

IN THE UTAH COURT OF APPEALS

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Steven Blevins and Debra Kay)	MEMORANDUM DECISION
Blevins,)	(Not For Official Publication)
)	
Plaintiffs and Appellees,)	Case No. 20050719-CA
)	
v.)	F I L E D
)	(May 4, 2006)
Custom Steel Fabrication,)	
Inc., et al.,)	2006 UT App 182
)	
Defendants and Appellants.)	

Third District, Salt Lake Department, 000906072
The Honorable L.A. Dever

Attorneys: Michael A. Jensen, Salt Lake City, for Appellants
Debra Kay Blevins and Steven Blevins, Sandy,
Appellees Pro Se

Before Judges Bench, Greenwood, and Davis.

DAVIS, Judge:

Defendant Custom Steel Fabrication, Inc. appeals the trial court's award of attorney fees, claiming they should be increased. We affirm.

"The trial court has broad discretion in determining what constitutes a reasonable attorney fee . . . , and we will not reverse a trial court's determination of whether a fee is reasonable absent an abuse of discretion." Bakowski v. Mountain States Steel, Inc., 2002 UT 62, ¶33, 52 P.3d 1179. Similarly, "we review a trial court's calculation of reasonable attorney fees for an abuse of discretion." Id.

Defendant first contends that the trial court abused its discretion by relying primarily on an affidavit submitted by a sole practitioner to determine a reasonable hourly rate. Defendant claims that the trial court should have given more deference to the affidavits it submitted by members of three large Utah law firms. Those affidavits, unlike that of the sole practitioner, describe higher hourly rates that increase incrementally with each year of experience. We recognize that

the affidavits presented by Defendant may be illustrative of fee structures used by some firms, but they are not necessarily determinative of a reasonable fee. Although the court's determination "must be based on the evidence and supported by findings of fact," it must nonetheless make an "independent evaluation" of the fee request. Foote v. Clark , 962 P.2d 52, 55 (Utah 1998) (quotations and citations omitted). In doing so, the court is not bound by one party's affidavit testimony, see Bakowski , 2002 UT 62 at ¶38, nor by a party's standard billing rate, see Dixie State Bank v. Bracken , 764 P.2d 985, 990 (Utah 1988). Here, where Defendant's attorney worked from his home, we cannot conclude that the trial court abused its discretion in relying on the hourly rate used by a sole practitioner. Nor can we conclude the trial court abused its discretion in applying a fixed billing rate for the five years of litigation when the sole practitioner attested in his affidavit that his rate had not increased in the last five years.

Defendant also contends that in reading the sole practitioner's affidavit, the trial court misunderstood the distinction made between "court time" and "non-court time." The affidavit states that the sole practitioner charges "\$125 per hour for non-court appearances and \$175 for courtroom work." Accordingly, the trial court applied the \$175 per hour rate for the time Defendant's attorney appeared in court and the \$125 per hour rate for other work. However, Defendant claims this was in error because the "Legal Representation Agreement" attached to the affidavit states that the sole practitioner's billing rate was "\$125 per hour for matters not related to court preparation and the rate of \$175 per hour for court preparation and appearances." Defendant argues that the trial court should have applied the \$175 per hour rate to its attorney's hours because, even if not actually in court, he was preparing for court appearances. Regardless of this apparent discrepancy, we cannot conclude the trial court abused its discretion in relying on the rate stated by the sole practitioner in his affidavit over the rate stated in his "Legal Representation Agreement."

Finally, Defendant takes issue with the trial court's reduction in the number of hours its attorney claims to have worked. Generally, we defer to the trial court's assessment of the reasonable number of hours required to complete tasks because it "is in a better position than an appellate court to gauge the quality and efficiency of the representation and the complexity of the litigation." Valcarce v. Fitzgerald , 961 P.2d 305, 317 (Utah 1998) (quoting Richard Barton Enters. v. Tsern , 928 P.2d 368, 380 (Utah 1996)). Because the trial court is not bound by a party's calculation of hours, see Dixie , 764 P.2d at 990, it may, after explaining its rationale, adjust the claimed hours to bring them within a more reasonable range. Here, where the trial court

provided a detailed assessment of the length of Defendant's filings and the complexity of the research involved, we cannot conclude that it abused its discretion in adjusting the number of hours billed.

Affirmed.

James Z. Davis, Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge