

DOCKET NO. HHD-CV-17-6074305-S : SUPERIOR COURT
WILLIAM ROACH : J.D. HARTFORD
v. : AT HARTFORD
TRANSWASTE, INC. : JUNE 4, 2024

FILED

JUN 04 2024

HARTFORD J.D.

MEMORANDUM OF DECISION RE ATTORNEY'S FEES, ## 137 & 173

This matter, tried to a jury before this court, returns to the court on remand from the Appellate Court; *Roach v. Transwaste, Inc.*, 210 Conn. App. 686, 270 A.3d 786 (2022) aff'd, 347 Conn. 405, 297 A.3d 1004 (2023); for a hearing to determine the reasonableness of the plaintiff's claimed attorney's fees based on the hours spent by the attorneys at their hourly rates employing the lodestar method. *Id.*, 694.¹ A hearing was held during which the court received an additional request for attorney's fees covering appellate fees.

The following facts and procedural history are relevant to this decision. The plaintiff, William Roach, claimed, and proved at trial, that the defendant, Transwaste, Inc., a trucking company, violated General Statutes § 31-51q² by terminating his employment because of safety complaints raised by the plaintiff. The jury returned a verdict in favor of the plaintiff in the amount of \$24,288. The trial occupied two days of jury selection and three days of evidence with receipt of the verdict on the fourth day. The court, finding an ambiguity in the attorney-client fee

¹ This court heard the trial of the above matter and awarded attorney's fees. The Appellate Court reversed the court's award based on a contingency basis and directed a new hearing. Mindful of the potential disqualification implications of General Statutes § 51-183c, the clerk of the court inquired of counsel whether they would waive any potential disqualification and reported that they waived such. See General Statutes § 51-39 (c) (permitting waiver of any disqualification).

² Section 31-51q relevantly makes an employer liable for the discharge of an employee who exercises rights guaranteed by the first amendment to the United State constitution or section 3, 4 or 14 of article first of the constitution of the state.

agreement, awarded attorney's fees of 33 1/3 percent of the total recovered. The Appellate Court found no ambiguity and ordered a hearing in accordance with its remand.

The court was presented with three billing statements. The first encompassed the work performed to the time of verdict (trial fees). # 137. The second was submitted for posttrial time addressing objections to the defendant's posttrial motions (posttrial fees). # 150. The third addressed posttrial appellate fees (appellate fees). # 173.

The defendant objects to any award as to the trial billing on the grounds that: (1) the plaintiff did not provide contemporaneous time sheets; (2) the bill for the trial fee request is in block billing and thus are not subject to reasonable review because, inter alia, some of the work for which compensation is sought is clearly clerical; (3) some of the work was duplicative, (4) the posttrial work included time for a court appearance without having provided the court with an attorney-client contract and is thus inappropriate; and (5) the hourly rate was excessive.

The last two objections are easily addressed. The posttrial fees are simply identified as "additional time . . . spent addressing Objections to Defendant's post-trial motions . . . [including] 15 hours for Attorney Vincent F. Sabatini at \$500 per hour (\$7,500) and additional 25 hours for Attorney James Demetriades at \$250 per hour ([\$]6,250.00)." # 150. The plaintiff appears to abandon the request for posttrial fees because his ultimate request for fees; # 173; did not include this time. Moreover, the posttrial fee request is unaccompanied by an affidavit and fails to include sufficient detail for the court to determine the reasonableness of the time and work undertaken. The posttrial fee request also includes a request for court reporter costs that are neither documented nor supported by affidavit. The court accordingly does not award any fees or costs for the posttrial fee request.

The court employs its experience to conclude that the hourly rate requested for Sabatini in both the trial fee and appellate fee request, \$450 per hour, is reasonable given Sabatini's experience as a trial and appellate attorney and the relative complexity of the action pursuant to § 31-51q. Similarly, the hourly rates of \$250 for Demetriades and \$300 for Matthew Muttart, who principally conducted the trial, are also reasonable in the court's experience. See *Smith v. Snyder*, 267 Conn. 456, 479, 839 A.2d 589 (2004) (court may employ its general knowledge of the reasonableness of the fees and case to determine reasonableness of fees).

