

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

*In re* Attorney Fees of JOHN W. UJLAKY.

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUSTIN WARREN WITHERS,

Defendant-Appellant,

and

JOHN W. UJLAKY,

Appellant.

---

UNPUBLISHED  
November 17, 2016

No. 329245  
Tuscola Circuit Court  
LC No. 11-012098-FH

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Appellant John W. Ujlaky appeals as of right the order of the trial court denying his request for extraordinary appellate attorney fees above the court's fee schedule maximum for plea-based appeals. Because Ujlaky failed to carry his burden of proving his entitlement to extraordinary attorney fees, we affirm.

**I. BASIC FACTS**

In 2012, Justin Withers pleaded no contest to first-degree home invasion and assault and battery. In exchange for Withers's plea, he was sentenced to 93 days for the assault and battery conviction, and he was sentenced to one year in jail and five years of probation for the home invasion conviction. In 2014, Withers pleaded guilty to violating his probation and was sentenced to serve 9 to 40 years in prison. He requested appointed appellate counsel, and the trial court appointed Ujlaky. On April 7, 2015, Ujlaky filed a motion for resentencing, which the trial court granted. Withers was resentenced on July 6, 2015.

On July 8, 2015, Ujlaky submitted a Michigan Appellate Assigned Counsel System (MAACS) Statement (MAACS) of Service and Order for Payment of Court Appointed Counsel to the Tuscola County Circuit Court. He requested \$3,102 in appellate attorney fees. He also checked a box titled “Motion for extraordinary fees (attach copy).” Underneath the box he wrote “See Attached Itemization.” Attached to the form was an itemized list detailing the professional services he rendered, when he rendered them, how long he spent on each date, and how much compensation he anticipated. Ujlaky did not, however, attach an actual motion for extraordinary fees or offer any explanation for why extraordinary fees were required for his representation of Withers.

At the time, Tuscola County paid appointed appellate lawyers pursuant to a fee schedule. The fee schedule stated that lawyers were compensated at a \$60 hourly rate, but that travel time to and from the court and from the prison or jail was not allowed.<sup>1</sup> Plea cases were capped at \$700, although the schedule also provided that the chief judge “may approve reimbursement for fees in excess of the max if the [lawyer] submits a written request which sets out excess fees and states the issues that made the case ‘unusual’ or ‘complex.’ ”

After receiving the MAACS statement of service, the circuit court ordered Tuscola County to pay Ujlaky \$700 in fees and \$499.90 in expenses for a total of \$1,199.90. The court did not offer any rationale in support of its decision.

On July 27, 2015, Ujlaky filed a motion for reconsideration. In the accompanying brief, he argued that he was entitled to reasonable attorney fees. He also set forth several factors that a reviewing court must consider when determining the reasonableness of a requested fee, and he asserted without elaboration that his itemized billing statement was sufficient to establish the need for extraordinary fees. He also summarily concluded that his work on Withers’s case justified the payment of extraordinary fees because it “required more work than the typical plea appeal” and “substantially more [time] than the eleven and one-half hours” allowed for under the fee schedule.<sup>2</sup> He did not explain or offer any evidence showing that the underlying case was not a typical plea case. Instead, he suggested that the trial court had “mechanically applied the fee cap” without basing its decision on a valid reason.

In a written opinion, the circuit court held that the burden of establishing entitlement to additional fees was on Ujlaky, the individual requesting the fees. The court explained that Ujlaky had failed to submit a written motion for extraordinary fees that conformed with the court’s requirements, and that he had instead submitted an “itemized hourly account of his time spent” without any “explanation of anything about [the underlying case] that makes it non-routine such that ordinary fees were called for.” The court reasoned that pursuant to our decision in *In re Ujlaky*, unpublished opinion per curiam of the Michigan Court of Appeals, issued

---

<sup>1</sup> The fee schedule provided that appointed lawyers would receive mileage at the current county rate, and the trial court approved Ujlaky’s mileage expenses.

<sup>2</sup> At \$60 per hour, a lawyer could work about 11 and a half hours before reaching the \$700 maximum allowed under the fee schedule.

October 23, 2014 (Dockets Nos. 316494; 316809), it had no obligation to determine the facts that made a lawyer's work on a case "unusual" or "complex" so as to establish the lawyer was entitled to additional fees. Accordingly, the court denied the motion for reconsideration.

