

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VILLA MARINA ASSOCIATION OF  
APARTMENT OWNERS,

Appellant,

v.

RICHARD B. CASSADY, JR.,

Respondent.

No. 85710-0-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, C.J. — Villa Marina Association of Apartment Owners (Villa Marina) appeals the trial court's order awarding it attorney fees following the entry summary judgment in its favor. Villa Marina asserts that the trial court erred by deducting its claimed fees by more than half without conducting a proper lodestar analysis. We conclude that the trial court did not develop an adequate record for us to review Villa Marina's claim of error and reverse and remand for further proceedings.

FACTS

Richard Cassady owns a condominium located at 17109 NE 45<sup>th</sup> Street, Unit 34 in Redmond, Washington. As owner of this condominium, Cassady is a member of Villa Marina and is obligated to pay regular monthly and special assessments to Villa Marina pursuant to Article 16 of the Declaration of Condominium for Villa Marina. The declaration provides that any unpaid assessments shall be a lien against the owner's condominium, which has priority

over all other liens and encumbrances. The declaration further grants the authority to the Villa Marina Board of Directors to levy and collect assessments and to bring suit to recover unpaid assessments, regardless of whether foreclosure has been initiated.

Villa Marina's collection policy states that any "account with an outstanding balance shall be subject to a monthly late fee of \$25" and that all outstanding balances would accrue interest at 12 percent per annum on a monthly basis until the balance is paid in full. The collection policy also states, "All attorneys' fees and costs incurred in the collection of past due Assessments shall be assessed against the delinquent Owner's account and shall be collectible as an Assessment, including but not limited to any fees paid to the Association's Manager as a result of the Owner's delinquency." The condominium declaration similarly states that

Failure to comply [with the condominium declaration] shall also entitle the Board of Directors to collect all attorneys' fees incurred by it by reason of such failure, irrespective of whether any suit or other judicial proceedings in commenced; and if suit is brought because of such failure, all costs of suit may be recovered in addition to attorneys' fees.

Cassady first fell behind on his regular monthly assessments in September 2019. On May 5, 2022, after sending multiple notices to Cassady about his accumulating debt, Villa Marina initiated a complaint against Cassady for lien foreclosure and to collect unpaid assessments, interest, late fees, and attorney fees. Villa Marina moved for summary judgment on October 18, 2022.

On April 18, 2023, after multiple continuances, the trial court entered an order granting Villa Marina's motion for summary judgment in part. Therein, the trial court entered judgment against Cassady in the principal amount of \$24,912.79, plus late fees and interest, minus \$19,072.04 in payments received, for a total of \$8,818.13. The trial court reserved determination of attorney fees and costs and Villa Marina's motion for decree of foreclosure pending the outcome of alternative dispute resolution (ADR).

Villa Marina moved for limited reconsideration on April 20, 2023, asking the trial court to decide the issues it had reserved in its order on summary judgment. The trial court did not decide the motion until June 7, 2023, by which time, the parties' attempt at ADR had failed.

Also on June 7, 2023, the trial court entered an order awarding \$20,000 in attorney fees and \$2,839.34 in costs to Villa Marina. This award was less than half of the fees that Villa Marina requested. The trial court entered the following findings of fact justifying its fee award:

3. In addition to the basis of the amount being requested, the Court has considered the type of work performed and the ultimate size of legal fees requested in light of the underlying debt in controversy in this collections matter. The total debt owed in HOA assessments after subtracting the payments made by Mr. Cassady is approximately \$5,800, while the requested attorney fees and costs are more than \$52,000. The attorney fees being requested far outstrip the principal debt. Indeed, there is a gross disparity between the amount requested when compared to the amount in controversy. Plaintiff has requested attorney fees and costs of more than nine (9) times the matter in controversy.

4.. This matter is not complex and may have been resolved sooner if not for the Plaintiff's delayed participation in ADR on a matter of a relatively small amount of debt. The Plaintiff

represented to the Court that they would not participate in ADR until after the Court ruled on Plaintiff's summary judgment motion.

5. In light of the size of the debt in relation to the fees requested, the Court finds it appropriate for a downward adjustment in fees and that reasonable fees and costs in this case should not exceed more than four (4) times the total debt owed in HOA assessments. See *Scott Fetzer Co. v. Weeks*, 122 Wash. 2d 141, 859 P.2d 1210 (1993). Thus, the Court finds attorney fees of \$20,000 to be reasonable in this case.

6. The Court finds an additional basis for this downward adjustment is consideration of the reasonableness of the hourly attorney rate billed of \$415 and the hourly paralegal rate billed of \$190 in this collections matter.

Villa Marina moved for reconsideration and submitted additional documentation to the court, including its scheduling communications with the mediator and declarations by other attorneys with experience representing condominium associations. The trial court denied the motion.

Villa Marina appeals.

