

of the plaintiffs and awarded statutory damages of \$2500 each to Winona Hilt and Goldene Biggs.

Thereafter, the plaintiffs filed a petition for attorney's fees pursuant to 18 U.S.C.A. § 2520 (West 2001), requesting that the defendant pay \$8,137.50. The plaintiffs arrived at this figure by multiplying the number of hours their attorney spent working on the case by their attorney's hourly rate.²

In response, the defendants filed an objection to the plaintiffs' petition. The defendant asserts that an attorney's fee is not appropriate in this case. Alternatively, the defendant argues that the amount of the plaintiffs' request for an attorney's fee is not reasonable.

II

The applicable statute authorizes the award of a "reasonable attorney's fee." 18 U.S.C.A. § 2520(b)(3) (West 2001). The Fourth Circuit has adopted the "lodestar" calculation to determine a reasonable attorney's fee. Under the lodestar method, an attorney's fee is calculated by "multiplying the number of reasonable hours expended times a reasonable rate." *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998).

² Mr. McAfee's in-court hourly rate is \$200 per hour and his out-of-court rate is \$150 per hour. (Pls.' Pet. ¶¶ 4, 5.)

A number of factors are used to determine whether the applicable hours and rate are reasonable:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id. (citations omitted). “[T]he most critical factor is the degree of success obtained.”

Hensley v. Eckerhart, 461 U.S. 424, 436 (1983).

The defendant does not challenge the reasonableness of the requested fee as calculated.³ Instead, the defendant argues that an attorney's fee award is not appropriate in this case. In support of this argument, the defendant contends that the plaintiffs' intent in the case was not to be compensated by damages, but to punish the defendant for a deterioration in their relationship with their mother. Also, the defendant argues that an award is not appropriate because he does not have funds with which to pay. Alternatively, the defendant argues that the amount of the plaintiffs' request for

³ The defendant asserts that the defendant's own attorney's fee is “substantially equivalent” to the amount the plaintiffs request. (Def.'s Objection.)

an attorney's fee is not reasonable and accordingly asks the court to limit the fee to one-third of the overall judgment against the defendant. This formulation would result in an award of \$1667.

The defendant's first two arguments are without merit. The plaintiffs' feelings toward the defendant and their intent in this case are irrelevant to the award of an attorney's fee. The defendant asserts in his second argument that he has little means to pay an attorney's fee award. However, he has not submitted any evidence in this regard and contrary to his assertion, at trial the defendant introduced evidence that he owned real estate. Because the statute authorizes an attorney's fee award after a verdict for the plaintiff and there are no valid objections, I find that an attorney's fee award is appropriate in this case.

The defendant's final argument implicates the reasonableness of the requested fee in light of the plaintiffs' success at trial. The plaintiffs' pressed only one claim in this case: that the defendant illegally intercepted their phone calls. The plaintiffs were successful at trial on this issue, although the jury did not award as much in damages as is authorized by statute. *See* 18 U.S.C.A. § 2520(c)(2). While the court should weigh the success of the plaintiffs as a factor, I do not find that the requested fee should be reduced in this case.

The applicable factors do not require that the attorney's fee be proportional to the damage award. Indeed, the proportionality argument has been rejected in other contexts using the lodestar calculation. *See Cowan v. Prudential Ins. Co. of Am.*, 935 F.2d 522, 528 (2d Cir. 1991) (rejecting the proportionality argument in a civil rights case). The question is whether the attorney's fee, considering all of the relevant factors, is reasonable. In fact, the wiretapping statute allows a reasonable attorney's fee even when, as here, no actual damages are incurred by the plaintiffs. *See* 18 U.S.C.A. § 2520(b), (c); *Campiti v. Walonis*, 467 F. Supp. 464, 467 (D. Mass. 1979). Under the statute, a reasonable attorney's fee award should not be limited as a contingency award. *See Campiti*, 467 F. Supp. at 467.

The plaintiffs' attorney submitted an itemized statement with the petition for an attorney's fee, setting forth an account of 49.25 hours at applicable rates of \$150 per hour out of court and \$200 in court. The plaintiffs' attorney spent this time litigating and preparing this case, during which time he was unable to work on other cases. He is an experienced attorney in this court and was successful at trial. While the issues in this case were not difficult or novel, the time expended on the case, including taking and attending depositions, preparing and responding to motions, responding to a counterclaim and preparing for trial, was reasonable. I find that the plaintiffs' attorney's rate is reasonable for federal practice in this district and the fee award is

similar to those in other cases. *See, e.g., Wolfe v. Wolfe*, 570 F. Supp. 826, 833 (D.S.C. 1983); *Campiti*, 467 F. Supp. at 467. Although the damages awarded were not the maximum allowed under the statute, I find that the attorney's fee requested is not excessive in relation to the degree of success at trial. *Cf. Forkes v. Busse*, 510 F. Supp. 122, 123 (E.D. Wis. 1981) (rejecting an attorney's fee of \$18,000 as "shockingly high" because the plaintiff had "over-tried" the case).

Based on this weighing of the relevant factors, I find that \$8,137.50 is a reasonable attorney's fee. An appropriate judgment will be entered.

DATED: November 21, 2001

United States District Judge