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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LEGAL SERVICE BUREAU, INC.,	
Plaintiff and Appellant,	G041804
v.	(Super. Ct. No. 30-2008-00101004)
ALI MOSTAFAVI,	O P I N I O N
Defendant and Appellant.	

Appeals from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Reversed and remanded with directions.

Amezcua-Moll and Associates and Rosemary Amezcua-Moll for Plaintiff and Appellant.

Law Offices of Murphy & Eftekhari and Thomas Murphy for Defendant and Appellant.

Legal Service Bureau, Inc. (Legal Service), appeals from a judgment awarding it only a portion of the fees it claims to be owed for collection services rendered to Ali Mostafavi, D.C., on an hourly basis, and awarding it none of the prejudgment interest or penalties it had claimed pursuant to the parties' contract. However, in urging reversal of that judgment, Legal Service largely ignores the evidentiary record, the argument made by Mostafavi in defense of its claim, and the court's own comments. Instead, Legal Service simply asserts the court must have erred as a matter of law in failing to enforce the terms of the contract.

The assertion is unfounded, and we reject it. We presume the court's judgment is correct, and in the absence of a formal statement of decision, we will infer the court made whatever proper findings were necessary to support it. Here, Legal Service sought to recover fees of $155 per hour allegedly incurred for work on numerous collection matters, while Mostafavi's primary defense was that the number of hours Legal Service claimed was grossly inflated. The evidence was more than sufficient to support that defense, and we consequently presume it was for that reason the court reduced the fee award below the amount claimed. We will not presume, as Legal Service apparently expects, that the court discounted the hourly rate for the hours worked below the contract rate.

Legal Service also challenges the court's refusal to award it prejudgment interest and penalties pursuant to a specific provision in the parties' contract, while ignoring the court's explicit justification for doing so – i.e., that it viewed the provision as applicable to only late payments of contingency fees following the "settlement of each file," and not to Legal Service's claim for hourly fees owed on non-settled cases in the wake of the contract's termination. By failing to even acknowledge the point, Legal Service necessarily fails to demonstrate the court erred in making it.

Mostafavi cross appeals, contenting the court erred in awarding attorney fees against him.[1] While Mostafavi makes several arguments, we find only one is necessary. The reference to attorney fees is contained in the same paragraph of the contract which provides for prejudgment interest and penalties. And consistent with the trial court's analysis of that provision, we conclude it applies only to the situation where Mostafavi fails to timely pay a "Billing Statement" sent in the wake of a settled file. As that was not the claim asserted by Legal Service in this case, no fee award was appropriate.

The judgment is reversed, and the case is remanded to the trial court with instructions to strike the provision awarding attorney fees in favor of Legal Service, and to otherwise reenter the judgment as previously rendered.

FACTS

Mostafavi is a chiropractor, and much of his work is apparently compensated through the Workers' Compensation system. In June of 2005, he entered into a "three tiered contingency" agreement with Legal Service to represent him in connection with pursuing lien claims for chiropractic services before the Workers' Compensation Appeals Board (WCAB). As pertinent here, the agreement provides that Legal Service shall represent Mostafavi in administrative hearings before the WCAB, and provide "other related non-attorney services pertaining to the administration of medical lien claims." Out of pocket costs are to be borne by Mostafavi, and Legal Service is entitled to be paid for its services on a contingency basis, with the percentage of the contingent fee ranging from 25 percent to 50 percent, depending upon the extent of work done before the case is resolved.

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[1] In connection with the cross-appeal, Mostafavi moved to augment the record on appeal to include Legal Service's motion for fees, as well as his opposition to that motion. Legal Service then filed its own motion to augment, suggesting that if we granted Mostafavi's motion, we should also augment the record to include its reply brief on the issue. Both motions to augment are granted.

The agreement further provides in the section entitled "Billing Statements," that "Clients shall be provided with billing statements *after settlement of each file*. Said billing statement shall set forth the case name, amount settled and the LSB fee. Payment shall be due within 5 business days of Clients' receipt of the Billing Statement." (Italics added.) The next section, entitled "Late Payments," commences with the phrase "[i]n the event Legal Service Bureau is not paid within 10 business days after the Billing Statement is mailed to client via First Class US Mail . . . ." That section goes on to provide for a 10 percent penalty, interest at a rate of 20 percent, a lien placed on any settlement after 30 days, and, "if court proceedings are required to collect any outstanding amounts due, and in addition to attorney's fees, liquidated damages of $500.00 shall be due as a cost of collection, in addition to any further amounts owing."