#### ANALYSIS

We review a trial court's decision concerning the amount of fees to be awarded for abuse of discretion. Mayer v. City of Seattle, 102 Wn. App. 66, 79, 10 P.3d 408 (2000). "A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds, or if no reasonable person would take the position adopted by the trial court." Mayer, 102 Wn. App. at 79. (citing Allard v. First Interstate Bank of Wash., N.A., 112 Wn.2d 145, 148–49, 768 P.2d 998 (1989)).

A trial court calculating the reasonable amount of attorney fees should apply the lodestar method. Mahler v. Szucs, 135 Wn.2d 398, 433, 957 P.2d 632 (1998) (overturned on other grounds by Matsyuk v. State Farm Fire & Cas.

Co., 173 Wn.2d 643, 659, 272 P.3d 802 (2012)). Courts applying the lodestar method must engage in a three-part analysis. First, the court must determine that “counsel expended a reasonable number of hours in securing a successful recovery for the client. Necessarily, this decision requires the court to exclude from the requested hours any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims.” Mahler, 135 Wn.2d at 434; see also Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 599-600. 675 P.2d 193 (1983) (“The starting point for the calculation of the lodestar is the number of hours reasonably expended in the litigation.”). Second, the trial court must determine “the reasonableness of the hourly rate of counsel at the time the lawyer actually billed the client for the services.” Mahler, 135 Wn.2d at 433 (citing Fisher Props., Inc. v. Arden–Mayfair, Inc., 115 Wn.2d 364, 798 P.2d 799 (1990)). Factors in determining the reasonable hourly rate include not only counsel’s customary rate, but also “the level of skill required by the litigation, time limitations imposed on the litigation, the amount of the potential recovery, the attorney’s reputation, and the undesirability of the case.” Bowers, 100 Wn.2d at 597. Finally, the court must calculate the lodestar fee “by multiplying the reasonable hourly rate by the reasonable number of hours incurred,” which the trial court may adjust up or down in “rare instances.” Mahler, 135 Wn.2d at 433; see also Bowers, 100 Wn.2d at 597.

Villa Marina’s challenge to the trial court’s award of attorney fees is twofold. First, Villa Marina asserts that the trial court reduced the amount of the fee award based upon factors that are not properly part of the lodestar analysis.

Second, Villa Marina asserts that the trial court did not correctly calculate the fees and costs awarded.

### Reasonableness

Villa Marina first asserts that the trial court based its award of fees upon factors not properly included in the lodestar analysis. Villa Marina contends that it was improper for the trial court to reduce its fee award based on the disparity between the amount of fee sought and the amount of the judgment, the lack of complexity involved, and its delayed participation in ADR. We disagree with respect to the first two factors and hold that the trial court did not err by reducing the fee award due to lack of complexity of the matter and the disparity between the fee request and amount of the judgment. But we agree with Villa Marina on the third factor and hold that the trial court's order is insufficient to support a reduction in fees for delayed participation in ADR.

Washington law does not contain any set definition of what constitutes a reasonable fee. However, courts have frequently looked to RPC 1.5(a) when assessing which factors are appropriate for a trial court to consider in determining the reasonableness of a requested fee award. See e.g. Berryman v. Metcalf, 177 Wn. App. 644, 666, 312 P.3d 745 (2013)). RPC 1.5(a) lists nine factors to be considered in determining the reasonableness of attorney fees. Among the factors listed are "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly" and "the amount involved and the results obtained." RPC 1.5(a)(1), (4). Because RPC 1.5(a) expressly contemplates that complexity of a

matter and the amount of the judgment are factors in determining what constitutes a reasonable fee, the trial court did not err by reducing Villa Marina's fee award on those bases.

Villa Marina nevertheless asserts that the disparity between the fees requested and the amount awarded should not have been considered, relying on Target Nat'l Bank v. Higgins, 180 Wn App. 165, 321 P.3d 1215 (2014). The court in Target held that the trial court erred when it reduced the amount of fees awarded under RCW 4.84.250 because of the small value of the claim. 180 Wn. App. at 193-94. Here, as the trial court correctly recognized, Target does not apply because Villa Marina did not claim fees under RCW 4.84.250.<sup>1</sup> For fee claims not asserted under RCW 4.84.250, our courts have consistently held that the amount of the judgment is a relevant, albeit not conclusive, factor in the trial court's determination of the reasonableness of the fees claims. Mahler, 135 Wn.2d at 433; Mayer, 102 Wn. App. at 83.

Villa Marina also asserts that the trial court erred by reducing its fee award based on Villa Marina's delayed participation in ADR. In its order awarding fees to Villa Marina, the trial court entered the following finding of fact:

This matter is not complex and may have been resolved sooner if not for the Plaintiff's delayed participation in ADR on a matter of relatively small amount of debt. The Plaintiff represented to the

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<sup>1</sup> Although Villa Marina states that Target did not limit its holding to fee claims brought under RCW 4.84.250, such a reading is inconsistent with our Supreme Court's decision in Mahler and Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993). We do not believe that Division Three intended such a result and therefore decline to read Target in the manner advocated by Villa Marina.

