

**Fifth Circuit Court of Appeal**  
**State of Louisiana**

No. 25-CA-86

CHRISTIE COURET BURGESS

*versus*

LAUREN CRESCIONI AND PROGRESSIVE SECURITY INSURANCE COMPANY D/B/A  
PROGRESSIVE OR PROGRESSIVE AUTO

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 851-468, DIVISION "B"  
HONORABLE R. CHRISTOPHER COX, III, JUDGE PRESIDING

December 17, 2025

**STEPHEN J. WINDHORST**  
**JUDGE**

Panel composed of Judges Fredericka Homberg Wicker,  
Marc E. Johnson, and Stephen J. Windhorst

**VACATED AND REMANDED**

**SJW**  
**FHW**  
**MEJ**



COUNSEL FOR INTERVENOR/APPELLANT,  
JAVIER JALICE AND JALICE LAW FIRM LLC

Javier Jalice

COUNSEL FOR PLAINTIFF/APPELLEE,  
CHRISTIE COURET BURGESS

Brian J. Branch

Gary M. Langlois, Jr.

## **WINDHORST, J.**

Appellants/intervenors, Javier Jalice and Jalice Law Firm LLC, appeal the trial court's October 29, 2024 judgment apportioning attorney's fees and costs. For the reasons that follow, the judgment is vacated and the matter is remanded for further proceedings.

### **PROCEDURAL HISTORY**

On February 16, 2024, plaintiff filed this lawsuit, concerning a February 16, 2023 motor vehicle accident, wherein the petition alleged that defendant, Lauren Crescioni, rear-ended plaintiff/appellee Christie Burgess' vehicle, causing bodily injuries to Mrs. Burgess. Plaintiff retained the legal services of appellants. Appellants were subsequently discharged as legal counsel for plaintiff. Plaintiff subsequently retained attorney/appellee, Brian J. Branch, as counsel of record. Mr. Branch then settled the lawsuit on behalf of Mrs. Burgess.

Appellants filed a petition for intervention for legal fees in the instant lawsuit. Appellants later filed a motion to deposit settlement funds in the registry of the court and to determine, set and apportion attorneys' fees. No exhibits were attached to this motion. Mr. Branch, on behalf of plaintiff, filed a response to appellants' motion and attached three emails. The hearing was set on the trial court's docket for October 22, 2024.<sup>1</sup> At the beginning of the hearing, the trial court denied the motion to deposit settlement funds without argument or a hearing. The matter then proceeded on appellants' motion to determine, set and apportion attorneys' fees. Appellants did not offer, file, or introduce any exhibits into evidence.<sup>2</sup> Mr. Branch offered, filed

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<sup>1</sup> The hearing was originally set for October 9, 2024 but was continued and reset for October 22, 2024, upon agreement of the parties.

<sup>2</sup> During the hearing, the trial court referred to a "stack of documents" that appellants apparently provided to the trial court at a different hearing, but appellants did not move to have the "stack of documents" admitted into evidence.

and introduced one email,<sup>3</sup> which was admitted into evidence.<sup>4</sup> At the conclusion of the hearing, the trial court rendered judgment, signed October 29, 2024, which apportioned the attorneys' fees as follows: 35% to appellants and 65% to Branch.<sup>5</sup> The trial court also awarded appellants \$400 in costs incurred for filing the lawsuit.<sup>6</sup> This appeal followed.

## DISCUSSION

On appeal, appellants' contend the trial court committed reversible legal error (1) by awarding a contingency fee percentage of 33.33%, without the existence of a written contingency fee contract, signed by the client, being established or offered in evidence; (2) by failing to award a contingency fee of 40%, where the only written contingency fee contract admitted into evidence was the signed written legal services agreement between the plaintiff and the appellants providing for a 40% contingency fee; and (3) by awarding a substantial portion of the attorney contingency fee to Mr. Branch, where no evidence of the nature and extent of the legal services allegedly performed by Mr. Branch, was offered except that Mr. Branch briefly negotiated with and settled plaintiff's case with defendants.

