IN THE COURT OF APPEALS OF IOWA

No. 0-945 / 10-0260
Filed March 21, 2011

JULIE BOYLE,
Plaintiff-Appellant,

vs.

ALUM-LINE, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Howard County, John Bauercamper, Judge.

A plaintiff appeals from the district court order on remand awarding her attorney fees. **AFFIRMED.**

Karl G. Knudson, Decorah, for appellant.

Donald H. Gloe, Decorah, for appellee.

Heard by Vogel, P.J., and Doyle and Tabor, JJ. Mansfield, J., takes no part.

VOGEL, P.J.

In this appeal, we must determine whether the district court adequately followed our supreme court's directive on remand to make "detailed findings of fact," such that will "afford effective appellate review" of the district court's previous award of attorney fees. Julie Boyle asserts the district court's order awarding her attorney fees on her sexual-discrimination and retaliatory-discharge claims against her former employer, Alum-Line, Inc., was inadequate. She argues that on remand, the district court abused its discretion in awarding attorney fees, namely that it did not follow the instructions given in *Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829, 833 (Iowa 2009). We conclude the district court complied with the directive and affirm.

I. Background Proceedings.

This litigation began in 2003 when Boyle filed a suit against her former employer, Alum-Line, alleging sexual discrimination and retaliatory discharge under the Iowa Civil Rights Act and Title VII of the Civil Rights Act of 1964. After adverse judgments at the district court, Boyle appealed. The supreme court initially transferred the case to this court but after our appellate decision was issued, granted further review. The supreme court reversed and remanded, directing the district court to enter judgment in favor of Boyle on her hostile-work-environment claims and reconsider her retaliatory discharge claim based upon the existing record, as well as determine damages. *Boyle v. Alum-Line, Inc. (Boyle I)*, 710 N.W.2d 741, 752 (Iowa 2006).

On remand, the district court found Boyle was subjected to sexual harassment by her coworkers and discharged by Alum-Line in retaliation for her

sexual harassment complaints, and entered judgment in favor of Boyle in the amount of $100,000. Boyle filed an application for attorney fees, requesting $46,264.50 for trial attorney Mark Anderson (342.7 hours at $135 per hour), $38,664[1] for trial attorney James P. Moriarty (286.4 hours at $135 per hour), and $98,793 for appellate attorney Karl G. Knudson (167.8 hours at $135 per hour for district court work and 380.7 hours at $200 per hour for appellate work), plus the attorneys' expenses. The application was supported by documentation, including affidavits and itemized billing records. After an evidentiary hearing, the district court awarded Boyle $25,000 in trial attorney fees (227.27 hours at $110 per hour) and $25,000 in appellate attorney fees (166.66 hours at $150 per hour), as well as the attorneys' expenses.

Boyle appealed and asserted, in relevant part, that the district court failed to apply the proper criteria in determining reasonable attorney fees and reduced the requested fees without making specific findings of fact explaining the reductions. After the case was initially transferred to this court and our decision issued, the supreme court again granted further review. The supreme court found the district court did not abuse its discretion in setting a reasonable attorney-fee rate of $110 per hour for trial work and $150 per hour for appellate work. *Boyle v. Alum-Line, Inc. (Boyle II)*, 773 N.W.2d 829, 833 (Iowa 2009). However, the district court had reduced the requested number of hours by

[1] We note a discrepancy in the record. Moriarty's itemized billing reflects 286.4 hours at $135 per hour, which totals $38,664, while the March 2007 order shows a total of $41,215.50, which is repeated in the supreme court's decision *Boyle v. Alum-Line, Inc. (Boyle II)*, 773 N.W.2d 829, 833 (Iowa 2009).

approximately two-thirds and the basis for the reduction was not clearly evident from the district court's ruling. *Id.* The supreme court explained,

> In its resistance to Boyle's application for attorney fees, Alum-Line contended the affidavits "contain[ed] duplication on the part of trial counsel that was unnecessary and itemizations for matters they should not be entitled to recover fees for." The court's ruling does not specifically address these assertions or provide any rationale for the court's reduction in the hours requested by the plaintiff.
>
> While the court may arrive at a general conclusion that the hours expended were excessive without specifying with exactness each hour that was unreasonably spent, it still must provide "[d]etailed findings of fact with regard to the factors considered [in its determination of] the attorney fee award." In this case, the court apparently concluded that the plaintiff was entitled to $25,000 in trial court attorney fees and $25,000 in appellate attorney fees. It then divided these amounts by the applicable reasonable hourly rates for trial and appellate work to determine the reasonable number of hours. While the court in its expertise may have been justified in reducing the plaintiff's attorneys' hours, under the methodology used by the court, we cannot afford effective appellate review. Therefore, we remand this case to the district court for detailed findings of fact utilizing the factors enunciated in [*Dutcher v. Randall Foods*, 546 N.W.2d 889 (Iowa 1996)] to determine the reasonableness of the hours claimed by Boyle's attorneys.

