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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed December 27, 1983

BRUCE P. BICKEL,	)	
Petitioner,	)	
vs.	)	3-125 2-66133
HONORABLE CARL D. BAKER, Judicial Magistrate of the Iowa District Court for Marshall County,	)	
Respondent.	)	

Appeal from Marshall District Court, Carl D. Baker, Judge.

Plaintiff challenges via certiorari the trial court's refusal to award him the full amount of the attorney fees he requested for representation of an indigent criminal defendant. WRIT GRANTED.

Bruce P. Bickel, pro se.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for defendant.

Heard by Oxberger, C.J. and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

Petitioner challenges via certiorari the trial court's refusal to award him the full amount of the attorney fees he requested for representation of an indigent criminal defendant. In his petition, petitioner asserts that additional fees should have been awarded and that costs should not have been taxed against him in his action seeking additional fees.

A brief review of the history of this claim is necessary to put everything in perspective. In 1978, petitioner was appointed to represent a criminal defendant in another county on a third-degree theft charge which ultimately resulted in trial, conviction, reversal by this court, and denial of the State's application for further review. Prior to trial the main issues in the case were stipulated. They were, first, whether the respondent knew that the property in question was stolen and, second, the value of the property. The sole issue on appeal was whether the state had proven that the market value of the stolen property exceeded $100.

Petitioner requested attorney fees of more than $3200, claiming that he had spent 97.5 hours working on the case. Finding this amount excessive, the trial court initially awarded him $1500. Petitioner's motion to reconsider the award was overruled by the trial court, and petitioner petitioned for a writ of certiorari. The supreme court granted the writ; however, upon joint motion following that court's decision in Hulse v. Wifvat, 306 N.W.2d 707 (Iowa 1981), the case was remanded for the taking of further evidence and entry of a new order. Both petitioner and the State presented evidence concerning the reasonableness of the fees petitioner requested. The trial court found that the services reasonably necessary to represent the indigent defendant totaled 60 hours, and petitioner was awarded an additional $1000 in fees. The costs of this action were assessed

against petitioner. Petitioner has challenged the action of the trial court by petitioning for a writ of certiorari.

This court on its own motion ordered a limited remand to the district court. The Honorable Carl D. Baker entered an order complying with the order of limited remand.

I. Scope of Review

Our scope of review by certiorari in cases such as this one is not de novo. Parrish v. Denato, 262 N.W.2d 281, 284 (Iowa 1978). "The writ provides a very limited review of trial court's discretion, only to the extent of determining if there has been an abuse thereof." Furey v. Crawford County, 208 N.W.2d 15, 19 (Iowa 1973). If the action of the trial court was within its discretion, it was not an illegal ruling such as will allow review by certiorari. State v. Holliday, 169 N.W.2d 768, 770 (Iowa 1969).

II. The Compensation Standard

It is well established that an attorney is not expected to represent an indigent defendant gratuitously. See Soldat v. Iowa District Court, 283 N.W.2d 497, 498 (Iowa 1979). When an attorney is appointed by the court to represent an indigent, he is entitled to reasonable compensation for his services. The first issue petitioner raises is whether the trial court's allowance of attorney fees amounted to reasonable compensation.

"Two elements inhere in any standard providing for reasonable attorney fees. Both the necessity and valuation of the services must be determined. The services must have been reasonably necessary and the valuation must be reasonable in amount." Hulse v. Wifvat, 306 N.W.2d at 709. We review each element briefly.

A. Necessity

The determination concerning the extent of services which are reasonably necessary in a given case, and the amount of time required to provide them is a matter which is left to the discretion of the trial court. In making its determination, "the court must put itself in the position of a reasonable attorney at the time the services were undertaken." Hulse, at 710. The factors which the court must consider include the nature and extent of the service, the time necessarily spent, the possible punishment involved, the complexity of the issues involved, and the results obtained. Parrish v. Denato, 262 N.W.2d at 285.

