



OKLAHOMA STATE COURTS NETWORK

[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#)

GRAND CREST OWNERS ASSOC., INC. v. STITES et al.

2026 OK CIV APP 22

Case Number: 121890

Decided: 04/06/2026

Mandate Issued: 07/08/2026

COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II



Cite as: 2026 OK CIV APP 22, __ P.3d __

GRAND CREST OWNERS ASSOCIATION, INC., an Oklahoma Not-For-Profit Corporation, Plaintiff/Appellee,
vs.

JEFFRY T. STITES, an individual, a/k/a JEF T. STITES; BEVERLY L. STITES, an individual, a/k/a BEVERLY STITES;
GRAND CREST ASSOCIATION, INC., an Oklahoma Corporation; and O'CONNOR LEGACY HOME, LLC,
Defendants/Appellants.

APPEAL FROM THE DISTRICT COURT OF
MAYES COUNTY, OKLAHOMA

HONORABLE SHAWN TAYLOR, TRIAL JUDGE

AFFIRMED AS MODIFIED

Sam P. Daniel, III, SAM P. DANIEL III, PLLC, Tulsa, Oklahoma For Plaintiff/Appellee

Jef Stites, LAW OFFICE OF JEF STITES, PLLC, Tulsa, Oklahoma For Defendants/Appellants Jeffrey T. Stites,
Beverly L. Stites, Grand Crest Assoc. and O'Connor Legacy Home, LLC

David Menditto, MENDITTO LAW PLLC, Tulsa, Oklahoma For Defendant/Appellant O'Connor Legacy Home, LLC

JOHN F. FISCHER, JUDGE:

¶1 Appellants Jeffrey Stites; Beverly Stites; their corporation, Grand Crest Association, Inc. (collectively the Stites); and O'Connor Legacy Home, LLC (O'Connor) appeal the district court's award of \$53,990 in appeal-related attorney fees granted to Appellee Grand Crest Owners Association, Inc. (Grand Crest). The Stites and O'Connor also appeal the district court's denial of their motion for new trial with respect to this award. Because we find that some of the fees awarded were not appeal-related, were not related to a fee-bearing claim, or should be reduced for block billing practices, we affirm the fee award as modified.

BACKGROUND

¶2 On August 6, 2020, this Court issued its Opinion in *Grand Crest Owners Association, Inc. v. Stites*, 2022 OK CIV APP 16, 512 P.3d 800(*Grand Crest I*). *Grand Crest I* reversed the district court's order granting partial summary judgment to the Stites and O'Connor and reversed the district court's order denying Grand Crest's motion for partial summary judgment, finding that the restrictive covenants in its bylaws were enforceable against the property interests of the Stites and O'Connor. The Opinion remanded the case back to the district court for further

proceedings. On August 31, 2020, Grand Crest filed its motion for appeal-related attorney fees and a supporting affidavit (Affidavit One) with this Court, and also filed a similar motion in the district court. ¹ This Court granted Grand Crest's motion for fees on appeal on October 15, 2020, and remanded the matter to the district court for a determination of the reasonable amount of appeal-related fees to be awarded.

¶3 The hearing on fees was set to take place on February 6, 2023. Leading up to the hearing, Grand Crest filed its "Supplemental Affidavit of Sam P. Daniel III in Support of Motion to Assess and Award Attorney's Fees and Costs" on May 4, 2021 (Affidavit Two), and a Supplemental Motion to Assess and Award Attorney's Fees and Costs, with a Second Supplemental Affidavit (Affidavit Three), on December 13, 2022. One or more of these filings and accompanying affidavits included time entries related to fees incurred in the district court as well as fees undertaken on appeal.

¶4 Grand Crest also filed a motion to quash discovery Mr. Stites issued to Grand Crest. This discovery requested the disclosure of information and production of documents seeking amounts incurred or billed by Grand Crest's lawyer versus the amounts paid by its insurance company. The district court granted Grand Crest's motion to quash, finding that the discovery requests were not relevant nor reasonably calculated to lead to the discovery of admissible evidence. ²

¶5 At the fee hearing Mr. Daniel was called as a witness and submitted to examination regarding his request for attorney fees. Aside from his testimony, he requested that the district court consider his three separately filed affidavits and their accompanying invoices, as well as a hearing exhibit marked "Plaintiff's Trial Exhibit No. 1," ³ as the evidence in support of his request for a total of \$104,815 in fees for time billed from August 1, 2016 through October 10, 2022.

¶6 The district court ultimately awarded Grand Crest \$53,990 of the \$104,815 requested. It found Grand Crest's request for trial related fees was premature, and consequently restricted its review of time entries to those incurred from September 18, 2018 through May 27, 2022, explaining as follows:

In determining 'the reasonable amount of attorney fees to be awarded,' this Court has limited its review of the billed attorney time from the original order denying summary judgment filed September 18, 2018, to the date of the district court minute spreading the mandate on May 27, 2022. Only those entries between those dates were considered to be eligible to be awarded as appellate related attorney fees for which a detailed analysis is provided herein.

