STATE OF MICHIGAN

COURT OF APPEALS

DR. CHARLES D. MOODY, SR. and C. DAVID MOODY, JR.,

Plaintiffs-Appellees,

v

QUENTIN R. LAWSON, EARL RICKMAN, ERNEST H. WHITE, JR., RUBY D. MOSLEY, DOREEN E. BARRETT, ELSIE J. ROSE, DWIGHT BONDS, DORIS BURNS, BERNARD HAMILTON, DEBORAH HUNTER-HARVILL, GLORIA F. NOLAND, CASSONDRIA GREENE, CARROL THOMAS, TERESEA POPE, EMMA EPPS, CHARLIE MAE KNIGHT, and MELVYN BASSET,

Defendants,

and

NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS, INC.,

Defendant-Appellant.

UNPUBLISHED
March 18, 2010

No. 287686
Washtenaw Circuit Court
LC No. 05-001203-CB

Before: FITZGERALD, P.J., and CAVANAGH and DAVIS, JJ.

PER CURIAM.

Defendant, National Alliance of Black School Educators, Inc. (NABSE), appeals as of right the trial court's award of attorney fees and costs to plaintiffs pursuant to MCL 450.2493 of the nonprofit corporation act. We affirm.

In November of 2005, plaintiffs filed this action, on behalf of NABSE and on their own behalves as directors and members of NABSE, against nominal defendant NABSE, its executive director, Quentin R. Lawson, and several members of its board of directors. Plaintiffs alleged that NABSE was mismanaged, financially and otherwise, by its executive director and that the named members of the board of directors failed to take the appropriate oversight actions to investigate that mismanagement. During the course of litigation, defendants filed two

unsuccessful motions for summary disposition. The matter was submitted to facilitation. The case was finally resolved by settlement agreement, which was approved by the trial court on November 14, 2007.

During settlement negotiations, however, the parties were unable to reach an agreement as to whether plaintiffs were entitled to recover their attorney fees and costs. In their motion, plaintiffs argued that they were entitled to recover their attorney fees and costs under MCL 450.2493 of the nonprofit corporation act from both NABSE and the individual board member defendants. Defendants opposed the motion. The trial court agreed with plaintiffs that they were entitled to an award of attorney fees and costs, but only from NABSE, not the board member defendants.

Thereafter, an evidentiary hearing was conducted which concluded with the trial court holding that plaintiffs were entitled to recover attorney fees for their two primary attorneys at a rate of $250 an hour, their associate attorneys at a rate of $175 an hour, and their paralegals at a rate of $90 an hour. The trial court also held that the hours expended in the case by plaintiffs' counsels were reasonable for the time period from October 12, 2005, through November 14, 2007. Subsequently, the trial court entered an order granting plaintiffs' motion for attorney fees and expenses in the amount of $382,984.33 against NABSE, only. The total attorney fees were $345,494.50 and the costs were $37,489.83. This appeal by the NABSE followed.

First, defendant argues that plaintiffs should not have been awarded attorney fees and expenses under MCL 450.2493 because they were not successful in achieving the same or similar result as that which was requested in their complaint. We disagree.

Interpretation of a statute authorizing attorney fees is reviewed de novo as a question of law. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). The trial court's decision with respect to the reasonableness and appropriateness of attorney fees is reviewed for an abuse of discretion. *J C Bldg Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 428; 552 NW2d 466 (1996). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A trial court's findings of fact underlying an award of attorney fees are reviewed for clear error. *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007).

MCL 450.2493(1) provides:

> If an action brought in the right of the corporation is successful, in whole or in part, or if anything is received by the plaintiff or a claimant as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff or claimant reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to account to the corporation for the remainder of the proceeds received.

The goal of statutory interpretation is to give effect to the intent of the Legislature. *White v Harrison-White*, 280 Mich App 383, 387; 760 NW2d 691 (2008). In that regard, we first turn to the specific language of the statute. *Id.* "If the language of the statute is clear and unambiguous,

no interpretation is necessary and the court must follow the clear wording of the statute." *American Alternative Ins Co, Inc v York*, 470 Mich 28, 30; 679 NW2d 306 (2004).

In this case, plaintiffs filed their action alleging that NABSE was mismanaged, financially and otherwise, by its executive director, and that the named members of the board of directors failed to take the appropriate oversight actions to investigate that mismanagement when evidence of possible mismanagement came to light. There were various allegations of mismanagement set forth in their complaint, including but not limited to (1) the accumulation of large credit card debt and other liabilities, (2) the placement of NABSE in a conflict of interest position related to the federal E-Rate Program which led to a federal investigation, (3) the improper use of grant funds for operational expenses rather than grant-related expenses, (4) the improper use of conference monies to fund non-conference related expenses, (5) the repeated failure to provide the NABSE's audit committee with accurate, complete, and timely financial information, (6) the holding of improperly called and unauthorized meetings by the defendant members of the board of directors, (7) the improper rescission of a resolution for a comprehensive and independent special audit, and (8) the failure of officers and directors to disclose potential conflicts of interest.

As a result of this litigation, a settlement agreement was reached between the parties which included, for example: (1) the implementation of a supplemental audit to examine NABSE's cash management practices, as well as the administration of its grants and participation in federal programs, (2) the disclosure by each director and employee of NABSE of potential conflicts of interest, (3) the requirement that the board of directors monitor compliance with the budget and enforce spending limits, (4) the establishment and enforcement of an audit schedule "that provides for the delivery of audited financial statements on a timely basis," (5) the implementation of a policy designed to limit the use of conference revenue to conference-related expenses, (6) the limitation of credit card debt to a preapproved amount, (7) the establishment of a "Grants and Restricted Funds" account so that such funds would not be commingled with other NABSE funds, (8) the establishment of a panel to monitor compliance with the settlement agreement terms, and (9) a cooperation agreement so that all parties to the litigation would "exert their reasonable and best efforts to assure compliance with the terms of this Settlement Agreement."

