

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

KENNETH EITHER,)	CASE NO. CV-2010-3172
)	
Plaintiffs,)	MEMORANDUM DECISION AND
)	ORDER RE: DEFENDANT'S
v.)	REQUEST FOR ATTORNEY FEES
)	
JUDITH BLANKENSHIP,)	
)	
Defendants.)	

Monica Flood – Brennan, ATTORNEY AT LAW, for Plaintiff.

Patrick Cronin, WINSTON & CASHATT, for Defendant.

I. SUMMARY

The parties appeared before this Court on April 3, 2012, regarding the Defendant's "Petition in Support of memorandum of Costs and Attorney Fees," "Plaintiff's Notice of Objection Re: Fees and Costs and Motion for Attorney Fees," "Defendant's Motion to Strike Objection to Fees and Costs," and "Plaintiff's Motion to Set Aside Judgment, Motion to Reconsider Judgment, Motion for Judgment Notwithstanding the Verdict, and Request for an Opportunity to be Heard."

This Court orally denied the Plaintiff's Motion to Set Aside Judgment, Motion to Reconsider Judgment, Motion for a Judgment Notwithstanding the Verdict, and Request for an Opportunity to be Heard. This Court also denied the Plaintiff's Motion for

Attorney Fees. In regards to the Defendant's request for attorney fees and costs, this Court entered the following oral findings and conclusions:

1. The Plaintiff's objection to the Defendant's request for attorney fees and costs is timely because it was filed within fourteen (14) days of the Defendant's request.
2. There are proper parties for attorney fees because there are adversarial parties with at least one claim between the Plaintiffs and the Defendant. There is an underlying basis for attorney fees and costs via the statutes I.C. §§ 6-808 and 12-121.
3. The Defendant has met the requirements for a mandatory award of attorney fees and costs as per I.C. § 6-808. An analysis of I.C. § 12-121 is unnecessary.
4. The Defendant is the prevailing party as per I.R.C.P. 54(d)(1)(B).
5. The Defendant is entitled to the following costs as a matter of right: 1) filing fee of \$58.00, 2) service fees of \$166.50, 3) witness fees of \$80.00, 4) travel expense of witnesses totaling \$50.00, 5) costs of preparation of exhibits in the amount of \$500, 6) expert witness fees for two experts totaling \$4,000.00, 7) deposition reporting and transcripts \$2,137.90. this Court hereby awards the Defendant all the requested costs as a matter of right, totaling \$6,992.40.

This Court, however, left open the question regarding whether the Defendant's requested attorney fees are of a reasonable amount and allowed the Plaintiff ten (10) days to file a brief regarding the reasonableness of the fees. The Plaintiff filed a brief on April 13, 2012.

II. ANALYSIS

In its memorandum the Defendant seeks \$64,296.00 in attorney fees. This determination is within the sound discretion of the trial court and will not be disturbed on appeal unless there is an abuse of discretion. Sun Valley Potato Growers v. Texas Refinery, 139 Idaho 761, 769, 86 P.3d 475, 483 (2004). The "reasonableness" of the amount of an attorney fee award is based on the trial court's consideration of certain

factors, which are set forth in I.R.C.P. 54(e)(3). Id. Rule 54(e)(3) enumerates the factors which should be considered in determining the amount of the award:

In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

The amount of attorneys' fees to be awarded is properly determined by utilizing the factors in Rule 54(e)(3) and no one factor is to be given more weight than any other. Paralegal fees and law clerk fees are also recoverable as part of the attorneys' fees. I.R.C.P. 54(e)(1).

The trial court has an enormous amount of discretion in determining the amount of an attorney fee award, and the rules do not require that the court state how it determined the amount of the award. Brinkman v. Aid Ins. Co., 115 Idaho 346, 351, 766 P.2d 1227, 1235 (1988). Although a trial court need not make specific findings demonstrating how it employed any of the factors listed in Rule 54(e)(3), it is required to consider those factors when determining the amount of the fees to award and it should,

at a minimum, provide a record establishing that it considered the factors under the rule. Pinnacle Engineers, Inc. v. Heron Brook, LLC, 139 Idaho 756, 760, 86 P.3d 470, 474 (2004); Sun Valley Potato Growers v. Texas Refinery, 139 Idaho 761, 769, 86 P.3d 475, 483 (2004).

A trial court must not address all of the factors in writing, but the record must show that the court considered all of the factors. Johannsen v. Utterbeck, 146 Idaho 423, 429, 196 P.3d 341, 347 (2008) (where the trial court concluded that the amount of fees requested was excessive, but did not indicate on the record why the trial court reached that determination), *citing* Lee v. Nickerson, 146 Idaho 5, 10-11, 189 P.3d 467, 472-73 (2008); see University of Idaho Foundation v. Civic Partners, 146 Idaho 527, 199 P.3d 102 (2008) and Griffith v. Clear Lakes Trout Co., Inc., 143 Idaho 733, 740, 152 P.3d 604, 611 (2007). It is sufficient if the trial court states that it has taken the factors listed in Rule 54(e)(3) into consideration. Awards of attorney fees have been upheld where the record indicates that the parties briefed and argued the factors because it can be presumed from such a record that the trial court considered the factors of Rule 54(e)(3). Pinnacle Engineers, Inc., 139 Idaho at 760-71, 86 P.3d at 474-75.