¶7 Within this scope of time, the order set forth several findings pertinent to its calculations: (1) certain time entries were excluded as unrelated to the appeal of *Grand Crest I*, including entries regarding reporting to Grand Crest's insurance company; (2) certain time entries were excluded or reduced as unreasonable or not sufficiently described to be able to be determined as appeal-related; and (3) time entries fairly attributable to work regarding the posting of a supersedeas bond pending the appeal of *Grand Crest I* were deemed to be appeal-related and subject to the fee award. The Stites and O'Connor filed a motion for new trial, asserting six separate grounds for error.

¶8 First, they argued that Mr. Daniel's increase in hourly rates -- from \$200 per hour through August 21, 2020, to \$350 per hour beginning August 26, 2020 through April 13, 2021, to \$400 per hour beginning April 16, 2021 -- was contrary to law and not supported by the evidence, and that Grand Crest failed to present any expert witness to establish such rates were standard in the legal community at the time or that the rate increases were justified.

¶9 Second, they argued that numerous time entries for which Grand Crest received an appellate fee award were not appeal-related. These entries included time pertaining to Grand Crest's defense of the Stites and O'Connor's post-trial collection efforts and the filing of a supersedeas bond. ⁴

¶10 Third, citing 12 O.S.2021 § 696.4, they argued that Grand Crest was required to "seek an award of [appeal-related] fees in the trial court within thirty (30) days." Believing this proposition to be a matter of first impression, they claimed that Affidavit Three filed on December 13, 2022, six months after mandate, was untimely.

¶11 Fourth, they claimed that numerous time entries for which Grand Crest was awarded appeal-related fees were either speculative, non-descriptive, were block billed, or constituted overhead activities. According to the Stites and O'Connor, these entries failed to satisfy the requirements of *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659(*Burk*) and its progeny or provide sufficient specificity to be able to differentiate between district court versus appellate court activities.

¶12 Fifth, they argued that 12 O.S.2021 § 1141.5(A), a provision of the Nonjudicial Marketable Title Procedures Act, does not permit an award of attorney fees on appeal for any activities unrelated to obtaining judgment quieting title in Grand Crest's favor.

¶13 Sixth, they argued it was error for the district court to grant Grand Crest's motion to quash. They adopted and incorporated by reference the argument made in their response to the motion to quash, which: (a) alleged that they were entitled to know if State Farm was the party who paid Mr. Daniel's fee because, if so, only State Farm was the real party in interest who could pursue recapture of those fees; and (b) argued that they were entitled to explore whether the amounts billed were greater than the amounts paid by State Farm, which would indicate or suggest that the amounts paid were the true reasonable value of services rendered.

¶14 The district court entered its order denying the Stites and O'Connor's motion for new trial. The Stites and O'Connor appeal both the fee award and the denial of their motion for new trial. Their Petition in Error and briefing on appeal assert the same grounds for error as those raised in their motion for new trial.

¶15 Grand Crest has moved to dismiss this appeal on the grounds that no attorney for O'Connor had, by the time of the motion's filing, entered an appearance on its behalf in this appeal. Grand Crest frames this argument as one of jurisdiction. Alternatively, Grand Crest requests dismissal of this appeal for failure to comply with the Oklahoma Supreme Court Rules. In response, counsel for O'Connor filed an entry of appearance on O'Connor's behalf, and later requested leave to file an entry of appearance on O'Connor's behalf.

STANDARD OF REVIEW

¶16 Where a litigant files a motion for new trial within ten days of the judgment and the motion is denied, that party "may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal" 12 O.S.2021 § 990.2(A). The standard of review of a district court's denial of a motion for new trial is abuse of discretion. *Smith v. City of Stillwater*, 2014 OK 42, ¶ 11, 328 P.3d 1192, 1197. A court abuses its discretion when its decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling. *Id.*

¶17 Where entitlement to the attorney fee is not at issue, the standard of review for determining the reasonableness of a fee award is also abuse of discretion. *In re Adoption of Baby Boy A*, 2010 OK 39, ¶ 19, 236 P.3d 116, 122. An award of fees will not be disturbed on appeal unless the district court made a clearly erroneous conclusion and judgment against reason and evidence. *Green Bay Packaging, Inc. v. Preferred Packaging, Inc.*, 1996 OK 121, ¶ 32, 932 P.2d 1091, 1097. This same standard of review applies to the district court's ruling on Grand Crest's motion to quash. *See State ex rel. Protective Health Svcs. v. Billings Fairchild Center, Inc.*, 2007 OK CIV APP 24, ¶ 8, 158 P.3d 484, 488 (citation omitted) ("A trial court is accorded broad discretion in deciding discovery matters, and its determination in such matters will not be disturbed absent a finding of abuse of discretion or that the decision is contrary to law.").

¶18 This appeal also presents a question of law regarding whether portions of Grand Crest's request for fees should have been denied as untimely pursuant to 12 O.S.2021 § 696.4. We review questions of law de novo. *Finnell v. Seismic*, 2003 OK 35, ¶ 7, 67 P.3d 339, 342. De novo review provides plenary, independent, and non-deferential authority to reexamine the district court's legal rulings. *Id.*

ANALYSIS

I. Appellate Motions

¶19 The gist of Grand Crest's motion to dismiss the appeal is that the petition in error contains a "misleading misrepresentation" and "irregularity" because Mr. Stites, himself an attorney, signed the petition in error on behalf of the Stites, but also on behalf of O'Connor, in the following fashion:

Verified by: /s/ Jef Stites

Jef Stites OBA 10481

Firm: Law Office of Jef Stites, PLLC

Attorney for Jeffry T. Stites, Beverly L. Stites, Grand Crest Association, Inc.

