

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 South Potomac St Centennial, CO 80112	DATE FILED: May 13, 2016 2:10 PM CASE NUMBER: 2015CV30286 <p style="text-align: center;">Court Use Only</p>
Plaintiff: DIANE P. HUNTER, v. Defendants: DENNIS A. LACERTE, an individual; and THE LAW FIRM OF DENNIS A. LACERTE.	
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	

This matter having come before the Court for trial, Plaintiff asserted claims against Defendant Lacerte and his law firm for professional negligence arising out of Defendants’ representation of her in a post-Decree *Crawford* Hearing in her dissolution of marriage action, Case No. 2008DR1546 in the Arapahoe County District Court. Defendants asserted a counterclaim for unpaid fees due on her account. The Court having considered the evidence and the arguments of counsel, finds, based upon a preponderance of the credible evidence, as follows:

I. FINDINGS OF FACT

a. Pre-Caufman Hearing Proceedings and Background

The Plaintiff, Diane Hunter, and her former husband, Robert Hunter, were married on June 18, 1982. In 2008 Ms. Hunter retained the Lacerte Defendants pursuant to a signed agreement for legal services¹ to represent her in a divorce

¹ As part of this agreement, Ms. Hunter agreed to pay for legal services. An outstanding balance remains unpaid.

proceeding against her now ex-husband, Robert Hunter.

Following a permanent orders hearing on September 8, 2009, the Court entered permanent orders dividing the parties' approximately \$1.5 million in marital property equally, and ordering Mr. Hunter to pay child support in the amount of \$677/month, as well as maintenance of \$2,500/month to Diane Hunter for 36 months. Despite Mr. Hunter's significantly reduced income, for purposes of the child support and maintenance determinations, the Court imputed income to him of \$180,000/year.

The Court also specifically retained jurisdiction under the Colorado Court of Appeals case *In re Marriage of Cauffman*, 829 P.2d 501 (Colo. App. 1992), to reexamine the issue of maintenance after three years because of an ascertainable future event, "namely the current economic recession - the outcome of which may significantly affect the amount and duration of maintenance award²."

Prior to the expiration of the 3 year maintenance period, Plaintiff hired Defendants to represent her in seeking a continuation of maintenance pursuant to *Cauffman*. Mr. Lacerte filed a motion on March 15, 2012 for a continuation of maintenance in accordance with *Cauffman*.

Prior to the *Cauffman* Hearing, Mr. Lacerte conferred with Ms. Hunter, either in-person or over the telephone, on eleven (11) separate occasions on issues, and conducted research on case law such as *In re Marriage of Olar*, 747 P.2d 676 (Colo. 1987), *Cauffman*, and *In re Marriage of Yates*, 148 P.3d 304 (Colo. App. 2006). In preparation for the *Cauffman* hearing, the Lacerte Defendants billed 38.8 hours, incurring legal fees in the amount of \$8,048.55, to prepare for, attend, and

² Although it's not explicitly set forth in the Decree of Dissolution of Marriage and Permanent Order, the DR Court's concern appears to have been the negative effect the economic recession, in which this country found itself in 2009, may have had upon the reasonableness of that Court's imputation of an annual income upon the husband of "approximately twice what he earned in 2007". This conclusion is supported by the Court of Appeals' notation that "the court reserved jurisdiction based on a perceived contingency, in particular, the economic downturn then affecting the legal industry." *Hunter v. Hunter*, 13CA0459, (Colo. App, December 5, 2013)(not published).

deal with appellate issues related to the *Caufman* Hearing. While such shows a reasonable amount of diligence in preparation, it is not dispositive of the question as to whether the Defendants' efforts fell below the applicable standard of care.