Criterion (D) of Rule 54(e)(3) requires the court to consider “the prevailing charges for like work.” The Idaho Supreme Court stated in Lettunich v. Lettunich, that the trial court “should consider the fee rates generally prevailing in the pertinent geographic area, rather than what any particular segment of the legal community may be charging.” A party claiming attorney fees does not have to submit evidence as to what is a reasonable fee. Halliday v. Farmers Ins. Exch., 89 Idaho 293, 300, 404 P.2d 634, 641 (1965); Smith v. Great Basin Grain Co., 98 Idaho 266, 561 P.2d 1299 (1977).

At least such evidence is not required in every case. Clark v. Sage, 102 Idaho 261, 629 P.2d 657 (1981).

Because most attorneys keep computerized time records of their services, there may be a tendency to compute the attorney fee based upon a time and reasonable hourly charge. However, in Craft Wall of Idaho, Inc. v. Stonebraker, the Idaho Court of Appeals held, "[t]he time and labor actually required, however, is not the 'be all, end all' of the attorney fee question.... A court is permitted to examine the reasonableness of the time and labor expended by the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by the attorney." 108 Idaho 704, 705-706, 701 P.2d 324, 325-326 (Ct. App. 1985).

Rule 54(e)(5) requires an attorney to present an affidavit stating the basis and method of computation of the attorney fee claimed. The introduction of hourly time sheets into evidence is not a prerequisite to an award of attorney fees. Hackett v. Streeter, 109 Idaho 261, 263, 706 P.2d 1372, 1374 (Ct. App. 1985). However, in All American Realty, Inc. v. Sweet, the Idaho Supreme Court held that the trial court erred in not requiring the party claiming attorney fees to itemize the time spent on the case when requested by opposing counsel. 107 Idaho 229, 231, 687 P.2d 1356, 1358 (1984).

The Plaintiff claims that the fee request is "unreasonable" because the request includes the "time spent on the counterclaim" that the Defendant and the Plaintiff agreed to dismiss and bare their own costs. The Plaintiff is correct that the Defendant and the Plaintiff agreed to bare their own costs on the dismissed counterclaim, but a review of

the request for attorney fees shows that there is no amount claimed for the prosecution or defense of that counterclaim.

The Plaintiff also asserts that the claimed fees are unreasonable because they are not properly itemized. A review of the memorandum shows that it is sufficiently specific such that this Court can deduce the activities of the Defendants' attorney.

The Plaintiff also relies on the parties' pretrial negotiations to assert that the fees incurred are unreasonable given the amounts discussed by the parties. There is no authority for a court to consider the amount discussed during settlement negotiations in relation to the fees incurred after a matter proceeds through a jury trial.

This Court agrees with the Plaintiff that the time claimed for an attorney from the Defendant's attorney's firm who read a transcript into the record at trial is not a reasonable expenditure as per I.R.C.P. 54(e). This Court disagrees, however, with the Plaintiff's argument that the expense of a paralegal's assistance during trial is an unreasonable expense. I.R.C.P. 54 specifically allows for the inclusion of paralegal fees as part of the expense of trial.

A review of the factors of I.R.C.P. 54(e) shows that the attorney fees claimed are reasonable in light of the time and labor required to present a defense at the jury trial, the prevailing charge in the community for like work, and the results obtained. After applying the factors and reviewing the memorandum of attorney fees, this Court hereby finds that \$55,000 in attorney fees is reasonable.

III. CONCLUSION

Defendant's Petition in Support of Defendant's Memorandum of Costs and Attorney Fees is hereby GRANTED IN PART. The Plaintiffs are HEREBY ORDERED

TO PAY to the Defendant \$55,000 in attorneys' fees as per I.C. § 6-808. The Plaintiffs are also HEREBY ORDERED TO PAY to the Defendant \$6,992.40 in costs as a matter of right as per I.R.C.P. 54(d)(1)(B).

The Defendant shall submit a judgment as per I.R.C.P. 54 for this Court's signature.

DATED this 25th day of April, 2012.



John Patrick Luster
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S REQUEST FOR ATTORNEY FEES AND COSTS was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the _____ day of April, 2012 to the following:

Patrick Cronin
Winston & Cashatt
(509) 838-6131

Monica Flood Brennan
Attorney at Law
(208) 676-8288

CLIFFORD T. HAYES
Clerk of the District Court

By: _____
Deputy Clerk