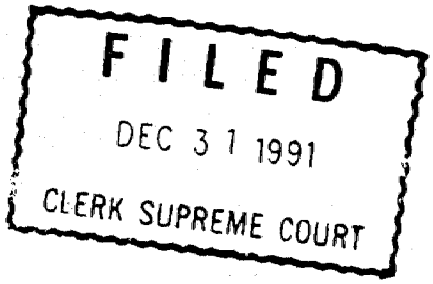
IN THE COURT OF APPEALS OF IOWA

No. 1-419 / 90-1437



ROBERT J. PHELPS,

Plaintiff,

vs.

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IOWA DISTRICT COURT FOR SCOTT COUNTY,

Defendant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

The appointed attorney for a parent in a juvenile court case has sought certiorari relief to challenge the juvenile court's award of attorney's fees. **WRIT GRANTED.**

Robert J. Phelps, Davenport, plaintiff pro se.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Assistant Attorney General; and Judy Sheirbon, Assistant Attorney General, for defendant.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

DONIELSON, P.J.

We are presented with an application for a writ of certiorari filed by Attorney Robert J. Phelps naming the Iowa District Court for Scott County, Judge John G. Mullen, as Defendant. Phelps contends Judge Mullen acted illegally in reducing his award of court-appointed attorney fees. Based on the record made on remand, we agree. We grant the writ of certiorari and remand with the instruction that the original award be reinstated.

In April 1990, Phelps was appointed to represent a parent whose children were alleged to be in need of assistance. The action later developed into a proceeding involving the termination of parental rights.[1] In May, an order was entered granting Phelps' request to exceed the court-appointed attorney fee guidelines of $500, but no specific fee amount was determined at that time. In August, after completing the representation, Phelps submitted a claim for attorney fees in the amount of $3,729.27. Judge Mullen reviewed Phelps' claim and granted him attorney fees in the amount of $3,103.25. However, at a later date, before the award was paid, Judge Mullen reduced the award to $1,500.

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1. The juvenile court declined to terminate parental rights, the court of appeals affirmed, and the supreme court granted the State's application for further review. No opinion has yet been filed. In Interest of L.H., No. 90-1431.

In September 1990, Phelps filed an application for a writ of certiorari in the Supreme Court of Iowa challenging the award. In October, the supreme court remanded jurisdiction to the district court for the limited purpose of permitting Phelps to make a record relating to his services in the underlying case, and to permit Judge Mullen to make a supplemental ruling relating to Phelps' fees. In November, on remand, a hearing was held.

At the hearing, Judge Mullen explained, on the record, the process by which he reduced the fee. The judge stated that he originally granted an award of $3,103.25. However, he stated that, at a later date, he discussed the fee award over lunch with Judge Nahra. Judge Nahra had presided at the trial of the underlying action. Judge Mullen told Judge Nahra that he had awarded Phelps approximately $3,000 in fees. Judge Nahra reportedly was shocked and responded that the award was exorbitant for the amount of work that had been performed by Phelps.

Judge Mullen stated:

> After lunch I got to thinking about it and I went and found those fees. They hadn't been paid yet and I reviewed them again. At that time I authorized a flat fee of $1,500.00 each. That was not based upon any sort of -- any sort of analysis of hours spent. It was a flat fee. It was done on a basis of determination that that is a substantial and reasonable fee.

Gary McKenrick, the attorney who had represented the children in the underlying action, testified at the hearing as well. He stated that he had requested and had been

granted an award of $2,502.50 for court-appointed attorney fees. He testified that he believed the case required at least as much time and effort on the part of Phelps, in representing the father, as it had required of him, in representing the children.

No evidence was introduced to show that any portion of Phelps' fee request was unreasonable in any respect or that the amount of time for which Phelps had billed was excessive. Phelps had billed his time at $55 per hour and had billed his legal assistant's time at $30 per hour. Both billing rates were within the limits established by Exhibit A of the Guidelines On Costs Of Court-Appointed Counsel, adopted by the Supreme Court of Iowa, effective September 3, 1985. Phelps billed 55.45 hours of his own time and billed 18.7 hours of his legal assistant's time. He also billed for $118.52 in expenses for copies, postage, long distance phone charges, and legal process service. He included an itemized statement of time spent on the case.

