

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 11, 1996

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

NOTICE

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

No. 95-2117

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STEPHANIE K. KALNES,

Plaintiff-Appellant,

v.

JULIE MONNIER,

Defendant-Respondent.

APPEAL from orders of the circuit court for Milwaukee County:
MICHAEL J. BARRON, Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. Stephanie K. Kalnes appeals from orders denying her motions to recover actual attorney's fees in a landlord-tenant case. Kalnes claims that the trial court's arbitrary award of \$2,500 for attorney's fees, when attorney's fees in excess of \$17,000 were incurred, was erroneous. Because the trial court erred in failing to review all of the relevant factors, failed to apply the relevant facts to the appropriate legal factors, and erroneously applied the law,

we reverse the orders and remand this case to the trial court to reconsider the amount of attorney's fees that should be awarded.

I. BACKGROUND

Kalnes and Monnier attempted to enter into a leasing agreement whereby Kalnes was to lease an apartment from Monnier. Kalnes signed the lease and paid Monnier \$1,050 security deposit, plus \$950 for first month's rent. Monnier modified the lease after Kalnes signed it. As a result, Kalnes requested her money back because she would not accede to the changes. Monnier refused.

Kalnes filed suit against Monnier, alleging violations of WIS. ADM. CODE § AG 134. Monnier counterclaimed, attempting to enforce the lease. The case was tried to a jury, which returned a verdict finding that Monnier had never provided Kalnes with a valid lease signed by Monnier. As a result, the trial court ruled that Monnier had violated WIS. ADM. CODE §§ AG 134.03 and 134.06(3). Based on these violations, the trial court awarded Kalnes double her pecuniary loss, plus costs, plus attorney's fees, pursuant to § 100.20(5), STATS.

Kalnes's attorney submitted documentation itemizing the hours spent on the case and the hourly fee charged. The itemized bill amounted to approximately \$17,500. Without finding that the itemized hourly time was excessive or not incurred, and without finding that the hourly fee was unreasonable, the trial court awarded attorney's fees in the amount of \$2,500. The trial court focused primarily upon the fact that the amount in dispute involved in the case was only \$2,000, although it did reference some additional factors.

Judgment was entered on the verdict, although the parties agreed to keep the attorney's fee issue open for appeal. Kalnes now appeals.

II. DISCUSSION

In initially addressing the attorney's fee issue, the trial court ruled in pertinent part:

The next question then becomes whether or not Mr. Savage is entitled to attorney fees, and the answer is clearly he is. The real question is how much.

Now, there's been a motion filed and an affidavit by Mr. Savage about his fees totaling over \$16,000.00. And then this morning he brings in another one for another \$1,300.00. So somewhere around 17,500 he's looking for.

To be candid with you, you aren't going to get anywhere close to that. I don't really care how much money you charge Kalnes. The real question is what's reasonable to assess against Monnier. That's really the issue.

.... And to charge somebody because they lost a case 17,500 for a \$2,000.00 case in my judgment is way out of line.

I don't think there's any question that Mr. Savage had to do a lot of work because of the position of the landlady in this case.

....

In my judgment \$2,500.00 is more than enough in this case for a rather small case.

In denying Kalnes's motion for reconsideration of this issue, the trial court ruled in pertinent part:

[Y]ou take into account the amount of controversy. You take into account how much time and effort was

necessary by the lawyer, the standing of the lawyer in the community, all of those factors

....

I looked at it as far as how much time and effort would be necessary in order to simply prosecute the claim of the tenant in this case that is being worth no more than \$2,500.00. And I still feel that way.

The amount of time that was spent was excessive on this case for a \$2,000.00 case.

The trial court also indicated that it had considered the fact that Kalnes could not recover attorney's fees for defending against the counterclaim of the landlord. See *Moonlight v. Boyce*, 125 Wis.2d 298, 307, 372 N.W.2d 479, 485 (Ct. App. 1985).

In reviewing this matter:

Our review of the circuit court's determination of the value of attorney's fees is limited to determining whether the circuit court properly exercised its discretion. A circuit court properly exercises its discretion if it "employs a logical rationale based on the appropriate legal principles and facts of record."

