

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

SHARON NEAL,
Plaintiff,
v.
NATALIA NEAL,
Defendant.

Case No. 18CV02117

**ORCP 68 PETITION FOR ATTORNEY
FEES**

The undersigned attorney declares and represents to the Court, under penalties of perjury, that the following facts offered in support of an award of reasonable and necessary attorney fees are true to the best of my knowledge and belief:

Defendant hereby petitions the court for reasonable attorney fees under ORCP 68C. On October 18, 2018 this court entered a general judgment of dismissal with prejudice in Defendants favor. Defendant is entitled to recover attorney fees pursuant to ORS 20.105 based upon a finding by this Court that Plaintiff has failed to comply with multiple Court orders. Defendant's attorneys bill their client in a single unified bill with detailed timesheets for each attorney or staff person.

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TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant Street, Suite 212, Canby, Oregon 97013
503-266-5590; Fax 503-212-6392

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1 **POINTS AND AUTHORITIES**

2 Defendant's Counsel recognizes that the hours expended on this case are extraordinary.
3 However, the majority of time spent comes as a result of frivolous motion practice by Plaintiff.
4 See generally Exhibit 2. Throughout the course of this case, Plaintiff has filed 16 motions. Each
5 motion has been denied (with the exception of a protective order that was stipulated). Because
6 Plaintiff filed motions pro se, many were on areas of the law which were totally inapplicable and
7 required research to learn. See e.g. Plaintiff's Motion for a Receivership. In addition to Plaintiff's
8 frivolous motion practice, Plaintiff has filed two frivolous bar complaints against two of the
9 attorneys at Defense Counsel's firm. (time responding to bar complaints was not billed) The first
10 bar complaint alleged that Attorney Ryan Adams told Plaintiff that "*He was military trained and*
11 *was going to take her down.*" Plaintiff also made allegations that Attorney Adams had somehow
12 surreptitiously accessed the court's network in order to manipulate evidence. Obviously, the bar
13 found no evidence to substantiate either claim. Finally, Plaintiff attempted to have Attorney
14 Adams arrested by the Canby Police Department for conspiring to violate an elder abuse
15 restraining order. After speaking with Canby Police and informing them of the absurdity of the
16 complaint, no further action was taken. Finally, in addition to the present case, Plaintiff has filed
17 4 elder abuse restraining orders against defendant within the last year. Defendant's attorney fees
18 have been reasonable both in total and in hourly rates pursuant to the statutory factors at 623.4
19 attorney hours and some staff and travel time for reviewing the relevant documents, conferring
20 with the client, conducting trial preparation, travel and oral argument. The number of hours and
21 services rendered in this matter for each lawyer, and legal assistant and the hourly rates for each
22 are set forth in detail below and are authenticated by the attached Declaration of Wes Adams, in
23 tenths of an hour.

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1 The actual timesheets are the same as those sent to the client for billing purposes. Exhibit
2 1 is the detailed timesheets for Managing Attorney Tyler Smith, Associate Attorney J. Ryan
3 Adams, Associate Attorney Caleb Leonard, Associate Attorney Wes Adams, and staff April Lee
4 and Joey Pickels. *See Declaration of Wes Adams*. You may notice that attorneys sometimes
5 charged reduced rates at "staff" rates when they are performing a staff level task, these times are
6 included on the attorney's respective timesheet, but billed to the client at a lower rate. Attorneys
7 and staff sometimes "no charge" for time spent, and that time is reflected as "n/c". Each
8 timesheet (Exhibit 1) shows a description of the precise tasks done in a particular month, the date
9 of the task, and time in detail to 1/10th of an hour. I redacted from the statement any other
10 services for the Plaintiff that were unrelated to this case.

11 Under ORS 20.105(1), the court "SHALL" award reasonable attorney fees to a prevailing
12 party upon a finding by the court that that the losing party failed to follow the Courts order(s).
13 On October 18, 2018, Judge Steele signed a judgment dismissing Plaintiff's lawsuit in its entirety
14 with prejudice because Plaintiff had repeatedly violated the Court's orders. Plaintiff had already
15 been previously sanctioned.

16 Defendant is entitled to Attorney Fees under ORS 20.105 and ORCP 68. Defendant's
17 Answer pleaded a right to attorney fees. Under ORCP 68(C), Defendant is entitled to reasonable
18 attorney fees within the discretion of this court. The factors to be considered under ORS 20.075
19 include:

20 (a) The conduct of the parties in the transactions or occurrences that gave rise to the
21 litigation, including any conduct of a party that was reckless, willful, malicious, in
22 bad faith or illegal.

23 (b) The objective reasonableness of the claims and defenses asserted by the parties.

1 (c) The extent to which an award of an attorney fee in the case would deter others from
2 asserting good faith claims or defenses in similar cases. *An award will not deter*
3 *others from asserting good faith claims or defense in similar cases.*

4 (d) The extent to which an award of an attorney fee in the case would deter others from
5 asserting meritless claims and defenses. *An award would deter others from asserting*
6 *meritless claims and defenses because it is an award in favor of Defendant after*
7 *Plaintiff asserted an unreasonable claim and acted in an unreasonable manner and*
8 *will deter other plaintiffs from acting in a like manner.*

9 (e) The objective reasonableness of the parties and the diligence of the parties and their
10 attorneys during the proceedings. *Plaintiff acted unreasonably in this case in the*
11 *following ways:*

12 a. *Filing the same TRO again in front of a different judge after the first TRO*
13 *was vacated and forcing Defendant to make the same arguments again to*
14 *get it vacated.*

15 b. *Filing the same motion for summary judgement 3 different times (it was*
16 *denied each time).*

17 c. *Filing four spurious elder abuse claims against the defendant in an effort to*
18 *remove her from the property quickly. The Court went so far as to enter an*
19 *order requiring Plaintiff to provide notice to defense counsel 48 hours*
20 *before she filed any pleadings.*

21 d. *Filing 2 unsubstantiated and completely false bar complaints against*
22 *Defense Counsel.*
23

1 e. *Attempting to have defense counsel and defendant arrested based on a false*
2 *accusation.*

3 f. *By having non-attorneys draft her pleadings and motions and subsequently*
4 *appearing at oral argument without knowing the content of her motions or*
5 *being prepared to argue her position.*

6 (f) The objective reasonableness of the parties and the diligence of the parties in
7 pursuing settlement of the dispute. *Defense Counsel attempted to have settlement*
8 *discussions with Ms. Neal on January 18, 2018 in Judge Van Dyk's Courtroom.*
9 *Ms. Neal was not amenable to discussion. Counsel explained that the subject*
10 *property was in foreclosure and that even in the unlikely event she was to prevail,*
11 *the home would be owned by the bank by next year. Even though a foreclosure sale*
12 *is set for January 10, 2019, Plaintiff pressed onward. Plaintiff left the settlement*
13 *discussion and immediately filed a false bar complaint stating the Attorney Adams*
14 *told her that he was "Military trained and was going to take [her] down." In reality,*
15 *Defense counsel escorted Ms. Neal to the civil window to assist her in making*
16 *certain that she had the correct address on file. This was corroborated by*
17 *courthouse video footage. When Ms. Neal briefly retained counsel, settlement*
18 *discussion was at the forefront of the discussion. Neither attorney saw this case as a*
19 *good use of client funds and judicial resources. However, Ms. Neal was once again*
20 *unwilling to engage in the discussion. Finally, at the settlement conference held on*
21 *September 14, 2018, Ms. Neal refused to have any type of reasonable settlement*
22 *discussion.*
23

1 (g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.

2 *Defendant is entitled to the statutory prevailing party fee.*

3 (h) Such other factors as the court may consider appropriate under the circumstances of

4 the case. *In an attempt at brevity, Defendant relies on the points set forth above.*

5 *Ms. Neal has abused the court's resources and has made this case as expensive as*

6 *possible for the defendant. Further, in deposition, Plaintiff told defense counsel*

7 *that she was "going to do everything in her power to destroy defendant's*

8 *reputation." Finally, Plaintiff admitted in deposition that the reason for the*

9 *litigation is that her youngest son (defendant's ex-husband) was working "behind*

10 *the scenes" to get the property even though, earlier this year, Plaintiff's son had*

11 *given up all right and title to the property in the judgment of dissolution.*

12 (i) The time and labor required in the proceeding, the novelty and difficulty of the

13 questions involved in the proceeding and the skill needed to properly perform the

14 legal services. *Defendants' attorney devoted a reasonable amount of time and effort*

15 *to the matter in the form of legal research, drafting a responses, replies, and*

16 *objections, and arguing the case at approximately 20-25 lengthy court appearances.*

17 (j) The likelihood, if apparent to the client, that the acceptance of the particular

18 employment by the attorney would preclude the attorney from taking other cases. *Not*

19 *applicable.*

20 (k) The fee customarily charged in the locality for similar legal services. *The fee charged*

21 *by Defendant's attorneys (\$200 per hour) is a reasonable rate for attorneys in the*

22 *area with similar experience.*

1 (l) The amount involved in the controversy and the results obtained. *The Defendant*
2 *successfully defended title to property worth approximately 1.5 million dollars.*

3 (m) The time limitations imposed by the client or the circumstances of the case. *The case*
4 *posed incredible time limitations because of the frivolous motion practice of*
5 *Plaintiff. On at least 20 occasions defense counsel was forced to move other client*
6 *matters and meetings off of his calendar to appear in court or draft responses to*
7 *Plaintiff's motions.*

8 (n) The nature and length of the attorney's professional relationship with the client. *The*
9 *attorney's firm defended Defendant in other cases.*

10 (o) The experience, reputation and ability of the attorney performing the services. *Ryan*
11 *Adams was the lead attorney. Mr. Adams has practiced law for approximately for*
12 *years. He handles property litigation almost exclusively. According to the 2017*
13 *economic survey, Mr. Adams' rate of \$200 is at or below the rate generally accepted*
14 *in the Clackamas County area. Mr. Adams is also a Judge Advocate for the United*
15 *States Army. In that capacity his role is to advise command on the lawful use of*
16 *force in the combat environment and to provide legal assistance to soldiers. Mr.*
17 *Adams was among 7% of applicants to be accepted as a judge advocate based on*
18 *his academic credentials and experience.*

19 (p) Whether the fee of the attorney is fixed or contingent. *The fee is hourly and is paid*
20 *by the client on a monthly basis. This matter has significantly hindered*
21 *Defendant's ability to make mortgage payments.*

22 My experience and background is described above. The hourly rates of \$200 to \$225 per
23 hour is competitive by industry standards for attorneys with similar experience in the Clackamas

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County area and therefore reasonable as to the per hour charge. We build in all copying costs, postage and other miscellaneous charges into our hourly rates.

Further, the litigation of this case was done as frugally as reasonably possible on our end, only billing for 623.4 hours of collective total attorney, travel, and staff time. Under ORS 20.075 based on the relevant factors the complexity of the issues, and the reasonable rate, the total amount of \$ 123,176.88 is a reasonable amount.

ATTORNEY FEES REQUESTED IN FULL:(as shown in Exhibit 1)

Name: Tyler Smith	Hours: 4.7	RATE: \$225/hour;	TOTAL: \$1057.50
Name: Ryan Adams	Hours: 169.5	RATE: \$200/hour;	TOTAL: \$33,900.00
Name: Caleb Leonard	Hours: 85.6	RATE: \$200/hour;	TOTAL: \$17,120.00
	Hours: 7.2	RATE: \$100/hour;	TOTAL: \$720.00
	Hours: 2.8	RATE: \$90/hour;	TOTAL: \$252.00
	Hours: 1.2	RATE: \$0/hour;	TOTAL: \$0.00
Name: Wesley Adams	Hours: 314.3	RATE: \$200/hour;	TOTAL: \$62,860.00
	Hours: .5	RATE: \$100/hour;	TOTAL: \$50.00
	Hours: 2.9	RATE: \$80/hour;	TOTAL: \$232.00
	Hours: 12.5	RATE: \$0/hour;	TOTAL: \$0.00
		TOTAL ATTORNEY FEES:	\$116,191.50

STAFF FEES REQUESTED IN FULL:

Name: April Lee	Hours: 35.6	RATE: \$90/hour;	TOTAL \$3,204.00
	Hours: 5	RATE: \$0/hour;	TOTAL: \$0.00
Name: Joey Pickels	Hours: .3	RATE: \$90/hour;	TOTAL: \$27.00
		TOTAL STAFF FEES:	\$3,231.00

1 COSTS:

2 Filing Fees and Court Costs: \$703

3 Prevailing Party fees: \$5,000 (ORS 20.190(3))

5 TOTAL: 5,703.00

7 TOTAL FEES: \$ 125,125.50

8 Based on the above, and pursuant to ORCP 68 and ORS 20.105 Defendant should be
9 awarded attorney fees of \$125,125.50.

10 I hereby declare that the above statement is true to the best of my knowledge and
11 belief, and that I understand it is made for use as evidence in court and is subject to penalty
12 for perjury.

13 DATED October 31, 2018

14
15 Tyler Smith & Associates, P.C.

16 By s/ J. Ryan Adams

J. Ryan Adams, OSB # 150778

Wesley Adams, OSB# 172900

Of Attorneys for Defendant

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