After review of the relief that plaintiffs sought on behalf of NABSE by this litigation and the subsequent settlement terms, we conclude that the action was "successful, in whole or in part" within the contemplation of MCL 450.2493(1). As the trial court held, plaintiffs "prevailed in a substantial way to the extent that they did obtain benefits for this nonprofit corporation, and benefits for the corporation that will [inure] for some period of time." Thus, contrary to defendant's claim on appeal, the trial court was authorized by MCL 450.2493(1) to exercise its discretion and award plaintiffs "reasonable expenses, including reasonable attorney's fees." MCL 450.2493(1).

Next, defendant argues that the award of attorney fees must be reversed because the trial court did not properly determine the hourly rate customarily charged in the relevant locality for similar legal services. We disagree.

With regard to the calculation of a reasonable hourly rate, our Supreme Court in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008), held:

> The reasonable hourly rate represents the fee customarily charged in the locality for similar legal services, which is reflected by the market rate for the attorney's work. "The market rate is the rate that lawyers of similar ability and experience in the community normally charge their paying clients for the type of work in question." We emphasize that "the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation."
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> The fees customarily charged in the locality for similar legal services can be established by testimony or empirical data found in surveys and other reliable reports. [*Id*. at 531-532 (citations omitted).]

In this case, the lead attorney for plaintiffs was Thomas Richey, and his co-counsel was Hans Massaquoi. In his affidavit in support of plaintiffs' motion for attorney fees and expenses, Richey indicated that he was a partner in his law firm that was located in Georgia and had been practicing law since 1975, with corporate governance being the central part of his practice throughout his entire career. His hourly rate ranged from $465 to $570 during the three years this action was pending and his principal associate's rate ranged from $230 to $265 an hour. In support of the reasonableness of his rates, Richey attached to his affidavit published information from the National Law Journal for the years 2006 and 2007 which set forth the billing rates of several firms in Michigan, including Butzel Long, Dickinson Wright, Dykema Gosset, and Miller Canfield Paddock & Stone. In 2006, the hourly rates for partners at these firms ranged from $220 to $580, and for associates from $150 to $330 an hour. In 2007, the hourly rates for partners at these firms ranged from $210 to $625, and for associates from $155 to $390 an hour.

Co-counsel Massaquoi also submitted an affidavit which indicated that he was a shareholder in the law firm of Lewis & Munday and graduated from law school in 1988. He indicated that he discounted his rate by a factor of five to ten percent based on his prior relationship with plaintiffs. Richey's affidavit indicated that Massaquoi's hourly rate ranged from $223 to $275 during the three years this action was pending.

An evidentiary hearing was conducted with regard to plaintiffs' motion for attorney fees and costs on August 7, 2008. The trial court acknowledged receipt of plaintiffs' attorneys' affidavits. After both attorneys and plaintiff David Moody testified, defendant argued, as it does here, that reasonable hourly rates were set forth in the State Bar of Michigan Economics Law Practice Survey from 2003. That survey indicated that the average billing rates were: $200 an hour for partners, $150 an hour for associates, and $190 an hour for senior associates. In response to defendant's argument, the trial court noted that those were average billing rates which neither accounted for cases that were not "average" nor for attorneys who were not "average." The court noted that this was a complex matter and that a small law firm could not have handled this litigation. The court further indicated that these 2003 statistics would have to be adjusted to reflect the more current rates. The court concluded that the reasonable rate for attorneys Richey and Massaquoi was $250 an hour, the reasonable rate for their associates was $175 an hour, and the reasonable rate for their paralegals was $90 an hour. In light of the record

evidence, we cannot conclude that the trial court's decision with regard to the hourly rates is outside the range of reasonable and principled outcomes. See *Maldonado*, 476 Mich at 388.

Next, defendant appears to argue that plaintiffs failed to establish that the hours expended by their attorneys were reasonable. In support of its position, defendant seems to argue that (1) the case did not "involve difficult issues or complicated facts," (2) the lawsuit was unnecessary, (3) an "award of fees performed on a contingency or pro bono basis was an undeserved and unwarranted windfall for Plaintiffs' attorneys," and (4) fees should not have been awarded for unnecessary, duplicative or unsuccessful efforts. These arguments lack merit.

First, in light of the record evidence, we reject defendant's unsupported claim that the case did not involve difficult issues or complicated facts contrary to the trial court's conclusion that this was a complex matter. Second, as previously set forth, this lawsuit had merit thus we cannot agree with defendant's unsupported claim that the lawsuit was "unnecessary." Third, defendant has failed to set forth any legal support for its claim that attorney fees cannot be awarded in a matter that is litigated in whole or in part on a contingency basis and we will not search for authority to sustain defendant's position. See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Fourth, defendant has also failed to set forth any legal support for its claim that "unsuccessful" efforts do not warrant the recovery of attorney fees. Further, whether efforts were "unsuccessful" or "unnecessary" is purely subjective and we defer to the trial court's decisions in that regard, but note that some of the fees to which defendant objected were not actually awarded. Thus, we find no support for defendant's claim that the trial court failed to consider certain objections defendant made regarding particular requests for attorney fees. And, in light of the record evidence, we conclude that the trial court did not abuse its discretion when it rejected defendant's argument that plaintiffs did not require the efforts of both of their attorneys at various court hearings and conferences.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis