

STATE OF MICHIGAN
COURT OF APPEALS

DAMM AND TAUSCHER, P.C.,

UNPUBLISHED
October 30, 1998

Plaintiff-Appellee,

v

No. 198016
Oakland Circuit Court
LC No. 93-467421 CK

FREIGHT ASSEMBLY DISTRIBUTION, INC., and
HUGH J. BROTHERTON,

Defendants-Appellants.

Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendants appeal by right from the trial court's judgment in favor of plaintiff after a bench trial in this suit for attorney fees. We affirm.

Defendant Brotherton is the owner of defendant Freight Assembly Distribution, Inc., an interstate trucking corporation. Defendants engaged plaintiff to represent their interests in two wrongful death suits arising out of a September 1987 automobile accident. Plaintiff was dismissed in January 1991 after defendants retained other counsel to represent them in the wrongful death litigation. In December 1993 plaintiffs filed this action for attorney fees stemming from their representation of defendants in that litigation.

The parties agree that an express oral contract for legal services did exist between them. Defendants' sole argument on appeal is that the trial court erred by not considering whether the attorney fees at issue were reasonable. We disagree. "The decision whether to award attorney fees is within the trial court's discretion and will be reviewed on appeal for an abuse of discretion." *Schoensee v Bennett*, 228 Mich App 305, 314; 577 NW2d 915 (1998). "It has long been held in Michigan that attorney fees and costs must be 'reasonable.'" *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benevolent & Protective Order of Elks of the United States of America*, 228 Mich App 20, 44; 577 NW2d 163 (1998). "The burden of proving the reasonableness of the fee award rests with the

party claiming compensation.” *In re Condemnation of Private Property for Hwy Purposes*, 209 Mich App 336, 339; 530 NW2d 183 (1995).

In *Zeeland Farm Services, Inc. v JBL Enterprises, Inc.*, 219 Mich App 190; 555 NW2d 733 (1996), this Court observed that “[t]he factors listed in MRPC 1.5(a) are properly considered when deciding if attorney fees are reasonable in a given case.” *Id.* at 198 (footnote omitted). Accord *In re Condemnation of Private Property for Hwy Purposes*, *supra* at 341-342. MRPC 1.5(a) provides in relevant part:

The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and 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 the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Having reviewed the record, we find there to be sufficient evidence to sustain the award and are convinced that the trial court considered all relevant factors. Accordingly, we find no abuse of discretion.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy