associates, P.A. registered the name Carlson & Associates, P.A. Even Woliner has acknowledged that “[a]fter registering the fictitious name, ‘Carlson & Associates, P.A.’, Mr. Curtis Carlson (as a natural person), or Curtis Carlson & Associates, P.A. (as a legal person), became eligible to maintain actions in Florida Courts.” (R. 2413).

A business may bring a claim in its registered name as well. Section 865.09(2)(a) defines “business” to include any enterprise or venture in which a person renders service for compensation. Section 865.09(9)(a) provides that “neither *the business nor the person or persons engaging in the business* may maintain any action ... until this section is complied with.” (Emphasis added). Stated differently, when section 865.09 is complied with, either the business or the person engaging in the business can

maintain an action. The conjunctive “nor” makes that clear. Thus, either the business (*i.e.*, Carlson & Associates, P.A.) or the owner (*i.e.*, Curtis Carlson & Associates, P.A.) was able to maintain the proceeding to enforce the charging lien.

5. *The trial court did not err in denying the motion to settle the record.*

The trial court was well within its discretion to deny the motion to settle the record as Woliner failed to follow the procedures of Fla.R.App.P. 9.200(b)(5). Woliner committed a culpable act by secretly recording the proceedings and by concealing it for so long. Section 934.03, Fla. Stat.

CONCLUSION

The trial court afforded appellants a fair and meaningful opportunity to be heard. The trial court considered all of appellants’ exhibits and arguments. The appellants had every opportunity to call witnesses at the two evidentiary hearings, and their decision to make argument instead was their choice. They have failed to detail a single contested fact that was essential to a determination of the charging liens and the defenses.

Substantial competent undisputed evidence existed to support the trial court’s judgment that Carlson established the four elements of *Mones* and appellants’ defenses lacked merit. Appellants’ initial brief raises nothing to warrant a reversal.

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CERTIFICATE OF SERVICE

I hereby certify that the following persons were served via the Court's e-File system on this 27th day of November, 2023: Jonathan O'Boyle, 1286 W. Newport Center, Dr., Deerfield, Beach, FL 33442; Kenneth Woliner, 23086 Island View, #6, Boca Raton, FL 33433; and Warren R. Trazenfeld, Esq., 9100 S. Dadeland Blvd, Suite 1500, Miami, FL 33156.

By: /s/ Curtis Carlson

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated answer brief complies with the font requirements and the 13,000 words and 50-page limitations of Fla. R. App. P. 9.210(a)(2)(B).

By: /s/ Curtis Carlson