

MEMORANDUM

TO: Lawyering Skills I students
FROM: Professor David E. Sorkin
DATE: January 15, 2004
RE: Costello v. King

Our firm, Parker & Phillips, represents Patrick Costello in connection with his lawsuit against Jesse King.

On August 25, 2003, we agreed to represent Costello with the agreement that he would pay an hourly fee of \$200 for our work on the case, to be billed and paid on a monthly basis. We filed the complaint on Costello's behalf in Cook County Circuit Court on September 12, 2003, alleging breach of contract, negligent misrepresentation, and negligent infliction of emotional distress. We are currently in the midst of exchanging interrogatories and other discovery materials, and the court has set August 16, 2004, as the tentative trial date. Thus far at least seven of the twenty lawyers in our firm have worked on Costello's case, although the majority of the work has been handled by Tom Parker. The firm has been very successful over the past year, and the demands of Costello's case have affected the ability of our lawyers to take care of other business. Since October we have been sending Costello bills reflecting the work performed to date, but he has yet to pay us anything. Costello phoned Parker in mid-November to say that he was experiencing cash flow problems, and Parker agreed to give Costello "a few more weeks" to pay.

Jesse King is an Elvis Presley tribute artist who performs a 1970-style act entitled "The King in Las Vegas" in nightclubs and at weddings and other events. In January 2002 Costello booked King to perform at a retirement party for his mother Marie, a huge Elvis fan, to be held in May. He paid half of King's \$800 fee as a deposit, with the remainder to be due on the date of the event. Between January and May, King lost nearly 120 pounds on the Atkins diet. When he showed up at the retirement party, Patrick Costello would not let him perform, saying that his mother would be offended by the "scrawny" Elvis. He refused to pay the remaining \$400, and threatened to sue King for ruining the retirement party.

Costello hired Lisa Vernon, a sole practitioner, to handle his dispute with King. She contacted King in late July 2002, at which time he said he would be willing to refund half of the \$400 deposit in order to settle the matter.

Marie Costello died on August 14, 2002. Patrick Costello considers her disappointment over the retirement party to be partially responsible for her death. He declined King's settlement offer, and said that anything under \$10,000 would be an insult to his mother's memory. Vernon told him that she was unwilling to represent him any longer. He had not yet paid her any legal fees, and she did not demand payment for the work that she had performed before withdrawing.

It now appears very likely that we will never be paid for our work on this case either. Costello was employed until last fall as a groundskeeper at Graceland Cemetery in Chicago, but he currently is unemployed and seems to be gambling on the prospect of winning a large damage award or settlement in his case against King. Frankly, King's settlement offer was a generous one; it is unlikely that Costello will recover anything if the case proceeds to trial, which is why we asked for payment based upon an hourly rate rather than a contingency basis in the first place. (Several other attorneys that Costello contacted in the days after Vernon resigned also declined to represent him.)

Last week we sent a letter to Costello, telling him that we were considering withdrawing from representing him. He left a voice mail message in response, saying that he preferred that we continue representing him, but would not object if we insisted upon withdrawing. (Presumably he would proceed pro se if he were unable to engage another attorney to represent him.) We also notified King, who is not represented by counsel, of our intent to withdraw. He threatened to ask the court to force us to continue the representation, claiming that he has had to deal with too many different people on this matter already, and just wants it to end. He said that the last thing he wants to do is to have to deal with Costello directly, and he is willing to refund the entire \$400 if necessary to bring this matter to an conclusion.

We plan to file a motion with the court seeking formal permission to withdraw from the case. Please write an objective memorandum evaluating the likelihood that we will be permitted to withdraw. Your research has unearthed the attached court rule and cases, some or all of which appear to be relevant to this matter. Cite only to materials that are included here, and submit a draft of your completed memorandum no later than February 2, 2004.

AUTHORITIES

1. Illinois Supreme Court Rule 135

2. *People ex rel. Burris v. Maraviglia*, 636 N.E.2d 717 (Ill. App. 1st Dist. 1993)7

3. *In re Rose Lee Ann L.*, 718 N.E.2d 623 (Ill. App. 1st Dist. 1999)17

4. *Synergy Assoc. v. Sun Biotechnologies, Inc.*, 350 F.3d 681 (7th Cir. 2003)23

5. *Haines v. Liggett Group, Inc.*, 814 F. Supp. 414 (D.N.J. 1993)29

6. *Kingdom v. Jackson*, 896 P.2d 101 (Wash. App. 1995)45