

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1861

FRANK CACIOPPO, SR., FRANK CACIOPPO, JR.,  
AND YVONNE CACIOPPO

VERSUS

BRENDA BRAUD AND BRAUD & BRAUD

Judgment Rendered: June 8, 2007.

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On Appeal from the  
21st Judicial District Court,  
In and for the Parish of Tangipahoa,  
State of Louisiana  
Trial Court No. 2005-0004103

Honorable Zorraine M. Waguespack, Judge Presiding

\* \* \* \* \*

David Jefferson Dye  
New Orleans, LA

Attorney for Plaintiffs-Appellants,  
Frank Cacioppo, Sr., Frank Cacioppo, Jr.,  
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Brenda Braud and Braud & Braud

\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE, AND MCDONALD, JJ.

**CARTER, C. J.**

This appeal concerns a dispute over the percentage of legal fees due pursuant to a contingency fee contract between plaintiffs, Frank Cacioppo, Sr., Frank Cacioppo, Jr., and Yvonne Cacioppo (the Cacioppo), and their prior attorneys, Brenda Braud and Braud & Braud (the Braud defendants). After cross-motions for summary judgment were filed regarding the interpretation of the attorney fees provision in the contingency fee contract, the trial court granted summary judgment in favor of the Braud defendants, denied the Cacioppo's motion for summary judgment, and dismissed the Cacioppo's claims. The Cacioppo appeal.

The pertinent disputed language in the contingency fee contract<sup>1</sup> provides as follows:

1. ATTORNEY'S FEES. As compensation for legal services, I agree to pay my Attorney as follows:

Contingency          X   Yes                                       No

(Attorney shall receive the following percentage of the amount recovered before the deduction of costs and expenses as set forth in Section 2 herein)

  40   % if settled without suit  
  40   % in the event suit is filed  
  50   % in the event a trial actually starts  
  50   % **in the event an appeal is filed by any party**

It is understood and agreed that this employment is upon a contingency fee basis, and if no recovery is made, I will not be indebted to my Attorney for any sum whatsoever as Attorney's Fees. (However, I agree to pay all costs and expenses as set forth in Section 2 herein, regardless of whether there is any recovery in this matter. In the event of recovery, costs and expenses shall be paid out of my share of the recovery.) (Emphasis added.)

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<sup>1</sup> While the record reveals two different versions of the contingency fee contract signed by the parties on two different dates, the disputed portion regarding attorney's fees is identical in each version.

The Cacioppos argue that the Braud defendants breached the contract when they received legal fees in the amount of 50% rather than 40% of the recovery (by settlement) in the underlying case that never went to trial.<sup>2</sup> The Braud defendants contend that they are entitled to 50% of the recovery in the settlement of the underlying case because two separate, successful appeals were taken in the underlying case, thereby preserving the Cacioppos' claims that were ultimately settled without the necessity of a trial on the merits.<sup>3</sup> The Cacioppos strenuously urge this court to find ambiguity in the contract language, "in the event an appeal is filed by any party." They contend that the progression of the fee percentages outlined in the contract supports their interpretation that the language means an appeal filed by any party *after* trial. For the following reasons, we do not agree.

We review summary judgments *de novo* under the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Hill v. Shelter Mutual Ins. Co.**, 05-1783 (La. 7/10/06), 935 So.2d 691, 693. The interpretation of a contract provision is typically a matter of law that may be decided on motion for summary judgment. **Sanders v. Ashland Oil, Inc.**, 96-1751 (La. App. 1 Cir. 6/20/97), 696 So.2d

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<sup>2</sup> The Cacioppos hired the Braud defendants to bring a legal malpractice action against the Cacioppos' former attorneys (filed in the 19th Judicial District Court) and new claims against medical defendants (filed in the 24th Judicial District Court) arising from their original 1988 action that was instituted after a 1983 automobile accident and subsequent medical treatment.

