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2025 IL App (3d) 240281-U

Order filed March 14, 2025

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2025

THOMAS J. KENNEDY,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-24-0281
)	Circuit No. 22-SC-297
)	
GLENN S. SWICK and LEILANI E. SWICK,)	Honorable
)	James B. Harvey,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justice Peterson concurred in the judgment.
Justice Anderson concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in awarding attorney fees with the exception of fees awarded for counsel’s travel. Affirmed in part and vacated in part. Cause remanded.

¶ 2 After prevailing in a small claims case, defendant sought, and the trial court granted, attorney fees which included time her attorney spent traveling on four occasions from central Illinois to Joliet to litigate the case. The court did not abuse its discretion in awarding attorney fees, except for the fees relating to travel. We affirm in part and vacate in part.

¶ 3

I. BACKGROUND

¶ 4

In January 2022, plaintiff Thomas Kennedy filed a small claims complaint against defendant Leilani Swick. (Plaintiff also sued Glenn Swick. He is no longer a party to the case.) Plaintiff alleged that defendant failed to disclose known defects in certain real estate. After a bench trial, the trial court entered judgment in plaintiff's favor and awarded him \$10,000 in damages plus costs. Defendant appealed, and we reversed the judgment in October 2023. *Kennedy v. Swick*, 2023 IL App (3d) 220519-U.

¶ 5

The parties' real estate contract entitled the prevailing party to reasonable attorney fees and costs as ordered by a court of competent jurisdiction. After our mandate issued, defendant petitioned for attorney fees and costs totaling \$50,071.54. She attached affidavits and attorney time records to her petition. One of her attorneys charged \$280 per hour, while the other charged \$330 per hour in 2022 and \$360 per hour in 2023. (Two other attorneys worked on the case.) In total, defendant's attorneys expended more than 150 hours on the case from its inception to the fee petition following defendant's successful appeal.

¶ 6

Defendant's attorneys billed for their travel time on several dates between March and December 2022. Those dates included March 25, 2022 (5.50 hours), May 10, 2022 (5.50 hours), October 26, 2022 (10.25 hours), and December 8, 2022 (7.75 hours), for a total fee of \$9,020.00. However, the billing entries did not separate the travel time from the time spent in court or otherwise working on the case. Total costs were \$2,426.54, including travel costs amounting to \$793.76. Additional fees of \$1,725.00 were assessed by counsel but not paid at the time of the petition's filing. In her reply to the petition, defendant updated the fee request by adding fees and costs incurred since the filing of the original fee petition, for an updated total of \$55,505.16.

¶ 7 Plaintiff objected to travel costs and the hourly rates charged, arguing they were unreasonable for the Will County area. He also argued the fees were excessive when compared to the amount of damages at issue in the case. He attached his own counsel’s billing statement and noted that both the hourly rate and total fees were substantially less than those charged by defense counsel. He did not object, however, to defendant’s status as the prevailing party. Nor did he object to the individual time entries or the attorney’s method of recording his time.

¶ 8 No testimony was taken at the time of the hearing, and after hearing the parties’ arguments, the trial court stated,

“I’ll just tell you, you know, I don’t at first blush see these fees in terms of the rate as out of line. This isn’t a normal small claims case when you take it up to the Third District, which is, you know, not something you can do in a couple hours. In terms of the affidavits, I’ll review that. As I sit here now, I don’t necessarily find anything inordinate about travel time from Lincoln on this case, but I’ll take it under advisement and I will issue my decision.”

The trial court granted defendant’s petition in part, awarding her \$50,071.54 in fees and costs.

