IN THE COURT OF APPEALS OF IOWA

No. 7-359 / 96-1222

000231

MONTICELLO STATE BANK,

Plaintiff-Appellee,

vs.

KENNETH RAY GILLMORE,
AND WILMA A. GILLMORE, et al.,

Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

The defendants appeal from the district court's ruling awarding the plaintiff additional attorney fees in a mortgage foreclosure action. **AFFIRMED.**

Kenneth F. Dolezal of Dolezal, Lindeman & Davison, Cedar Rapids, for appellants.

H. Raymond Terpstra II and James H. Carter, Cedar Rapids, for appellee.

Considered by Sackett, P.J., Huitink, J. and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

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PERKINS, S.J.

In October 1995, the district court entered a foreclosure decree in favor of the plaintiff, Monticello State Bank, against farm property of the defendants, Kenneth and Wilma Gillmore. Approximately $17,000 in attorney fees were assessed against the Gillmores as costs. On March 25, 1996, the bank filed an affidavit for additional amounts due for attorney fees and expenses. The total amount was $4449.08. The bank did not attach itemized billing statements to the affidavit on the basis that the statements involved privileged attorney-client and/or work product of the bank's counsel. The Gillmores resisted the affidavit, in part, on the basis that no itemization or accounting was provided to reach a determination of the reasonableness of the request.

During a hearing on the request for additional fees, copies of billing statements were provided. In an order entered on June 19, 1996, the district court determined that the itemized billing statements provided did contain attorney-client and attorney work product items which were privileged. The court determined that such statements should be sealed and noted that counsel for the Gillmores did not resist the entry of an order sealing the statements. The court did not allow the plaintiff attorney fees in the amount of $1756.40 which were attributable to the attendance at a sheriff's sale and abstracting work but did allow $2683.58 for fees and costs. The court also issued directions regarding the bank tendering the Gillmores a sheriff's certificate for a sheriff's sale.

On June 28, 1996, the Gillmores filed a notice of appeal. In response to the Gillmores' challenge to the district court's ruling on the confidential nature of the billing statements, the bank claims that the Gillmores failed to preserve error and the district court's ruling should be affirmed because the Gillmores had access to the billing statements at the hearing, the Gillmores had an adequate opportunity to be heard, the Gillmores failed to file an Iowa Rule of Civil Procedure 179(b) motion regarding the district court's findings and conclusions, and the Gillmores failed to object to the sealing of the itemized billing statements as privileged documents.

I. Scope of Review

The standard of review for an award of attorney fees based on a contract is an abuse of discretion, but the trial court's conclusions of law are open for review by this court. *3 S Co., Inc. v. Zarek,* 504 N.W.2d 153, 156-157 (Iowa App. 1993).

II. Issues

The appellants contend the district court erred in two respects:

A. In the award of attorney fees without input from the Gillmores; and
B. In determining the itemized billing statements were subject to attorney-client or work product privilege.

We take up these issues by first determining that a hearing was held on the claim for additional attorney fees on May 18, 1996. The itemized billing statements were made available to the Gillmores and their counsel. Plaintiff-appellee argued that additional fees should be allowed and further that the billing statements contained confidential information protected by the attorney-client privilege. Defendants argued

against certain items after having had the opportunity to consider and review the itemized billing statements.

The district court in a written order entered on June 19, 1996 allowed $2683.58 in additional attorney fees and costs. The defendants had successfully convinced the court to disallow $1756.40. The district court further found the itemized billing statements did contain attorney-client and work product materials and provided the statements should be sealed.

At the hearing on May 18, 1996, counsel for the Gillmores did not resist the entry of an order sealing the itemized billing statements. The Gillmores did not file a motion asking the court to expand it's findings of fact pursuant to Iowa Rule of Civil Procedure 179(b). On the basis of the record before us we find that the defendants failed to preserve the issue of whether the itemized billing statements are privileged.

Proceeding on to the remaining issue of whether the trial court erred in the award of additional attorney fees without input from the Gillmores we decide, first, that the Gillmores did have input and they prevailed on some matters; second, and the broader question, the trial court did not abuse its discretion in awarding additional attorney fees.

A court is to consider a wide variety of factors in determining reasonable attorney fees. *Id.* at 156. We have previously stated:

> Any determination of attorney fees must include but is not limited to, a consideration of the amount of time spent; nature, extent and difficulty of services; amount involved; responsibility assumed; results obtained; customary charges for similar services; and professional standing and experience of the attorney.

Lundy, Butler & Lundy v. Bierman, 398 N.W.2d 212, 215 (Iowa App. 1986). The district court is recognized as an expert on the issue of reasonable attorney fees. *Edson v. Chambers*, 519 N.W.2d 832, 834 (Iowa App. 1994).

A careful review of the record convinces us that the district court fully considered the affidavits filed by the parties, the arguments of counsel and the entire matter before the court. The decision of the trial court was detailed in setting forth the hourly compensation rate of the attorney and the number of hours for which no compensation would be allowed. We find no abuse of discretion by the district court in its allowance of additional attorney fees.

The trial court is affirmed.

AFFIRMED.