Thus, the instant appeal requires this court to review the trial court's determination of whether appellants were discharged for cause or without cause, and the reasonableness and apportionment of attorneys' fees based on the two alleged competing contingency fee contracts. Contingency fee contracts to compensate attorneys have been consistently approved of in Louisiana and are subject to review and control by the courts. See O'Rourke v. Cairns, 95-3054 (La. 11/25/96), 683

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<sup>3</sup> The email was to appellants from plaintiff's husband, Erick Burgess, dated November 26, 2023. The email expressed concern as to appellants' handling of his case and his wife's case, which he thought should have been settled by that time, and whether they should retain another law firm to represent them.

<sup>4</sup> Branch also played a voicemail from plaintiff's adjuster for the trial court and provided the trial court with a "settlement statement," which included an amount for attorney's fees, but did not officially offer, file, or introduce those exhibits, nor were they admitted into evidence by the trial court.

<sup>5</sup> The trial court's judgment did not state the total of attorneys' fees awarded or a definitive amount of attorneys' fees owed to either party based on the percentage apportioned to each.

<sup>6</sup> During the hearing, the trial court referred to two receipts provided by appellants (*i.e.*, one for \$400 for filing the lawsuit and one for \$300 for filing the intervention). However, those receipts were not offered or admitted into evidence.

So.2d 697, 700; Saucier v. Hayes Dairy products, Inc., 373 So.2d 102 (La. 1978); Rule 1.5 of the Rules of Professional Conduct.

However, upon review, the record establishes that there is nothing for this court to review. The October 22, 2024 hearing transcript reveals that the trial court did not determine whether appellants were terminated with or without cause, nor did the trial court consider any factors in determining a reasonable amount of attorneys' fees to award as to either the appellants and/or appellee. See O'Rourke, supra; Rivet v. State, Dep't of Trans. and Development, 96-145 (La. 09/05/96), 680 So.2d 1154, 1161-1162 (setting forth the factors to be considered in determining the reasonableness of the attorney fees); Village Shopping Center Partnership v. Kimble Development, LLC, 19-238 (La. App. 5 Cir. 12/30/19), 287 So.3d 882, 886.

Moreover, although the parties referred to evidence during the hearing, neither party moved to admit into evidence the settlement agreement, the alleged competing written contingency fee contracts entered into with and signed by plaintiff, evidence concerning whether appellants' termination was with or without cause, or the amount of attorneys' fees alleged to be owed by plaintiff to appellants and/or appellee. Furthermore, the parties did not move to admit *any* evidence (1) concerning the nature of work allegedly performed on behalf of the plaintiff; or (2) to support an award of attorneys' fees in consideration of the factors set forth in Rivet, supra. Denoux v. Vessel Mgmt. Services, Inc., 07-2143 (La. 05/21/08), 983 So.2d 84, 88 (Exhibits not properly and officially admitted into evidence cannot be considered.). Consequently, we find there is no evidence properly and formally admitted into the record of this matter from which the trial court could make a ruling. Appellate courts are courts of record and may not review evidence that is not in the trial court's record and not properly considered by the trial court. Nor may we receive new evidence. Denoux, 983 So. 2d at 88, citing La. C.C.P. art. 2164. There is therefore nothing for this court to review.

We also point out that because the judgment did not state the total of attorneys' fees awarded, or a definitive amount of attorneys' fees owed to either party based on the percentage apportioned to each, the judgment's decretal language is deficient. La. C.C.P. art. 1918. It is therefore not a valid and appealable final judgment. However, since it is not yet reviewable on the merits, we need not set a date for correction of the decretal language and return of the judgment as provided in La. C.C.P. art. 1918.

Accordingly, without determining the merits of appellants' assignments of error, we vacate the trial court's October 29, 2024 judgment and remand the matter for further proceedings.

#### **DECREE**

For the reasons stated above, the trial court's judgment is vacated and the matter is remanded for further proceedings.

**VACATED AND REMANDED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



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CLERK OF COURT

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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED  
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY  
**DECEMBER 17, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES  
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-CA-86**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
R. CHRISTOPHER COX, III (DISTRICT JUDGE)  
BRIAN J. BRANCH (APPELLEE)                      GARY M. LANGLOIS, JR. (APPELLEE)

**MAILED**

JAVIER JALICE (APPELLANT)  
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