

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-3549
STATE OF WISCONSIN**

Cir. Ct. No. 01CV000860

**IN COURT OF APPEALS
DISTRICT III**

BIERSDORF & ASSOCIATES, S.C.,

PLAINTIFF-APPELLANT,

v.

**SPIRE CAPITAL CORPORATION, A/K/A SPIRE CAPITAL
LIMITED, A/K/A ATLAS WAREHOUSE COLD STORAGE,**

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Brown County:
JOHN D. MC KAY, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The law firm of Biersdorf & Associates appeals a judgment awarding it attorney fees. Biersdorf argues it is entitled to the full amount it would have received under its contingency agreement with Atlas

Warehouse Cold Storage. Because the circuit court's findings and conclusions of law are supported by the evidence, we affirm the judgment.

BACKGROUND

¶2 In June 1996, Atlas and Biersdorf entered into a contingent fee agreement. Biersdorf agreed to perform legal services in order to achieve a property tax reduction on Atlas's property in Green Bay. Atlas agreed to pay attorney fees of one-third of the tax savings. The contract covered the years 1996-1998 and the underlying dispute arose with the 1997 property tax assessment.

¶3 In November 1997, Atlas received notice from the City of Green Bay that the value of Atlas's property had been reassessed and substantially increased. Atlas contacted Biersdorf to attempt to get a reduction of the assessment. After providing Atlas with its analysis of the assessment, Biersdorf set up a meeting with Lee Clouse, the assessor. In preparing for the meeting, Clouse determined that the assessment was wrong and discussed a reduction of the assessment with representatives from Biersdorf and Atlas. Ultimately, the assessment was reduced by \$5,000,000.

¶4 Biersdorf subsequently requested its contingent fee for 1997 and 1998 based on the reduction, for a total of \$85,269. When Atlas refused to pay, Biersdorf filed suit. The circuit court determined that Biersdorf was not entitled to a contingent fee because the correction had nothing to do with Biersdorf's involvement. In its appeal from that judgment, this court concluded that the record supported Biersdorf's argument that it was involved in bringing about the reduction. We consequently reversed the judgment and remanded the matter to the circuit court to determine a reasonable fee. *See Biersdorf & Assocs., S.C. v.*

Spire Capital Corp., No. 02-2364, unpublished slip op. (Wis. Ct. App. March 11, 2003).

¶5 On remand, the circuit court determined that the \$85,269 sought under the contingency agreement was unreasonable and ultimately awarded attorney fees in the amount of \$14,239.74. This appeal follows.

DISCUSSION

¶6 Biersdorf contends that the circuit court erroneously exercised its discretion by concluding that the contingent fee was unreasonable. The amount of attorney fees awarded by a circuit court will be sustained on review unless the circuit court erroneously exercised its discretion. *Standard Theatres, Inc. v. Transportation Dep't*, 118 Wis. 2d 730, 747, 349 N.W.2d 661 (1984). We give deference to an attorney fee award because the circuit court is in the best position to judge the quality of the services rendered by counsel and is familiar with local billing norms. *Id.* Therefore, “we do not substitute our judgment for the judgment of the circuit court, but instead probe the court’s explanation to determine if the court employed a logical rationale based on the appropriate legal principles and facts of record.” *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2004 WI 112, ¶22, ___ Wis. 2d ___, 683 N.W.2d 58.

¶7 Biersdorf argues the \$85,269 fee is reasonable because it resulted from a written contingent fee contract between an attorney and a sophisticated commercial client. We are not persuaded. A contingent fee agreement is a guide, but not a control on the question of a reasonable fee. *Hutterli v. State Conservation Comm’n*, 34 Wis. 2d 252, 258, 148 N.W.2d 849 (1967). Our supreme court has held that if a contingent fee contract represents a reasonable charge it should be granted; if it is excessive it should not be granted. *Id.* To the

extent Biersdorf contends the circuit court erred by failing to adequately analyze the factors enumerated in SUPREME COURT RULE 20:1.5(a), the law does not compel the circuit court to analyze each factor of SCR 20:1.5(a).¹ Rather, the court should review “all the circumstances of the case to determine whether the contingency fee amount is a just and reasonable figure.” *Village of Shorewood v. Steinberg*, 174 Wis. 2d 191, 204, 496 N.W.2d 57 (1989).

¶8 Here, the circuit court found that although Biersdorf arranged an informal meeting with the city assessor, the assessor recognized the miscalculation

¹ SUPREME COURT RULE 20:1.5(a) provides:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(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; and

(8) whether the fee is fixed or contingent.

before the meeting occurred. The court further found that there was no information provided by Biersdorf in the meeting, or anytime thereafter that caused the City to make a change in assessment. The assessor unilaterally decided to reduce the property valuation, explaining that the incorrect assessment was the result of a clerical error made by the assessor's office. Concluding that the reduction resulted from the assessor's correction of a "scrivener's error," the circuit court determined "it would be unreasonable to credit [Biersdorf] with all of the action of this case by the City of Green Bay." Because Biersdorf's efforts were not commensurate with the \$85,269 sought under the contingency agreement, the circuit court awarded attorney fees in the amount of \$14,239.74. The circuit court's findings and conclusions of law are supported by the evidence; therefore, we affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