In the limited remand order Judge Baker found three areas of appellant's claim were for unnecessary services. First, he concluded that twenty (20) hours of research time were unreasonable. Petitioner on September 5, 1980, claimed forty and eight-tenths (40.8) hours for research time for trial preparation plus unspecified time for appeal, reply and resistance brief. We have examined the content of petitioner's briefs and argument before this court and find that his claim for thirty-seven (37) hours for appellant research is reasonable. Judge Baker does not specify whether or not his denial of twenty (20) of the forty and eight-tenths (40.8) research time was meant to include research time for the appeal. However, in light of our finding that thirty-seven (37) hours was reasonable and necessary to prepare for the case before us, we conclude that Judge Baker's order was meant only to include trial time. Therefore, we remand this matter to the trial court for entry of an order awarding appellant an additional thirty-seven (37) hours research time.

Secondly, Judge Baker found eight (8) of the sixteen (16) hours travel time were unnecessary. Judge Baker does not specify what trip was unnecessary or the length on any trip he considered excessive. Appellant claimed he traveled eight

times to Marshalltown on behalf of his client. The round trip was ninety-two miles. We find each of the eight trips were necessary to represent his client and two (2) hours is a reasonable time to make the trip.

The third and final area Judge Baker found the petitioner rendered unnecessary service was in the other out-of-court time category. Judge Baker denied compensation for eight (8) out of sixteen and three-tenths (16.3) hours claimed. Judge Baker did not specify what service was unnecessary.

Petitioner has itemized the services rendered in the out-of-court category. They include bond review, preparation motions to sequester, in limine, new trial, etc. We have examined the time spent and find that each activity was reasonable and necessary. In summary, we conclude that appellant should be compensated for fifty-three (53) additional hours at $41 per hour.

B. Valuation

Iowa Code section 815.7 provides that "[a]n attorney appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community." (emphasis added). Attorneys are no longer required to discount their services based upon their professional obligation to represent the poor. Hulse at 711. We point out, however, that when an attorney's fees are to be paid out of the public coffer, a discount is reasonable due to the certainty of payment. Id. at 712.

Petitioner argues that the attorneys which he called to testify established that the ordinary and customary charge for like services was $50 per hour, and that the trial court abused its discretion in failing to award him his fees at that rate. We do not agree. To begin with, while the value of an attorney's services is a proper subject for professional witnesses, the opinions of these witnesses are not conclusive. Parrish at 285. After all, the court itself is an expert on the value of

attorneys' professional services. Id.

More important, we note that the state bar association fee survey, which was admitted into evidence, showed that the average fee was $46 per hour. This was an average, so some attorneys charged less than that amount. Keeping in mind that the court may discount the fee due to the certainty of payment, we cannot say that the trial court's award, which figures out to $41 per hour, was so unreasonable that it constituted an abuse of discretion.

III. Costs

Petitioner's final contention is that the trial court erred in taxing court costs against him. "The rule is well established that in an equity action the trial court has a large discretion in the matter of taxing costs and we will not ordinarily interfere therewith." Wymer v. Dagnillo, 162 N.W.2d 514, 519 (Iowa 1968). Petitioner was not entirely successful in his claim before the trial court. We therefore find that the trial court did not abuse its discretion by taxing costs against petitioner. However, petitioner has been successful here so we do not assess costs against him.

WRIT GRANTED. THIS MATTER IS REMANDED TO THE TRIAL COURT FOR ENTRY OF AN ORDER CONSISTENT WITH THIS OPINION.

All judges concur except Schlegel and Snell, JJ., who concur in part and dissent in part, and Sackett, J., who concurs in part and dissents in part.

SCHLEGEL, J. (concurring in part and dissenting in part)

I agree with the majority in its requirement that petitioner be compensated for fifty-three (53) additional hours at $41.00 per hour. I do not agree, however, that the assessment of court costs in the trial court against the petitioner should stand.

Of course, petitioner was not entirely successful in the trial court. The same abuse of discretion that caused the commencement of this certiorari action caused him to be unsuccessful below. I dissent from that part of the opinion of the majority that leaves petitioner obligated to pay any of the court costs in the prosecution of his claim for compensation of services.

Snell, J., joins this partial concurrence and dissent.

I agree with Judge Oxberger's opinion in all respects except that I would find that the trial court abused its discretion in not allowing Bickel attorney fees at the rate of $50.00 per hour. If we want below-average representation for criminal defendants, then we can continue to pay below-average fees. The certainty of payment is hardly balanced by the toll a good and adequate representation takes on a competent lawyer. The court might see fewer claims of incompetent counsel if they were willing to pay for the best. While I recognize the expertise of the trial court on the matter of fees, I have to wonder how long it has been since the trial court paid law office overhead.