

IN THE COURT OF APPEALS OF IOWA

No. 8-028 / 97-0497

000239

**ED MORRISON, Individually, and ROSAN L.
MORRISON, as Parents and Next Best Friends
of JENNIFER MORRISON, Minor; and
DIANE M. ROBUCK, as Parent and Next Best
Friend of SARAH MORRISON, Minor,**

Plaintiffs-Appellants,

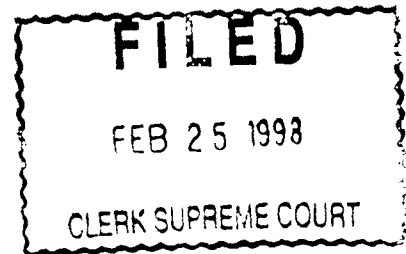
vs.

FLORENCE M. SPAUR and MYRNA SPAUR,

Defendants,

STATE FARM MUTUAL INSURANCE COMPANY,

Intervenor-Appellee.



Appeal from the Iowa District Court for Marion County, J. W. Jordan, Judge.

Plaintiffs appeal from the district court's order granting the intervenor-insurer's motion to adjudicate attorney fees. **REVERSED.**

Donald G. Beattie and R. Bradley Skinner of Skinner & Beattie, P.C., Altoona,
for appellants.

Thomas J. Berg and Jon A. Vasey of Elverson, Vasey & Peterson, Des Moines,
for appellee.

Heard by Cady, C.J., and Sackett and Mahan, JJ.

SACKETT, J.

This appeal concerns the right of attorneys Skinner & Beattie, P.C., to collect a contingent fee from a property damage claim subrogated to State Farm Mutual Insurance Company. The attorneys collected the property damage as a part of the settlement of this suit where State Farm's insured was not named as a party plaintiff and State Farm intervened. The trial court found, because State Farm's insured was not named as a party plaintiff, the attorneys were not entitled to collect a fee. Under the facts of this case, we disagree and reverse the findings of the district court.

State Farm insured an automobile owned by Cindy Lawrence. Plaintiff Ed Morrison, who married Lawrence shortly after the accident, was driving the automobile with Lawrence's permission when it was involved in a collision with an automobile owned and operated by defendant Florence Spaur.¹ Defendant was insured by Allied Mutual Insurance Company.

Plaintiffs filed a suit seeking damages for personal injury and property damage. State Farm intervened claiming its subrogated interests for payment of medical expenses and property damage. Skinner & Beattie, P.C., on behalf of plaintiffs and Lawrence, settled the suit with defendants and Allied Mutual. Part of the settlement included \$8500 for damage to Lawrence's car. State Farm had paid \$7347.66 to Lawrence for property damage and was subrogated in that amount to any recovery she

¹ At the time, plaintiffs Jennifer Morrison and Sarah Morrison were passengers in Lawrence's vehicle.

made. The attorneys took a one-third fee from the \$7347.66 and paid State Farm the two-thirds balance. State Farm asked the district court to find State Farm had no responsibility for the attorney fees on the property damage amount paid to it. The trial court agreed with State Farm, basing its holding on the fact Lawrence was not a named party in the tort action.² This appeal claiming the fee was owed to Skinner & Beattie, P.C., followed.

The obligation of State Farm, as a subrogated party, to pay a portion of attorney fees from the property settlement it received is premised on Iowa Code section 668.5(3) and (4) (1993). *See Krapfl v. Farm Bureau Mut. Ins. Co.*, 548 N.W.2d 877, 878 (Iowa 1996). These subsections read as follows:

668.5 Right of contribution.

.....

3. Contractual or statutory rights of persons not enumerated in section 668.2 for subrogation for losses recovered in proceedings pursuant to this chapter shall not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under section 668.3, subsection 8, and according to the findings made pursuant to section 668.14, subsection 3, *and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict.*

4. Subrogation payment restrictions imposed pursuant to subsection 3 apply to settlement recoveries, but only to the extent that the settlement was reasonable.

Iowa Code § 668.5(3), (4) (1993) (emphasis added).

² The amount of the challenged fee is held in trust pending resolution of this litigation.

Though Lawrence was not a party to the lawsuit, Skinner & Beattie, P.C., collected damages for her property loss and loss of use, including claims not included in State Farm's subrogated interest.³

Skinner & Beattie, P.C., on behalf of plaintiffs and Lawrence, settled with defendants and Allied Mutual and tendered to State Farm its subrogated amount less attorney fees. Under these circumstances, the fact Lawrence was not named as a party plaintiff does not decide the issues. The attorneys settled Lawrence's claim. In *Principal Casualty Ins. Co. v. Norwood*, 463 N.W.2d 66, 69 (Iowa 1990), the court held the subrogee's responsibility under section 668.5(3) to pay a pro rata share of legal and administrative expenses incurred in obtaining a judgment or verdict against a third-party tortfeasor applies equally to settlement recoveries "to the extent the settlement was reasonable."

State Farm was paid the entire amount of its subrogated interest after attorney fees. There can be no claim the settlement was not reasonable. We do not agree with the trial court's holding on this issue.

State Farm advances it should not have to pay the attorneys because it was forced to intervene. We evaluate the role of State Farm in litigation and find its only role was to protect its right to reimbursement from a recovery made by the attorneys

³ Our review of the correspondence in the record makes it clear, though there was some confusion about ownership of the car, there is nothing to indicate Skinner & Beattie, P.C., ever intended to do anything but protect State Farm's subrogated interest.

for plaintiffs and Lawrence. State Farm's efforts in that role are not a factor to be considered in determining whether Skinner & Beattie, P.C., are entitled to the fee. *See Aspelmeier, Fisch, Power, Warner & Engberg v. Allied Group Ins. Co.*, 556 N.W.2d 805, 807 (Iowa 1996).

We reverse the trial court and find Skinner & Beattie, P.C., entitled to a one-third fee on the collection of the \$7347.66 for State Farm.

REVERSED.