IN THE COURT OF APPEALS OF IOWA

No. 0-506 / 99-1891
Filed September 27, 2000

JOSEPH SITZES, D/B/A ALL-RITE-SITES PROFESSIONAL SERVICES AND LANDA PAINTING, INC.,
Plaintiffs-Appellants,

vs.

FIRST AVENUE RAMP, L.C.,
Defendant-Appellee.

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CLERK SUPREME COURT

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

The plaintiffs appeal from a district court order awarding them attorney fees following a successful mechanic's lien foreclosure action. **REVERSED AND REMANDED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellants.

William G. Nicholson of White & Johnson, P.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

Reasonableness cannot be reduced to a formula. The district court apparently attempted to do so when it awarded attorney fees to Joseph Sitzes, doing business as All-Rite Sites Professional Services, and Landa Painting, Inc., following enforcement of their mechanic's liens against First Avenue Ramp, L.C. We reverse and remand.

I. Background Facts and Proceedings.

Sitzes and Landa brought a mechanic's lien foreclosure action against First Avenue Ramp in 1996. The trial court entered a $16,382.82 judgment for Sitzes and a $1601 judgment for Landa. The court also awarded the plaintiffs five percent interest from the date they filed their mechanic's liens until the date the court entered their judgments and ten percent interest thereafter.

On appeal this court allowed Sitzes's claim against First Avenue Ramp in full ($24,618.54) and his claim for sales tax for labor; we affirmed the district court's award of Landa's entire claim against First Avenue Ramp. *Sitzes v. First Ave. Ramp, L.C.*, No. 9-248/98-561 (Iowa App. May 26, 1999). We denied Sitzes and Landa's claim for one and one-half percent interest per month, but found they were entitled to ten percent interest from the date they filed their petition to foreclose their mechanic's liens. *Id.*

After remand to the district court, Sitzes and Landa filed a supplemental application for allowance of the attorney fees and expenses they incurred during the appeal. (Sitzes and Landa filed their initial application before we decided their first appeal.) The district court awarded Sitzes and Landa all of their

expenses ($4465.12) and forty percent of their claimed attorney fees ($9071.80 of $22,679.50). Sitzes and Landa appeal the award.

II. Attorney Fees.

Sitzes and Landa, because they successfully enforced their respective mechanic liens against First Avenue Ramp, are entitled to "reasonable attorney fees." Iowa Code § 572.32 (1999). Section 572.32 and the cases decided under it do not address the standards for awarding and reviewing these fees. The standards applicable to other statutory attorney fees apply here.

The district court should have only awarded attorney fees to Sitzes and Landa if they proved the services were reasonably necessary and the charges were reasonable in amount. *See Green v. Iowa Dist. Ct.*, 415 N.W.2d 606, 608 (Iowa 1987). In exercising its discretion, the court could consider the following factors:

> the time necessarily spent, the nature and extent of the service, the amount involved, the difficulty of handling and importance of the issues, the responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service.

Landals v. George A. Rolfes Co., 454 N.W.2d 891, 897 (Iowa 1990).

We review the district court's award of attorney fees for an abuse of discretion. *Id.* We will find the court has abused its discretion only if it exercised such discretion on "grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Mississippi Valley Broad., Inc. v. Mitchell*, 503 N.W.2d 617, 619 (Iowa App. 1993). Moreover, we will presume the court has expertise on the reasonableness of attorney fees. *Id.*

Sitzes and Landa assert the district court abused its discretion by relying on an argument First Avenue Ramp advanced in its resistance to their application for allowance of attorney fees and expenses. First Avenue Ramp stated it resisted any award of attorney fees and costs "attributable to the claim of Plaintiff Sitzes for the reason that Sitzes was not successful in this case." It argued a court may equitably apportion costs when a party succeeds in only part of its claim and noted Sitzes's award of $16,382.82[1] was a "reduction" of almost forty percent of his original claim for services. Sitzes and Landa argue the district court's award, which was forty percent of the total fees they had sought, shows the court applied—albeit incorrectly[2]—First Avenue Ramp's argument regarding the reduction of their fees. They further argue this was an abuse of discretion because on appeal they were successful on all but one of their claims.

Sitzes and Landa's assertion that the district court relied on First Avenue Ramp's argument is a fair observation of how the court may have settled on its fee award. The court's award of $9071.80 is forty percent—to the penny—of the fees Sitzes and Landa requested. Nothing in the court's ruling explains how the court reached this sum.[3] We agree the court apparently attempted to match Sitzes and Landa's attorney fee award with Sitzes's success on the merits at trial.

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[1] First Avenue Ramp filed its resistance before this court decided Sitzes and Landa's first appeal and increased Sitzes's award to $24,618.54.

[2] The district court's attorney fees award constitutes forty percent *of* the amount Sitzes and Landa requested, not a reduction *by* forty percent.

[3] The district court is generally not required to precisely account for how it computes an attorney fee award. *Gabelmann*, 606 N.W.2d at 344.

The court could properly consider the "results obtained" by Sitzes and Landa as one factor bearing on what sum would constitute an appropriate attorney fee award and adjust the award accordingly. *See Landals*, 454 N.W.2d at 897. If the court was going to make such an adjustment, however, it should have considered the results Sitzes and Landa obtained following their successful appeal—not the results they obtained at trial. Moreover, while the court could reduce Sitzes and Landa's fee award so it would reasonably reflect their failure to prevail on every one of their claims, the court should not have adopted a "rigid formula" tying "the recovery of fees to a precise ratio of the amount of damages awarded over the amount demanded." *See Vaughan v. Must, Inc.*, 542 N.W.2d 533, 541 (Iowa 1996) (recognizing a prevailing plaintiff's attorney fees can sometimes be reduced if the party has been only partially successful, but refusing to apply the formula proposed by the defendant in this age discrimination suit); *cf. Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 344 (Iowa 2000) ("[A] court which places emphasis on the size of the judgment, to the exclusion of all other pertinent factors, thereby disregards the public interest underlying [section 91A.8's remedial provisions]."). "There is no precise rule or formula for making these determinations." *Vaughan*, 542 N.W.2d at 541 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40, 52 (1983). By using such a formula, the district court failed to exercise its discretion.

We therefore reverse and remand to the district court for entry of judgment in conformity with this opinion. We are not suggesting the result to be reached by the district court. We do not retain jurisdiction.

REVERSED AND REMANDED.

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

SACKETT, C.J. (dissenting)

I dissent. The district court did not abuse its discretion in fixing attorney fees. Determination of attorney fees is a matter entrusted to the discretion of the district court. *Bremicker v. MCI Telecomm. Corp.*, 420 N.W.2d 427, 428 (Iowa 1988); *see also Hulse v. Wifvat*, 306 N.W.2d 707, 709 (Iowa 1981). We reverse for an abuse of discretion "'only when such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *Bremicker,* 420 N.W.2d at 428 (quoting *Rowen v. LeMars Mut. Ins. Co.*, 357 N.W.2d 579, 583 (Iowa 1984)). The discretionary decisions of the trial court are presumed to be correct until the contrary is shown by the complaining party. *Id.; see also State v. Gartin*, 271 N.W.2d 902, 910-11 (Iowa 1978). A trial court abuses its discretion when the evidence and all matters necessarily involved are considered and the award is manifestly inadequate. *Tilton v. Iowa Power and Light Co.*, 250 Iowa 583, 590, 94 N.W.2d 782, 786 (1959), *Sunrise Dev. Co. v. Iowa Dep't of Transp.*, 540 N.W.2d 465, 467 (Iowa App. 1995). The award made is adequate.