## II. ATTORNEY FEES

### A. STANDARD OF REVIEW

Ujlaky argues that the circuit court abused its discretion in denying him a reasonable fee for the professional services he performed. A circuit court's determination as to the reasonableness of compensation for services and expenses for court-appointed lawyers is reviewed for an abuse of discretion. *In re Attorney Fees of Mullkoff*, 176 Mich App 82, 85; 438 NW2d 878 (1989). "A court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes." *People v Waclawski*, 286 Mich App 634, 645; 780 NW2d 321 (2009).

### B. ANALYSIS

An appointed lawyer is entitled to reasonable compensation for representing an indigent criminal defendant on appeal. *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 122-123; 503 NW2d 885 (1993).<sup>3</sup> The burden to prove the reasonableness of requested attorney fees is on the party requesting the fees. *Adair v Michigan (On Fourth Remand)*, 301 Mich App 547, 552; 836 NW2d 742 (2013) (citation omitted). In *Smith v Khouri*, 481 Mich 519, 528; 751 NW2d 472 (2008), our Supreme Court explained that the reasonableness of attorney fees depends on "the totality of special circumstances applicable to the case at hand." The *Smith* Court noted that the factors that should be considered were set forth in *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982) and in Rule 1.5(a) of the Michigan Rules of Professional Conduct. See *Smith*, 481 Mich at 529-530. Further, the *Smith* Court set forth a detailed procedure for a reviewing court to use when evaluating the relevant factors. *Id.* at 530-534. However, in this case, the circuit court was under no obligation to individually consider each of the factors in the manner set forth in *Smith* because Ujlaky wholly failed to file a motion for extraordinary fees.

---

<sup>3</sup> In *In re Attorney Fees of Foster*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016) (Docket No. 327707); slip op at 3 n 1, we recognized that an appointed lawyer's right to reasonable compensation for representing an indigent defendant on appeal was originally codified in MCL 775.16. The statute, however, was amended in 2013 and no longer expressly provides that an appointed lawyer is entitled to reasonable compensation. *In re Attorney Fees of Foster*, \_\_\_ Mich App at \_\_\_; slip op 3 n 1. Nevertheless, the Michigan Supreme Court has referenced the reasonable compensation requirement in an order entered after MCL 775.16 was amended, which suggests that the requirement still exists. See *In re Attorney Fees of Ujlaky*, 498 Mich 890; 869 NW2d 624 (2015).

The box that Ujlaky checked expressly stated “Motion for extraordinary fees (attach copy).” Ujlaky, however, did not attach a copy of a motion for extraordinary fees, which pursuant to MCR 2.119(A) must generally

- (a) be in writing,
- (b) state with particularity the grounds and authority on which it is based,
- (c) state the relief or order sought, and
- (d) be signed by the party or attorney as provided in MCR 2.114.

Additionally, MCR 2.119(B) requires that if the motion “presents an issue of law” then it “must be accompanied by a brief citing the authority on which it is based.” Here, instead of attaching a conforming motion, Ujlaky attached an itemized billing setting forth the tasks he performed and the time he spent performing them. The attached document did not provide the legal framework on which Ujlaky based his request, nor did it provide any application of the relevant facts to the legal framework for determining whether fees are reasonable. Based on the attached document, the circuit court was left to find the authority either supporting or refuting Ujlaky’s request, applying that authority to the facts, and then determining whether Ujlaky was legally entitled to relief. Because the burden of proving entitlement to reasonable attorney fees is on the person requesting the fees, not the court, *Adair (On Fourth Remand)*, 301 Mich App at 552, we conclude that the circuit court did not err in denying the request for extraordinary fees.