Verified by: /s/ David Menditto by Jef Stites

David Menditto OBA 35485

Firm: Menditto Law PLLC

Attorney for O'Connor Legacy Home, LLC

Grand Crest argues that Mr. Stites' attempt to verify the petition in error by signing on behalf of Mr. Menditto is worthy of dismissal of the appeal altogether.

¶20 Grand Crest's motion also raises concern that Mr. Stites' first entry of appearance listed himself as attorney only for the Stites parties -- not O'Connor -- and that at the time of the motion's filing, no attorney had filed an entry of appearance on behalf of O'Connor. ⁵

¶21 Grand Crest directs us to no authority, other than Okla. Sup. Ct. R. 1.5 and 1.23(c), for its conclusion that failure to file an entry of appearance is jurisdictional. Although both rules recite that the filing of an entry of appearance is required, it remains the Court's "prerogative" to strike pleadings or dismiss appeals when the rule is violated. See, e.g., *Redcorn, Jr. v. Knox*, 2014 OK CIV APP 109, ¶ 37, 345 P.3d 392, 400 (citing *Massongill v. McDevitt*, 1989 OKLA CIV APP 82, 828 P.2d 438). ⁶ We decline to exercise that discretion in this case. Grand Crest's motion to dismiss is denied; O'Connor Legacy Home, LLC's motion for leave to file entry of appearance is granted, and we accept the August 29, 2024 filing of Mr. Menditto's entry of appearance as satisfaction of the relief requested in that motion.

II. Attorney Fee Award

¶22 Generally, appeal-related attorney fees are only "recoverable if statutory authority exists for their award in the trial court." *Harris v. Three Hundred and Twenty Five Thousand and Eighty Dollars*, 2021 OK 16, ¶ 25, 485 P.3d 242, 248. In *Grand Crest I* this Court granted Grand Crest's application for appeal-related attorney fees pursuant to 12 O.S. § 1141.5. Grand Crest's entitlement to appeal-related attorney fees, pursuant to the law of the case, ⁷ is thus not in question; only the amount remains in question.

¶23 Although Grand Crest moved for both trial-related and appeal-related fees, the district court's order restricted its award to those items it deemed to be appeal-related. The district court rejected or reduced numerous entries of Grand Crest's fee request and lowered the claim accordingly. Grand Crest has not appealed the district court's rejections or reductions, and those rejections and reductions stand undisturbed in this appeal.

A. Timeliness of Portions of the Fee Request

¶24 The Stites and O'Connor assert that 12 O.S.2021 § 696.4(B)'s thirty-day requirement sets the timeframe applicable to the filing of an application to determine the reasonable amount of appeal-related attorney fees after an appellate court has already determined entitlement. They allege error in the district court's consideration and award of fees reflected in Affidavit Three, which was filed more than six months after mandate issued in *Grand Crest I*. Their claim is that section 696.4 requires that Affidavit Three be filed within thirty days of mandate. Only subsection B sets forth a thirty-day timeline. This subsection provides, in pertinent part:

If attorney fees or costs . . . have not been included in the judgment, decree, or appealable order, a party seeking any of these items must file an application with the court clerk The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order

12 O.S.2021 § 696.4(B). Although framed as a matter of first impression, the question is not entirely new to Oklahoma appellate courts. See *J.P. Metal Works, Inc. v. Elam*, No. 118,467, slip op. (COCA Div. III, Dec. 17, 2020) (unpublished). In *J.P. Metal Works*, the Oklahoma Court of Civil Appeals rejected the contention that the statute's time requirements apply after an appellate court has previously determined entitlement to an appeal-related fee award. This conclusion is supported by the language of the statute:

Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court by separate motion filed any time before issuance of mandate The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

12 O.S.2021 § 696.4(C). Grand Crest complied with subsection C, having filed its request for appeal-related fees prior to the issuance of mandate in *Grand Crest I*. Subsection D (which adopts the procedures and deadlines set forth at subsection B and requires the application for appeal-related fees in such case to be made to the district court under subsection B) only applies *if* prevailing party status "cannot be determined from the decision of the appellate court." See 12 O.S.2021 § 696.4(D).⁸ For purposes of appeal-related fees, that decision was rendered in *Grand Crest I*. Grand Crest's request for appeal-related attorney fees arising out of services performed in the appeal of *Grand Crest I* was timely.

B. The Ruling on the Motion to Quash

¶25 After the filing of Grand Crest's motion for appeal-related fees, and shortly before mandate was issued in *Grand Crest I*, Mr. Stites issued written discovery to Grand Crest. The two interrogatories sought identification of persons who were sent requests for payment for services performed by Mr. Daniel on Grand Crest's behalf, and sought identification of each person or entity (a) that provided insurance coverage for Grand Crest or (b) who discussed billing statements for services rendered to Grand Crest. The request for production sought documents and communications "sent or received by [Grand Crest's] attorneys" regarding insurance coverage, contracts employing Grand Crest's attorneys, required billing practices, and bills and proof of payments for services rendered.

