

**In the Franklin County Municipal Court
Columbus, Ohio**

Ridenour, Nancy
Plaintiff,

v.

Dunn, Velva
Defendant.

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Case Number: 2001 CVF 020926

Magistrate Mark A. Hummer

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Magistrate's Report and Decision

This cause came on for hearing before Magistrate Hummer pursuant to a ruling by the Franklin County Court of Appeals in No. 03AP-611 (June 29, 2004) and by order of Judge Maynard on September 14, 2004. A hearing before Magistrate Hummer was conducted on October 19, 2004. Attorney Andrew Ruzicho represented plaintiff. Attorney James Becker represented defendant. No sworn testimony was taken. Each counsel addressed the Court of Appeals decision and the matter was taken under advisement.

The Court of Appeals reversed an earlier Municipal Court decision regarding an award of attorney fees of \$1,000 to plaintiff's counsel. The matter was remanded for the trial court "to provide further findings regarding this amount or, if the court, upon further consideration of the current record, decides to change the amount of the award, to give its reasons for choosing that specific amount." *Ridenour v. Dunn* (June 29, 2004), Franklin App. No. 03AP-611, at pg. 6.

The Court of Appeals decision, citing *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, directed the trial court to determine the number of hours reasonably expended on the case times a reasonable hourly rate. Here, plaintiff's counsel sought an award of attorney fees in excess of 28 hours at an hourly rate of \$150.00, and he testified that he actually spent more hours on the case than he sought as part of the attorney fee award. Plaintiff's expert witness, attorney Eric Willison, provided credible testimony that both the amount of hours expended on the case and the hourly rate sought by plaintiff's counsel were reasonable based on Mr. Willison's experience in landlord/tenant law. The hourly rate is consistent with the

magistrate's own experience in considering other attorney fee requests. The magistrate finds this hourly rate to be in conformity with generally accepted attorney fee standards in the Central Ohio area and reasonable in light of the level of experience of plaintiff's counsel.

With regard to the specific factors to be considered by a court in determining the reasonableness of an attorney fee as set forth in DR2-106, they are as follows:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

With respect to those considerations, factor number 8 was addressed in the Court of Appeals decision and is not applicable. The magistrate also believes factors 2, 5, and 6 are not relevant in this circumstance. As to the remaining factors:

Factor 1: While ordinarily a time commitment in excess of 28 hours in legal services is extremely high for a landlord/tenant dispute, this matter was complicated by the claims that each side argued. Plaintiff argued that the landlord harassed and engaged in unauthorized entries; defendant argued there was an unauthorized occupant circumstance which should have resulted in a higher rental value for the apartment. Moreover, this was a bitterly fought case in which the parties challenged each other vigorously. The majority of the trial time, as noted in the earlier magistrate's decisions in this dispute, was devoted to those subjects and not to routine security deposit issues. Based on the totality of the circumstances, the magistrate finds an award of \$1,000 in attorney fees to be reasonable in the context of DR2-106(B)(1). This amount is consistent with the Ohio Supreme Court directive in *Smith v. Padgett* (1987), 32 Ohio St.3d 344, that the

amount of an attorney fee awarded be related only to the portion of the fee that dealt with the security deposit so as to conform to R.C. 5321.16.

Factor 3: Expert witness Eric Willison testified credibly that the fees described by plaintiff's counsel are consistent with customary charges in the Columbus area for similar legal services. Nevertheless, because the majority of the fees accrued for non-security deposit reasons, the majority of the fees are not covered by R.C. 5321.16.

Factor 4: The amount of the judgment in this case is \$510.00, approximately ½ of the attorney fee award in the original decision. The Franklin County Court of Appeals notes that a trial court abuses its discretion when an amount awarded for attorney fees compared to an actual judgment for the tenant is excessive. *Parks v. Kanani* (March 21, 2002), Franklin App. No. 01AP-905, citing *McGregor v. Armeni* (Nov. 20, 1990), Franklin App. No. 89AP-1500, attorney fees of \$5,809.76 found excessive on a \$465.00 security deposit claim. Likewise, the Ohio Supreme Court raised the subject in the leading landlord/tenant security deposit case, *Smith v. Padgett* (1987), 32 Ohio St.3d 344, concurring opinion of Justice Wright in which he noted that an award of attorney fees of \$1,000 for having recovered \$10.00 wrongfully withheld from a \$400.00 security deposit would be an absurd result. The award of \$1,000 in attorney fees to plaintiff, unlike the excessive awards described above, is not disproportionate to the amount of the judgment. What may have been excessive was the amount of the original claim for attorney fees in excess of \$4,000.

Factor 7: Plaintiff's attorney testified that his experience and ability in the area of landlord/tenant relations justifies the fee rate he charges, and the magistrate found nothing in the testimony or in his performance at trial to disprove that notion. While counsel for defendant argued passionately that the behavior of plaintiff's counsel was unprofessional and worthy of reproach, the magistrate observed his demeanor throughout the trial and did not find it to be objectionable.

Given the above analysis, the magistrate concludes that no reasonable basis exists to modify the original attorney fee award and that \$1,000 is a reasonable attorney fee. Plaintiff's motion of Oct. 19, 2004, for additional attorney fees as a result of the appellate court litigation is outside the remand order of the Court of Appeals and is overruled.

Decision

Final judgment to include an award to plaintiff for attorney fees in the amount of \$1,000.

Date

1/27/05

Magistrate Mark A. Hummer

cc:

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