We reached the same result in the consolidated cases in *In re Attorney Fees of Ujlaky*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2014 (Docket Nos. 316494; 316809). In the first case, Docket No. 316494, we held:

Ujlaky initially submitted a request for fees totaling \$2,150.05. He submitted the request on a MAACS form. He placed an “x” on the form next to Line 35, which provides: “Motion for extraordinary fees (attach copy).” Ujlaky attached no copy of a motion for extraordinary fees. Rather, he attached a statement of the hours expended and the services provided. Kent County paid Ujlaky the flat fee from the schedule. *Ujlaky then filed a formal motion for extraordinary fees.* We note that the circuit court failed to explicitly address whether the fees sought were both extraordinary and reasonable. Nevertheless, Ujlaky bore the burden of proving the extraordinary nature of the services rendered and the reasonableness of the fees sought. A review of his motion reveals that Ujlaky failed to explain how the services rendered in the appeal in Docket No. 312494 were of a character and an amount beyond those normally required in a guilty-plea appeal. Ujlaky filed a 22-page appellate analysis that addressed the two issues preserved by [the underlying defendant] in his conditional plea. Those issues were the subject of briefing by the parties in the trial court, an evidentiary hearing, and a ruling by the trial court. Under such circumstances, Ujlaky would not have to have done a great deal of original analysis to present those issues on appeal. As noted, when asked by the court what characteristics of the case supported the request for extraordinary fees, Ujlaky responded: “Well, nothing particularly, you know.” Under the

circumstances, we cannot find that Ujlaky carried his burden, and appellate relief is unwarranted. [*In re Attorney Fees of Ujlaky*, unpub op at 7, reversed 498 Mich 890 (2015) (emphasis added).]

In the second case, Docket No. 316809, we held:

Ujlaky submitted a request for attorney fees in the amount of \$4,207.50 on a MAACS form. Again, he placed an “x” on the form next to Line 35, which provides: “Motion for extraordinary fees (attach copy).” Ujlaky attached no copy of a motion for extraordinary fees. Rather, he attached a statement of the hours expended and the services provided. The circuit court signed the form order that is part of the second page of the MAACS form and, by so doing, authorized the payment of the flat fee. Although the circumstances of this case suggest that an award of extraordinary fees might have been in order, Ujlaky did not attach a motion to the MAACS form as required and, thus, never offered any explanation, beyond a recitation of his proposed billing, to the court regarding the apparent extraordinary nature of the services rendered and the reasonableness of the fees sought. Thus, again, Ujlaky failed to carry his burden. Appellate relief is unwarranted. [*In re Attorney Fees of Ujlaky*, unpub op at 7, lv den 498 Mich 892 (2015).]

Subsequently, in Docket No. 316494, our Supreme Court reversed our decision and remanded to the “Kent County Circuit Court for a determination of the reasonableness of the attorney fees requested.” *In re Attorney Fees of Ujlaky*, 498 Mich at 890. The Supreme Court explained:

The trial court applied the county’s fee schedule, which capped compensation for plea cases at \$660, but did not address at all the reasonableness of the fee in relation to the actual services rendered, as itemized by the appellant. Although the expenditure of any amount of time beyond that contemplated by the schedule for the typical case does not, *ipso facto*, warrant extra fees, spending a significant but reasonable number of hours beyond the norm may. On remand, the trial court shall either award the requested fees, or articulate on the record its basis for concluding that such fees are not reasonable. . . . [*Id.* (citation omitted).]

The Court, however, denied leave to appeal in Docket No. 316809. *In re Attorney Fees of Ujlaky*, 498 Mich 892; 869 NW2d 617 (2015).

Ujlaky argues that the Supreme Court’s order in Docket No. 316494 should control the result in this case. See *In re Attorney Fees of Ujlaky*, 498 Mich at 890. However, the difference between the proofs in Docket No. 316494 (the case reversed and remanded) and in Docket No. 316809 (the case with leave denied) is significant. In the case reversed by the Supreme Court, Docket No. 316494, Ujlaky filed a formal motion seeking extraordinary fees. In the other case, Docket No. 316809, he only attached an itemized billing statement detailing the services rendered and the time spent on the case. The Supreme Court’s decision to reverse when a formal motion was filed and to deny when there was no motion indicates that Ujlaky met his initial burden of proof in the case where he filed a motion, but did not meet it when he did not. As we stated in *Petterman v Haverhill Farms, Inc.*, 125 Mich App 30, 33; 335 NW2d 710 (1983), an

“itemized bill in itself [is] not sufficient to establish the reasonableness of [a] fee, nor [is] the trial judge required to accept it on its face.” Accordingly, on the facts of this case, Ujlaky has failed to meet his burden of proof.

Appellate relief is unwarranted.

Affirmed.

/s/ Michael J. Kelly

/s/ Christopher M. Murray

/s/ Stephen L. Borrello