The agreement also specifies Legal Service's rights in the event either party elects to terminate the arrangement. Specifically, it provides that Legal Service has the right to "complete its efforts to secure payment on any files of which Legal Service Bureau had previously commenced representation. Such efforts shall be pursuant to the terms of compensation set forth in paragraph B of this agreement [referring to the contingency fee schedule] and all other terms of this agreement shall apply to the services rendered after termination of the contractual relationship. Client agrees, at all times, not to engage in any conduct which may interfere or disrupt the settlement efforts of Legal Service Bureau. In the event Legal Service Bureau is not prevented,[2] for any reason, from completing its efforts to secure payment on any file, Legal Service Bureau is entitled to quantum meruit payment of actual work performed on the incomplete files at a rate of $155 per hour."

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2 The copy of the parties' agreement contained in our record is not entirely a clean one, but the word "not," perhaps circled or contained within parentheses, clearly appears in this provision, and frankly renders it nonsensical. Neither party mentions the point, and Legal Service's entitlement to the quantum meruit payment for uncompleted files seems to be undisputed. Consequently, we will assume the inclusion of the word "not" is simply a typographical error.

Other than the reference to interest, penalties, liquidated damages and attorney fees contained in the section governing "Late Payments" of "Billing Statements," the agreement includes no provision purporting to govern the rights of the parties in the event of a dispute.

Ultimately, Mostafavi became dissatisfied, and elected to terminate his relationship with Legal Service. At his request, Legal Service returned certain files to him in July of 2006. In September of 2006, Legal Service sent Mostafavi a demand for payment of "outstanding invoices" totaling $28,215.25. This total involved services rendered on 19 separate files, and included two cases identified as having been billed on a contingency basis, and 17 cases billed at the hourly "quantum meruit" rate of $155 per hour.

Mostafavi declined to pay the amount demanded, and Legal Service filed its complaint for breach of contract on January 4, 2008. The case was tried to the court, sitting without a jury. In their "Joint Statement of the Case" prepared in anticipation of trial, the parties described the dispute as follows: "Plaintiff is an Administrative Hearing Representative. Defendant retained the services of Plaintiff to recover payments of outstanding medical liens. On or about July 2006, Defendant terminated the services of Plaintiff. Plaintiff is seeking damages under the terms of the contract. [¶] Defendant disputes Plaintiff's claim in that the hours put forth by Plaintiff for services rendered are overinflated [inflated yes, but not *over* inflated] and exorbitant for the job performed."

The bulk of the evidence at trial pertained to Mostafavi's contention that the hours claimed in Legal Service's "quantum meruit" billings were inflated. According to Legal Service's invoices, the services in question were rendered over a period stemming from July of 2005 through July of 2006, and Daniel Escamilla, Legal Service's principal, acknowledged that no contemporaneous time records had been kept. Instead, he described his "hindsight assessment" of the work that went into each case, and claimed that his secretary had "a major role in preparing" the bills based upon her review

of "notes from the file." On cross-examination, however, Escamilla admitted that the files in question had already been returned to Mostafavi at the time the "quantum meruit" bills were generated, and thus were not available for review. He then claimed the billings were based upon "computer notes" and his "independent recollection."

Mostafavi relied upon the testimony of Krishna Gulaya, an experienced Workers' Compensation attorney, for the specific purpose of demonstrating the amount of time claimed by Legal Service in its quantum meruit billings had been inflated. When Gulaya was first called to the stand, the court noted it would likely not be receptive to a claim the rates called for in the contract were unreasonable: "My thought is that even if there are regular and customary charges in the industry regarding this, certainly you are allowed to contract maybe outside that." Mostafavi's attorney agreed, explaining "our defense is that these are inflated billings. We didn't object to the contract. [Mostafavi] signed the contract." The court responded "Okay. Well, then let's hear about the inflated billings, then. I'm willing to hear that."

