IN THE SUPREME COURT OF THE STATE OF NEVADA

99 Nev. 717, 669 P.2d 719 (September 27, 1983)

ROBERT W. LUECK, Appellant, v. THE STATE OF NEVADA, Respondent. RICHARD A. WRIGHT, Appellant, v. DARREL R. DAINES, Clark County Comptroller, Respondent

Nos. 14204, 14288

Supreme Court of Nevada

PRIOR HISTORY: Appeals from orders denying motions for payment of excess fees to appointed counsel, Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge.

DISPOSITION: Reversed and remanded.

CASE SUMMARY PROCEDURAL POSTURE: Appellant attorneys appealed from orders from the Eighth Judicial District Court, Clark County (Nevada), which denied their applications for payment of excess fees in criminal cases in which they were appointed to represent criminal indigent defendants.

OVERVIEW: The attorneys contended that the trial court abused its discretion in denying their applications. Each attorney was awarded a $ 1,000 fee pursuant to Nev. Rev. Stat. § 7.125(2). The county comptroller conceded the time and effort each attorney claimed he expended. Each attorney documented his time and expenses and complied with the procedural requirements of § 7.125. Upon review, the court found that no reasons were stated for the denial of one attorney's motion, and the other attorney's request was denied because the trial court felt it would have to grant excess fees all of the time. The court held that the necessary factors for considering whether the requested fees were reasonable were the amount, the character and complexity of the work involved, the responsibilities involved, the manner in which the necessary duties were performed, the amount of knowledge, skill, and judgment displayed by counsel, and the professional standing of counsel. The attorneys did not have to prove financial hardship. Because the factors were raised before the trial court and not contested, the denial of the excess fees to the attorneys was an abuse of discretion.

OUTCOME: The court reversed the orders that denied the attorneys their requests for excess fees. The court remanded the cases to the trial court for the entry of orders that granted the relief the attorneys sought.

COUNSEL: Robert W. Lueck, Las Vegas, for Appellant Lueck.

Wright, Shinehouse & Stewart, Las Vegas, for Appellant Wright.

Brian McKay, Attorney General, Carson City; Robert J. Miller, District Attorney, and Johnnie B. Rawlinson, Deputy District Attorney, Clark County, for Respondents.

JUDGES: Manoukian, C.J., Springer, J., Mowbray, J., Steffen, J., Gunderson, J.

OPINION BY: PER CURIAM

OPINION

These are appeals from orders denying motions for attorney fees in excess of the statutory maximum allowed for the representation of indigent criminal defendants by appointed counsel. Appellants both contend that the lower court abused its discretion in denying their respective motions. We agree.

Appellant Lueck sought excess fees for his representation of an indigent through jury trial on both the substantive offense of burglary and a related offense in municipal court, and in attendant probation revocation proceedings. Lueck submitted a claim for $ 2,897.65 which included $ 1,503.00 of in-court time, $ 538.50 of out-of-court time and $ 856.15 in actual expenses. Lueck was awarded a fee of $ 1,000.00 pursuant to NRS 7.125(2)(b).

Appellant Wright sought payment for representation of Frank Ralph LaPena in the appeal of LaPena's convictions for first degree murder and robbery with the use of a deadly weapon. See LaPena v. State, 98 Nev. 135, 643 P.2d 244 (1982). Wright also represented LaPena in several matters [*719] resulting from the remand of the case. Wright submitted a claim for $ 6,864.80 which included $ 172.50 for in-court time, $ 6,505.00 for out-of-court time and $ 187.30 in actual expenses. Wright was awarded $ 1,000.00 pursuant to NRS 7.125(2)(e).

The comptroller of Clark County concedes that the time and effort claimed was expended; the comptroller does not contend that there was any failure to document the time or expenses or to comply with the procedural requirements of the statute. Therefore, the only issue before us is whether, under the circumstances presented, the trial court abused its discretion in failing to award fees in excess of the statutory maximum as provided by NRS 7.125(4).

3 NRS 7.125(4) provided, at all times relevant to this case:
As used in this subsection "extraordinary circumstances" means financial burdens and hardships far in excess of those normally attendant upon the defense of indigent persons. If the appointing court deems it appropriate because of extraordinary circumstances to grant a fee in excess of the applicable

maximum, the payment may be made only if the court in which the representation was rendered certifies that the amount of the excess payment is both reasonable and necessary and the payment is approved by the presiding judge of the judicial district in which the attorney was appointed, or if there is no such presiding judge or if he presided over the court in which the representation was rendered, then by the district court judge who holds seniority in years of service in office.

The legislature in 1983, amended section (4) and deleted the terms "extraordinary circumstances," substituting a consideration of factors such as complexity of the case and severity of the offense. 1983 Nev. Stats. ch. 429, § 1, at 1096. The services at issue in these appeals, and the district court rulings, were rendered before the amendment.

No reasons are stated in the record for the denial by the trial court of Lueck's motion for excess fees. In denying Wright's motion, the court below reasoned that "just because he put a lot of time in as research, . . . under the law . . . I can't grant it. I would have to do it all the time." On reconsideration, the lower court further found that extraordinary circumstances did not exist as defined by Daines v. Markoff, 92 Nev. 582, 555 P.2d 490 (1976).

Prior to 1975, there was no statutory provision for fees in excess of the limitations specified in subsection (2) of NRS 7.125. The provision for extraordinary fees which is applicable to this case was added by the legislature in 1975. Although the comptroller has discussed Daines v. Markoff, supra, and its predecessors in his opposition to the appellants' requests for compensation, only one decision of this court has been based on the provision of the statute which is at issue herein: County of Clark v. Smith, 96 Nev. 854, 619 P.2d 1217 (1980). Although the trial judge is in the best position to gauge the reasonableness of the fees claimed, Smith, supra, the factors which should be considered in making the necessary assessment were listed in Smith. Those factors are: the amount, character and complexity of the work required; the responsibilities involved; the manner in which the necessary duties were performed, the amount of knowledge, skill, and judgment displayed by counsel; and the professional standing of counsel.

On appeal, the comptroller has not contended that any of the factors listed above are lacking. Instead, the comptroller argues that appointed counsel must show personal financial hardship resulting from the appointment. Additionally, the comptroller argues that as a result of the obligation of all attorneys to represent indigents, appointed counsel must disregard financial reward. As to the ethical obligation of counsel, we need only note that neither counsel seeks an hourly rate greater than the $ 20.00 for out-of-court time and $ 30.00 for incourt time specified by the statute, an hourly rate substantially less than that probably charged by the bar in non-appointed cases.

The requirement of "financial ruin" as expressed in Brown v. Board of County Commissioners, 85 Nev. 149, 451 P.2d 708 (1969) is not applicable as that case was decided before the statute was amended in 1975, and we are not convinced that our opinion in Smith should be overruled. Therefore, because the Smith factors were raised in the district court and were not contested, we must find that the denial of excess fees to appellants was an abuse of discretion and accordingly, we reverse the orders of denial in both cases. Furthermore, because the amount of the claims has not been disputed on appeal, and because the comptroller has not contended on appeal that any of the Smith factors are lacking in these cases, we remand these cases to the trial court for the entry of orders granting the relief sought by appellants.

Reversed and remanded.