"The lodestar method entails examining the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate to calculate an amount of reasonable attorney's fees." (Internal quotation marks omitted.) *Roach v. Transwaste, Inc.*, supra, 210 Conn. App. 688 n.2. In the defendant's view, the lack of a contemporaneous record for the trial bill precludes the award of attorney's fees. This argument is based on the Appellate Court's decision in *Tedesco v. Stamford*, 24 Conn. App. 377, 384, 588 A.2d 656 (1991), rev'd on other grounds, 222 Conn. 233, 610 A.2d 574 (1992) in which the court adopted the bright line rule expressed by the Second Circuit in *New York Association for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983) that an application for attorney's fees must be documented with contemporaneous time records specifying the attorney, date, hours expended and the nature of the work done. The *Tedesco* court agreed and clearly held that a "plaintiff's failure to produce contemporaneous time records precludes the trial court's award of attorney's fees." *Tedesco v. Stamford*, supra, 385. This decision, however, appears to be superseded by the subsequent decision of our Supreme Court in *Smith v. Snyder*, supra, 267 Conn. 456, in which it held that "[a]lthough we have been careful not to limit the contours of what particular factual showing may suffice, our case law demonstrates that a threshold evidentiary showing is a prerequisite to an award of attorney's

fees.” (Emphasis added; footnote omitted.) *Id.*, 477. The court acknowledged that “some confusion exists in our case law regarding the nature and extent of this evidentiary burden.” *Id.* It clarified that the movant for attorney’s fees bears the burden of proof such that “when a court is presented with a claim for attorney’s fees, the proponent must present to the court . . . a statement of the fees requested and a description of services rendered.” (Footnote omitted.) *Id.*, 479.

Although the issue of the need for contemporaneous time records was not addressed, nor apparently raised, the court could have, but did not, adopt the bright line enunciated in *Tedesco*.

The Appellate Court likely acknowledged sub silentio this rule by quoting at length from *Smith* - one year after that decision was released - in *DuBois v. William W. Backus Hospital*, 92 Conn. App. 743, 749, 887 A.2d 407 (2005), cert. denied, 278 Conn. 907, 899 A.2d 35 (2006).

“Our Supreme Court has recently clarified the rule for attorney’s fees. See *Smith v. Snyder*, 267 Conn. 456, 479–80, 839 A.2d 589 (2004). “[W]hen a court is presented with a claim for attorney’s fees, the proponent must present to the court . . . a statement of the fees requested and a description of services rendered. Such a rule leaves no doubt about the burden on the party claiming attorney’s fees and affords the opposing party an opportunity to challenge the amount requested at the appropriate time.” This court concludes that under our applicable appellate authority, the plaintiff’s burden is somewhat less than the provision of contemporaneous records but requires a statement of the fees requested and a description of services rendered sufficient for the court to pass on the reasonableness of the fees. While contemporaneous billing records provide the best source of evidence of the reasonableness of a fee request, the absence of such records is not fatal to an award of attorney’s fees. The court nevertheless may consider the lack of contemporaneous billing in determining whether the plaintiff has met its burden of proof.

The defendant next argues that the block billing renders it impossible to ascertain the reasonableness of the fee requested. This is particularly so when, as in the present case, clerical and paralegal work are encompassed within the billing entry. The trial bill covers the work of the three attorneys, Sabatini, Muttart and Demetriades. The total bill is in the amount of \$33,850. The trial fee request for attorney's fees is comprised of block billing entries for multiple activities delineated by the attorney who performed the work. Where the decision to submit block billing renders it impossible to segregate compensable time from non-compensable time it is appropriate to decline to award attorney's fees for the billing on the grounds that the movant has not met the burden of proof. See *Watson Real Estate, LLC v. Woodland Ridge, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-13-6039906-S, 2022 WL 2131810, *6 (June 14, 2022, *Shapiro, J.T.R.*); *Medical Device Solutions, LLC v. Aferzon*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-18-6103682-S, 2022 WL 1072975, *5 (February 18, 2022, *Noble, J.*)