Gulaya then testified about her experience handling Workers' Compensation lien cases, and why she had concluded the amounts of time claimed by Legal Service in its invoices were grossly inflated.

At the conclusion of the trial, the court informed the parties it would find in favor of Legal Service, but not award the full amount of fees requested, or award any interest or penalties. The court first made clear it was persuaded by Mostafavi's contention that Legal Service's hourly bills had been inflated, telling his counsel "I agree with you. I think probably, reasonably the files could have been done in maybe three hours, three and a half hours. I think that will be the reasonable value of the services for each of the files. I completely agree."

The court went on to explain "[T]he reason I'm not awarding the full amount requested is because the job wasn't fully done. We're talking about the claims [that] weren't resolved. The claims were beginning; most of them are still pending at this

point in time. So I'm going to have to award money for the back – for what was done. And it may be that Dr. Ali may not get a recovery on some of those cases. So I have to take that into consideration too."[3] The court then said "given all of that, . . . as to the $28,215.25 that's requested in the total amount, I'm reducing that amount by the Gutierrez bill, the Oliveras bill and the Fuentes bill, which leaves $18,700 total remaining."[4] The court then concluded the "reasonable value" of the services which made up that $18,700 claim was only half, or $9,350, "based upon the testimony of Ms. Gulaya."

The court expressly rejected any award of contractual interest or penalties, because "I don't think paragraph F on page 3 . . . of the agreement is applicable when there has been a termination of the contract. I think it applies for late payments in relation to what has been collected or what would be collected."

The court's minute order, dated January 28, 2009, simply stated that it "finds judgment" in favor of Legal Service "in the amount of $9,350.00 plus attorney fees and costs." It then instructed counsel for Legal Service to prepare a judgment.

No party requested a formal statement of decision. Legal Service filed its notice of appeal on March 23, 2009, and expressly acknowledged therein that judgment was "not yet entered." Mostafavi filed his notice of cross-appeal on April 3, 2009, also expressly acknowledging that judgment was "[n]ot yet entered." The judgment was finally entered on August 3, 2009, and no further notices of appeal were thereafter filed.

I

The first issue we must consider is whether it is appropriate to simply dismiss both the appeal and cross-appeal, as both were filed prematurely, and apparently

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[3] It's not entirely clear what the court is referring to here. But presumably, it is explaining why Legal Service would not be entitled to recover a contingent fee on the files in question, and would instead be entitled to recover only for the work actually completed on the files.

[4] Neither party attempts to explain what distinguishes these three files from the remaining ones. As a consequence, any claim the court erred in doing so is waived.

intentionally so. Moreover, when the judgment was finally entered, some five months after the parties had filed their notices of appeal, no one filed a notice of appeal from it.

We start with the proposition that appeals filed prior to entry of judgment are premature, warranting dismissal, but this court has discretion to determine there is "good cause" to construe the notice as having been filed immediately after entry of judgment. (*In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1341, fn. 1; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1275, fn. 24.)

In this case, it is difficult to discern "good cause" for doing so. Both parties expressly admitted, in their notices of appeal, that judgment was "not yet entered." And yet apparently neither party felt it advisable to wait until judgment actually was entered to get the appellate wheels turning.

Instead, Legal Service filed its notice of appeal, in which it acknowledged no judgment had been entered, on March 23, 2009, at least a week before it filed its motion for attorney fees, and while it was apparently working on a proposed judgment. On April 3, 2009, Mostafavi filed his cross-appeal, also acknowledging no judgment had been entered. Then, three days after that, Mostafavi filed objections to the proposed judgment which had submitted by Legal Service.

Indeed, the register of actions in this case reflects the parties were rather vigorously pursuing their appellate rights throughout April of 2009, while simultaneously litigating both the attorney fee issue and the content of the judgment in the trial court. There is no indication any party was laboring under a mistaken apprehension about where things stood.

On the other hand, there is also no indication either party was trying to get away with anything. Our clerks' notes reflect that counsel for Legal Service was asked about the existence of a judgment in April of 2009, and she responded by telling the clerk she would either obtain the judgment or explain why she could not as part of her civil case information statement, to be filed within a week. And in fact, when counsel filed

that statement, she frankly revealed that no judgment had yet been entered, although she was working on obtaining one. At that point, it would have been appropriate for the appeal to be dismissed, as the non-existence of the judgment had been confirmed. And had we had done that, it is likely both parties would have understood it was incumbent upon them to reassert their appellate rights after the judgment was actually entered.