In anticipation of the *Caufman* hearing, the parties updated their 2009 Sworn Financial Affidavits, and filed a Joint Trial Management Certificate ("JTMC") which explained that the issue to be determined at the *Caufman* hearing was whether that Court should order continued maintenance and, if so, how much. Plaintiff, Ms. Hunter, was seeking \$2,200 per month in maintenance until her death or remarriage. Mr. Hunter's position was that no further maintenance be awarded. Defendant Lacerte mailed a copy of the JTMC to Ms. Hunter on February 1, 2013.

b. The *Caufman* Hearing

Following the February, 2013 *Caufman* hearing³, the Court⁴ denied the motion for a continuation of maintenance, finding that Ms. Hunter had failed to establish the threshold for an award of maintenance pursuant to C.R.S. § 14-10-114. It is that finding that forms the basis of this professional negligence action.

At the *Caufman* Hearing, the Court heard testimony regarding the parties' income, assets, debts, and expenses; including testimony from Ms. Hunter concerning her employment, income, assets, monthly expenses, the standard of living during the marriage, as well as her age and physical and emotional well-being, and testimony from Mr. Hunter regarding his ability to pay the requested \$2,200 in maintenance and the standard of living during the marriage. The Court also had the original Permanent Order, which included information concerning the duration of the marriage, and the parties' standard of living during the marriage.

At all relevant times, Ms. Hunter was employed as a Flight Attendant at United Airlines where she was earning \$4,328.74 per month, and had separate

³ At that same hearing the Court also considered and denied a contempt citation filed against Mr. Hunter.

⁴ Judge Jack Smith presided over the initial dissolution proceedings and Judge Michelle Amico presided over the *Caufman* hearing.

property valued at \$607,145.00, some of which was liquid and available to Ms. Hunter. The Court found that Ms. Hunter had bank accounts and cash on hand valued at \$9,063; life insurance policies with a cash surrender value; stocks, bonds, mutual funds, and other non-retirement accounts valued at \$111,567; pension, profit sharing and retirement funds valued at \$401,586; plus a defined benefit retirement plan through her employer.

Having recognized that *Caufman*-hearing jurisdiction was reserved for the purposes of addressing issues “based upon an ascertainable future event or events if the contingency can be resolved within a reasonable and specific period of time,⁵”—specifically any effect the economy may have upon the husband’s income—the Court turned to the first two prongs of the applicable test, C.R.S. § 14-10-114.

In order for the Court to enter an order of maintenance for either spouse the Court must find that the spouse seeking maintenance:

1. lacks sufficient property, including marital property apportioned to him or her, to provide for her reasonable needs; and
2. is unable to support herself through appropriate employment.

Based upon the evidence presented, the Court at the *Caufman* hearing found that Plaintiff’s long-term employment was not insignificant and that she had significant property, including marital property apportioned to her, which was valued at over a half a million dollars, a substantial portion of which was sufficiently liquid to be utilized to meet any shortfall to her⁶.

⁵ The Court disregarded the parties’ arguments concerning the propriety of the court retaining *Caufman* jurisdiction based upon the economic uncertainty of income from the legal profession. Because such was accepted by the parties and not appealed, this Court does so as well.

⁶ The Court noted that “by case law she’s not necessarily required to utilize [the separate property apportioned to her], but she’s got it and a lot of it and she’s able to support herself through appropriate employment.” The Court also noted that although she testified to a shortfall, there was “wiggle room” in her expenses.

c. The Appeal of the *Caufman* Order

Although not directly a part of Plaintiff's professional negligence claim, the Colorado Court of Appeals' order from Plaintiff's appeal of the *Caufman* Order is relevant and instructive.

Plaintiff appealed the order from the *Caufman* hearing, *Hunter v. Hunter*, 13CA0459, (Colo. App., December 5, 2013)(not published) contending that the court erred in denying her request for continued maintenance by misapplying the factors articulated in C.R.S. § 14-10-114(3)(version in effect until January 1, 2014), and contending that the *Caufman* Court failed to make the required relevant findings as to the amount and duration of maintenance under C.R.S. § 14-10-114(4)(version in effect until January 1, 2014).