Court that they would not participate in ADR until after the Court ruled on Plaintiff's summary judgment motion.

Villa Marina contends that this was not a valid basis for the deduction of fees because it was entitled to a ruling on its summary judgment motion before proceeding with ADR. It is not clear from the trial court's order how Villa Marina's "delayed participation in ADR" pertains to its determination that counsel's hours or hourly rate were unreasonable. To the extent that the trial court believed that a delay in ADR resulted in the expenditure of "wasteful" hours, it was required to state as much in its order. Mahler, 135 Wn.2d at 434-35. Without any explanation from the trial court connecting its finding to its reasonableness determination, we are unable to state whether the trial court abused its discretion.

#### Lodestar Calculation

Villa Marina also asserts that the trial court erred by not using the lodestar method to calculate its fee award. Villa Marina contends that the trial court "never identified what it considered to be a reasonable rate" and "made no efforts to establish a lodestar before declaring the Association's attorneys' fees to be unreasonable and justifying a reduction by nearly 2.5 times." We agree with Villa Marina that the trial court did not adequately explain how it determined its fee award. But we disagree with Villa Marina as to the appropriate remedy for the inadequate explanation.

"The purpose of the lodestar is to provide an objective basis for assessing a reasonable fee." Bowers, 100 Wn.2d at 599. The lodestar method of calculating fees provides "trial courts a clear and simple formula for deciding the



reasonableness of attorney fees in civil cases and gives appellate courts a clear record upon which to decide if a fee decision was appropriately made.” Mahler, 135 Wn.2d at 433.

In order for this court to determine whether the fee award was appropriately made, the trial court must necessarily create an adequate record explaining the basis of the award. Mayer, 102 Wn. App. at 79 (“Trial courts must also create an adequate record for review of fee award decisions. Failure to create an adequate record will result in a remand of the award to the trial court to develop such a record.”) (citing Mahler, 135 Wn.2d at 435). This requires the court to explain its reasoning for each of the three steps outlined in Mahler – which hours it deemed inessential, duplicative or unnecessary, what it determined to be a reasonable hourly rate, and how it reached its calculation, before adjusting the award up or down.<sup>2</sup> 135 Wn.2d at 435.

Here, the trial court’s order contains no discussion whatsoever of the amount of hours counsel spent litigating the matter. While the trial court explained why it determined counsel’s claimed hourly rates to be unreasonable, it did not state what would constitute a reasonable hourly rate. Finally, the trial court did not explain how it arrived at \$20,000 as the appropriate amount of fees to be awarded and whether that number included an upward or downward

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<sup>2</sup> One such way for the court to do so is to prepare a table “that lists, for each attorney, the hours reasonably performed for particular tasks and the rate charged, which may vary with the type or work.” Berryman, 177 Wn. App. at 664 (citing Bowers, 100 Wn.2d at 597-98).

multiplier. Because it is unclear how the trial court calculated the fee award, remand is necessary in order for the trial court to develop an adequate record.

Villa Marina asks us to perform the lodestar calculation on the trial court's behalf. Villa Marina contends that the trial court does not have "any interest in ever awarding a community association its reasonable attorneys' fees in a superior court foreclosure lawsuit because [the trial court] appears to believe such actions are unjustifiable." This is a gross misreading of the trial court's orders. The trial court initial order awarding fees was not wholly improper, as lack of complexity and the amount of judgment are factors to be considered in determining what constitutes a reasonable fee. In its order on Villa Marina's motion for reconsideration, the trial court expressed its disagreement with Villa Marina's proffered interpretation of the Washington Condominium Act, chapter 64.34 RCW, which would have had the trial court read the statute generously in favor of condominium associations. It did not go so far as to state that it would never award fees in a foreclosure action. We decline to calculate the reasonable fees to be awarded and remand for the trial court to clarify its award of fees and costs in light of this opinion.

#### Fees on Appeal

Villa Marina also requests an award of fees on appeal under RAP 18.1, the condominium declaration, and RCW 64.34.364. RAP 18.1 provides that applicable law may grant a party the right to recover reasonable attorney fees or expenses on review. RCW 64.34.364(14) states:

The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

Similarly, the condominium declaration states, "In any such action to foreclose a lien against any apartment for nonpayment or delinquent assessments, any judgment rendered against the Owner of such apartment shall include a reasonable sum for attorneys' fees."

Because we remand this matter due to a lack of an adequate record, Villa Marina is not yet a prevailing party. The trial court may consider a request for appellate fees on remand.

Because the trial court did not create an adequate record for us to review its award of fees to Villa Marina, we reverse and remand for further proceedings.

WE CONCUR:

  
  