<sup>3</sup> There were actually three appeals involved with the underlying case, but one of the appeals was filed in the 5th Circuit Court of Appeal in connection with the claims against the medical defendants. See **Cacioppo v. Alton Ochsner Foundation Hosp.**, 01-808 (La. App. 5 Cir. 12/26/01), 806 So.2d 803, writ denied, 02-0262 (La. 3/28/02), 812 So.2d 634. The two appeals pertinent to this discussion were filed in this court in connection with the legal malpractice action against the Cacioppos' former attorneys. See **Cacioppo v. Meredith**, 01-2834 (La. App. 1 Cir. 11/8/02), 836 So.2d 702 (unpublished), writ denied, 02-2975 (La. 2/14/03), 836 So.2d 113; **Cacioppo v. Meredith**, 02-0109 (La. App. 1 Cir. 11/8/02), 836 So.2d 702 (unpublished), writs denied, 02-3133, 02-2988 (La. 2/14/03), 836 So.2d 113. The legal malpractice action is the subject of the contingency fee contract at issue in this appeal.

1031, 1036, writ denied, 97-1911 (La. 10/31/97), 703 So.2d 29. A contingency fee contract is governed by the law of obligations and should be construed using the general rules of interpretation of contracts as set forth in the Civil Code. See **Wampold v. E. Eric Guirard & Assoc.**, 442 F.3d 269, 271 (5 Cir. (La.) 3/1/06); **Classic Imports, Inc. v. Singleton**, 99-2272 (La. App. 4 Cir. 6/14/00), 765 So.2d 455, 459.

Generally, a contract between the parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent of the parties. See LSA-C.C. art. 2045; **Sanders**, 696 So.2d at 1036. If the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent and the agreement must be enforced as written. See LSA-C.C. art. 2046. Further, the words of a contract must be given their generally prevailing meaning, and technical terms must be given their technical meaning. See LSA-C.C. art. 2047. Thus, the meaning and intent of the parties in a written contract must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence unless the contract language is found to be ambiguous. **Sanders**, 696 So.2d at 1036. Whether a contract is ambiguous is a question of law, and appellate review of questions of law is simply whether the trial court was legally correct. **Id.** at 1037.

At the heart of this controversy is the correct contingency fee percentage agreed upon by the parties in the event an appeal was filed by any party in the underlying case, and whether the Cacioppo's compromised the dispute over the fee percentage when they accepted, endorsed and negotiated the disbursement of 50% of the settlement of the underlying case

as well as an additional \$2,500.00 check from the Braud defendants. However, we do not reach the issue of compromise because we find that the contract language is clear and unambiguous as to the percentage due when an appeal was filed.<sup>4</sup> After careful review of the contract and the record, we find that the contract language is not subject to more than one interpretation.

Appeals were undeniably filed in the underlying case, and the Cacioppos were well aware of the appeals because they were the party that appealed in both instances and they benefited from the appeals since this court reversed and/or modified two summary judgments that had been rendered against them. The contract does not limit the 50% attorney's fee to situations where an appeal is taken after a trial on the merits. It merely provides for 50% "in the event an appeal is filed by any party." Louisiana Code of Civil Procedure Article 2082 defines an "appeal" as the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside or reversed by an appellate court. Because appeals were clearly filed in the underlying case, the trial court had a duty to enforce the clear language of the contingency fee contract providing for a 50% attorney's fee without considering the Cacioppos' intent or understanding of the contractual provision "in the event an appeal is filed by any party."

There are no material issues of fact regarding the 50% attorney's fee provision in the contingency fee contract, and there are no material issues of fact regarding the filing of two appeals in the underlying case. Thus, the

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<sup>4</sup> We also do not reach the issue raised by the Cacioppos regarding the late-filed supporting affidavits by two additional attorneys who shared in the Braud defendants' fees, because the only relevant evidence for this decision is the actual contract language in dispute.

trial court properly granted the Braud defendants' motion for summary judgment.

In view of our findings, we affirm the judgment of the trial court and assess all costs associated with this appeal to the plaintiffs-appellants, Frank Cacioppo, Sr., Frank Cacioppo, Jr., and Yvonne Cacioppo.

**AFFIRMED.**