But we did nothing, and thus probably gave the parties the impression it was acceptable to continue with the appellate process while everyone waited for a judgment from the trial court. Indeed, when the judgment was finally entered, in August of 2009, Legal Service promptly provided us with a copy, and we accepted it for inclusion in the appellate record. However, no one actually filed a separate appeal from that judgment, and if we now dismissed the premature appeals, it would be far too late to do so. Both parties would lose their appellate rights.

Because we conclude our own inaction contributed to the parties' apparent belief they could go ahead and pursue their appeals from the judgment while waiting for it to be entered – and we acknowledge that had we acted promptly to dismiss their premature notices of appeal when the situation became clear, they would likely have re-filed the appeals in a timely manner once judgment was entered – we conclude there is good cause to construe those original notices as having been filed right after the judgment was entered. But just barely.

II

Legal Service first argues the court erred by implicitly concluding it was entitled to be compensated for its services at a rate lower than the $155 per hour "quantum meruit" rate specified in the contract, and on that basis awarding it less than the full amount it was entitled for services rendered on Mostafavi's lien cases. In making this argument, Legal Service focuses on a carefully selected portion of the court's oral comments, and asserts that its reference to the "reasonable value" of Legal Service's

work necessarily implies it engaged in a subjective assessment of the value of Legal Service's time as the basis for the decision.

We find the contention unpersuasive. It is well settled that in the absence of a formal statement of decision, we will presume the judgment is correct, and indulge all inferences in support of it. "Under the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision. Securing a statement of decision is the first step in avoiding the doctrine of implied findings, but is not always enough: The appellant also must bring ambiguities and omissions in the factual findings of the statement of decision to the trial court's attention. If the appellant fails to do so, the reviewing court will infer the trial court made every implied factual finding necessary to uphold its decision, even on issues not addressed in the statement of decision. The question then becomes whether substantial evidence supports the implied factual findings." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48.)

Moreover, as explained by this court in *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1451, we will also presume the court employed the correct legal analysis, and will not allow the parties to rely upon the court's oral statements as a basis for suggesting otherwise. "Because we review the correctness of the order, and not the court's reasons, *we will not consider the court's oral comments or use them to undermine the order ultimately entered.* (Cf. *Selfridge v. Carnation Co.* (1962) 200 Cal.App.2d 245, 249 ['oral opinions or statements of the court may not be considered to reverse or impeach the final decision of the court which is conclusively merged in its findings and judgment']; *Birch v. Mahaney* (1955) 137 Cal.App.2d 584, 588 ['remarks made by a trial judge during a trial or argument, or even an opinion filed by him, cannot be used to impeach a formal decision, order or judgment later made or entered'].) Here, where the trial court was not required to prepare a statement of decision or explain its reasons . . . , it is especially important to refrain from using the court's oral comments as a basis for

reversal. In that situation, reviewing the trial court's oral comments would in effect require the trial court either to prepare a statement of decision where none is required or to say nothing during argument to avoid creating grounds for impeaching the final order. We decline to place the trial courts in such an untenable position." (Italics added.)

In this case, the court issued no statement of decision explaining its ruling, and its judgment says nothing about reducing the hourly rate for the work performed by Legal Service. Under these circumstances, we must presume the court awarded Legal Service a reduced amount of fees for a legally proper reason – i.e., because it concluded the hours claimed by Legal Service were inflated and in excess of a reasonable amount of time for the services described – and not because it chose to ignore the hourly rate which *both sides agreed* was enforceable in this case. If Legal Service actually believed the court's ruling reflected a decision to award it a lower hourly rate than that called for in its contract, then it was incumbent upon Legal Service to request a statement of decision to clarify that point. But in the absence of such a statement, and with nothing in the judgment to suggest the court did that, we will not presume it.

