

District Court, Larimer County, State of Colorado 201 LaPorte Avenue Fort Collins, Colorado 80521 970-494-3500	DATE FILED: September 25, 2019 3:18 PM CASE NUMBER: 2018CV220
STACY LYNNE, Plaintiff,  v.  NOAH BEALS, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: 2018CV220  Courtroom: 3C
<b>ORDER REGARDING DEFENDANT BEALS' REQUEST FOR ATTORNEY FEES</b>	

THIS MATTER comes before the court regarding Defendant's award of attorney's fees granted in the Courts Order Granting Defendant Noah Beals' Motion to Dismiss and Request for Attorney's Fees dated April 3, 2019. This matter proceeded to a hearing before the court on September 17, 2019. After considering the affidavits, testimony, and the arguments of parties and counsel, the court finds, and orders as follows:

**BACKGROUND AND PROCEDURAL HISTORY**

The claims against Defendant Noah Beals were dismissed pursuant to C.R.C.P. 12(b)(1) and Plaintiff was ordered to pay Defendant's reasonable attorney's fees under both C.R.S. §13-17-201 and C.R.S. §24-10-110(5)(a)(c). Defendant filed an affidavit of fees on April 18, 2019 and Plaintiff filed an objection on May 1, 2019. A hearing regarding Defendant's request for attorney fees was set for August 5, 2019. On July 31, 2019, Defendant filed a supplemental affidavit of attorney's fees. Plaintiff filed an Emergency Motion for Delay of Hearing with the Court on August 2, 2019. The Motion was granted by the Court on August 5, 2019 and the hearing was rescheduled for September 17, 2019. On September 6, 2019 Defendant filed a

second supplemental affidavit of attorney's fees. A hearing on the matter was held before the Court on September 17, 2019.

### **LEGAL STANDARD**

In the Court's April 3, 2019 Order, Defendant was awarded his reasonable attorney's fees under both C.R.S. §§ 13-17-201 and C.R.S. §24-10-110(5)(a), (c). When an action is dismissed under C.R.C.P. 12(b), a defendant is entitled to "reasonable attorney fees in defending the action." C.R.S. § 13-17-201. Similarly, if a plaintiff does not substantially prevail on a claim that such act or omission was willful and wanton, a defendant is entitled to attorney's fees. C.R.S. § 24-10-110(5)(c). An award of attorney fees under C.R.S. §13-17-201 is mandatory when a trial court dismisses a tort action under C.R.C.P. 12(b). *Castro v. Lintz*, 338 P.3d 1063 (Colo.App. 2014). A determination of whether the requested fees are reasonable is a question of fact for the trial court and "will not be disturbed on review unless it is patently erroneous and unsupported by the evidence." *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990); *Williams v. Farmers Insurance Group, Inc.*, 781 P.2d 156 (Colo.App.1989).

The award of attorney's fees must be reasonable. *Crow v. Penrose-St. Francis Healthcare System*, 262 P.3d 991, 998 (Colo. App. 2011). The initial estimate of reasonable attorney's fees is the lodestar amount which is the number of hours reasonably expended multiplied by a reasonable hourly rate. *Dubray v. Intertribal Bison Co-op*, 192 P.3d 604, 608 (Colo. App. 2008). Reasonableness is determined "in light of all the circumstances, based upon the time and effort reasonably expended by the prevailing party's attorney." *Crow* 262 P.3d at 998. In determining the reasonableness of the fees the court may consider "(1) the amount in controversy; (2) the time required to effectively represent the client; (3) the complexity of the action; (4) the value of the legal services to the client; and (5) the customary practice in the legal

community regarding fees in similar actions.” *Id.* The lodestar amount may be adjusted after consideration of the factors. *Dubray* 192 P.3d at 608.

The party seeking attorney’s fees bears the burden of proving by a preponderance of the evidence that it is entitled to the award. *Crow* 262 P.3d at 998. A party can meet its prima facie burden of establishing reasonableness by providing detailed billing records, an affidavit from counsel, and other supporting documentation. *Id.* at 999. A district court must make findings that will permit meaningful appellate review. *Id.* at 998.

