IN THE COURT OF APPEALS OF IOWA

No. 0-620 / 89-1876

FILED
AUG 27 1991
CLERK SUPREME COURT

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TONY B. TAYLOR and **THERESA M. TAYLOR,**

Plaintiffs-Appellees/Cross-Appellants,

vs.

KEITH ELWIN ANDERSON, LUELLA C. ANDERSON, et al.,

Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

The Taylors won a judgment of $500 in district court, plus attorney fees of $5,742. The Andersons appealed the award of attorney fees. The Taylors cross appealed. **AFFIRMED.**

Daniel C. Galvin of O'Brien, Galvin & Moeller, Sioux City, for appellants.

Robert F. Meis and F. Joseph Du Bray of Shull, Cosgrove, Hellige, Du Bray & Lundberg, Sioux City, for appellees.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

HABHAB, J.

Plaintiffs Tony B. Taylor and Theresa M. Taylor entered into a purchase agreement with defendants Keith Elwin Anderson and Luella C. Anderson to purchase certain residential property in Sioux City, Iowa, known as 2204 West Palmer Avenue. The purchase agreement provided that the Andersons would give the Taylors a warranty deed and that the property would be free and clear from all encumbrances on the date of closing. If the seller failed to fulfill the agreement, the buyer could proceed by any action and the seller agreed to pay costs and attorney fees. The Andersons executed a warranty deed to the Taylors on March 26, 1987.

Robert Kuhlman and Linda Kuhlman live on the property adjacent to 2204 West Palmer Avenue. The Kuhlmans own a twelve-foot square shed which is located upon the property which the Taylors were buying. On March 27, 1987, the Andersons executed a document which intended to grant the Kuhlmans an easement for the area in which the shed is located. However, the legal description in the easement does not include the area where the shed is located.

The sale between the Taylors and the Andersons was closed on March 30, 1987. The warranty deed and the easement were both filed with the Woodbury County Recorder on that date. The easement was filed first.

After the Taylors took possession of the house on 2204 West Palmer Avenue, they asked the Kuhlmans to remove the shed. The Kuhlmans refused based on the easement.

The Taylors instituted the present lawsuit. Count I of their petition was an action to quiet title. Count II sought damages from the Andersons for breach of contract and breach of warranty deed. The district court granted the Taylors' motion to sever the two counts. This appeal concerns only Count II.

The district court determined that the value of the land with the easement was only $100 less than the value of the land not so encumbered. The Taylors spent $400 for an expert witness. The court entered judgment against the Andersons for $500. The court also noted that the Taylors could recover attorney fees, and this amount would be determined at a separate hearing.

The Taylors filed an application for attorney fees which included an affidavit of services rendered by their attorneys, F. Joseph Du Bray and Robert F. Meis. The application sought attorney fees of $7,660.78. A hearing was held at which Robert Meis and the Andersons' attorney was present. The court disallowed fees relating to Count I and two unsuccessful motions. The Andersons were ordered to pay attorney fees of $5,742.36.

The Andersons appealed the award of attorney fees and the Taylors cross-appealed. We affirm the decision of the district court.

I. The action below was tried at law. Our scope of review is on assigned errors only. Iowa R. App. P. 4.

II. The Andersons contend the attorney fees awarded to the Taylors were excessive and unreasonable. They assert that the Taylors did not present sufficient evidence to support the award. The Andersons also point out that the attorney fee award is disproportional to the amount of damages.

Applying the correct legal standard, a court has broad discretion in determining attorney fees. Hulse v. Wifvat, 306 N.W.2d 707, 709 (Iowa 1981). Yet, this must be a reasonable degree of discretion. In re Estate of Bruene, 350 N.W.2d 209, 217 (Iowa App. 1984).

Both the necessity and valuation of the services must be determined. Hulse, 306 N.W.2d at 709. The services must have been reasonably necessary and the valuation must be reasonable in amount. Id. In the case of an attorney's services, "reasonable value" is not ascertained by a single factor such as time expended. Heninger & Heninger, P.C. v. Davenport Bank & Trust Co., 341 N.W.2d 43, 48 (Iowa 1983). The fact finder looks at the totality of the circumstances including the nature and extent of services, the difficulty and complexity of the questions presented, the amount involved, the time expended, the responsibility assumed, the customary charge for similar services, the result obtained, and the experience of the attorney. Id.

The district court is an expert on what are reasonable attorney fees. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 1256, 115 N.W.2d 695, 699 (1962). It is not necessary for the court to hear evidence in support of the motion. Id. The affidavit of counsel and the matters known to the court from the trial of the case, may be sufficient to support the allowances made. Id. at 700.

We believe there was sufficient evidence in this case to support the award of attorney fees made by the district court. The Taylors' application for attorney fees was supported by an affidavit of counsel and attorney Robert Meis made a professional statement. Furthermore, the fee application was considered by the same judge who heard the original action.

Also, we believe the court did not abuse its discretion in making the award. We reject the argument the trial court abused its discretion in failing to award fees and expenses proportional to the amount of the money judgment. See Lynch v. City of Des Moines, 464 N.W.2d 236, 238 (Iowa 1990). A court cannot place undue emphasis on the size of the judgment, but must look at the whole picture. Id. at 239.

III. In their cross-appeal, the Taylors contend that the Andersons should be responsible for the cost of attorney fees the Taylors spent in their quiet title action against the Kuhlmans. The Taylors state that the actions of the Andersons forced them to institute the quiet title action.

We do not believe the court erred in this regard. The suit was severed and only the claims against the Andersons were considered in the present action. Because the Taylors' claims against the Kuhlmans were not considered here, the trial court would not be able to exercise its expertise in awarding attorney fees on those claims.

IV. We hold that the district court did not abuse its discretion in awarding attorney fees in this case and affirm the judgment of the district court.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. The trial court determined this was a case where damages of $100 were justified and awarded an attorney fee of $5,742.78. I cannot agree. I would modify to decrease the attorney fee to $500.