

IN THE COURT OF APPEALS OF IOWA

NOV 26 1980

259

STATE OF IOWA,

Plaintiff,

vs.

SAMUEL M. COPELAND,

Defendant,

E. RALPH WALKER,

Appellant.

CLERK SUPREME COURT

Filed November 26, 1980

0-252
63348

Appeal from Polk District Court - Gibson C. Holliday, Judge.

Court-appointed counsel appeals from trial court's ruling denying his claim for attorney fees asserting that trial court erred in determining the defendant was not indigent and that counsel was not entitled to attorney fees. Case properly is one for certiorari. WRIT SUSTAINED.

Donald A. Wine of Thoma, Schoenthal, Davis, Hockenberg & Wine, Des Moines, Iowa, for defendant and appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

E. Ralph Walker, counsel to defendant, Samuel M. Copeland, appeals from trial court's ruling denying his claim for attorney fees in a criminal case. He asserts the trial court erred in determining that the defendant was not indigent and that counsel was not entitled to attorney fees. We reverse and remand.

Defendant, Samuel M. Copeland, retained E. Ralph Walker, appellant herein, to represent Copeland on his charges of two counts of child stealing in violation of section 706.2, The Code 1975. On June 8, 1977, Walker filed an application to withdraw because Copeland could no longer meet his financial obligations to counsel. Copeland then applied for court-appointed counsel. On June 27, 1977, trial court found that Copeland was not indigent, but ordered Walker to be appointed at public expense with any amount so paid to him to be assessed against Copeland as part of the court costs. Following Copeland's conviction on the child stealing charges, he applied for court-appointed counsel on appeal and for a trial transcript at public expense. On December 5, 1977, trial court, in denying Copeland's request, found that he was not indigent.¹

On October 23, 1978, Walker submitted his claim for attorney fees, outlining the number of hours of service as directed in the court's June 27, 1977 order. On April 4, 1979, the court found that Copeland had not established his indigency and also denied Walker's claim for attorney fees. Walker's appeal followed.

L. Scope of Review. On February 19, 1980, the State filed a motion to dismiss Walker's appeal, asserting that a direct appeal from trial court's rulings on fees was inappropriate and that the proper remedy was to petition the supreme court for a writ of certiorari. The motion was denied. We agree that the proper method for court-appointed counsel to seek review of a trial court's ruling on attorney fees in a criminal case is to petition for writ of certiorari. State v. Iowa District Court of Sioux County, 286 N.W.2d 22, 23 (Iowa 1979). Under Iowa R. App. P. 304, however, we "proceed as though the proper form of review had been sought." We determine only whether trial court "exceeded its jurisdiction or otherwise acted illegally." Id. (quoting Furey v. Crawford County, 208 N.W.2d 15, 19 (Iowa 1973)). Our review is very limited, Parrish v. Denato, 262 N.W.2d 281, 284 (Iowa 1978), and we grant relief only if trial court abused its discretion. Soldat v. Iowa District Court for Emmet County, 283 N.W.2d 497, 498 (Iowa 1979).

¹ At the time of hearing on fees, Copeland owed Walker's law firm \$2,010 for \$10,000 of billed services through June 8, 1977, and \$2,565 for services rendered between June 8th and June 23rd. Copeland also signed a \$10,000 promissory note for expenses on appeal, \$2,500 for the cost of the transcript and \$7,500 for attorney fees.

II. Defendant's Indigency. Walker first contends that trial court erred in failing to adjudge Copeland an indigent entitled to court-appointed counsel at both the trial and appellate levels. The State contends that the issue of Copeland's indigency is not subject to our review in this proceeding since the issue was not properly before trial court in the April 1979 determination of Walker's fees. We agree.