Id. at 833–34.

On remand, the district court made specific factual findings. It found the litigation was not particularly time consuming, nor was it complex legally or factually—there were no pretrial depositions, the trial lasted five days from jury selection to closing arguments, the proceedings outside of the jury's presence were not extensive, Boyle called six witnesses and Alum-Line called seven, the evidence did not involve technical, scientific, or medical matters, and neither party called expert witnesses. In addition, the court found the attorneys' work was duplicative. Anderson billed for 342 hours and Moriarty billed for 286 hours for trial work, but at trial Anderson gave the opening statement, examined and

cross-examined all the witnesses, and argued the case to the jury. Moriarty did not examine any witnesses and "said little to the court on the record outside the presence of the jury." As for the appellate work, Knudson expended substantial time familiarizing himself with the trial court record, and performed nearly all of the appellate work. Noting the disparity with the amount of time itemized by defense counsel and considering other factors, the district court further found,

> The defendant's attorney Gloe billed for about 125 hours at the trial court level [compared to nearly 800 hours for plaintiff's counsel] and about 50 hours at the appellate level [compared to nearly 400 hours for plaintiff's counsel].
>
> Plaintiff's counsel presented evidence from several attorneys in support of their fee applications, both by oral testimony and by affidavit. None of these witnesses acknowledged that they had reviewed the fee applications in detail, examined the court file and appellate briefs, and then concluded that the time spent was necessary and reasonable.
>
> . . . .
>
> Taking into account all of the matters discussed above, this court considers all of the trial court level services rendered by the second and third attorneys as duplicative and unnecessary, including services rendered after the first remand. The court further concludes that the services rendered in trial preparation were excessive in light of the nature of the case and compensation should be limited to 227.27 hours.
>
> Likewise, this court considers all of the appellate services rendered by the second and third attorneys as duplicative and unnecessary. The court further concludes that the services rendered in appellate brief preparation were excessive due to the nature of the case, lack of familiarity of appellate counsel with the trial court record, and that compensation should be limited to 166.66 hours.

The court supplemented its prior ruling and affirmed the prior award of attorney fees and expenses.

Boyle appeals and asserts the district court abused its discretion in setting the award of attorney fees.

II. Standard of Review.

"We review the court's award of attorney fees for an abuse of discretion. Reversal is warranted only when the court rests its discretionary ruling on grounds that are clearly unreasonable or untenable." *Id.* at 832.

III. Reasonable Attorney Fees.

The supreme court fully set forth the applicable law regarding attorneys' fees in *Boyle II*, 773 N.W.2d at 832–33. The district court is considered an expert in determining what constitutes a reasonable attorney fee. *Id.* at 832. A reasonable attorney fee is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate, which equals the lodestar amount that is presumed to be the reasonable fee. *Id*. The facts of a particular case may require the lodestar amount to be adjusted up or downward. *Id*. Some factors that may be applicable include,

> 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.

Id. at 832–33 (quoting *Schaffer v. Frank Moyer Const., Inc.*, 628 N.W.2d 11, 24 (Iowa 2001) (internal quotations omitted)). Particular factors considered applicable to downward adjustments include partial success, duplication hours, and hours not reasonably expended. *Id.* at 833. "The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case." *Id*. "There is no precise rule or formula for making these determinations. However, [d]etailed

findings of fact with regard to the factors considered must accompany the attorney fee award." *Id.*

Boyle asserts the district court abused its discretion in awarding attorney fees. She argues the district court did not calculate a lodestar amount, did not make detailed factual findings, and reduced the hours beyond the duplicative hours. *See id.* at 834. Although the district court did not use the term "lodestar amount," it essentially calculated one and followed the law set forth above. The district court found, and the supreme court agreed, a reasonable hourly rate was $110 for trial work and $150 for appellate work. *Id.* at 833. The district court then found a reasonable number of hours expended by the attorneys were 227.27 for trial work and 166.66 for appellate work. These numbers were multiplied to obtain the result of the attorney fee award. *See id.* (citing *Dutcher*, 546 N.W.2d at 896 ("A reasonable attorney fee is initially calculated by multiplying the number of hours reasonably expended on the winning claims times a reasonable hourly rate.")).