Village of Shorewood v. Steinberg, 174 Wis.2d 191, 204, 496 N.W.2d 57, 61 (1993) (citations omitted). In reviewing the trial court's decision, we conclude that it erroneously exercised its discretion because it did not address all the relevant facts, did not apply the facts to the appropriate law, and did not apply the law correctly. See *Elfelt v. Cooper*, 163 Wis.2d 484, 498-99, 471 N.W.2d 303, 309 (Ct. App. 1991), *rev'd on other grounds*, 168 Wis.2d 1008, 485 N.W.2d 56 (1992), *cert. denied*, 507 U.S. 908 (1993).

We first recite the pertinent legal principles. Section 100.20(5), STATS., provides:

Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and *shall* recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

In interpreting this statute, the Wisconsin Supreme Court noted several purposes and policy interests behind §100.20(5), STATS.: (1) the double damages and attorney's fee award encourages injured tenants to bring legal actions to enforce their rights; (2) in these types of cases the pecuniary loss is small when compared to the cost of litigation—which makes it necessary to allow for a recovery that is large enough to justify bringing suit; (3) the attorney's fee award encourages attorneys to take these types of cases when otherwise, the anticipated recovery would not justify the expense of litigation. *Shands v. Castrovinci*, 115 Wis.2d 352, 358, 340 N.W.2d 506, 509 (1983). In addition, in determining what constitutes a reasonable attorney's fee, the trial court should consider:

[T]he amount and character of the services rendered; the labor, time, and trouble involved; the character and importance of the litigation; the amount of money or value of the property affected; the professional skill and experience called for; the standing of the attorney in his profession; and the general ability of the client to pay and the pecuniary benefit derived from the services.

Three & One Co. v. Geilfuss, 178 Wis.2d 400, 415, 504 N.W.2d 393, 399 (Ct. App. 1993). Finally, according to the Supreme Court Rules, in determining the reasonableness of a fee, “the fee customarily charged in the locality for similar legal services” should also be considered. SCR 20:1.5 (1990).

Although the trial court's decision references some of these factors, the record demonstrates that the trial court did not address all the factors, and it did not specifically apply the facts of this case to the relevant factors. Instead, the trial court summarily concluded that \$2,500 was reasonable in this case given the small amount in controversy and the fact that Kalnes could not recover any fees for defending the counterclaim.

In addressing primarily the amount in controversy, the trial court failed to consider other appropriate factors, including the purpose behind the statutory award. The trial court did not make any specific findings regarding the bills submitted. It did not, for instance, find that Kalnes's attorney's three hour charge for drafting the complaint was excessive and that he should have only charged two hours. Further, the trial court did not find that Kalnes's attorney's hourly billing rate was "not the fee customarily charged in the locality for similar legal services." SCR 20:1.5 (1990). In order to reach a rational conclusion regarding attorney's fees in this matter, the trial court needs to specifically address these and related issues.

Moreover, we disagree with the trial court's conclusion that Kalnes is not entitled to recover any fees for defending the counterclaim. Although the trial court is correct that the *Moonlight* case prohibits recovering attorney's fees for defending against the landlord's counterclaim, the instant case is distinguishable from *Moonlight*. Here, Monnier's counterclaim was nothing more than her theory of defense against Kalnes's claim. Kalnes claimed there was not a valid lease and Monnier's counterclaim alleged that there was a valid lease. In contrast, in *Moonlight*, the counterclaim sought recovery for actual damages caused to the apartment. *Moonlight*, 125 Wis.2d at 301, 372 N.W.2d at 482. Therefore, it was error for the trial court to apply *Moonlight* to the instant case.

The purpose of § 100.20(5), STATS., as noted above, is to encourage tenants to enforce their rights. To hold in this case that Kalnes's recovery should be limited simply because the landlord labeled her theory of defense as a counterclaim, would violate the purpose and spirit of the statute. Accordingly, we reverse the order of the trial court denying Kalnes's motion to reconsider the attorney's fee issue. We remand this case to the trial court with directions to reconsider what should be awarded as reasonable attorney's fees. During this process, the trial court should: (1) keep in mind the purpose behind § 100.20(5)

as stated in the *Shands* case, and not limit the attorney's fee award simply because the amount in controversy was small; (2) address with specificity the legal fees submitted to determine which charges, if any, were excessive or unnecessary, and address whether the hourly rate was reasonable and customary; and (3) not exclude from the attorney's fee award the costs to defend the counterclaim because the counterclaim was not a true counterclaim, but only a theory of defense.

By the Court.—Orders reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.