¶26 Grand Crest moved to quash the discovery requests for lack of relevance and further claimed that the collateral source rule and the attorney-client privilege prohibited disclosure. Mr. Stites' response argued that, to the extent an insurer paid any of Mr. Daniel's fees, that insurer is the real party in interest who must pursue the fee award,⁹ that the collateral source rule does not apply to an action unrelated to any tort, and that the attorney-client privilege does not shield the requested information from disclosure when the reasonableness of fees is placed at issue. The district court granted Grand Crest's motion to quash, finding that the discovery was neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The district court is correct.

¶27 "Relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." 12 O.S.2021 § 2401. What constitutes "relevant evidence" in a fee hearing is defined by the criteria for the award. Such "criteria" can be gleaned from *Burk*. The district court should determine the reasonable hours necessary for the work and multiply that by the reasonable rate per hour, considering if an enhancement is warranted based on (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skills required to properly perform the legal service; (4) whether other employment was precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the 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 attorney(s); (10) the risk of non-recovery; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. See *Burk*, 1979 OK 115, ¶ 8, 598 P.2d at 661.

¶28 Although it is incumbent upon the movant to "present detailed time records to the court and to offer evidence of the reasonable value for the services performed," that reasonable value is "predicated on the standards within the local legal community." *Oliver's Sports Center v. Nat'l Standard Ins. Co.*, 1980 OK 120, ¶ 8, 615 P.2d 291, 295. In circumstances such as the present case, where a prevailing party is entitled to a statutory award of "reasonable" fees, ¹⁰ an attorney's contract with his client is a matter between the client and the attorney. *Morgan v. Galilean Health Enterprises, Inc.*, 1998 OK 130, ¶ 13, 977 P.2d 357, 363. ¹¹ The amount due pursuant to that contract "is not binding on the court" and "may not serve as a basis for computing an attorney's fee award against the unsuccessful party." *Id.* If the amount due pursuant to an attorney-client contract cannot serve as a basis for computing an award of attorney fees, then it is not an abuse of discretion for the district court to have determined that the requested information was neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

¶29 The district court's Order granting Grand Crest's motion to quash is affirmed.

C. Increase in Hourly Rates

¶30 The Stites and O'Connor next argue that the increase in Mr. Daniel's hourly rates -- from \$200 to \$350 to \$400 -- was contrary to law and not supported by the evidence. They argue that independent expert testimony was required to establish the reasonableness within the legal community of the increase in hourly rates.

¶31 Mr. Daniel's rate remained \$200 per hour until shortly after the issuance of our Opinion in *Grand Crest I*. It then increased to \$350 per hour as the Stites and O'Connor were seeking rehearing and certiorari review. It then increased to \$400 per hour after the Oklahoma Supreme Court denied the Stites and O'Connor's petition for certiorari. Mr. Daniel testified as to his justification for the rate increases at the fee hearing. He testified that he wanted to help his Northeastern Oklahoma practice grow. Having an office in Langley, Oklahoma, Mr. Daniel had a relationship with one of the people associated with Grand Crest and agreed to take on the case at a discounted rate "until we won. And so when we won, I got to raise my fee." The district court's order found these rates to be reasonable pursuant to many of the *Burk* factors, including Mr. Daniel's length of experience as an attorney, the complexity of the case, and his relationship to his client. It entered its "lodestar" calculation and denied Mr. Daniel's request for a *Burk* enhancement. ¹²

¶32 "An attorney's testimony and time records have been found sufficient to uphold an attorney fees determination Expert testimony need not be included in the hearing on attorney fees to uphold the award." *Spencer v. Oklahoma Gas & Elec. Co.*, 2007 OK 76, ¶ 16 n.23, 171 P.3d 890, 896 n.23 (citations omitted). In *Spencer*, as in this case, neither party presented an independent witness to testify concerning an appropriate hourly rate. The district court heard evidence concerning Mr. Daniel's experience and the reasons given for the rate increases. The Stites and O'Connor cross-examined Mr. Daniel but did not call their own expert witness on this issue. Based on this evidence, the district court did not err in approving Mr. Daniel's hourly rate, and the increases thereto, particularly in the absence of any contrary expert witness testimony. We affirm the rates stated in Affidavits One, Two, and Three.

D. The Scope of Appeal-Related Fees

¶33 Two of the allegations of error relate to the district court's duty to allocate and apportion the fee award. Specifically, the Stites and O'Connor argue that the district court did not restrict its award exclusively to (1) entries related to a fee-bearing claim and (2) entries for appeal-related services.

1. Entries Related to a Fee-Bearing Claim

¶34 In *Grand Crest I* we reversed partial summary judgment in favor of the Stites and O'Connor which had quieted title to their lots in their names. We also reversed the district court's denial of Grand Crest's summary judgment motion, wherein it had sought to establish that the lots owned by the Stites and O'Connor were subject to Grand Crest's bylaws and restrictive covenants. Although we were unable to resolve certain issues not fully briefed by the parties in their summary judgment motions, ¹³ our Opinion in *Grand Crest I* did resolve the issue of the general applicability of Grand Crest's bylaws and restrictive covenants to the lots owned by the Stites and O'Connor. In addition, we held that Grand Crest was entitled to appeal-related attorney fees pursuant to the Nonjudicial Marketable Title Procedures Act. The Stites and O'Connor argue that only those fees which were "directly related to obtaining judgment quieting title" ¹⁴ in Grand Crest's favor can form the basis of the award.

¶35 Apportionment is necessary when a party successfully prosecutes or defends both fee-bearing and non-fee-bearing claims. *Green Bay Packaging, Inc. v. Preferred Packaging, Inc.*, 1996 OK 121, ¶ 38, 932 P.2d 1091, 1098. This principle was recently affirmed in *U.S. Bank Nat'l Ass'n as trustee for Sasco Mortg. Loan Tr. 2004-GEL2 Mortg. Backed Notes, Series 2004-GEL2 v. Hill*, 2023 OK 86, 540 P.3d 1, where the Oklahoma Supreme Court rejected recognition of an "inextricably intertwined" theory upon which attorney fees "do not have to be apportioned if the claims are closely related." *Id.* ¶ 35, 540 P.3d at 14. Quoting a decision from the Tenth Circuit, our Supreme Court stated: "[a]lthough we are sympathetic to the difficulty of segregating attorneys' fees between claims that are so closely related, we can find no support for an 'inextricably intertwined' exception to the general Oklahoma rule that attorneys' fees can only be awarded where there is an independent statutory basis." *Id.* (quoting *State Bank & Tr. V. First State Bank of Texas*, 242 F.3d 390 (10th Cir. 2000) (unpublished)). It is the party seeking fees which bears the burden of proving that the time and labor spent relate to a fee-bearing claim. *Id.* ¶ 12, 540 P.3d at 7. And it is the obligation of the district court to "distinguish, on the record, between the compensable and non-compensable attorney time and effort." *Silver Creek Invs., Inc. v. Whitten Const. Mgmt., Inc.*, 2013 OK CIV APP 49, ¶ 13, 307 P.3d 360, 365-66 (citing *Green Bay Packaging, Inc.*, 1996 OK 121, ¶ 38, 932 P.2d at 1098).

¶36 Pursuant to these authorities, we first conclude that those time entries pertaining directly to those services performed in advancing the appeal in *Grand Crest I* ¹⁵ are directly related to a fee-bearing claim. The partial summary judgment quieting title in the Stites and O'Connor's favor, while denying similar relief to Grand Crest, was the exclusive focus of the *Grand Crest I* appeal. The petition in error filed in that appeal, which has been designated for inclusion in the record in this appeal, sets forth ten propositions of error, all of which pertain to whether the Stites and O'Connor were bound by Grand Crest's restrictive covenants and bylaws. The Opinion is constrained to reversing the judgment in favor of the Stites and O'Connor on their quiet title claims. Further, we held that Grand Crest demonstrated its entitlement to summary relief, i.e., that its restrictive covenants and bylaws were enforceable against the Stites and O'Connor lots. The district court's fee award for the time related to these issues, except as otherwise affected by other error addressed below, is affirmed.

¶37 The Stites and O'Connor do, however, object to a number of time entries which do not reflect the apportionment required by the binding precedent set forth in *Hill*. ¹⁶ For example, the district court permitted recovery of fees for Mr. Daniel to "[a]ttend meeting of Board and members at Grand Crest" on November 3, 2018. When questioned regarding this time entry and whether it was "actually time related to compensable attorney fees under the NMPTA [Nonjudicial Marketable Title Procedures Act]," Mr. Daniel's response was that he did not know how to apportion the time entry and that he must simply stand on the entry as written. Because it was Grand Crest's burden to prove that the time and labor spent was in relation to a fee-bearing claim, it was error for the district court to award fees for this entry. The award of \$600 related to this time entry is reversed.

¶38 In addition to this November 3, 2018 entry, we find additional time entries which fail to distinguish between the fee-bearing and non-fee-bearing claims. Because these time entries were specifically objected to by the Stites and O'Connor, the total fee award is reduced as follows:

10/31/2018	Phone Conversation Dave re meeting and appeal issues, review emails from Beth re payment	0.30* 200.00/hr
2/1/2019	Phone Conversation Dave re appeal status, attorneys fees, Homeowners Association/plat amendment/survey	0.15* 200.00/hr
3/20/2019	Work-on filing Amended Petition in Error, pc Beth re coverage, email Dave re same	1.00 200.00/hr
3/22/2019	Obtain the accelerated record from Court Clerk Mayes County, prepare Amended Petition in Error, pc Beth review policy provisions, email Dave re issue	3.7* 200.00/hr
5/3/2019	Review accounting, email Dave, pc Reilly re asset hearing review response time for Stites to our appeal of fees	1.00 200.00/hr
3/30/2020	Phone Conversation Dave re appeal, liens on past dues, overall issues	0.30* 200.00/hr

Further Reductions 8.45 hrs
\$1,690.00
\$ 600.00

Total Reductions \$ 2,290.00

¶39 The district court's award of \$53,990 is reduced by these amounts for lack of apportionment, lowering the amount to \$51,700.