And of course, there was an abundance of evidence to support the defense actually asserted by Mostafavi in this case – that the *amounts of time* claimed in Legal Service's bills had been inflated, and thus that it was not entitled to the entire fee amount it demanded. Legal Service's principal, Escamilla, admitted that no time records had been kept at the time the claimed services were rendered, and that the bills were consequently created based upon "hindsight" – and without the actual case files – months (and in some cases more than a year) after those services had been performed. Mostafavi's expert witness, an experienced Workers' Compensation attorney, opined that the amounts of time claimed for particular tasks were grossly in excess of what those tasks should have required, and that the bills were unreasonably high for the services described. In the face of such evidence, the court was certainly not obligated to believe Escamilla's conclusory assertion he actually worked all the hours reflected in Legal

Service's billings. Nor was the court obligated to award Legal Service compensation for time which it concluded was not reasonably expended on a case.

Finally, we note that even if we could rely upon the court's oral statements as a basis for reversing its judgment, the argument made by Legal Service in this case borders on the frivolous. The record demonstrates that (1) Mostafavi's only defense was that Legal Service inflated the time estimates included its billings; (2) he expressly eschewed any claim that the $155 hourly rate was unenforceable; (3) the court otherwise explicitly equated the concept of the "reasonable value" of Legal Service's work with the *amount of time* spent on each file;[5] and (4) the court specifically stated that its decision to award a reduced amount was based largely on the testimony of Mostafavi's "inflated billings" expert witness.[6] In the face of all that, it is unreasonable to suggest the court must have decided, sub silentio, to compensate Legal Service for all the hours it claimed to have worked on Mostafavi's cases, albeit at a reduced hourly rate.

III

Legal Service next argues the court erred in refusing to award it either pre-judgment interest at the contractual rate of 20 percent per annum, a "penalty" of 10 percent, or a $500 "cost of collection," all of which are provided for in the "Late Payments" section of the parties' contract. We apply a de novo standard to this contention, because the "'interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence.' [Citations.]" (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 520,

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5 As previously noted, the court expressly agreed with the "inflated billings" contention made by Mostafavi's attorney in closing argument. And in doing so, the court equated the notion of the "reasonable value" of Legal Service's work with the amount of time devoted to each file: "I think probably, reasonably the files could have been done in maybe three hours, three and a half hours. I think *that will be the reasonable value of the services* for each of the files. I completely agree." (Italics added.)

6 The court expressly tied its determination that the "reasonable value of the services that were done" was significantly lower than what Legal Service requested to the "testimony of Ms. Gulaya."

quoting *Morgan v. City of Los Angeles Bd. of Pension Comrs.* (2000) 85 Cal.App.4th 836, 843.)

Unfortunately, in asserting its claim of error, Legal Service simply ignores the court's express justification for its decision – i.e., that it viewed this "Late Payment" section of the contract as applicable only to the situation where Mostafavi failed to make a timely payment of a contingent fee owed to Legal Service in the wake of its "settlement" of a file, and thus as having no application to its assertion of a claim for an hourly fee for services on *non-settled* cases following termination of the parties' contract.

Instead of addressing that point, Legal Service's opening brief asserts only that the 20 percent interest provision is not usurious (while acknowledging that Mostafavi made no such claim). But the fact the interest rate claimed is not usurious does not establish a legal entitlement to collect it. It is not until its cross-respondent's brief, opposing Mostafavi's challenge to the attorney fee award, that Legal Service even makes an attempt to engage on the merits of whether the contract's "Late Payment" section – which includes the provisions for interest and penalties, as well as the contract's only reference to attorney fees – is applicable here.

Even then, Legal Service makes no effort to explain how the provisions for 20 percent interest, and the 10 percent penalty, which would be triggered by Mostafavi's failure to promptly pay a "Billing Statement" generated after "settlement" of a lien file, might be applied here. The claim asserted by Legal Service in this case was for hourly billings generated in cases which Legal Service had not yet settled. By failing to address how the court erred in denying those particular claims, Legal Service has waived the claim on appeal. (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164 [conclusory assertion of error, unsupported by any analysis of the record or citation to authority, is treated as waived on appeal.].)