### **DISCUSSION**

Defendant argued that all fees incurred in this action, including after the dismissal on April 3, 2019, are properly awarded because the statute states defense of an action, not just the filing of a motion. *See Dubray* 192 P.3d at 607. Defendant also argued that the fees are reasonable considering the case and the motions filed after dismissal, and that the reasonableness of the fees was bolstered by the expert testimony presented at the hearing. Defendant asserts that the reasonableness cannot be rebutted by mere argument. *See Crow* 262 P.3d at 999; *Madison Capital Co. LLC v. Star Acquisition VIII*, 214 P.3d 557, 561 (Colo. App. 2009).

Plaintiff’s Complaint states estimated damages of \$350,000. Defendant’s attorney, Ms. Schutt, provided three affidavits of her fees which totaled \$12,432 for 67.2 hours of work on the case. Ms. Schutt also stated in the affidavit that an estimated \$555 would be incurred in preparation for and at the hearing on attorney’s fees. After dismissal of the claims against Defendant Beals in April, Ms. Schutt’s total fees were \$6,049.50 for 32.7 hours of work. However, after the filing of the affidavit of fees on April 18, 2019, Plaintiff filed an objection to the affidavit, a motion for post-trial relief, an emergency motion to delay hearing on attorney’s

fees, and a motion for sanctions against Ms. Schutt. Plaintiff's filings required a response by Defendant which resulted in additional attorney's fees.

The evidence presented to the court establishes that Ms. Schutt charged Defendant \$185 per hour on the case while her normal rate is \$225 to \$250 per hour for similar work. At the hearing, Defendant provided expert testimony from Daniel Muffly, Esq. to support Defendant's claim. Mr. Muffly testified that the fees incurred and being sought were reasonable and necessary, that the scope of the work was appropriate given his review of the file and that Ms. Schutt's hourly billing rate was reasonable and likely substantially less than Ms. Schutt could have been reasonably charging given her skill and experience practicing law. Defendant also made an offer of proof of counsel for the City of Fort Collins, John Duvall, Esq. who testified as to the amounts paid and that he approved payment of fees requested from Ms. Schutt's firm. Both testified to that the amount of time spent was reasonable and that the hourly rate of \$185

Plaintiff did not provide any evidence rebutting the reasonableness of the fee charged or the time required for Ms. Schutt's work. The crux of Plaintiff's argument is that an award of fees is not appropriate because the case was improperly dismissed. Plaintiff argued that the hearing on attorney's fees was an "exercise in futility," an "exercise in fraud," and that it was based on a "faulty premise" because the claims against Defendant Beals were improperly dismissed. Plaintiff challenged Mr. Muffly's testimony as an expert stating that his memory was questionable and his responses that he didn't remember or didn't know the answers to certain questions was "embarrassing." Plaintiff also implied a potential bias in Mr. Muffly's testimony because his law office is next door to Ms. Schutt's and the two have worked together on a few cases over the past twenty years.

Based on the evidence provided to the court, the court finds that Ms. Schutt's hourly rate was more than reasonable given her 22 years of experience as an attorney in northern Colorado and her experience in the area of general civil litigation. The court further finds that 67.2 hours spent on the case is reasonable given that Plaintiff filed several motions after the claim against Defendant was dismissed, all of which required Defendant's response to the motions. The Court also finds that \$555, 3 hours billed at \$185 per hour, in preparation and at the hearing is reasonable because the hearing lasted approximately an hour and a half and another hour and a half in preparation is reasonable. Therefore, the court finds that all of Defendant's attorney's fees are reasonable in light of the factors set forth in *Dubray, supra*.

**ORDER**

Judgement is entered in favor of the Defendant against Plaintiff, Stacy Lynne, in the amount of \$12,987, which represents all of Defendant's attorney's fees incurred in defense of this action plus the reasonable amount incurred in preparation and presentation of the attorney's fee claim at hearing.

SO ORDERED: September 25, 2019.



BY THE COURT:

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Stephen J. Jouard  
District Court Judge