

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 19-01400

PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, WINSLOW, AND BANNISTER, JJ.

WILLIAM TAROLLI AND LAURIE TAROLLI,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

JERVIS B. WEBB COMPANY, DEFENDANT,

MCMAHON KUBLICK, P.C., APPELLANT.

MCMAHON KUBLICK, P.C., SYRACUSE (W. ROBERT TAYLOR OF COUNSEL), FOR
APPELLANT.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (JAMES W. CUNNINGHAM
OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Onondaga County
(Anthony J. Paris, J.), entered June 21, 2019. The order apportioned
5 percent of attorneys' fees to appellant McMahon Kublick, P.C.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: This appeal involves a dispute between law firms
over attorneys' fees arising from the legal services provided to
plaintiffs in a personal injury action. McMahon Kublick, P.C.
(McMahon) appeals from an order that, after a hearing, apportioned
McMahon 5 percent of the net contingent attorneys' fee, and
apportioned the remaining 95 percent to Smith, Sovik, Kendrick &
Sugnet, P.C. (Smith Sovik), the law firm that represented plaintiffs
when the personal injury action was settled.

We reject McMahon's contention that Supreme Court abused its
discretion in fashioning the award. In fixing the percentages to be
awarded to McMahon and Smith Sovik, the court properly considered the
amount of time each firm spent on the case, the nature of the work
performed, the relative contributions of counsel and the quality of
the services rendered (*see Cellino & Barnes, P.C. v York* [appeal No.
2], 170 AD3d 1658, 1658-1659 [4th Dept 2019]; *McCarthy v Roberts
Roofing & Siding Co., Inc.*, 45 AD3d 1375, 1375-1376 [4th Dept 2007];
see generally Lai Ling Cheng v Modansky Leasing Co., 73 NY2d 454, 458
[1989]). Contrary to McMahon's further contention, we conclude that
Smith Sovik's argument that McMahon was discharged for cause and
therefore not entitled to any fees was not frivolous, and thus McMahon
is not entitled to attorneys' fees and costs for having to litigate

that issue (see 22 NYCRR 130-1.1 [a], [c]).

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court