

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

KATHY MELVIN	:	
	:	C.A. No. 04-04-0092
Plaintiff,	:	
	:	
vs.	:	
	:	
PLAYTEX APPAREL, INC.,	:	
a Delaware Corporation,	:	
	:	
Defendant.	:	

Upon plaintiff's application for attorney's fees

Date Submitted: October 26, 2004

Date Decided: October 26, 2004

Granted in part and denied in part.

Walt F. Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., 414 South State Street, Post Office Box 497, Dover, Delaware 19903-0497, Attorney for Plaintiff.

J.R. Julian, Esquire, 824 Market Street, Suite 1001, Post Office Box 2171, Wilmington, Delaware 19899-2171, Attorney for Defendant.

Trader, J.

This case involves a claim for unpaid worker's compensation benefits, liquidated damages, interest and attorney's fees. On August 17, 2004, the Court granted the plaintiff's, Kathy Melvin (Melvin), Motion for Summary Judgment on the issue of liability and denied defendant's, Playtex Apparel (Playtex), Motion for Summary Judgment. At an inquisition at bar, I awarded Melvin lost wages in the amount of \$5,412.00, medical witness fees in the amount of \$220.00 for Dr. Angermyer's deposition fee, \$272.85 for the court reporter's charge for Dr. Angermyer's deposition and Dr. Weiss' deposition fee of \$225.00 for a total of \$6,129.85. In addition, I awarded Melvin liquidated damages in the same amount. Based on the statutory interest rate of 8% on 11/03/01, I awarded Melvin pre-judgment interest in the amount of \$2,850.97.

The remaining issue before me concerns Melvin's request for attorney's fees. In determining the award of attorney's fees, it is necessary to review a history of the proceedings concerning this matter in this court as well as proceedings in other courts. Prior to the filing of the *Huffman* claim in this court, Playtex filed a declaratory judgment action in Chancery Court. The declaratory judgment action was subsequently transferred to the Superior Court and later dismissed. An appeal from that decision was taken by Playtex to the Supreme Court and that civil action is currently pending in the Supreme Court. While the declaratory judgment action was pending in the Superior Court, the civil claim for unpaid worker's compensation benefits and liquidated damages was filed in this court. Both parties filed cross motions for summary judgment and I granted summary judgment for Melvin in my opinion of August 17, 2004. The Court then scheduled an inquisition at bar to be held on September 29, 2004. Playtex filed a motion to stay the proceeding in this court until the declaratory judgment action was fully determined by the Superior Court. I denied Playtex's application for a stay and I awarded

Melvin the unpaid worker's compensation benefits, medical witness fees, liquidated damages and interest. Both attorneys have submitted time sheets relevant to the hours spent by each attorney both for this court and the other courts.

In determining the appropriateness of attorney's fees, I should consider (1) the time and labor required, the novelty and the difficulty of the questions involved, and the skill requisite to perform the legal service properly. (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (3) The fee customarily charged in the locality for similar legal services. (4) The amount involved and the results obtained. (5) The time limitations imposed by the client or by circumstances. (6) The nature and length of the professional relationship with the client. (7) The experience, reputation and ability of the lawyer or the lawyers performing the services. (8) Whether the fee is fixed or contingent. Professional Conduct Rule 1.5. Additional factors that I may consider are the employer's ability to pay and whether the employee's attorney has or will receive any fees or expenses from any other source. *Pollard v. The Placers*, Del.Super., C.A. No. 95A-09-021, Cooch, J. (August 9, 1996) (ORDER).

Mr. Schmittinger is an attorney of good reputation in the community whose specialty is handling worker's compensation claims. Plaintiff's attorney's fee of \$250.00 per hour is the usual and customary rate that plaintiff's counsel charges for this type of case. Additionally, this case involves difficult and unique questions of law. Furthermore, plaintiff's attorney obtained a favorable result for his client on the difficult and unique questions presented. Based on the analysis of these factors, I am satisfied that \$250.00 an hour is a reasonable charge for the services rendered by Melvin's attorney.

Melvin, however, not only seeks attorney's fees for the time spent on proceedings in this court, but also for the declaratory judgment action brought by the defendant in other courts. Melvin contends that proceedings in Chancery and Superior Court are all part of this *Huffman* claim and Playtex was attempting to present an preemptive defense in those courts. Playtex, on the other hand, contends that this court has no authority to impose attorney's fees for proceedings in other courts.

The general rule is that each party must bear his or her own attorney's fees and expenses of litigation unless there is a "contractual or statutory basis for liability". *Safeway Stores v. Chamberlain Protective Services*, D.C. Ct. App., 451 A.2d 66, 68 (1982). In fact, law courts in Delaware "may not order payment of attorney's fees as part of costs to be paid by the losing party unless the payment of such fees is authorized by some provision of statute or contract." *Casson v. Nationwide Ins. Co.*, Del. Super., 455 A.2d 361, 370 (1982).

In the case before me, Melvin brought an action in this court pursuant to 19 Del. C. § 1113(a) to collect unpaid disability benefits and liquidated damages. Section 1113(c) clearly allows this court to award the plaintiff attorney's fees for an action brought under this section. However, the statute is silent concerning the award of attorney's fees for proceedings in other courts. Since the statute is unambiguous, the court must give the statute its plain meaning. *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, Del. Supr., 492 A.2d 1242, 1246 (1985). Consequently, if the legislature intended that a court award attorney's fees for proceedings in other courts, the statute would have explicitly provided for such an award.

I conclude that I lack authority to impose attorney's fees for the declaratory judgment action in the Chancery Court, the Superior Court and now the Supreme Court.

The Court of Common Pleas is a statutory court of limited jurisdiction and this court only has the authority granted to it by the legislature. Melvin's attorney has cited no authority that would permit me to grant attorney's fees for the declaratory judgment action in the other courts. The court that is presiding over the declaratory judgment action should make that determination and it should be noted that that action is still pending in the Supreme Court. Accordingly, plaintiff's request for attorney's fees is limited to the time spent in this Court.

After analyzing the time sheets concerning the hours spent on this civil action, it appears that plaintiff's attorney spent 18.7 hours in connection with the claim in this court. Three-tenths of an hour for the review of the defendant's appeal of the Superior Court's dismissal is rejected. Based on the hourly rate of \$250.00 per hour, I award plaintiff attorney's fees in the amount of \$4,675.00.

Judgment is entered for the plaintiff, Kathy Melvin, and against the defendant, Playtex Apparel in the amount of \$6,129.85 for unpaid worker's compensation benefits, liquidated damages in the amount of \$6,129.85 for a total of \$12,259.70, plus pre-judgment interest at the rate of 8% per annum in the amount of \$2,850.97, plus reasonable attorney's fees in the amount of \$4,675.00 and costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge