

RED EXPRESS, INC., A CORPORATION,

IN THE SUPERIOR COURT
OF PENNSYLVANIA

Appellee

v.

UNITED REFINING COMPANY OF
PENNSYLVANIA,

Appellant

No. 836 WDA 2003

Appeal from the Judgment entered on June
11, 2003, in the Court of Common Pleas of Venango
County, Civil Division, at No(s). 1723-1996.

BEFORE: FORD ELLIOT, LALLY-GREEN, and TODD, JJ.

MEMORANDUM:

Filed: June 29, 2004

Appellant, United Refining Company of Pennsylvania, appeals from the judgment entered by the Court of Common Pleas of Venango County, after granting the Petition to Finalize the order of Appellee, Red-Express Inc. We affirm.

The trial court found the following facts:

This action was brought in response to the contamination of the plaintiff's property, which resulted from a leak in the defendant's underground storage tanks. As a result of the contamination, the plaintiff conferred with local counsel, who informed him that the local bar lacked expertise in environmental matters and referred him to the law offices of Harry F. Klodowski, Jr., Esq. 230 Grant Street, Suite 3321, Pittsburgh, Pennsylvania 15219, who specialized in environmental matters. This court conducted two days of hearing in this matter on February 28, 2000 and February 29, 2000, and we filed an opinion and order on March 15, 2000. In that opinion and order, we left open the issue of counsel fees and expenses and directed counsel to attempt to obtain a stipulation, and, if they could not agree, to submit the matter to the court and

the court would either adjudicate it or conduct a hearing. On October 10, 2000, Klodowski withdrew his appearance as counsel for the plaintiff. On the same date, Scott Schreffer, Esq. entered his appearance on the plaintiff's behalf. Thereafter, plaintiff's counsel submitted a petition to finalize the order and a request for hearing, and the Defendant submitted a response to the petition to finalize order. A hearing was conducted on the matter on February 26, 2003. At the commencement of the hearing, counsel brought to the attention of the court that the plaintiff had received a letter from the Department of Environmental Protection (hereinafter "DEP"), dated February 24, 2003, which put to rest the issue as to whether the Red Express property was included in what we characterize as the "Act 2" letter, which had been the subject of a stipulation entered by counsel at the start of the trial. In view of that letter, the issue as to further remediation of the site and further assistance concerning the site's clean up, is now put to rest. The court considers [sic] the filings of the parties, and we have considered the testimony presented at the hearing from Dennis M. Redfield and Tim Ruth.

Trial Court Opinion, 4/14/03, at 1-2.

On April 14, 2003, the trial court entered an order which granted Appellee's request for attorneys' fees and costs in the amount of \$72,367.24 plus interest from the date of the award. Subsequently, on June 11, 2003, the trial court entered judgment in favor of Appellee. This appeal followed.

Appellant raises the following issues on appeal:

Whether the trial court abused its discretion, committed an error of law, or exercised judgment which was manifestly unreasonable in awarding costs of litigation pursuant to section 1305(F) of the Storage Tank and Spill Prevention Act because the plaintiff below:

- A. Failed to prove each of the elements necessary to succeed on a cause of action brought under this statute;

- B. Failed to establish a compelling reason to award costs of litigation under this statute; and
- C. Achieved limited success at trial?

Appellant's Brief at 4. We will treat these issues as one of whether the trial court properly awarded attorneys' fees.

Our review of a trial court's award of attorneys' fees is limited to whether the court clearly abused its discretion. *Cummins v. Atlas Railroad Construction Co.* 814 A.2d 742, 746 (Pa. Super. 2002). An abuse of discretion occurs "when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias, or ill will." *L.B. Foster Co. v. Charles Caracciolo Steel & Metal Yard, Inc.*, 777 A.2d 1090, 1092 (Pa. Super. 2001). For purposes of justifying an award of attorneys' fees, a prevailing party is a litigant who succeeds on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit. *See e.g., Logan v. Marks*, 704 A.2d 671 (Pa. Super. 1997).

The Pennsylvania Storage Tank and Spill Prevention Act ("Act") governs this case. The Act is a public health statute designed to control the storage of "regulated substances" in new and existing storage tanks. 35 P.S. § 6021.101; *Centolanza v. Lehigh Valley Dairies, Inc.*, 658 A.2d 336 338 (Pa. 1995).

The question of when an award of attorneys' fees is appropriate under the Act appears to be a case of first impression. We note that when the language of a statute is clear and unambiguous, it is not to be disregarded under the pretext of pursuing the spirit of the statute. 1Pa.C.S.A. § 1921(b); *Centolanza*, 658 A.2d at 339. The plain words of a

statute cannot be disregarded where the language is free and clear from all ambiguities.

Id. Furthermore, “words and phrases shall be construed according to the rules of grammar and according to their common and approved usage.” 1 Pa.C.S.A. § 1903(a). It is only when a statute is unclear that we may embark upon the task of ascertaining the intent of the Legislature by reviewing the necessity of the act, the objective to be obtained, the circumstances under which it was enacted and the mischief to be remedied.

Id.

Section 6021.1305(f) governs the award of attorneys’ fees, expert witness fees, and litigation costs. Section 1305(f) provides:

Fees and Costs.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. Except as provided in subsection (b), the court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.

35 P.S. § 6021.1305(f) provides that the award of attorneys’ fees, expert witness fees, and litigation costs is discretionary. Appellant acknowledges that such an award is discretionary. Appellant’s brief at 10,11.

Nevertheless, Appellant claims that the trial court erred in the award of attorneys’ fees and litigation costs because the Appellee did not prevail in its action under the Act due to the fact that the trial court awarded no damages for diminution of property value. Appellant also claims that the award of attorneys’ fees and litigation costs exceeded the actual damages in the case. Finally, Appellant claims that the trial court erred in awarding

the expert witness fees incurred by Appellee's environmental consultant. We will address these issues separately.

First, we address Appellant's assertion that the attorneys' fees and litigation costs were not appropriate because the trial court awarded no damages for diminution of property value. Appellant asserts that, in order for attorneys' fees to be awarded under the Act, the party to whom such an award is given must prevail on its cause of action brought under the Act. Appellant claims that Appellee prevailed on common law causes of action but not on an action brought pursuant to the Act.

Appellant specifically claims that the damages awarded to Appellee were based upon the encroachment of Appellant's tanks onto Appellee's premises, for the loss of use and fair rental value of the premises and for the use of Appellee's driveway by Appellant's tractor-trailers. Appellant contends that because the trial denied any recovery for diminution of property value, the damages awarded to Appellee were based upon common law actions in trespass and were not based upon a violation of the Act. Because no violation of the Act occurred, Appellant continues, Appellee did not prevail and no attorneys' fees were appropriately awarded pursuant to the Act.

Our review of the record reflects that the trial court awarded Appellee \$15,000 for the encroachment, loss of use, and fair rental value of its premises.¹ *See*, 3/15/00 Order. This award constituted \$1,500.00 per month from April 16, 1996 through February 16, 1997, the date of Appellee's initial demand to the approximate date that the trial court considered Appellee's premises restored. *See*, 3/1/00 Findings of Fact Decision at pp 9-10. The court stated "\$1,500.00 per month, a number set by Red Express, adequately

¹ The record also reflects that the court awarded another \$1,275.00 to Appellee for damages to its premises caused by Appellant's tractor-trailers. Appellee's claim for future loss of value of the premises was denied. *See*, 3/1/00 Findings of Fact Decision at p.12.

compensates Red Express for the trespass, its loss of use, **and for any possible diminution in value.**” *See*, 3/1/00 Decision (emphasis added). The express language used by the trial court compensated Appellee for the diminishment in property value caused by Appellant’s violation of the Act. Appellee, thus, did prevail on this issue and attorneys’ fees were appropriately awarded pursuant to the Act. Appellant’s first claim fails.

