

THE SUPREME COURT OF WASHINGTON

V&E MEDICAL IMAGING SERVICES, INC., a
Washington corporation, dba AUTOMATED HOME
SOLUTIONS,

Plaintiff,

v.

MARK DeCOURSEY AND CAROL DeCOURSEY,
husband and wife and the marital community
composed thereof, and [REDACTED]

Respondents,

v.

[REDACTED] JANE DOE [REDACTED] individually
and the marital community, [REDACTED]
HELP (incorporated and unincorporated),
CONSTRUCTION CREDIT CORPORATION,
HERMAN RECOR ARAKI KAUFMAN
SIMMERLY & JACKSON, PLLC.,

Defendants,

PAUL H. STICKNEY, JANE DOE STICKNEY,
individually and their marital community,

Petitioners,

KENNETH MICHAEL BACON, JANE DOE BACON,
individually and their marital community, MICHAEL
JOHN CONNOLLY, JANE DOE CONNOLLY,
individually and their marital community,

Defendants,

WINDERMERE REAL ESTATE / S.C.A. INC.,

Petitioner,

CITY OF REDMOND, WELLS FARGO BANK
ACCOUNT 6000398773 IN LIEU OF BOND, JOHN
DOE (1), AND JOHN DOE (2),

Defendants.

CLERK'S RULING SETTING OF ATTORNEY FEES AND EXPENSES

NO. 85563-3

C/A No. 62912-3-I

King County No.
06-2-24906-2 SEA

FILED
SUPERIOR COURT
KING COUNTY
JAN 25 AM 10:06
BY RONALD R. DRPENTER
CLERK

613/28

PROCEDURAL BACKGROUND

By order entered on April 27, 2011, this Court denied review of the petition for review filed by the Petitioners, Paul Stickney and Windermere Real Estate, S.C.A., Inc. This Court's order also awarded the Respondents, Mark and Carol DeCoursey, husband and wife, reasonable attorney fees and expenses pursuant to RAP 18.1(j) for answering the petition for review, and directed that the Supreme Court Clerk determine the amount of said award pursuant to RAP 18.1.

On May 6, 2011, the "RESPONDENTS' AFFIDAVIT OF FEES AND EXPENSES" (affidavit) was filed, which seeks an award for expenses and attorney fees in the total amount of \$16,718.46 (expenses of \$73.39 and attorney fees of \$16,645.07).

On May 12, 2011, the "PETITIONERS' OBJECTION TO RESPONDENTS' REQUEST FOR FEES AND EXPENSES" (objection) was filed; which suggests a maximum award for attorney fees in the amount of \$2,786.41.

On May 17, 2011, the "RESPONDENTS' REPLY IN SUPPORT OF FEES AND EXPENSES" (reply) was filed.

On May 23, 2011, the "PETITIONER'S SUPPLEMENTAL AUTHORITIES RE: DOES RAP 18.1(j) ALLOW RECOVERY OF ATTORNEY FEES FOR NON-CPA CLAIMS" was filed.

ISSUE:

What amounts, if any, should be awarded to the Respondents regarding expenses and attorney fees?

RULING:

First I will address the Respondents' request regarding their expenses. The Petitioners object that some of the claimed expenses are not permitted. I note that to the extent of the claimed amount pursuant to RAP 14.3 (20 pages at \$2.00 per page), such is a cost claim and must be denied. Enumerated costs, as opposed to expenses, cannot be awarded because this Court is not in the position to make an award of costs as it did not enter a decision terminating review, it denied review. In that regard please see RAP 12.3(a)(1) & (2) and RAP 14.1(a). Therefore, I must disallow the \$40.00 claimed amount. I find the remaining claimed expenses to be otherwise proper expenses pursuant to RAP 18.1; both properly documented and reasonable expenses of the type that would normally be awarded pursuant to both this Court's order and the applicable rule. As such, the Respondents are awarded expenses in the total amount of \$33.39.

The balance of this ruling will focus on determining the appropriate amount to be awarded to the Respondents as reasonable attorney fees for work performed regarding the process of answering the petition for review. In calculating what should be awarded as reasonable attorney fees, this Court employs the "lodestar" method. Under that method the Court generally determines the attorney fees to be awarded by multiplying the number of hours reasonably expended by counsel for the prevailing party by a reasonable hourly rate. *Bowers v. Transamerica Title Ins., Co.*, 100 Wn.2d 581, 593-94, 675 P.2d 193 (1983). The party requesting the attorney fees must provide basic documentation of the work performed sufficient to inform the Court of the number of hours worked, the type of work, and the category of the attorneys or other professionals who performed the work. *Id.*, 597. By necessity, the

determination as to what are reasonable hours for which counsel can fairly be compensated requires the Court to exclude from the requested hours any wasted hours. *Mahler v. Szucs*, 135 Wn.2d 398, 433-34, 957 P.2d 632 (1998). Likewise the Court must determine the reasonableness of the claimed hourly rate of counsel at the time the lawyer actually billed the client for the services provided. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 798 P.2d 799 (1990). The evaluation process requires at least a passing knowledge of what has been considered a reasonable expenditure of efforts and reasonable hourly rates in prior similar litigation.

Having reviewed our file and the pleadings of the parties, I find that the number of hours claimed for the various activities of Respondents' counsel to be slightly on the strong side as to some of the activities, although generally reasonable, therefore somewhat atypical of what this Court usually sees as being expended in representing a respondent before this Court in similar litigation. So I have disallowed some of the claimed hours. Also, given the nature of the litigation, the general quality of their pleadings, and the levels of professional experience of counsel, I have determined that the claimed hourly rate of \$440.00 per hour to frankly be excessive; particularly when it is compared with the \$175.00 per hour rate apparently charged by opposing counsel who has substantial appellate court experience. Arguably, no appellate counsel is worth in excess of \$7.00 per minute of effort expended in representation of a civil client. So I find substantial merit and force to the Petitioners' objection as to the hourly rate claimed, and have reduced it appropriately.

On balance however, I reject the notion that Respondents' counsel should only be

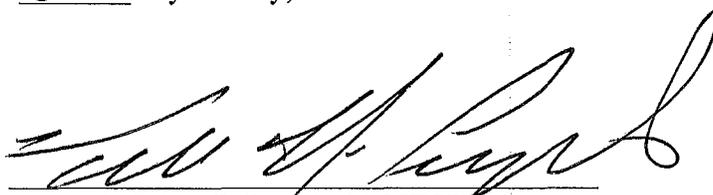
compensated as to a portion of the efforts devoted to the filing of the answer to the petition for review. As review of the pleadings indicated that not only was it reasonable to file the answer, but that said answer was presumably very helpful to this Court in making its determination regarding the review request. Additionally, in its order awarding reasonable attorney fees the Court in no way suggested that a limited or adjustment should be made as to the scope of efforts expended in filing the answer. Accordingly, I have concluded that the Respondents should be awarded reasonable lodestar attorney fees in the amount of \$11,945.50.

CONCLUSION

The Respondents, Mark and Carol DeCoursey, husband and wife, are awarded expenses and reasonable attorney fees in the total amount of \$11,978.89, which shall be paid by the Petitioners, Paul Stickney and Windermere Real Estate, S.C.A., Inc, who shall be jointly and severally liable for the payment of the same.

A person aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17. 7.

DATED at Olympia, Washington this 20th day of May, 2011.



RONALD R. CARPENTER
Supreme Court Clerk