The question of Copeland's indigency could only be determined as of the time he requested appointment of counsel, that is June 23, 1977, and November 23, 1977, respectively. See Sill v. District Court of Clayton County, 184 N.W.2d 699, 700 (Iowa 1971); Schmidt v. Uhlenhopp, 258 Iowa 771, 775, 140 N.W.2d 118, 121 (1966). Once trial court entered findings against defendant on June 27, 1977, and December 5, 1977, respectively, these matters were final determinations and subject to challenge within appropriate time frames for appellate review.²

III. Assessment of Attorney Fees as Court Costs. Walker also asserts that trial court erred in denying him any compensation for his services rendered after the order of June 27, 1977. We agree. Trial court's order of that date stated, in part:

That E. Ralph Walker be and he is hereby appointed as counsel for Defendant, Samuel M. Copeland, in this case at public expense on the conditions that at the conclusion of this case counsel may submit a claim to the Court for his services setting out a complete itemization of all services rendered on this case, that is the date and item of work performed, the amount of time on each item and setting out all amounts paid thereupon by the Defendant. The Court will thereupon make a determination as to what amount shall be due counsel from this date based upon the standards and rates used in the payment for court appointed counsellors in criminal cases in this court and giving due consideration to past work done and amounts paid based upon the fair and reasonable charges made by attorneys for similar services in the community.

Thus, for purposes of this review, we consider the hours expended and fees sought during the period in which Walker was court-appointed under section 336B.6, The Code 1977, as well as the compensation he received for services provided prior to that date.

We begin our analysis with section 336B.6 which states:

If a court finds that a person desires legal assistance, and is financially able to secure counsel but refuses to employ an attorney, the court shall appoint an attorney to represent such person at public expense. The attorney fee paid by the state or county in such cases shall be taxed as part of the court costs against the person receiving the legal assistance, and the state or county shall be reimbursed for said fee when the court costs are paid.

² We note defendant was convicted on August 10, 1977; his motion for new trial was filed August 25, 1977; he filed notice of appeal November 10, 1977; and trial court denied the motion for new trial on October 28, 1978.

We are further guided by section 815.7, The Code 1979, which provides that a court appointed attorney in a criminal case "shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court" Trial court thus has broad discretion in determining reasonable compensation for legal services; we review only for an abuse of discretion. Soldat, 283 N.W.2d at 499. While attorneys under court appointment are not expected to serve gratuitously, Woodbury County v. Anderson, 164 N.W.2d 129, 132 (Iowa 1969), "[n]either are they entitled to compensation on the same basis as they might justifiably charge one who had privately engaged them." Soldat, 283 N.W.2d at 499.

We begin our review with the record. Walker is a senior partner in a large Des Moines law firm and has been in practice since 1972. He estimated that he spent approximately thirty percent of his time on criminal cases, especially white collar crime. He provided a detailed record of 634 hours work for Copeland's defense subsequent to the court's order appointing him as counsel for which he had received no compensation. He testified to areas requiring extensive research and issues of first impression in Iowa. He also testified to an understanding reached with another district court judge, Judge Glanton, in which he was to receive between \$4,000 and \$5,000 for his services as court-appointed counsel for defendant. Walker testified that he would be happy with an award of \$4,500. Trial court, however, stated a different understanding had been reached regarding the discussion between counsel and Judge Glanton. Counsel also testified that Judge Missildine, when asked by Judge Glanton to approve the sum of \$4,500, refused to give approval and that the matter was then transferred to trial court here. The State's witness, Roger Owens, director of the Polk County Offender Advocate's Office, testified that the average award for court-appointed attorneys in a jury case in Polk County was \$1,200 and that court-appointed fees are low, which discourages attorneys from seeking court appointments. He also testified, however, that Ruth Harkin and Mr. Dutton of Waterloo were paid \$25,000 in total for a special prosecution. When asked whether a fee of \$10,000 would be high, low, or average, Owens also testified that he would be "happy with that." In addition, he stated that his office had to go through "the same thing," (meaning preparation) as did Walker since few child stealing cases are filed.

Applying the factors set forth in Furey, 208 N.W.2d at 18, and Parrish, 262 N.W.2d at 285, we conclude trial court's denial of attorney fees was an abuse of discretion and,

therefore, illegal. While the attorney must determine "... what is necessary and proper preparation in a given case[,] ... the court has a corresponding duty to decide what was reasonable when the matter of fees is reached." Soldat, 283 N.W.2d at 500. We also note that the supreme court has urged uniformity throughout the state in the amount of compensation paid for representing indigent defendants in criminal matters. Parrish, 262 N.W.2d at 287. We believe the same policy should apply to compensation under section 336B.2. We therefore conclude that \$4,500 is a reasonable compensation for Walker's court-appointed representation of defendant Copeland.

WRIT SUSTAINED.