

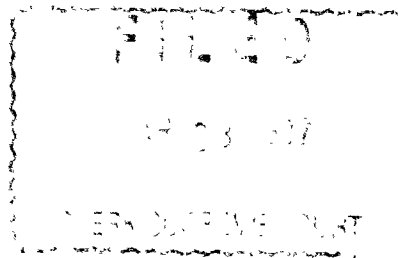
IN THE COURT OF APPEALS OF IOWA

No. 7-007 / 95-1746

FOXLEY CATTLE CO.,
Plaintiff-Appellee,

vs.

**MIDWEST SOYA INTERNATIONAL
INC., and KIM F. PLEGGENKUHLE,**
Defendants-Appellants.



Appeal from the Iowa District Court for Cerro Gordo County, Gilbert K.
Bovard, Judge.

The defendants in a foreclosure action appeal from the district court's ruling
awarding fees to a receiver and his attorney. **AFFIRMED.**

Brian Miller and M. Wayne Oltrogge of Oltrogge Law Office, Clear Lake, for
appellants.

Norbert Kaut of Nyemaster, Goode, McLaughlin, Voights, West, Hansell &
O'Brien, P.C., Des Moines, for appellee-receiver.

Leo A. McCarthy, Dubuque, and Dennis E. Martin of Martin & Martin, P.C.,
Omaha, Nebraska, for plaintiff-appellee.

Heard by Habhab, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

Defendants Midwest Soya International, Inc. (“Midwest Soya”) and Kim F. Pleggenkuhle appeal the district court’s award of fees to the receiver, John P. Long, and the receiver’s attorney, Norbert Kaut. We affirm.

I. Background Facts and Proceedings.

The dispute between the parties arose out of a foreclosure action filed in Cerro Gordo County, Iowa, in March 1994. The mortgagee and plaintiff in the action, Foxley Cattle Co., sought the appointment of a receiver “to collect rents and profits from the real estate and UCC secured property and to apply the same upon taxes, insurance, maintenance, repair and other necessary expenses.” Long was appointed receiver in May 1994. The court later authorized Long’s employment of counsel.

In November 1994, Midwest Soya filed a petition for relief under Chapter 11 of the United States Bankruptcy Code and notice of this filing was delivered to the Cerro Gordo County Clerk of Court. On November 16, 1994, Foxley moved for relief from the automatic stay in order to proceed with the state court foreclosure and receivership proceedings. *See* 11 U.S.C. § 362(d)(1). Foxley also requested the receiver be relieved of the requirement under the Bankruptcy Code to turn over the assets of the receivership to the debtor, Midwest Soya. *See* 11 U.S.C. § 543(d)(1).¹

¹ Section 543. Turnover of property by a custodian.

In December 1994, the bankruptcy court ordered Long to retain possession of receivership assets. In May 1995, the bankruptcy was dismissed on Midwest Soya's motion.

In July 1995, Long filed a Final Report and Accounting and Application for Payment of Fees and Expenses incurred from July 12, 1994 through July 20, 1995. Midwest Soya objected to the amount requested by the Receiver. The district court issued an order in September 1995 awarding Long \$3757.17 of the total \$4350.83 requested for his services and \$12,774.50 of the \$16,552.50 attorney fees requested. Long was also awarded \$74.44 for his expenses and the court also awarded \$1277.77

(b) A custodian shall --

(1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and

(2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(d) After notice and hearing, the bankruptcy court --

(1) may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and . . .

of counsel's expenses. In January 1996, judgment was entered in favor of Foxley Cattle Co. in the foreclosure proceedings.

On appeal Midwest Soya challenges the district court's order awarding fees and expenses for the period its bankruptcy petition was pending. Midwest Soya also challenges the necessity and reasonableness of the fees awarded.

II. Standard of Review.

We review a court order awarding receiver and attorney compensation for an abuse of discretion. *Brenton State Bank of Jefferson v. Tiffany*, 440 N.W.2d 583, 588 (Iowa 1989); *Herrick v. Davidson*, 164 Iowa 462, 465, 145 N.W. 907, 907-08 (1914). In order to show an abuse of discretion, one generally must show the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

III. Fees Awarded During Pendency of Bankruptcy.

Midwest Soya argues the district court did not have jurisdiction to award Long's fees and expenses incurred during the period from November 1994 to May 1995 when Midwest Soya's bankruptcy petition was pending. Midwest Soya cites 28 U.S.C. § 1334 as support for its claim that upon filing for bankruptcy, Long and his

legal counsel lost any authority or duty to manage the debtor's property.² Therefore, Midwest Soya contends, they were not entitled to the \$1188 in fees awarded for services rendered during that period and also the \$6497 in attorney fees allowed by the court.

We reject Midwest Soya's broad reading of the exclusive jurisdiction provision of 28 U.S.C. § 1334. Midwest Soya has not cited any authority in support of its argument that the district court lacked jurisdiction to award fees. Moreover, the record indicates the bankruptcy court acknowledged Long's continuing authority by releasing him from any obligation to surrender the assets of the receivership. *See* 28 U.S.C. § 543(a). Moreover, the bankruptcy court did not retain jurisdiction to determine fees when Midwest Soya's bankruptcy petition was dismissed. In the absence of any contrary order of the bankruptcy court, we hold the district court had the authority to determine fees and expenses incurred during the pendency of the bankruptcy proceedings.

² 28 U.S.C. § 1334 provides:

(a) Except as provided in subsection (b), the District Courts shall have original and exclusive jurisdiction of all cases under Title 11.

....

(e) the District Court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

IV. Amount of Fees and Expenses.

Midwest Soya challenges the necessity and reasonableness of the fees awarded. It argues Long's limited responsibilities do not justify the amount of fees awarded. Midwest Soya emphasizes the total awarded equaled nearly thirty-five percent of the total income generated by the receivership. Midwest Soya also contends Long's attorneys did not meet their burden to prove their services were reasonably necessary or the reasonableness of the amount requested. *See Lundy, Butler & Lundy v. Bierman*, 398 N.W.2d 212, 215 (Iowa App. 1986) (burden rests upon party requesting compensation as the fiduciary attorney to show the services rendered were reasonable and necessary, and the value thereof).

We conclude the fees awarded were well within the district court's discretion and we will not disturb them on appeal. In its order awarding fees, the court noted the adversarial nature of the proceedings necessitated the level of services provided by Long's legal counsel. The court also noted the "sudden and unannounced" maneuvers of the litigants which required Long's frequent consultation with his attorneys. Counsel's reduced role following the bankruptcy filing was reflected in the court's reduction of counsel's requested \$9741 fee for this period to \$6497.

Long's duties during administration of the receivership included negotiating leases of receivership assets and collection of rents. The court adjusted the amount of Long's fees to accommodate his limited ministerial role from November 1994

through February 1995. The record also indicates the court made similar reductions for the period during which Midwest Soya's bankruptcy was pending.

Both Long and his attorneys were entitled to reasonable compensation for services rendered in their respective roles. The district court properly exercised its discretion in determining the necessity and reasonableness of their compensation. We affirm.

AFFIRMED.