In addressing the threshold determination the Court of Appeals noted the Court at the *Caufman* hearing finding "that, considering wife's more than half a million dollars worth of property and 27 year career as a flight attendant, wife had sufficient property to meet her reasonable needs and could support herself through her employment." The Court of Appeals also dismissed the Plaintiff's "contention that her \$1,300 monthly shortfall entitles her to maintenance as a matter of law." The Court of Appeals held "we discern no abuse of discretion in the court's determination that wife had sufficient assets to meet her reasonable needs. The amount of property a spouse has is a factor the court must consider under section 14-10-114(3)(a)(version in effect until January 1, 2014) when determining eligibility for maintenance." The Court of Appeals further found "moreover, the court did not deny maintenance solely because wife had significant property; it also considered the fact that the wife generated income as a flight attendant" and had done so for many years.

This legal malpractice action against Defendants followed.

II. Conclusions of Law and Application of Facts

a. Standard and Elements of Review

Argument was presented during trial as to whether this Court was to conduct a *de novo* review of the underlying *Caufman* Hearing. The analysis of a professional negligence claim is a three step process. The first element, the existence of duty, was uncontested. The second concerns whether defendant's representation fell below the applicable standard of care at the time of representation and under the circumstances then present. *See Stone v. Satriana*, 41 P.3d 705, 712 (Colo. 2002). If the first two elements are met then the Court steps into the shoes of the trier of fact, to determine whether such breach of that duty proximately caused damages by conducting a *de novo* review of the complete evidence and issues presented.

b. Did the Lacerte Defendants' Representation fall below the Applicable Standard of Care.

Breach of a legal duty of care for professionals in Colorado "is defined in terms of a standard of care ... For those practicing a profession involving specialized knowledge or skill, reasonable care requires the actor to possess 'a standard minimum of special knowledge and ability,' and to exercise reasonable care in a manner consistent with the knowledge and ability possessed by members of the profession in good standing." *United Blood Servs., a Div. of Blood Sys., Inc. v. Quintana*, 827 P.2d 509, 519 (Colo. 1992).

The standard of care for attorneys is not perfection or compliance with hindsight hypotheticals. Indeed, "[t]he services of experts are sought because of their special skill. They have a duty to exercise the ordinary skill and competence of members of their profession, and a failure to discharge that duty will subject them to liability for negligence. Those who hire such persons are not justified in expecting infallibility, but can expect only reasonable care and competence." *Metropolitan Gas Repair Service, Inc., v. Kulik*, 621 P.2d 313, 318 (Colo. 1980) (internal citations omitted).

As applied to professionals, the standard of care is not set by “best practices,” unerring judgment, producing a mistake-free product, or disagreement among like professionals. Nor is it set by the negative evidence that a professional possesses only marginal skill, or that the applicable standard was conclusively violated by evidence of a bad result. Rather, the focus in setting the standard of care is to determine if the professional had sufficient knowledge to ply his or her trade, and applied that skill to the issue at hand.

It is worth noting that this inquiry is neither purely objective, nor purely subjective. If simple disagreement between qualified professionals as to the appropriate approach, emphasis, or presentation of a case was sufficient to ground liability for negligence, that logic would dictate that nearly every attorney has committed malpractice in the eyes of another simply by virtue of a disagreement over case strategy. This cannot be reconciled as a basis for liability if there is more than one professionally reasonable and justifiable method for going about things.

Ms. Hunter contends that the Lacerte Defendants breached their duty of care in the following ways:

- a. Mr. Lacerte failed to prepare her for the *Caufman* Hearing;
- b. Mr. Lacerte made an unreasonable request of \$2,200 without giving her prior notice of that request;
- c. Mr. Lacerte failed to advise her to accept a \$500 offer of settlement at mediation;
- d. Mr. Lacerte failed to introduce the same kind of evidence presented at the Permanent Orders hearing to establish the threshold determination set forth in C.R.S. § 14-10-114(3);
- e. The Sworn Financial Affidavit included information regarding her expenses for her emancipated child; and
- f. Mr. Lacerte directed her to sign a blank Sworn Financial Affidavit.

