

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
February 25, 1991
William F. Clayton
Clerk

DONALD J. PORTER
CHIEF JUDGE
413 U.S. COURTHOUSE
PIERRE, SOUTH DAKOTA 57501

NORTHERN DIVISION

CLM
February 25, 1991

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Dear Counsel:

RE: WILLIAM L. NEEDLER and WILLIAM NEEDLER & ASSOC., LTD.,
Appellants vs. WESLEY GRIMES and DELORES GRIMES,
Appellees
CIVIL NO. 90-1023

MEMORANDUM OPINION

The appellants, William L. Needler and William L. Needler & Associates., Ltd. [hereinafter Needler], appeal from a decision by the United States Bankruptcy Court, District of South Dakota, the Honorable Irvin N. Hoyt presiding, which reduced the appellants' fees incurred while representing debtors in a Chapter 11 bankruptcy proceeding. The appellant asserts that the reduction was arbitrary and asks that the case be remanded to a different bankruptcy court in South Dakota. The debtor-appellees, Wesley and Delores Grimes, contend that the bankruptcy court's award of attorneys' fees was correct.

I. FACTS

The debtors, Wesley and Delores Grimes, are farmers located in Conde, South Dakota. The debtors filed for Chapter 11

bankruptcy and hired Needler's firm, which was based in Chicago, Illinois, to represent them. The bankruptcy judge approved Needler's application for employment, but warned Needler that his fee might be reduced if the Court found that local counsel was available.

The debtors' Chapter 11 plan was approved and Needler submitted a final fee application. The debtors, a creditor, and the United States Trustee all objected to the amount requested by Needler and a hearing was held to hear the objections. After the hearing the bankruptcy court approved part of the fees. The total amount approved was less than the amount already paid to Needler so the court directed that the additional funds be disgorged and returned to the debtors. Needler then filed this appeal.

II. STANDARD OF REVIEW

The bankruptcy court's findings of fact are reviewed under the clearly erroneous standard. Conclusions of law are reviewed de novo. In re Apex Oil Co., 884 F.2d 343, 348 (8th Cir. 1989), citing Wegner v. Grunewaldt, 821 F.2d 1317, 1329 (8th Cir. 1987). A bankruptcy court's award of attorneys' fees is based on factual findings and must be reviewed under the clearly erroneous standard. In re AOV Industries, Inc., 798 F.2d 491, 494-95 (D.C. Cir. 1986). A bankruptcy court has "'broad discretion in determining the amount of attorneys' fees to award as compensation for services performed in connection with bankruptcy proceedings, and [its] exercise of that discretion will not be disturbed by an appellate court absent a showing that it was abused.'" Matter of Consolidated Bancshares, Inc., 785 F.2d 1249, 1252 (5th Cir. 1986), quoting In

re First Colonial Corp. of America, 544 F.2d 1291, 1298 (5th Cir. 1977), cert. denied, 431 U.S. 904, 97 S. Ct. 1696, 52 L. Ed. 2d 388 (1977).

III. DISCUSSION

Compensation received for actual and necessary services must be reasonable and is "based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services" 11 U.S.C. § 330(a). A person applying for professional fees and services in a bankruptcy proceeding bears the burden of proof. In re Yankton College, 101 B.R. 151, 157 (Bankr. D.S.D. 1989). Under Bankruptcy Rule 2016, the application for fees must contain "a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested."

The bankruptcy judge made detailed findings of fact in his opinion which reduced the amount of fees and expenses which had been requested by Needler. The judge evaluated the application for fees under the twelve factor approach recognized in Johnson v. Georgia Highway Express, 488 F.2d 714, 717-19 (5th Cir. 1974).¹ The court noted that the case posed no difficult questions and

¹ The twelve factors to be considered are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

involved only three secured creditors. The court recognized the fact that the reorganization was successful and that Needler was an able and reputable attorney. The court heard testimony from an experienced bankruptcy attorney in South Dakota who testified that he received \$75.00 an hour and that he believed the highest rate charged in the district was \$100.00 an hour.

Based on the evidence and testimony presented at the hearing, the court reduced Needler's hourly rate from \$175.00 to \$100.00 an hour and also reduced the hourly rate of the other attorneys in the firm. The court then deducted the time Needler charged for non-professional services and the time spent with consultants. Travel time and expenses were reduced by 75%. This reduction was due to the fact that local counsel could have been retained which would have greatly lessened the amount spent on travel. The court pointed out that it had previously warned the appellant at the time he took the case that the court might reduce his fee if competent local counsel was available.

Needler's main argument appears to be that since the debtor's Chapter 11 plan was confirmed, he should have been awarded the amount of fees he requested in his application.² He claims that the fact that the plan was successful was ignored by the bankruptcy court. The appellant also disagrees with the bankruptcy court's characterization of the Chapter 11 proceedings as uncomplicated.

² It was difficult to determine the exact legal issues presented by Needler because of the generalized nature of his arguments. He also made disparaging remarks about the bankruptcy judge and accused the judge of improper motivations. Needler stated that the judge had "an ax to grind," was inexperienced, and had little respect for the bar. These remarks were uncalled for, highly unprofessional, and totally unfounded.

He maintains that this was not a "garden variety" Chapter 11 because issues concerning § 1111(b) and the absolute priority rule could have arisen during the proceeding.

The bankruptcy court clearly recognized that the plan was successful when discussing the twelve factors. However, the court balanced this against the fact that the case was not unduly complicated. The court also noted Needler's argument that questions concerning § 1111(b) and the absolute priority rule could have arisen in the bankruptcy proceeding. Of course, as the court pointed out, this is a possible concern in every Chapter 11 case. The correct focus of inquiry in determining the "novelty or difficulty of the questions" involved in a case is what actually happens during the course of the proceedings, not what could have happened.

The court disallowed time spent conferring with outside consultants because the court determined that such consultations were not warranted given the relative simplicity of the case. These same consultants had applied for fees and the court denied the fees because the consultants had failed to obtain court approval for employment.

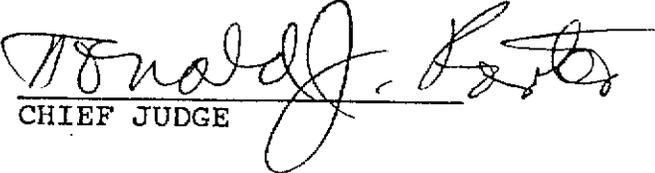
In addition, case law supports the bankruptcy court's reduction of travel time and expenses. In re Interstate United Electronic Sales Co., 44 B.R. 784 (Bankr. S.D.Fla. 1984). The Florida court disallowed all travel expenses by stating that "if there is adequate representation available at the situs and no compelling need for this special counsel, the attorney cannot expect to be compensated at more than the prevailing rate for

available, local counsel of comparable experience and ability. Nor can he expect to be compensated for travel." Id. at 786. The Fifth Circuit has found that a lower court properly considered the fact that the use of local counsel would have reduced expenses. Matter of Multiponics, Inc., 622 F.2d 731, 734-35 (5th Cir. 1980).

IV. CONCLUSION

The bankruptcy court's findings of fact were well-reasoned, detailed, and persuasive. The findings were not clearly erroneous and the bankruptcy court's decision is affirmed.

BY THE COURT:


CHIEF JUDGE