

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TILEUS CHARLES, as Personal)
Representative of the Estate of Gerta)
Charles, deceased,)
)
Appellant,)
)
v.)
)
KLEMICK AND GAMPEL, P.A.,)
)
Appellee.)
_____)

Case No. 2D07-4335

Opinion filed May 16, 2008.

Appeal from the Circuit
Court for Collier County;
Hugh D. Hayes, Judge.

James J. Zonas, Naples, for
Appellant.

Ross Bennett Gampel of Klemick
and Gampel, P.A., Miami, for
Appellee.

PER CURIAM.

We reverse the order awarding attorney's fees.

Klemick and Gampel's claim for fees was based on a contingency fee
agreement signed by a person who had no authority to sign the agreement and by a
minor, who lacks the capacity to enter into a contract, see Global Travel Marketing, Inc.

v. Shea, 908 So. 2d 392, 402 (Fla. 2005) (citing Lee v. Thompson 124 Fla. 494, 168 So. 848 (1936)); In re T.W., 551 So. 2d 1186, 1201 (Fla. 1989) (Overton, J., concurring in part, dissenting in part). Klemick and Gampel failed to file a claim for alternative relief, and therefore, they are foreclosed from an award of attorney's fees.

The record before this court does not contain a contingent fee agreement with attorney Zonas, but the transcript of the hearing contains testimony by Tileus Charles that he signed papers retaining Zonas. There appeared to be no dispute during oral argument that attorney Zonas had a contingent fee agreement with Charles.

Accordingly, we reverse the award of attorney's fees and remand for the trial court to determine the amount of fees to which attorney Zonas is entitled pursuant to a valid agreement.

Reversed and remanded for further proceedings.

WHATLEY and STRINGER, JJ., and DAKAN, STEPHEN L, ASSOCIATE SENIOR JUDGE, Concur.