The Court analyzes each of these theories of breach below.

a. Preparation for the *Caufman* Hearing

Ms. Hunter testified that she was unprepared for the *Caufman* Hearing. Specifically, she testified that Mr. Lacerte failed to explain to her the factors set forth in C.R.S. § 14-10-114, or the holdings of cases like *Caufman* and *In re the Marriage of Olar* 747 P.2d 676 (Colo. 1987).

The standard of care requires that the attorney be familiar with the case law and statutory factors in order to present the case to a court. It does not require him to explain all legal theories or provide copies of case law or statutes his client.

Here, Ms. Hunter had previously testified at length during the Permanent Orders hearing, and was, therefore, familiar with the process of testifying and being cross-examined by her ex-husband⁷. Further, as evidenced by Defendants' billing records, Mr. Lacerte discussed the upcoming *Caufman* Hearing and the continued maintenance request with Ms. Hunter, via telephone or in-person, at least eleven (11) times for a number of hours.

While perhaps in hindsight Plaintiff would have preferred to have had a greater understanding of the applicable law and the process, any failure to provide such did not fall below the applicable standard of care. The Court finds that, by a preponderance of the credible evidence, Mr. Lacerte's preparation of Ms. Hunter for the *Caufman* Hearing, while not what she in hindsight wanted, did not fall below the standard of care and, therefore, was not a breach of his professional duty to Ms. Hunter.

b. The \$2,200 Maintenance Request

Ms. Hunter testified that Mr. Lacerte did not tell her he was requesting \$2,200 in maintenance prior to the *Caufman* Hearing. Mr. Lacerte testified that Ms. Hunter came up with that number and was adamant about that request. He also testified that he had a good faith basis for that request based on Judge Smith's original award and the financial position of the parties in 2013. Further, Ms.

⁷ Mr. Hunter, a licensed attorney, appeared pro se.

Hunter does not dispute that she received a copy of the JTMC prior to the *Caufman* Hearing which included this figure.

It is common for an attorney to make a maintenance request to the Court for a figure that is greater than what the attorney hopes or expects to receive. Because courts, at the time of the *Caufman* Hearing, were afforded broad discretion in making a maintenance award, many attorneys practicing domestic relations law in Colorado and advocating at *Caufman* hearings made maintenance requests for an amount higher than they would reasonably expect to receive, anticipating that the Court would likely come up with a number somewhere between the parties' requests. As long as the request was reasonably supported by the evidence, such did not fall below the applicable standard of care. Here, Ms. Hunter's request was \$2,200 and Mr. Hunter's request was \$0. It was not unreasonable for Mr. Lacerte to make the \$2,200 request based on the maintenance history between the parties.

A preponderance of the credible evidence supports the finding that Mr. Lacerte did inform Ms. Hunter of the \$2,200 maintenance request prior to the *Caufman* Hearing and that the request was made in good faith and was reasonable in light of Judge Smith's prior award. The Court finds that making this request did not fall below the applicable standard of care.

c. The \$500 Offer

Ms. Hunter testified that at mediation Mr. Hunter offered to pay \$500 per month in maintenance for a short period of time. It is the client's choice to accept or not accept offers of settlement. There was little to no credible evidence that Mr. Lacerte failed to communicate this offer of settlement to Ms. Hunter or that she would have accepted the offer even if Mr. Lacerte encouraged her to do so.

The Court finds that, by a preponderance of the credible evidence, Mr. Lacerte's conduct concerning this alleged offer did not fall below the standard of care and, therefore, he did not breach his duty to Ms. Hunter in this manner.

d. Introduction of Evidence to Establish the Threshold

i. Income and Assets

Ms. Hunter asserts that Mr. Lacerte failed to introduce sufficient and available evidence to meet the threshold by not introducing evidence of the standard of living enjoyed by the Hunters during their marriage, to enable the Court to define and determine her reasonable needs; and that by failing to do so he prevented the court from getting past the threshold determination and considering the amount and duration of maintenance.