2. Entries for Appeal-Related Services

¶40 After our order granting entitlement to appeal-related fees was mandated, the district court's further obligation on remand was to focus its analysis on the time and labor spent pursuing the appeal in *Grand Crest I*. It endeavored to do so by restricting the date range for which it would consider appeal-related fees to those entries beginning on September 18, 2018 and concluding on May 27, 2022. ¹⁸ The order stated: "[o]nly those entries between those dates were considered to be eligible to be awarded as appellate related attorney fees"

¶41 The district court's restriction in this regard was reasonable and permitted it to isolate those entries which could be considered for potential recovery as appeal-related fees. However, the district court's finding that "entries fairly attributed to work regarding the required bond for post-hearing award of attorney fees were appeal-related," or its award of fees for entries related to post-judgment collection activities, is in error.

¶42 Appeal-related fees are those fees "for services performed on appeal." 12 O.S.2021 § 696.4(C). Barring the exception found in section 696.4(D) not applicable here, they are those services which must be "authorized by an appellate court in the case in which the services were performed." *Chamberlin v. Chamberlin*, 1986 OK 30, ¶ 14, 720 P.2d 721, 728. Post-judgment collection efforts instituted in the district court are not services "performed" in the appellate courts.

¶43 The Stites and O'Connor made and preserved objections to the following entries which were deemed in error to be appeal-related services:

3/12/2019	Review Statement of Judgment Lien, emails and pc with Beth and Dave	1.0 200.00/hr
4/1/2019	Review collection motions/garnishment and email from Dave about Stites service attempts	0.30 200.00/hr
4/4/2019	Phone Conversation MaryKate Bernhardt re settlement and supersedeas bond, email Dave J	0.50 200.00/hr
4/5/2019	Phone Conversation MaryKate (2), email Dave, legal research on bonds and stays, pc Greg Reilly	2.00 200.00/hr
4/8/2019	Email with Karen Weber, work on bond	0.30 200.00/hr

4/9/2019	Prepare Supersedeas Bond, emails, pc re same	2.00
		200.00/hr
4/10/2019	Review emails from Dave, revise Bond, prepare Order to Stay	1.00
		200.00/hr
4/11/2019	Email with Karen, review Bond, emails with Dave, review letter of Marykate, pc with Marykate and Gill	1.50
		200.00/hr
4/16/2019	Meet with Dave, finalize Objection to Motion for asset hearing and motion to Stay, pc Greg	2.00
		200.00/hr
4/18/2019	Phone Conversation Virginia re suretyship agreement	0.30
		200.00/hr
4/22/2019	Email with Virginia and Karen re Suretyship Agreement requested by opposing counsel, review Order for asset hearing, email Dave re same, email Reilly	1.00
		200.00/hr
5/1/2019	Phone Conversation Dave re survey, Bennett, bond hearing, letter to Stites and O'Connor re survey, email with Beth re status update	.4*
		200.00/hr
5/6/2019	Review Stites Objection to Bond, legal research, emails with Dave and Virginia re same	0.70*
		200.00/hr
6/4/2019	Phone Conversation Malinda Court Clerk re hearing date and collection Judge different date for asset hearing	0.30
		200.00/hr
6/10/2019	Review O'Connor response to Motion to Approve Bond, email Virginia, email with Dave Johnson	0.20*
		200.00/hr
6/14/2019	Phone Conversation Galen (2), review emails and bond forms, and case file	1.50
		200.00/hr
6/17/2019	Phone Conversation Dave, emails, Greg, email and pc with Galen with new bond language, prepare Order approving the Bond	1.50
		200.00/hr
6/19/2019	Attend hearing, conference with Dave afterwards	3.0
		200.00/hr
4/20/2021	Review and respond to email from Dave, place call to Court for hearing date, review file for settlement negotiations	1.0
		400.00/hr
5/11/2021	Prepare Order Releasing Bond	0.30
		400.00/hr
Total at \$200 per hour		19.5 hrs
		200.00/hr.
		\$3,900.00
Total at \$400 per hour		1.3 hrs
		400.00/hr
		\$520.00
Total Further Reductions		20.8 hrs
		\$4,420.00

¶44 The attorney fee award of \$51,700 is reduced by this additional amount for performance of services not encompassed within appeal-related attorney fees, further lowering the amount to \$47,280.

E. Specificity of Time Entries and Block Billing

¶45 Finally, the Stites and O'Connor objected to numerous time entries which they identified as too speculative or non-descriptive to be able to determine whether they related to a fee-bearing claim or to services performed on appeal, or were block billed such that meaningful review of time spent on specific tasks was made impossible. Grand Crest acknowledged at the fee hearing that many of its time entries were block billed. ¹⁹

¶46 "Lawyers must present to the trial court detailed time records showing the work performed together with evidence of the reasonable value of different types of legal work based on local standards." *Morgan v. Galilean Health Enters., Inc.*, 1998 OK 130, ¶ 16, 977 P.2d 357, 364-365 (citing *Burk*, 1979 OK 115, ¶ 20, 598 P.2d at 663). Federal courts employing a *Burk* type analysis have held: "a district court may discount requested attorney hours if the attorney fails to keep 'meticulous, contemporaneous time records' that reveal 'all hours for which compensation is requested and how those hours were allotted to specific tasks.'" See *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998). We find that approach appropriate here. "Block billing" often prevents determination of the amount of time billed for differing and unrelated tasks bundled into a single time entry.