Second, we address Appellant’s assertion that the trial court erred in the award of attorneys’ fees and litigation costs because the award exceeded the actual damages in the case. Here, the trial court awarded actual damages of \$15,000.00 plus \$1,275.00² (\$16,275.00) and awarded \$72,367.24 in attorneys’ fees and litigation costs.

Section 1305(f) authorizes the court, in its discretion, to award costs of litigation “whenever the court determines such award is appropriate.” 35 P.S. § 6021.1305(f). Pursuant to the rules of statutory construction, “words and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa. C.S.A. § 1903. The common and approved usage of the language reflects that the award is discretionary with the court and no restrictions or other limiting factors are apparent in the language of the statute. **Id.** Appellate case law supports this determination.

The “reasonableness” of attorneys’ fees is a matter to be decided through the sound discretion of the trial court, and an appellate court should not alter such a decision unless there has been a clear abuse of discretion.

In re LaRocca’s Trust Estate, 246 A.2d 337, 339 (Pa. 1968). Although the value of a judgment is a factor that has been considered in determining the reasonableness of attorneys’ fees, the reasonableness of attorneys’ fees is not necessarily determined by the

² *Id.*

monetary value of the fines awarded. See, *Borough of Bradford Woods v. Platts*, 799 A.2d 984, 991 (Pa. Cmwlth.2002) (an award of costs and attorneys' fees includes all costs and attorneys' fees incurred as a result of the violation, which may encompass appeals from the enforcement notice); *Mountain View Condominium Association v Bomersbach*, 734 A.2d 468, 470-71 (Pa. Cmwlth. 1999) (affirming award of \$46,548.64 in attorneys' fees incurred to collect \$1,200.00); *Logan v. Marks*, 704 A.2d at 673 (the trial court does not have the discretion to deny attorneys' fees merely because the recovery is disproportionate to the fee claimed; however, a comparison of the size of the award to the objectives of the litigation is highly relevant to determining the degree of success obtained, the critical inquiry in determining the reasonableness of a requested fee.)

The trial court addressed this issue as follows:

The plaintiff first contends that it is entitled to the attorney's fees. We agree. Mr. Redfield established that the plaintiff has paid to the Klodowski firm a total of \$70,443.32 and that the plaintiff is or will be liable to present counsel, Schreffler, a total amount of \$1,946.42 less \$22.50. Although the facts of *Logan v. Marks*, 704 A.2d 671 (Pa. Super. 1998) differ from the case at hand in that it involves a civil rights action, the case demonstrates that the Pennsylvania courts have adopted the "lodestar" technique to compute a reasonable attorney's fee. "The lodestar is a computation of the reasonable hourly rate multiplied by the number of hours reasonably expended by the attorney. The lodestar produces a presumptively reasonable calculation of attorney's fees." *Orson, Inc. V. Miramax Film Corp.*, 14 F. Supp.2d 721 (E.D. Pa. 1998).

Counsel for the defendant agreed that the hourly rate being charged by Schreffler was reasonable. We find that Klodowski's fees were also reasonable given his expertise. Further, we find that the plaintiff was required to go outside of the county to find an expert attorney on

the subject of environmental law. To the extent that the Klodowski Firm would be charging more on its hourly rate than would be prevailing in Venango County, we find those charges to be not unrealistic or unreasonable for environmental counsel.