This Court looks to the evidence before the *Caufman*-hearing Court to determine if there was a failure to provide the Court with the evidence to reconsider, or whether the true dispute is a disagreement over the Court's analysis and application of the evidence and the Court's discretion. The former is the issue before this Court, while the latter was an issue before the Court of Appeals.

Plaintiff contends that Mr. Lacerte failed to present sufficient evidence to establish a threshold award of maintenance under C.R.S. § 14-10-114(3), and that he failed to present evidence to establish an appropriate amount and duration of maintenance under C.R.S. § 14-10-114(4).

Ms. Hunter testified at both the *Caufman* Hearing and at trial in this case that she was employed by United Airlines as a flight attendant and at the time of the *Caufman* Hearing was earning approximately \$4,328.74 per month. Ms. Hunter was earning approximately \$700 more per month, gross, than she was in 2009 when Judge Smith entered his original maintenance award. Ms. Hunter presented no additional or different evidence in this instant case to suggest that her income in 2013 was any different than the number Judge Amico considered.

An examination of Plaintiff's 2009 and her 2013 Sworn Financial Affidavits reveals that her assets grew significantly in those four years either by virtue of the Permanent Order or Ms. Hunter's contributions. There was no evidence that any assets were left off either the 2009 or 2013 Sworn Financial Affidavit, that assets were included on either Affidavit that she did not actually own, or that the assets'

valuations were wrong in either year. Whether the judge at the *Caufman* hearing applied the proper standard in relying upon the 2013 Sworn Financial Affidavit or should have looked exclusively at the parties' situation in 2009 is not the issue before this Court; that was an issue that, if appropriate, would have been and perhaps may have been raised upon the appeal.

At the *Caufman* hearing the judge had Ms. Hunter's 2013 Sworn Financial Affidavit, which listed each of these assets and each asset's valuation as above. The credible evidence before this court does not support a finding that the Court lacked evidence of the parties' financial positions and standards of living both in 2009 and 2013.

ii. Reasonable Needs

Plaintiff contends that pursuant to C.R.S. § 14-10-114(3)(a) and *In re Marriage of Olar, Id.* at 687, at a *Caufman* hearing a party's "reasonable needs" are to be determined by the party's standard of living during the marriage, and that at her *Caufman* hearing evidence was not presented regarding her standard of living during the marriage, including dinners at expensive restaurants, luxury vacations, a large home, and expensive vehicles. The issue of whether such is a correct statement of the law is not the issue before this Court in this professional negligence case⁸. The issue is whether, even in light of any uncertainty about the applicable legal standard, was there sufficient evidence before the *Caufman*-hearing Court to support the Plaintiff's position; which, based upon the amount of the maintenance request, was that continued maintenance of \$2200 a month was supported by the parties' pre-divorce "reasonable needs." Indeed, *Olar* does not state that a party's "reasonable needs" are the standard of living of the parties during the marriage.

The *Olar* decision did recognize that a party's reasonable needs are more than "the minimum resources to sustain human life", but are dependent upon the facts and circumstances of the marriage. *Id.* at 681. The *Olar* Court noted that

⁸ Any dispute over whether the *Caufman* Court applied the correct legal standard was an issue to have been raised in the appeal.

“one of the remedies available to a working spouse, where no marital property is accumulated, is an award of maintenance if a ‘need is demonstrated.’” *Id.* at 681. The *Olar* Court also recognized that “the determination of what constitutes ‘appropriate employment’ ... requires that the party’s economic circumstances and reasonable expectations established during the marriage be considered.” *Id.* at 681.

