

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

**POWELL VALLEY BANKSHARES,
INC.,**)

Plaintiff,)

v.)

JOHN C. WYNN, ET AL.,)

Defendants.)

Case No. 2:01CV00079

OPINION

By: James P. Jones
United States District Judge

James S. Crockett, Jr., Troutman Sanders Mays & Valentine, LLP, Richmond, Virginia, for Plaintiff; Carl E. McAfee, McAfee Law Firm, P.C., Norton, Virginia, for Defendant John C. Wynn.

In this interpleader action, the stakeholder plaintiff seeks an award of attorneys’ fees and costs following a settlement of the underlying dispute. I will grant such fees and costs, but not in the amount sought.

I

Powell Valley Bankshares, Inc. (“PVB”) brought this action pursuant to the federal interpleader statute, 28 U.S.C.A. § 1335 (West 1993), in order to resolve inconsistent claims to the ownership of 4657 shares of PVB stock. The defendants are John C. Wynn (“Wynn”), his sister Mary Wynn Allen, and Sheriff Gary B. Parsons, the

administrator of the estate of Browning Wynn, their deceased father. Pursuant to order, PVB paid into court the amount of the accrued dividends on the stock and has since paid into court all subsequent dividends. In addition, at the request of PVB, the court restrained the defendants from the prosecution of any other proceedings affecting the stock, including a state court action previously filed by Wynn against PVB.

The parties have now advised the court that they have settled the disputed claims. As part of the settlement, Wynn will receive payment of the accumulated dividends on the stock, less any attorneys' fees and expenses that the court may award to PVB. Accordingly, PVB has filed a motion for award of attorneys' fees and costs, which has been objected to by Wynn.¹ The motion is supported by affidavits and itemized time records showing a total of 143.3 hours spent by PVB's counsel in the case. Based on those time records, PVB seeks a fee of \$39,573, together with reimbursement of the filing and service fees of \$288.14 and travel expenses of \$714.37. The motion has been briefed and argued and is ripe for decision.

¹ The remaining defendants, Mary Wynn Allen and Sheriff Gary B. Parsons, have advised the court that they have no position on the motion.

II

The court has the discretion to award attorneys' fees and expenses to a disinterested stakeholder in an interpleader action, even though there is no precise statutory authority to do so. *See Prudential Prop. & Cas. Co. v. Baton Rouge Bank & Trust Co.*, 537 F. Supp. 1147, 1150 (M.D. Ga. 1982). The basis for such an award is that it would be inequitable to make the disinterested stakeholder bear such burden, particularly where the action benefits the claimants by facilitating a determination of the conflicting claims. *See Schirmer Stevedoring Co. v. Seaboard Stevedoring Corp.*, 306 F.2d 188, 193-94 (9th Cir. 1962). While Wynn asserts that PVB was not a disinterested stakeholder, I find that the record does not support that contention.

Wynn further argues that since the transfer of stock is part of the ordinary business of a corporation, PVB ought to bear any expense incurred by it in determining the rightful owners of its shares. *See Fid. Bank v. Commonwealth Marine & Gen. Assurance Co.*, 592 F. Supp. 513, 526 (E.D. Pa. 1984) (holding that fee award might shift stakeholder's ordinary business expenses to the claimants). However, I find that the circumstances of this case place it beyond the ordinary stock transfer duties of a corporation and thus an award of the costs of litigation is proper. Likewise, I find that PVB ought not to be denied a fee on the ground of any lack of diligence in pursuing the remedy of interpleader. The record indicates that the dispute over the stock arose in

late 2000, and PVB filed this action the following year. Wynn does not point to any prejudice to the parties by virtue of any delay in the filing of the interpleader action.

Wynn's final contention is that the award requested is excessive. I agree with this argument and will only award a portion of the amount sought.

In my view, the proper perspective of a fee award in an interpleader action is as recently quoted by Judge Wilson of this court:

The remedy of interpleader should, of course, be a simple, speedy, efficient and economical remedy. Under ordinary circumstances there would be no justification for seriously depleting the fund deposited in court by a stakeholder through the allowance of large fees to his counsel. The institution of a suit in interpleader, including the depositing of the fund in the registry of the court and the procuring of an order for discharge of the stakeholder from further liability, does not usually involve any great amount of skill, labor or responsibility, and, while a completely disinterested stakeholder should not ordinarily be out of pocket for the necessary expenses and attorney's fees incurred by him, the amount allowed should be modest.

Lewis v. Atlantic Research Corp., No. 98-0070-H, 1999 WL 701383, at *7 (W.D.Va. Aug. 30, 1999) (quoting *Hunter v. Fed. Life Ins. Co.*, 111 F.2d 551, 557 (8th Cir. 1940)).²

² The traditional test for determining attorneys' fees in an interpleader action is less rigorous than the more elaborate factors used to consider fee awards in civil rights suits and other contexts. See *Noeller v. Metro. Life Ins. Co.*, 190 F.R.D. 202, 207 (E.D. Tex. 1999). In an interpleader action, the broad rule is reasonableness. See *id.*

The amount of fees and expenses sought by PVB total \$40,575.50, which is nearly half of the accrued dividends of \$83,826. While I recognize that the value of the stock at issue in the case exceeds the accumulated dividends,³ I nevertheless find the requested fees and expenses excessive.

