

**IN THE COURT OF APPEALS OF IOWA**

No. 2-846 / 12-0328  
Filed November 15, 2012

**UNES J. BOOTH,**  
Plaintiff-Appellant,

**vs.**

**STATE PUBLIC DEFENDER'S  
OFFICE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,  
District Associate Judge.

Attorney Unes J. Booth appeals the district court order approving the public defender's reduction of his fee claim for representing a mother in CINA proceedings. **AFFIRMED.**

Unes J. Booth of Booth Law Firm, Osceola, pro se appellant.

Samuel P. Langholz, State Public Defender, and Julie Miller, Assistant State Public Defender, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**DANILSON, J.**

Attorney Unes J. Booth appeals a district court order approving the public defender's reduction of his fee claim for representing a mother in CINA proceedings. The district court found that "the fees claimed were excessive and reductions made by the State Public Defender were appropriate." Because we conclude that the district court determination was supported by the evidence, we affirm.

**I. Background Facts and Proceedings.**

Attorney Unes J. Booth is contracted with the state public defender's office to provide representation to indigent defendants. He was appointed to represent a mother in a child in need of assistance (CINA) proceeding on June 29, 2011. Booth submitted a claim to the state public defender's office for payment of \$3168.58 for his legal services in the CINA action. The state public defender denied a portion of the claim as billed twice for the same work and reduced other portions of the bill for being excessive.<sup>1</sup> The remaining balance of \$1770.58 was

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<sup>1</sup> Booth performed 50.2 hours of legal services. The state public defender reduced the number of allowable hours for the itemized tasks and ultimately compensated Booth for 26.9 hours. During the course of the proceedings, Booth filed a motion in limine which was denied. He subsequently filed a motion to reconsider and additional authority in support of the motion to reconsider. Booth claims the issue presented in the motion in limine would have been a matter of first impression on appeal had the issue proceeded to trial; thus, his filings were required to preserve error. However, with the undisputed error in double-billing aside, compensation was not denied altogether for any service provided. Therefore, the question before our court is not whether the services were reasonable and necessary, but rather whether the evidence of record supports the district court's determination that the time claimed for provision of those services was excessive.

paid. Booth filed a motion for judicial review of the reduction due to excessiveness.<sup>2</sup>

Booth's motion was heard on January 19, 2012. The hearing was not reported. The court summarily upheld the reduction finding that "the fees claimed were excessive and reductions made by the State Public Defender were appropriate." Booth did not file a 1.904(2) motion or prepare a statement of the evidence in lieu of a transcript. He filed a notice of appeal on February 21, 2012.

## **II. Standard of Review.**

The district court review of the state public defender's action in denying a portion of a claim is deferential. Iowa Code § 13B.4(4)(d)(5).<sup>3</sup> We review a district court decision reviewing the state public defender's reduction of a claim for attorney's fees for correction of errors at law. Iowa R. App. P. 6.907; See *Simmons v. State Pub. Defender*, 791 N.W.2d 69, 73 (Iowa 2010).

"A trial court applying the correct legal standard has broad discretion in determining the attorney fee for representation of an indigent defendant." *Norton v. Iowa Dist. Ct.*, 554 N.W.2d 301, 303 (Iowa Ct. App. 1996). We are bound by the district court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

## **III. Discussion.**

The State argues Booth did not preserve error because he failed to provide our court with the complete record on which the district court made its

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<sup>2</sup> He does not contest denial of charges for the portions of the bill deemed duplicative.

<sup>3</sup> Iowa Code § 13B.4(4)(d)(5) provides: "If a claim or portion of the claim is denied, the action of the state public defender *shall* be affirmed unless the action conflicts with a statute or an administrative rule." (Emphasis added).

determination. Booth argues that traditional methods of preserving error should not be required here because a review of the public defender's action is conducted by the same judge that presided over the underlying action. Booth contends he asked the judge to take judicial notice of the court file at the review hearing and that all of the facts relevant to the case are contained in that record.

Because Booth asserts that the district court ruling was not supported by substantial evidence, he is required to provide a transcript of all relevant evidence for appellate review.<sup>4</sup> A transcript of the review hearing was not available. Booth declined to provide a statement of the evidence summarizing the substance of the arguments.<sup>5</sup> He contends that nothing outside the scope of the contents of the court file was argued at the unreported review hearing. Assuming without deciding that error was sufficiently preserved, we consider the merits of Booth's claim.

"A trial court acts within the law in disallowing a part of an attorney fee claim on a finding the time claimed is excessive." *Norton*, 554 N.W.2d at 304; see also *Halverson v. Iowa Dist. Ct. for Decatur Cnty.*, 532 N.W.2d 794, 800-01 (Iowa 1995). In valuation of allowable compensation for legal services, a court should consider "the time necessarily spent, the nature and extent of the service, the possible punishment involved, the difficulty of handling and importance of the

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<sup>4</sup> Iowa Rule Appellate Procedure 6.803(1) provides: "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant *shall* include in the record a transcript of all evidence relevant to such finding or conclusion." (Emphasis added.)

<sup>5</sup> "If no report of the evidence or proceedings at a hearing or trial was made or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection." Iowa R. App. P. 6.806(1).

issues, responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service . . . .” *Green v. Iowa Dist. Ct. for Mills Cnty.*, 415 N.W.2d 606, 607-08 (Iowa 1987). However, “it is not incumbent upon the defendant court to demonstrate compliance” with this standard. *Id.* at 608. Booth carries the burden to “establish by a preponderance of the evidence that the amount of compensation and expenses [submitted was] reasonable and necessary.” Iowa Code § 13B.4(4)(d)(6); *see also Green*, 415 N.W.2d at 608.

Here, as in *Green*, the attorney failed to move for enlargement of the court’s findings and conclusions pursuant to rule 1.904(2). Therefore, like the court in *Green*, we must assume that the district court’s analysis considered the factors outlined above.

The court did not deny payment for the services rendered; it merely found the reduction in the number of compensable hours made by the public defender was appropriate as the actual time claimed was excessive. Booth failed to meet his burden of proof—there is no basis for our court to conclude that this determination was not supported by the evidence.

#### **IV. Conclusion.**

The public defender properly reduced fees claimed by Booth. The district court acted within the law to uphold the fee reduction upon finding that the fees claimed were excessive.

**AFFIRMED.**