This, of course, begs the question of whether “reasonable needs” in the context of a *Caufman* hearing are to be determined based upon the circumstances enjoyed by the parties during their marriage or those in which they find themselves at the time of the hearing. A close reading of the *Caufman* decision reveals that while the standard a court is to apply is that set forth in C.R.S. § 14-10-114, at the *Caufman* hearing the court’s analysis is to focus upon what effect, if any, the issue which formed the basis for the reservation of jurisdiction at Permanent Orders may have had upon the court’s decision to reserve jurisdiction concerning maintenance. Here, that issue was the effect the economic recession at the time of permanent orders in 2008 – 2009 had upon both parties’ income and reasonable needs. Here, it appears that the judge at the *Caufman* hearing applied the facts as she understood them to her determination of the parties’ “reasonable needs” at that time. Any effect the 2008 – 2009 recession had or was continuing to have upon those “reasonable needs,” was not factored in because the trial judge was not attempting to put herself into the mind of the judge who presided at Permanent Orders. Although this Court does not disagree with this procedure, whether such is proper is not an issue before this Court; it would have been an issue before the Court of Appeals in the underlying domestic relations proceedings.

In any event, evidence of the parties’ standard of living during the marriage was before the court at the *Caufman* hearing, including the parties’ original and updated financial affidavits, the parties’ age as well as their physical and emotional well-being; that Mr. Hunter had historically earned upwards of \$350,000 during the marriage; that Ms. Hunter was able to take a decade off of work to raise their children without the need of a second income; and that the parties owned expensive cars and lived in an \$800,000 home. The judge at the *Caufman* hearing, in her discretion, found that Ms. Hunter could meet her reasonable needs at the time of the hearing through her employment and/or separate property without a maintenance award. The evidence which Ms. Hunter contends the Defendants

should have introduced or perhaps emphasized in argument was in the record before the *Caufman-hearing* court. While the presentation cannot be said to be one which would have won awards, such is not, based upon the legal standards set forth above, the basis upon which liability is to be found in this matter.

The Court finds based upon the legal factors set forth above, that, based on a preponderance of the credible evidence, Mr. Lacerte's presentation of the evidence to try to establish the factors set forth in C.R.S. § 14-10-114 did not fall below the standard of care and, therefore, he did not breach his duty to Ms. Hunter in this manner.

a. Maclain's Expenses

Plaintiff contends that Mr. Lacerte should not have included expenses on her Sworn Financial Affidavit for Maclain, Mr. and Ms. Hunter's emancipated son. The judge at the *Caufman* hearing noted that, although Ms. Hunter was under the circumstances presented to be commended for helping her son, such expenses were not to be considered by the Court in its initial analysis. It does not appear that such played any part in the Court's analysis.

The Court finds that, by a preponderance of the credible evidence, even though such might not have been the most effective manner in which to present such evidence, it did not fall below the standard of care to include Maclain's expenses on the Sworn Financial Affidavit. Therefore, the Court finds that Mr. Lacerte did not breach his duty to Ms. Hunter in this manner.

b. The Sworn Financial Affidavit

Ms. Hunter testified that Mr. Lacerte's legal assistant called her the day after she met with Mr. Lacerte and instructed her to come back and sign her Sworn Financial Affidavit. She testified that she drove back to the office and signed a blank Sworn Financial Affidavit. Although the Court finds that a preponderance of the credible evidence supports a finding that the Affidavit was not blank, the Court notes that Ms. Hunter presented no evidence at the trial in this matter that her income, assets, and expenses in January 2013 were *not* what she stated they were

in her updated Sworn Financial Affidavit or at the *Caufman* hearing. Even if the Sworn Financial Affidavit was blank as she contends, there is no evidence that its contents were false and that signing such a blank Affidavit damaged Ms. Hunter.

c. Causation and Damages

The statute regarding maintenance, as it was framed at the time of the *Caufman* hearing, afforded the domestic relations court sole discretion in making a maintenance award. Colo. Rev. Stat. § 14-10-114 (3) (2012); see also *Todd v. Todd*, 291 P.2d 386, 387 (Colo. 1955) (“Division of property, property settlements, and the award of permanent alimony are within the sound discretion of the trial court”). In order to prevail, Ms. Hunter had the burden of proving by a preponderance of the evidence that the Defendants’ conduct not only fell below the standard of care but proximately caused the damages she is seeking to recover. Such is a “but for” test: but for Mr. Lacerte’s acts or omissions which fell below the standard of care, she would have received a maintenance award. *Brown v. Silvern*, 45 P.3d 749, 751 (Colo. App. 2001).