The lack of contemporaneous billing and the use of block billing makes it difficult and at times impossible for the court to determine whether the billing is reasonable. For example, the first entry for Sabatini records hours for "drafted complaint, reviewed it with plaintiff, and filed it with court. Arranged for service of process." The filing of the complaint and arranging for service of process are work that is more properly performed by a paralegal or at least at a paralegal rate, for which no rate has been suggested by the plaintiff. This deficiency is mirrored in the following entry for which the activity is reported as "Discovery: Plaintiff Interrogatories" and is purported to have taken three hours. The task description is recorded as "Reviewed answers with Plaintiff, organized documents, bated documents, submitted documents to Defendant." The organization of documents, bates stamping and submittal to the defendant

reflects activity that is clerical in nature and should not be billed at the attorney rate. Similarly, the third entry is generally described as “Discovery: Defendant’s Interrogatories” reported to have consumed two hours with a task description of “Drafted Defendant’s interrogatories and Request for Production, sent them to Defendant and reviewed responses.” Not only does this also represent work more appropriately done by clerical or paralegal staff, but it necessarily depicts time over multiple days.

A review of other components of the requested billing reveals duplicate billings for the same activity. For example, both Muttart and Demetriades attended jury selection on one specified date³ and both billed for attendance at trial. Additional time that does not distinguish between clerical or paralegal work includes Muttart billing one hour for “Gathered documents and sent supplemental compliance on October 18, 2018” and three hours for “sending out subpoenas, reviewing all depositions taken and reviewing all produced information.” Moreover, Demetriades billed seven hours for “Reviewing documents, redacting documents, organizing documents, printing, placing them into binders, downloading digital files, reviewing exhibits with Attorney Muttart and making appropriate changes.” The vast majority of this entry should have been done by clerical or paralegal staff.

The court finds that the plaintiff has not met his burden of proof as to the reasonableness of some of the time spent and charged and has made it difficult, if not impossible, to distinguish what activity is properly charged at the attorney rate or even what time was spent on various work. The court observes that clerical time is typically not an item for which billing is accepted and the plaintiff has provided no evidence as to what is an appropriate hourly for paralegal work.

³ The court notes that Muttart recorded time for jury selection on February 1 and February 5, 2019, when the court’s record indicated jury selection took place on January 29 and January 30, 2019. The discrepancy serves as a basis to consider the billing as not completely reliable.

The court reduces Sabatini's time to .5 hours at a rate of \$450 per hour or \$225. This reflects an award for only the time for drafting the proposed scheduling order. While the other block billing clearly references compensable time, the use of block billing encompassing paralegal or clerical work would require the court to engage in speculation as to what time was spent by Sabatini on the work performed. The court declines to award any time for Demetriades' entries of Trial Management Report, Exhibit Preparation and Jury Selection. The latter is unnecessarily duplicative of Muttart's time conducting jury selection and the first two are clerical in nature. The court thus finds that the remaining 13.5 hours at \$250 per hour are reasonable for a total of \$3,375. The court finds the plaintiff has proven the reasonableness of all of the fee request for Muttart in the amount of \$18,150. The total amount of time awarded for trial fees is thus \$21,750.

The billing for the appellate work, all done by Sabatini, appears to be at least contemporaneous and the time recorded is not in block form. As noted above, the rate of \$450 per hour is appropriate for an attorney of Sabatini's experience and skill. The 62.95 hours expended is reasonable. The court thus holds that the fee requested of \$28,327.50 is reasonable.

The court therefore finds reasonable the sum of \$50,077.50 as attorney's fees, plus costs in the amount of \$1,881.46.

THE COURT

/s/ #435707
Cesar A. Noble
Judge, Superior Court