In the first place, I find that much of the time spent by PVB's counsel ought not in fairness to be charged against the claimant Wynn. For example, a considerable amount of time was spent by PVB's counsel in traveling from Richmond, Virginia, to Norton, Virginia, and attending depositions taken by the claimants. One of the witnesses deposed was a PVB employee, and while it was doubtless in PVB's interest to provide an attorney for the employee while he was deposed, that interest did not involve PVB's role as a disinterested stakeholder.

It is true that PVB remained a party throughout the case, but as was made clear at an early hearing before the court, once the parties had been restrained from prosecuting other actions, and arrangements had been made for paying into court the disputed dividends, PVB's status as a party was only nominal.

PVB also asserts that its attorney "actively participated in settlement negotiations between the parties." (Crockett Aff. ¶ 12.) While such activity may have been helpful

³ PVB asserts that the current value of the stock at issue is approximately \$1,564,752. (Lutz Aff. ¶ 11.)

to the parties, there is no evidence that the claimants, all represented by competent counsel, could not have settled the case without such participation.

Under the circumstances, I find it is appropriate to allow attorneys' fees only for that portion of the time incurred before October 19, 2001, by which date PVB had accomplished the filing of the interpleader action, the payment of the accrued dividends into court, the hearing on the restraining order, and the completion of PVB's initial disclosures. The remainder of the time, while perhaps in PVB's best interests, was not appropriate to PVB's role as a disinterested stakeholder and should not be charged to the property of the claimant.

Secondly, as to the time spent by PVB's counsel prior to this cutoff date, even though it is properly compensable, I find the hourly rate excessive under the circumstances.

In awarding attorneys' fees, the court must determine that the hourly rate is reasonable. Reasonable hourly rates in this context are ones that are the "prevailing market rates in the relevant community." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Normally the relevant community is where the court sits, although in circumstances where it is more reasonable to obtain counsel from outside that community, that fact may be shown. *See id.* The burden of showing the prevailing market rate and of

overcoming the presumption that the relevant community is where the court sits is on the party seeking attorneys' fees. *See Morse v. Republican Party*, 972 F. Supp. 355, 364 (W.D. Va. 1997).

PVB has submitted no evidence of the prevailing market rates and indeed has not expressly disclosed the hourly rates contained in its requested award, although it appears from the information supplied that several different hourly rates are involved. An affidavit submitted shows that three attorneys worked on the case for PVB: James A. Crockett, Jr., a partner in the firm of Troutman Sanders Mays & Valentine LLP, Jacob A. Lutz, III, a "banking partner" in that firm, and Peter A. Gilbert, a "litigation associate" of the firm. (Crockett Aff. ¶ 1.) All of the lawyers are located in Richmond, Virginia. According to the time records submitted, Crockett and Lutz spent most of the time charged in the case, and their hourly rates range from \$300 to \$335 per hour for Crockett and \$340 to \$375 for Lutz. Gilbert's time was charged at \$160 per hour.

The present case was run-of-the-mine litigation and there is no reason that market rates outside of the Big Stone Gap division of this court should be appropriately considered. For example, this is not a dispute, like that in *Rum Creek Coal Sales, Inc. v. Caperton*, where there is likely no local attorney available with the required skills, *see id.* at 179, or where the politically sensitive nature of the case makes it necessary to obtain counsel from afar. *See id.*

In the absence of proof by PVB of the prevailing market rates, I find that a rate recently awarded by this court in an action in the Big Stone Gap division is appropriate. In *Hilt v. Hurd*, No. 2:01CV00017, 2001 WL 1517041, at *2 (W.D. Va. Nov. 21, 2001), I awarded rates of \$150 to \$200 per hour, based on evidence of the prevailing market rate for litigation in this court. The *Hilt* case involved issues no less difficult or specialized than in the present dispute; moreover, it involved rates for the same law firm that represents Wynn in this case. Accordingly, I intend to award attorneys' fees based on an hourly rate no greater than \$200.

III

For the reasons stated, I will allow attorneys' fees to PVB in this case from the funds held by the court in the amount of \$15,940. In addition, I will allow costs of \$288.14, for total fees and costs of \$16,228.14. Since there is no breakdown of travel expenses, I cannot determine what amount ought to be awarded for counsel's travel to the hearing on October 10, 2001. If PVB desires an award for such travel expenses, it may timely move the court to amend its judgment and supply the necessary supporting information.

A separate judgment consistent with this opinion is being entered herewith.

DATED: April 11, 2002

United States District Judge