Further, the district court considered the appropriate factors and made specific factual findings to support its reduction in hours. The district found that this case was neither factually nor legally complex, including that there was no complex medical, technical, or scientific testimony, there were no expert witnesses called, and the plaintiff called six witnesses and the defendant seven. The trial was not especially time consuming, no pretrial depositions were taken, and trial lasted a total of five days. During trial, only one attorney materially participated by giving the opening statement and examining and cross-examining the witnesses. During the appeal, one attorney performed nearly all of the

appellate work, but much time was spent on familiarizing himself with the trial record. The time spent by the plaintiff's attorneys was in great excess to that spent by the defendant's attorney and although the plaintiff's attorneys presented evidence from other attorneys in support of the fee, none of those witnesses "had reviewed the fee applications in detail, examined the court file and appellate briefs" before concluding the fee was necessary and reasonable. There was no evidence showing any of the plaintiff's attorneys had any substantial prior experience handling this type of case nor were any recognized as experts in the field. We also note that as the defendant argues, the requested amount of attorney fees in excess of $185,000 greatly exceeds the plaintiff's recovery of $100,000. While Boyle would have the district court detail its reasons for striking each time entry it considered to be unnecessary or a duplication of attorney time, such minute accounting is not required for our effective review. *Lynch v. City of Des Moines*, 464 N.W.2d 236, 240 (Iowa 1990) ("The court can arrive at this general conclusion without specifying with exactness each hour of time unnecessarily spent."). The factual findings the district court made support its determination the services rendered were "excessive in light of the nature of the case" and unnecessary, as well as its determination there were duplicative hours.

Boyle also argues the district court abused its discretion in calculating the trial attorney fees by improperly relying on administrative rules that permit the Iowa State Public Defender to pay only one attorney except in class A felonies and this resulted in the finding the services of the second and third counsel were duplicative and unnecessary. *See GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005) ("To the

extent the district court adopted a per se rule capping all pay for paralegals at $50 per hour, the court abused its discretion."). The district court noted the administrative rule and then stated,

> Clearly, these rules have no application to this civil case. However, the comparison is instructive in determining whether the services of two or more plaintiff's attorneys are necessitated by the nature of this civil case. The lack of complexity, number of witnesses, need to research and prepare for the examination of scientific or technical testimony are all absent in the case.

We find the district court did not improperly rely on the administrative rule, but did utilize it as an instructive and comparative tool. The district court simply explained that where cases are not factually or legally complex, more than one attorney may not be necessary. In the first order of fees the district court judge noted he had served on the district court bench since 1986. Such service has given him a broad and extensive experience in the trial arena. He was also familiar with all three of plaintiff's attorneys. "The district court is considered an expert in what constitutes a reasonable attorney fee, and we afford it wide discretion in making its decision." *Id.* We find the district court made detailed findings of fact that have afforded us effective appellate review. *See Boyle II*, 773 N.W.2d at 833 (citing *Dutcher*, 546 N.W.2d at 897 (explaining the district court must make "findings of fact with regard to the factors considered" to afford effective appellate review)). In setting the fee amounts, the district court considered the proper factors and sufficient evidence supports its decision.[2]

[2] At oral arguments, attorney Knudson asked us to remand to the district court for it to expand its findings, but also asked us to set a minimum amount of fees to be awarded. While we might have awarded a different sum had we been given that task in the first instance, our limited charge in this appeal is to determine whether the district court adequately followed the supreme court's directive.

Finding no abuse of discretion, we affirm.

AFFIRMED.

Doyle, J., specially concurs; Tabor, J., dissents.

DOYLE, J. (concurring specially)

In its original attorney fee award, the district court found "that all three attorneys for [Boyle] worked long hours, zealously, diligently, and effectively, thereby securing a very favorable result for their client." Nevertheless, the court reduced their requested hours by approximately two-thirds. In affirming the reduction on remand, the court supplemented its original findings as directed by our supreme court, but commented: "This court also believes that the fees awarded should bear some relationship to the responsibility assumed by counsel and the results obtained."

The public policy of this state entitles a successful civil rights litigant with the right to recover reasonable attorney fees. Iowa Code § 216.15(8)(a)(8) (2003) (now renumbered as Iowa Code § 216.15(a)(8) (2011)). "The reason a successful civil rights litigant is entitled to attorney fees 'is to ensure that private citizens can afford to pursue the legal actions necessary to advance the public interest vindicated by the policies of civil rights acts.'" *Lynch v. City of Des Moines*, 464 N.W.2d 236, 239 (Iowa 1990) (quoting *Ayala v. Ctr. Line, Inc.*, 415 N.W.2d 603, 605 (Iowa 1987)). Indeed, it would be ironic "if a victim of discrimination is provided rights under chapter [216] but could not enforce them because the victim's attorney could not be adequately compensated." *Id*. In my opinion, tying an attorney fee award to the amount of recovery could result in inadequate fees in many cases.