¶ 9 II. ANALYSIS

¶ 10 The trial court is “particularly well-qualified to make the partially subjective findings necessary for an award of fees.” (Internal quotation marks omitted.) *Peraica v. Riverside-Brookfield High School District No. 208*, 2013 IL App (1st) 122351, ¶ 34. Accordingly, we review the decision to award attorney fees for an abuse of discretion. *Jones v. Lockard*, 2011 IL App (3d) 100535, ¶ 45. “An abuse of discretion occurs only when the trial court’s decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court.” *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 11 In determining reasonable attorney fees, Illinois courts conduct a multifactor analysis. *Kieken v. City of Joliet*, 2023 IL App (3d) 220392, ¶ 28. “Relevant factors include the skill and standing of the attorney, the nature of the case, the novelty and difficulty of the question at issue, the amount and importance of the subject matter, the degree of responsibility, the usual and customary charges and the benefits to the client.” *Id.* “The trial court may and should rely on its own knowledge and experience when determining the reasonableness of the fees sought.” *McHenry Savings Bank v. Autoworks of Wauconda, Inc.*, 399 Ill. App. 3d 104, 113 (2010).

¶ 12 Plaintiff’s counsel points out the trial court’s fee award was more than five times the maximum amount recoverable in small claims cases. See Ill. S. Ct. R. 281 (eff. Jan. 1, 2022) (a small claim is a civil claim for money not in excess of \$10,000). However, we disagree this alone renders the award unreasonable. The fact that the fee request far exceeds the client’s recovery does not, on its own, justify rejection. *Thomas v. Weatherguard Construction Company, Inc.*, 2018 IL App (1st) 171238, ¶ 74. As the trial court recognized, this was not an ordinary small claims case. It was filed in January 2022 and ultimately concluded more than two years later. It involved motion practice, an amended complaint, limited discovery, a two-day trial during which the complaint was again amended, an appeal, and a fee petition. See *Kennedy*, 2023 IL App (3d) 220519-U, ¶¶ 15-23 (setting forth the procedural history of this case).

¶ 13 A “petition for fees must specify the services performed, the attorney who performed the services, the time expended, and the hourly rate charged.” *Kroot v. Chan*, 2017 IL App (1st) 162315, ¶ 37. In support of her petition, defendant submitted a detailed billing statement with individual entries specifying the services performed, the attorney who performed those services, the date of performance, the time spent, and the billed amount. Some entries indicated that billing

accrued in 15-minute increments. Plaintiff’s trial counsel never challenged any individual entries in the billing affidavit such that the court was required to rule on specific fee charges. Nor did he object to defense counsel’s 15-minute billing increments.¹ At the hearing on the petition, the trial court stated it did not view defense counsel’s hourly rates as unreasonable for the area. We see no reason to disturb this determination. See *Kieken*, 2023 IL App (3d) 220392, ¶ 28.

¶ 14 The court initially noted this case was not one “you can do in a couple hours.” After taking the petition under advisement, it granted the petition in part. The trial court did not abuse its discretion in awarding attorney fees with the exception of fees awarded for counsel’s travel from Lincoln to Joliet to litigate the case. Although an attorney’s travel time can be recoverable in a petition for attorney fees (see *e.g.*, *Jones v. Brandt Construction Co.*, 2022 IL App (3d) 210389-U, ¶ 29), excessive, unnecessary, or unreasonable travel time cannot (see *In re Marriage of Fitz*, 2021 IL App (2d) 200479-U, ¶ 16).

¶ 15 Here, the fees incurred for travel time were unreasonable. Lincoln and Joliet are 129 miles apart.² Defendant’s right to select the attorney of her choice should not require her opposition to pay for time billed at the attorney’s hourly rate for travel from such a significant distance. Further, the court simply stated it did not consider the travel time from Lincoln to Joliet to be “inordinate.” The court’s finding overlooks this court’s precedent that travel expenses beyond those typical in the forum area are not recoverable absent a justified need for out-of-area counsel with specialized expertise. *Losurdo Brothers v. Arkin Distributing Company*, 125 Ill. App. 3d 267, 275-76 (1984).

¹The dissent raises unbriefed issues and essentially argues on plaintiff’s behalf. See *People v. Givens*, 237 Ill. 2d 311, 328 (2010) (“[E]ven though a reviewing court has the power to raise unbriefed issues, it should refrain from doing so when it would have the effect of transforming the court’s role from that of jurist to advocate.”).