¶47 The district court's Order awarded attorney fees based on a lodestar calculation, less certain exclusions and reductions, without enhancement. ²⁰ The Order makes a specific finding that some entries were not recoverable due to unreasonableness, lack of specificity, or other reasons. However, there remain a number of undisturbed time entries, preserved by objection, which were either block billed or lack the specificity required to determine whether they were related to a fee-bearing claim or services performed on appeal. They are as follows:

9/27/2018 Prepare Order of certification, legal research, letter to Reilly and Stites, Emails with Dave, Emails with Reilly	2.0 200.00/hr
3/25/2019 File amended Petition in Error, meet with Dave re same and State Farm payment	5.0 200.00/hr
5/9/2019 Review O'Connor Objection to Motion to Stay and email to State Farm re settlement authority regarding terms of the bond	0.50 200.00/hr
5/14/2019 Phone Conversation with State Farm local counsel at Atkinson firm	0.60 200.00/hr
5/21/2019 Phone Conversation Gaylan Brittenham lawyer re bond and settlement	0.30 200.00/hr
4/16/2021 Prepare for meeting with Dave, review all old files, meet with Dave	3.00 400.00/hr
4/28/2021 Review and respond to emails with Dave, pc Stites re settlement, pc Dave re same	1.00 400.00/hr
6/21/2021 Review email regarding board meeting, respond to Dave	0.30 400.00/hr
7/16/2021 Phone Conversation Dave re board meeting	0.30 400.00/hr
9/29/2021 Work-on Board notice, emails with Bob	0.50 400.00/hr
10/7/2021 Phone conversation Bob re meeting with Board	0.30 400.00/hr
1/17/2022 Review email from Dave regarding meeting of the Board	0.30 400.00/hr
Total at \$200 per hour	8.4 hrs
	200/hr
	\$1,680.00
Total at \$400 per hour	5.7 hrs
	400.00/hr
	\$2,280.00
Total Block Billing \$3,960.00	

¶48 Block billing, or entries which lack specificity, do not fulfill the fee applicant's obligation to submit detailed time records. The block billing and vague entries identified above account for an additional \$3,960 of the district court's lodestar fee award. The attorney fee should be further reduced, for a total award of \$43,320. The district

CONCLUSION

¶49 After remand from this Court in *Grand Crest I*, the district court segregated the time entries which could be eligible for consideration in its calculation of appeal-related attorney fees, made certain reductions and rejections for items it determined were not appeal-related, and awarded \$53,990 in appeal-related fees. We hold that the award for appeal-related attorney fees should be further reduced to \$43,320 for the reasons discussed. The award of attorney fees to Grand Crest is modified to \$43,320 and affirmed.

¶50 AFFIRMED AS MODIFIED.

HIXON, C.J., and WISEMAN, P.J., concur.

FOOTNOTES

JOHN F. FISCHER, JUDGE:

¹ The motion filed in the district court referenced the pursuit of appeal-related attorney fees with this Court, and additionally sought an award of prevailing party attorney fees at the trial court level as well as the release of a previously-filed supersedeas bond.

² Interlocutory orders not subject to immediate appeal "may obtain appellate scrutiny upon appeal from a subsequent appealable order or judgment." *W. Heights Indep. Sch. Dist. No. I-41 of Okla. Cnty. v. State ex rel. Okla. State Dep't of Educ.*, 2022 OK 79, ¶ 15, 518 P.3d 531, 538 (citing *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 9, 396 P.3d 210, 214).

³ This exhibit (which the district court described in its order as an invoice dated February 5, 2023, requesting an additional 8.0 hours of time related to the attorney fee hearing to be held the following day, on February 6, 2023) was not designated for inclusion in the record, but was included in the record nonetheless. By order of the Oklahoma Supreme Court, it was returned to the Mayes County District Court Clerk and this matter was ordered to proceed without it as an item in the appellate record.

⁴ After the Stites and O'Connor were awarded summary judgment in the district court leading up to the appeal and Opinion in *Grand Crest I*, the Stites and O'Connor commenced activities to collect on their judgment. These collection activities led Grand Crest to eventually post a supersedeas bond while its appeal in *Grand Crest I* was pending.

⁵ Within a week of the filing of the motion to dismiss, Mr. Menditto entered his appearance on behalf of O'Connor. He also filed a motion requesting leave for his entry. Shortly thereafter, Mr. Stites filed a second entry of appearance listing himself as additional counsel for O'Connor.

⁶ *Massongill* is itself explicitly referenced at Okla. Sup. Ct. R. 1.5(b).

⁷ The doctrine of the settled law of the case "provides that issues which are litigated and settled on appeal . . . may not be the subject of further litigation between the parties in that case and are deemed settled." *Acott v. Newton & O'Connor*, 2011 OK 56, ¶ 10, 260 P.3d 1271, 1274 (quoting *Miller Dollarhide, P.C. v. Tal*, 2006 OK 27, ¶ 8 n.11, 174 P.3d 559, 563 n.11).

⁸ "If the right of a party to recover attorney fees depends upon a determination that the party has prevailed in an action, and if the prevailing party in the action cannot be determined from the decision of the appellate court, an application for attorney fees for services performed on appeal shall be made to the trial court in the manner and within the time provided in subsection B of this section." *Id.*

⁹ Because we previously determined in *Grand Crest I* that Grand Crest (not its insurer) was entitled to the fee award which is the subject of this appeal, we find this element of the Stites and O'Connor's argument precluded by the law of the case doctrine.