That having been said, I do not suggest the district court placed undue emphasis on the size of the judgment obtained by Boyle, for it did look at the "whole picture." *See Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897

(Iowa 1990). Our supreme court remanded this case to the district court for detailed findings of facts utilizing the appropriate factors to determine the reasonableness for the hours claimed by Boyle's attorneys. The district court supplemented its original findings and affirmed its prior award of attorney fees. I agree with the majority's conclusion that the district court on remand complied with the directive of the supreme court by considering the appropriate factors and making sufficiently specific factual findings to support the reduction in hours. Had I been the trial court judge I may have awarded more fees. But here our review of the award of attorney fees is for an abuse of discretion. *Id*. Like the majority, I cannot say the district court abused its discretion. I must therefore concur.

TABOR, J. (dissenting)

I respectfully dissent. Unlike my colleagues, I do not find that the district court complied with our supreme court's remand order in *Boyle v. Alum-Line, Inc. (Boyle II)*, 773 N.W.2d 829, 834 (Iowa 2009). The supreme court asked the district court to provide "detailed findings of fact utilizing the factors enunciated in *Dutcher [v. Randall Foods*, 546 N.W.2d 889 (Iowa 1996)] to determine the reasonableness of the hours claimed by Boyle's attorneys." *Boyle II*, 773 N.W.2d at 834. In *Dutcher*, 546 N.W.2d at 896, the court held:

> A reasonable attorney fee is initially calculated by multiplying the number of hours reasonably expended on the winning claims times a reasonable hourly rate. . . . That calculation results in the lodestar amount which is presumed to be the reasonable attorney fee envisioned in the statute.

(Citations omitted.)

Rather than following the multiplication process mandated by *Dutcher*, the district court worked backwards from its original determination that Boyle's attorneys should be compensated $25,000 for their trial work and another $25,000 for their appellate work. The district court divided the two $25,000 awards by what it determined to be the reasonable hourly rate for trial ($110 per hour) and appellate ($150 per hour) work to arrive at the number of hours expended. In so doing, the district court failed to exercise its discretion to determine the reasonableness of the hours claimed by Boyle's attorneys. Courts from other jurisdictions have emphasized:

> The starting point of every fee award . . . must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.

Serrano v. Priest, 569 P.2d 1303, 1317 n.23 (Cal. 1977) (relying on *City of Detroit v. Grinnel Corp.*, 495 F.2d 448, 470 (2d Cir. 1974)). While the district court does not need to set forth an hour-by-hour analysis of the fee request, it must give at least some indication of how it arrived at the amount of compensable hours to allow for meaningful appellate review. Because the number of hours allowed by the district court here was preordained by its reverse method of calculation, any reasons given by the court for reducing the hours cannot truly be tethered to the actual and dramatic reduction from the hours documented by Boyle's attorneys.[3]

The majority believes that the district court "made specific factual findings to support its reduction in hours." I disagree. The remand order contains a single paragraph discussing the length of the trial, the number of witnesses, and the content of their testimony—all matters the supreme court could have deciphered on its own from reading the transcript, not matters within the special expertise or vantage point of the trial court. The remand order also finds the work of the plaintiff's three attorneys to be "duplicative" at times, but does not tie that observation to any specific reduction in the number of hours allowed. Even when we consider only the time claimed by the lead trial attorney, the district court's calculation compensates only slightly more than half of those hours—without any further explanation. The district court did not give adequate reasons

[3] The three attorneys provided documentation of expending a combined total of 1945 hours over the course of the trial, first remand and appeal. The district court's calculation awarded fees for 393.93 hours. The supreme court previously noted that the district court's methodology resulted in a figure reflecting time to the hundredth of an hour, "an amount not typically found in legal billing practice." *See Boyle II*, 773 N.W.2d at 834, n.2.

for its wholesale reduction of the compensable hours. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (emphasizing that the hours actually expended in the litigation are not to be disallowed without a supporting rationale). I would remand the matter yet again for the district court to work forward to determine a reasonable amount of attorney fees by starting with a cogent determination of the number of hours actually expended by Boyle's attorneys on her successful litigation.