

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Christine Madsen,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070339-CA
v.)	
)	F I L E D
William K. Sadleir,)	(August 28, 2008)
)	
Defendant and Appellant.)	2008 UT App 316

Third District, Salt Lake Department, 060904801
The Honorable Kate A. Toomey

Attorneys: Donald L. Dalton, Salt Lake City, for Appellant
David M. Bennion and David R. Hall, Salt Lake City,
for Appellee

Before Judges Thorne, Bench, and Davis.

THORNE, Associate Presiding Judge:

William K. Sadleir appeals from the district court's award of \$26,088 in attorney fees to Christine Madsen. Sadleir argues both that Madsen's rule 73 affidavit in support of fees was insufficient in that it did not state "factors showing the reasonableness of the fees," see Utah R. Civ. P. 73(b)(3), and that the district court erred in determining that the fees claimed by Madsen for this year-long collection action were reasonable. Sadleir raised these objections before the district court, and the district court concluded that the claimed fees were reasonable in light of Madsen's affidavit. We affirm.

"Calculation of reasonable attorney fees is in the sound discretion of the trial court, and will not be overturned in the absence of a showing of a clear abuse of discretion.'" Chang v. Soldier Summit Dev., 2003 UT App 415, ¶ 23, 82 P.3d 203 (quoting Dixie State Bank v. Bracken, 764 P.2d 985, 988 (Utah 1988)). The Utah Supreme Court has offered the following guidance to trial courts in exercising their discretion:

[T]he trial court should find answers to four questions:

1. What legal work was actually performed?
2. How much of the work performed was reasonably necessary to adequately prosecute the matter?
3. Is the attorney's billing rate consistent with the rates customarily charged in the locality for similar services?
4. Are there circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility?

Dixie State Bank, 764 P.2d at 990 (footnotes omitted). To assist in evaluating the reasonableness of claimed fees, rule 73 of the Utah Rules of Civil Procedure mandates that fee requests be supported by affidavit or testimony setting forth various elements, including the basis for the award, a description of the work performed, and factors showing the reasonableness of the fee. See Utah R. Civ. P. 73(a)-(b).

Here, Madsen's counsel's affidavit in support of attorney fees stated that he was a licensed attorney and shareholder with the law firm Parsons Behle & Latimer; that he had been primarily responsible for representing Madsen in this action; that Madsen had incurred attorney fees in the amount of \$26,088 in prosecuting this action; and that the fees were "reasonable under the circumstances, and were necessarily incurred." The affidavit included an attachment showing the hours billed, the hourly rate for both the primary attorney and an associate, and the purpose of each billing entry. The billing entries, beginning in February 2006 and concluding in February 2007, documented various steps in the litigation process, including initial consultation, drafting of the complaint, conducting of discovery, and preparing for trial. The total time billed on the matter was 95.55 hours.

We observe no abuse of discretion by the district court in determining the reasonableness of Madsen's claimed fees based on this information. First, we note that the fee affidavit included the assessment of a licensed attorney that the fees were reasonable and necessary. While the district court is not required to accept such testimony, see Beckstrom v. Beckstrom, 578 P.2d 520, 523-24 (Utah 1978) (affirming fee award in amount less than that testified to by counsel and stating that trial court is "not necessarily compelled to accept such self-interested testimony"), it is certainly competent evidence of the reasonableness of the fee for purposes of rule 73 should the district court choose to accept it, particularly in light of the

court's first-hand knowledge of the litigation and the other materials presented. And, even if counsel's assessment alone does not satisfy rule 73's requirement of "factors showing the reasonableness of the fees," Utah R. Civ. P. 73(b)(3), Sadleir presents no authority for the proposition that a party's failure to strictly comply with rule 73 deprives the district court of discretion to determine the reasonableness of a fee request.

Sadleir's appellate brief fails to even acknowledge the assessment of Madsen's counsel as to the reasonableness of the fees, much less argue its lack of evidentiary value. Instead, Sadleir argues that the materials Madsen presented, and in particular the attached hourly billing statement, satisfy only rule 73(b)(2)'s requirement of "a reasonably detailed description of the time spent and work performed," id. R. 73(b)(2), and as such do not satisfy rule 73(b)(3)'s separately enumerated requirement of "factors showing the reasonableness of the fees," id. R. 73(b)(3). Sadleir seems to argue that because the billing statement satisfies the express requirement of rule 73(b)(2) it cannot also serve as a factor satisfying rule 73(b)(3). Accordingly, Sadleir argues, there is no evidence that the district court considered the required factors. See generally Dixie State Bank, 764 P.2d at 990 (identifying factors for trial courts to consider in evaluating the reasonableness of fee requests).

We disagree. The district court's minute entry addressing Sadleir's objection to the fee award stated that the court had "carefully reviewed the submitted affidavit, including its attachment" and that "[i]n reviewing the attached description of time spent on the matter, the [c]ourt concludes that the fees are reasonable." Sadleir presents no authority to suggest that the district court must expressly address each factor in the reasonableness analysis. The materials submitted provided the district court with ample evidence to determine the reasonableness of the work actually performed and the amounts billed in light of the court's experience presiding over the present case and other, similar cases. See EDSA/Cloward, LLC v. Klibanoff, 2008 UT App 284, ¶ 17, 609 Utah Adv. Rep. 9 (rejecting argument that affidavit was inadequate under rule 73 where affidavit "described [work] with some detail" and "substantially answer[ed]" the questions identified in Dixie State Bank v. Bracken, 764 P.2d 985 (Utah 1988)). And, as noted above, the district court could also rely to some extent on counsel's assessment that the claimed fees were reasonable and necessary. Thus, the district court's reasonableness determination was adequately supported by the materials presented, and we will not disturb the fee award.

In sum, the materials presented by Madsen in this case presented a prima facie showing of the reasonableness of the claimed attorney fees. Sadleir was given the opportunity to challenge that showing and took advantage of that opportunity by arguing that the fees were excessive and unnecessary. After hearing arguments from both sides, the district court acted well within the bounds of its discretion in determining that the claimed fees were reasonable. We therefore affirm the district court's award of fees in the amount of \$26,088 and remand this matter to the district court for a determination of Madsen's reasonable attorney fees incurred on appeal. See generally Valcarce v. Fitzgerald, 961 P.2d 305, 319 (Utah 1998) ("[W]hen a party who received attorney fees below prevails on appeal, the party is also entitled to fees reasonably incurred on appeal." (internal quotation marks omitted)).

William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

Russell W. Bench, Judge

James Z. Davis, Judge