As stated above, the judge at the *Caufman* hearing, even if she had found the first threshold test had been met, had significant discretion to award or not to award maintenance, based on the weight of the credible evidence presented to her, as applied to the statutory threshold factors in C.R.S. § 14-10-114. Based upon the analysis set forth hereinabove this Court finds that the Plaintiff has not met her burden of establishing that but for Mr. Lacerte’s actions or inactions, even if such fell below the standard of care with regard to the first threshold test, this would have established her entitlement to continued maintenance payments.

Even if the Court were to determine that that Mr. Lacerte should have presented other evidence or made other arguments which would have met the initial threshold test, the Court finds that Ms. Hunter’s claimed damages are impermissibly speculative. Colorado law dictates that “there [is] no ‘tangible or quantifiable way’ to measure what a trial court might do on retrial of permanent orders in a dissolution case because of the discretion the court is authorized to exercise.” *Foxley v. Foxley*, 939 P.2d 455, 458-59 (Colo. App. 1996). Further, the mere possibility that a different view of the evidence could have changed another

Court's discretionary decision is not a palpable nor genuine basis in this action to prove damages. *McGovern v. Broadstreet*, 720 P.2d 589, 591 (Colo. App. 1985). The evidence would have to be sufficiently substantial that this Court would be able to find that the *Caufman*-hearing Court would have decided the case differently. Here, viewing the evidence and arguments made by plaintiff at this trial this Court cannot and does not find that it would have awarded continued maintenance, or that the Judge at the *Caufman* hearing would have decided differently.

The preponderance of the evidence does not support a finding that Mr. Lacerte breached his duty to her, nor, even if the Court considers the additional evidence and arguments presented on her behalf at this trial, does such support a finding that such proximately caused her damages.

The Court finds for the Defendants and against the Plaintiff on Plaintiff's claims, and such are DISMISED.

III. Breach of Contract (Counterclaim)

“[A] party attempting to recover on a claim for breach of contract must prove the following elements: (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff.” *Western Distributing Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992) (internal citations omitted).

a. Existence of a contract

The existence of the contract for payment in exchange for legal services is not in dispute. Mr. Hunter and Mr. Lacerte both testified that they entered into the Fee Agreement at issue.

b. Performance

In light of the Court's findings above, the Court finds that the Defendants carried their burden of proving that they provided the legal services at issue.

c. Breach

Ms. Hunter failed to pay the final bill sent to her on July 1, 2013. That bill contained a balance of \$4,276.63.

d. Interest

The fee agreement provided that if a client such as Ms. Hunter fails to pay attorney fees and expenses in accordance with the terms of this fee agreement and suit is initiated to collect such attorney fees and expenses owed the law firm, the client is obligated to pay to the firm an additional 15% of the outstanding attorney fees and expenses or \$500, whichever is greater, plus 12% interest on the unpaid balance from the due date of such sums. The Court finds this provision applicable. Fifteen percent of the outstanding balance owed is \$641.50. The total outstanding balance is therefore \$4,918.13, plus 12% interest, which began to accrue on July 1, 2013.

The Court finds for the Defendant and against the Plaintiff on Defendant's counter-claims against her, and judgement shall enter thereon. Defendant shall prepare a proposed order of judgment.

SO ORDERED THIS DAY May 13, 2016

BY THE COURT:



Charles M. Pratt
District Court Judge