The defendant objects to the reasonable number of hours expended on this matter. The defendant contends that the defendant should not be responsible for attorney's fees that the plaintiff incurred in an effort to obtain a document verifying its Act 2 protection. We disagree. We find that counsel fees incurred with regard to Scheffler are reasonable and are reasonably related to this proceeding relating to the claim for counsel fees and obtaining the clearance which is evidenced in the letter from the Department of Environmental Protection of February 24, 2003, which is the plaintiff's exhibit A in this proceeding. We also find that the fees incurred from the hours expended by Klodowski are reasonable. The court has already in its findings concluded that the tank did en[c]roach on the Red Express property. Further, the evidence is unequivocal that United's Qwik Fill station experienced a spill which required remediation. It is only logical at this point that the plaintiff would incur counsel fees, first of all to deal with the issue of the en[c]roachment, and then to deal with the issue of the spill. We do find that engaging counsel by the plaintiff was necessary and reasonable. We further find that litigating the case under the circumstances was not unreasonable. There were close issues and we concluded that Red Express was not entitled to certain components of its damage claim. Nevertheless, we did find that Red Express had suffered palpable damage and those damages had to be developed by counsel for the court. The defendant also contends that extra hours should not have been expended in furtherance of obtaining Act 2 protection because the DEP letter of January 19, 2000, the defendant's exhibit 2 in this proceeding, was entirely sufficient to afford the plaintiff clearance for its property of future environmental concerns relating to the spill. The position, however, is somewhat impeached by the stipulation entered by the parties at the start of the trial and as further discussed in the partial transcript that was prepared from the hearing on February 28, where counsel, on the record, discussed the stipulation. At the time of the stipulation, it was apparent to this Judge, and

apparently to both counsel, that there were open issues concerning the applicability of the January 19, 2000 letter to United Refining, and therefore, we find that counsel's efforts to obtain a letter from DEP specifically addressing the status of the Red Express property where necessary.

We accept the testimony of Tim Ruth as credible that in the field of environmental practices that United, when purchasing a property equivalent to Red Express, would be satisfied with the January 19, 2000 letter as evidence of the property's clearance and the unlikelihood of future liability. However, that position ignores the thrust of the stipulation which was that the parties' object was to get an express clearance from DEP directed to Red Express.

Both counsel at this time agree the letter of February 24, 2003, accomplished the clearance necessary, but the court does find that the expenses that the plaintiff incurred in counsel fees between the time of the trial and February 24, 2003, were necessary, were initiated in the stipulation entered at the start of the trial, and were a direct result of the spill.

Trial Court Opinion, 4/14/03 at 2-5.

Again, here, the record reflects that the trial court awarded actual damages of \$16,275.00 and awarded \$72,367.24 in attorneys' fees and litigation costs. The trial court found that the fees submitted by the attorney were reasonable given their expertise. Trial Court Opinion, 4/14/03, at 3. The trial court also found that it was reasonable to go outside the county to secure an attorney with environmental expertise. *Id.* Finally, the trial court found that the counsel fees incurred were reasonably related to the proceeding for violation of the Act. *Id.* In summary, the award reflects reasonable attorneys' fees incurred as a result of the violation of the Act. **Mountain View Condominium**

Association. In conclusion, our review reflects no abuse of discretion by the trial court in the award of attorneys' fees. 35 P.S. § 6021.1305(F); **In re LaRocca's Trust Estate.**

Finally, Appellant claims that the trial court erred in awarding expert witness fees incurred by Appellee's environmental consultant because the fees were both unnecessary and unreasonable. The amount of expert witness fees in dispute is \$6,665.14. See, Exhibits to Appellee's Petition to Finalize March 15, 2000 Order.

Again, Section 6021.1305(f) provides that the trial court "may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate." 35 P.S. § 6021.1305(F). The award of expert witness fees is, thus, discretionary. *Id.* Appellant acknowledges that such an award is discretionary. Appellant's brief at 26.

Here, the trial court found that Appellant was required to pay the expert witness fees of Appellee because the issue was not settled before trial and fees were, thus, necessary. Trial Court Opinion, 4/14/03, at 5. Our review reflects no abuse of discretion in this determination.

Accordingly, on the basis of the foregoing, we affirm the judgment entered by the trial court in favor of Appellee.

Judgment affirmed.