As his supplemental ruling, Judge Mullen held: "The Court determines that it allowed reasonable and substantial fees to Robert Phelps, attorney for the father, in the amount of $1,500. It should be affirmed."

Our scope of review is for an abuse of discretion. Bush v. Iowa District Court for Sac County, 369 N.W.2d 424, 425 (Iowa 1985). Iowa Code section 232.141(2)(b) (1991) states: "Upon certification of the court, all of the following expenses are a charge upon the county in which

the proceedings are held, to the extent provided in subsection 3: . . . b. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem."

In In re A.C., 415 N.W.2d 609 (Iowa 1987), the supreme court stated:

> [c]ompensation should be fixed much the same as in criminal cases: for 'the time necessarily spent, the nature and extent of the services, . . . responsibility assumed and results obtained, the standing and experience of the attorney in the profession, . . . the customary charges for similar services' and the certainty of payment from the public treasury.

Id. at 616 (citing Hulse v. Wifvat, 306 N.W.2d 707, 711 (Iowa 1981)). The burden rests upon the applicant for attorney fees to prove both that the services were reasonably necessary and that the charges were reasonable in amount. Green v. Iowa District Court for Mills County, 415 N.W.2d 606, 608 (Iowa 1987). An attorney is not guaranteed payment at a fixed hourly rate for every hour spent. Id. Neither is the court bound by evidence regarding the customary charges of other attorneys. Id. We recognize that "[t]he district court is itself an expert on the issue of reasonable attorney fees." Id. (citing State v. See, 387 N.W.2d 583, 586 (Iowa 1986)). "The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee that is appropriate for handling the

complete case." Id. (citing Walters v. Herrick, 351 N.W.2d 794, 797 (Iowa 1984)).

From our review of the record, we find that the underlying action was a very complex juvenile court proceeding with multistate aspects. Phelps was appointed to represent the father in this action and was told by the court, before his appointment, that the case was very difficult and complicated. Phelps' client apparently suffered from significant emotional and educational limitations, making his representation all the more difficult. Phelps testified that all of the time for which he billed had actually been expended. He stated that he had only billed for time which he found to be absolutely necessary to the case. Judge Mullen stated that Phelps was a respected attorney upon whose opinions, professionalism and advocacy the judge relies.

However, Judge Mullen seems to have been most influenced in his decision by the lunchtime remarks of Judge Nahra. There is no evidence in the record to suggest that Judge Nahra had ever seen the itemized list of time billed which was attached to Phelp's fee request. Nothing in the record suggests that Judge Nahra's statements were anything but mere off-hand commentary made in an informal lunchtime setting. Section 5(d) of the supreme court guidelines encourages the judge who is responsible for determining compensation to obtain advice and guidance from other judges. Nevertheless, the guidelines also state

"Each district should establish procedures to facilitate such consultation."

Having considered Judge Mullen's explanation of the procedures used and the advice and guidance obtained, we find no support in the record for the judge's decision to reduce Phelp's fee award to $1,500. It was unreasonable for Judge Mullen to rely solely on Judge Nahra's judgment when Judge Nahra had not even seen the statements attached to Phelp's request for fees.

We find Judge Mullen's explanation recounts an abuse of his discretion. By the court's own statements, the award represents a "flat fee" determined without any consideration or analysis of the hours actually or necessarily spent on the case by Phelps. We believe the original award of $3,103.25 reflects an amount arrived at through a reasoned analysis. We, therefore, grant the writ of certiorari and remand the case to the district court with the instruction that the original fee award of $3,103.25 be paid to Phelps.

The costs of this proceeding are taxed to the Iowa District Court for Scott County.

WRIT GRANTED.