²Courts may take judicial notice of mileage distances. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003).

Based on the foregoing and under the specific circumstances of this case, the court's failure to reduce the fees incurred for travel time was an abuse of discretion.

¶ 16 Correspondingly, the travel costs of \$793.76 are not reasonable and their award was therefore an abuse of discretion. We likewise find the award for the time spent traveling in excess of that generally incurred by attorneys in the area was an abuse of discretion. See *id.* (“[A]ny additional attorney fees incurred *** due to the travel time of [the] chosen attorney beyond that generally incurred by attorneys in the area of the court proceeding was not a reasonable expense.”). However, because the time records attached to the fee petition do not distinguish between the time spent traveling and the time spent in court or otherwise working on the file, we are unable to determine the appropriate reduction amount. We therefore remand for the trial court to determine the amount of time defendant's attorney spent traveling and disallow the fees related to that time.

¶ 17 Otherwise, the record shows the trial court was aware of the relevant factors and carefully considered the parties' arguments and the materials they presented, and we cannot say its decision was unreasonable.

¶ 18 **III. CONCLUSION**

¶ 19 We affirm in part and vacate in part the judgment of the circuit court of Will County. We remand with directions.

¶ 20 Affirmed in part and vacated in part.

¶ 21 Cause remanded with directions.

¶ 22 JUSTICE ANDERSON, concurring in part and dissenting in part:

¶ 23 I agree with the majority's conclusion that the trial court's award for travel time was improper. I have no concern with Ms. Swick having the counsel of her choosing, even if her attorney is based in Lincoln or Springfield, Illinois. This is especially true for a trial. However,

that does not mean that Kennedy ought to pay for travel time of that magnitude. Further, some of the trips to Will County could have been easily and efficiently handled through local counsel or via Zoom, at a potential savings of thousands of dollars.

¶ 24 With regard to the remaining fees awarded, I disagree with the majority’s conclusion that the trial court did not abuse its discretion. Swick seeks fees approximately five times the amount of the small-claims damages ceiling. A proper fee award requires a reasonable connection between the fees sought and the amount at stake in the litigation. See *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987); Ill. R. Pro. Conduct (2010) R. 1.5(a)(4) (eff. Jan. 1, 2010). Depending on the circumstances of the case, a five-times multiplier is not *per se* unreasonable, but it is easily unreasonable here.

¶ 25 Kennedy correctly argues that the fees sought are excessive and that “there is no basis *** allowing a windfall of fees” to Swick. While I perceive *many* problems with the fee petition and time entries in this case, I point out just one example. There are several time entries for “analyzing” appellate court docket entries relating to deadlines for filing transcripts, briefs, and the like. Those non-substantive orders from our court would have consisted of a few sentences, *if* that, and would have taken less than a minute to read. Swick’s counsel billed 15 minutes to read and “analyze” each of them (at \$360 per hour, so \$90 for each docket entry), and that is unconscionable. A windfall indeed.

¶ 26 While Kennedy did not raise the precise issue of billing in quarter-hour increments, I believe this issue is sufficiently subsumed by Kennedy’s general contention that the fees are excessive and disproportionate to the amount in controversy. Further, “[c]ourts have a duty to guard against the collection of excessive fees in all cases.” *Corcoran v. Northeast Illinois Regional Commuter R.R. Corp.*, 345 Ill. App. 3d 449, 452 (2003). I agree with the court’s statement in *In re*

Wildman, 72 B.R. 700, 726 (Bankr. N.D. Ill. 1987), that “[p]rofessional persons *** cannot, in all honesty and reasonableness, charge their clients for increments in excess of one-tenth of an hour.”

¶ 27 I also agree with Kennedy’s arguments that there is no basis in the record to conclude that the trial court adequately considered the various factors necessary for issuing a fee award, including the propriety of in-person travel time and the relationship between the fees sought and the amount otherwise in controversy. For that reason, I concur with the majority’s analysis regarding travel-related fees, but respectfully dissent regarding the propriety of the remaining fee award.