What Legal Service does instead is focus its analysis strictly on language farther down in the "Late Payments" section, which states that "if court proceedings are

required to collect any outstanding amounts due, and in addition to attorney's fees, liquidated damages of $500 shall be due as a cost of collection . . . ." Essentially, Legal Service construes that language in a vacuum, without attaching any significance to its specific inclusion in the "Late Payments" section, and argues that because "court proceedings" are more likely to follow in the wake of a contract's termination than during its tenure, this provision must consequently be construed as having been intended to apply to the former situation. That analysis is improper, as contractual terms must always be considered in context. "We consider the contract as a whole and construe the language in context, rather than interpret a provision in isolation." (*Westrec Marina Management, Inc. v. Arrowood Indemnity Co.* (2008) 163 Cal.App.4th 1387, 1392; *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 868 ["'"[L]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case . . . ."' [Citations.]".)

But even if we focused only on that phrase in isolation, as Legal Service would have us do, we are unpersuaded by its contention. According to Legal Service, it would be "somewhat of an 'absurdity'" to believe the parties did not intend their liquidated damages and attorney fee provision to apply to legal proceedings initiated after termination of the contract. The argument, however, is a red herring.

Nothing in the "Late Payments" section prohibits any of its provisions from being applied to claims asserted after the contract's termination date. Rather than specifying a time frame within which it can be invoked, the section specifies a particular *type of claim* to which it applies. And the claim to which the "Late Payments" section applies is one based upon the late payment of a "Billing Statement." A "Billing Statement," in turn, is defined as a bill "provided . . . *after settlement of each file*. Said billing statement shall set forth the case name, *the amount settled* and the LSB fee." (Italics added.) Plainly, the purpose of this section is to ensure that Legal Service is promptly paid the contingent amount owed to it when a lien case is resolved –

presumably a non-controversial percentage of the amount actually recovered on the lien – and the inclusion of significant penalties for late payments is designed to ensure prompt payment is made before the recovered funds are dissipated.[7]

Such considerations would not apply equally to a claim for hourly fees generated for services rendered on files prior to settlement. Determining the propriety of a fee claim based upon hourly billings is inherently more complicated, and almost always dependent upon an assessment of whether the time claimed, and the services rendered, were reasonable and necessary to the job. Given this difference between a contingent fee billing following resolution of a file, and an hourly fee billing, we do not view it as at all unreasonable for the parties to treat them differently in a contract for collection services.

Nor do we think that such a difference works a hardship on Legal Service. As we construe the contract, Legal Service retained the right, upon termination of the contract, to continue working on existing lien cases it had already received by Mostafavi on a contingency basis, until those cases were resolved. Had it done so with the cases at issue herein, it would have retained the ability to issue contingent fee "Billing Statements" for each, and to seek redress under the "Late Payments" section in the event Mostafavi did not comply with the payment deadlines set forth therein. But instead, Legal Service opted to relinquish the cases and seek payment for prior services rendered on an hourly fee basis. Having voluntarily exercised that choice, Legal Service cannot reasonably complain of its disadvantages.

Based upon the foregoing, we find no error in the court's determination that the interest and penalties set forth in the "Late Payments" section of the parties' agreement are not applicable to the hourly fee claim made by Legal Service in this case.

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[7] Whatever their intended purpose, we express no opinion about whether such late payment "penalty" or "liquidated damages" provisions would be enforceable as a matter of public policy.

IV

Mostafavi's cross-appeal asserts the court erred in making an award of attorney fees against him. Although he argues the court's decision was improper on several grounds, we need only address one. As Mostafavi points out, the only mention of attorney fees contained in the agreement – and it's a passing reference at that – is contained in the very same "Late Payments" section of the parties' contract which the court otherwise concluded was not applicable to this dispute.

And as we have already explained, we agree with the court's initial assessment of that section. It is applicable when Mostafavi fails to make a timely payment of a "Billing Statement" following the settlement of a lien file, but is not applicable to this "quantum meruit" hourly fee dispute. In the absence of such an applicable fee shifting provision, both parties must bear their own attorney fees. (*Trope v. Katz* (1995) 11 Cal.4th 274, 278 ["California follows what is commonly referred to as the American rule, which provides that each party to a lawsuit must ordinarily pay his own attorney fees."].) Consequently, the attorney fee award in favor of Legal Service cannot stand.

DISPOSITION

The judgment is reversed and the case is remanded to the trial court with instructions to strike the provision awarding attorney fees in favor of Legal Service and to

otherwise reenter the judgment as previously rendered. Mostafavi is to recover his costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.