¹⁰ See 12 O.S.2021 § 1141.5(A)(4) (permitting recovery for expenses of litigation directly related to obtaining the quiet title judgment, including "reasonable attorney fees"), discussed in greater depth at Part D of this Opinion.

¹¹ But see *State ex rel. Dep't of Transp. v. Norman Indus. Dev. Corp.*, 2001 OK 72, ¶ 8, 41 P.3d 960, 963 (distinguishing *Morgan* in the context of a condemnation proceeding where the statutory fee award limited recovery of attorney fees to those "actually incurred").

¹² "Generally, the correct formula for calculating a reasonable fee is to: 1) determine the compensation based on an hourly rate; and 2) enhance the fee through consideration of the factors outlined in *Burk v. Oklahoma City*." *Spencer v. Oklahoma Gas & Elec. Co.*, 2007 OK 76, ¶ 13, 171 P.3d 890, 895 (footnote omitted). There is a strong presumption that a reasonable attorney fee "is the product of reasonable hours times a reasonable rate, i.e., the "lodestar figure." *U.S. Bank Nat'l Ass'n as trustee for Sasco Mortg. Loan Tr. 2004-GEL2 Mortg. Backed Notes, Series 2004-GEL2 v. Hill*, 2023 OK 86, ¶ 12, 540 P.3d 1, 8.

¹³ We determined there remained issues of fact with respect to the location and use of a possible utility easement across one of the lots owned by the Stites, the potential breach of Grand Crest's bylaws, and the facts concerning unpaid dues and assessments under those bylaws.

¹⁴ See 12 O.S.2021 § 1141.5(A)(4).

¹⁵ E.g., tasks involved in preparing the petition in error, designating the record, reviewing filings made in the appellate courts, researching and responding to those filings, etc.

¹⁶ These references can be found in the February 6, 2023 filing entitled "Defendants Stites', Et Al [sic] Response in Opposition to Specific Entries of Time by Plaintiff," a filing which the district court accepted as the Stites and O'Connor's argument in opposition to an award of fees and costs at the February 6, 2023 hearing.

¹⁷ An asterisk reflects an entry that the district court already reduced. However, we reject the entries in full which fail to distinguish between fee-bearing and non-fee-bearing elements.

¹⁸ The date of the appealable order granting partial summary judgment to the Stites and O'Connor and denying summary judgment to Grand Crest, and the date of its receipt of mandate, respectively.

¹⁹ "Block billing" is described as time entries which lump together several tasks without differentiation as to the amount of time spent on each specific task. *Okla. Natural Gas Co. v. Apache Corp.*, 355 F. Supp. 2d 1246, 1263 (N.D. Okla. Dec. 9, 2004).

²⁰ See *Burk*, 1979 OK 115, ¶ 7, 598 P.2d at 660-61.

²¹ With regard to the award of fees for travel time, amounts to which the Stites and O'Connor also objected, it is within the district court's discretion to determine whether to award fees for such time, and how much should be awarded. *Miller v. State ex rel Dep't of Pub. Safety*, 1996 OK CIV APP 71, ¶ 10, 926 P.2d 797, 800. We find no error in this regard.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name Level

Oklahoma Court of Civil Appeals Cases

Cite

Name

Level

Cite Name	Level	
<u>1989 OK CIV APP 82, 828 P.2d 438, 63 OBJ 1302,</u>	<u>Massongill v. McDevitt</u>	Cited
<u>2007 OK CIV APP 24, 158 P.3d 484,</u>	<u>STATE ex rel. PROTECTIVE HEALTH SERVICES v. BILLINGS FAIRCHILD CENTER, INC.</u>	Discussed
<u>1996 OK CIV APP 71, 926 P.2d 797, 67 OBJ 3315,</u>	<u>Miller v. State ex rel. Dept. of Public Safety,</u>	Discussed
<u>2013 OK CIV APP 49, 307 P.3d 360,</u>	<u>SILVER CREEK INVESTMENTS, INC. v. WHITTEN CONSTRUCTION MANAGEMENT, INC.</u>	Discussed
<u>2014 OK CIV APP 109, 345 P.3d 392,</u>	<u>REDCORN v. KNOX</u>	Discussed
<u>2022 OK CIV APP 16, 512 P.3d 800,</u>	<u>GRAND CREST OWNERS ASSOC. v. STITES</u>	Discussed

Oklahoma Supreme Court Cases

Cite	Name	Level
<u>2001 OK 72, 41 P.3d 960, 72 OBJ 2708,</u>	<u>STATE ex rel. DEPT. OF TRANSPORTATION v. NORMAN INDUSTRIAL DEVELOPMENT CORP.</u>	Discussed
<u>2003 OK 35, 67 P.3d 339,</u>	<u>FINNELL v. JEBCO SEISMIC</u>	Discussed
<u>2006 OK 27, 174 P.3d 559,</u>	<u>MILLER DOLLARHIDE, P.C. v. TAL</u>	Discussed
<u>2007 OK 76, 171 P.3d 890,</u>	<u>SPENCER v. OKLAHOMA GAS & ELECTRIC COMPANY</u>	Discussed at Length
<u>1996 OK 121, 932 P.2d 1091, 67 OBJ 3291,</u>	<u>Green Bay Packaging, Inc. v. Preferred Packaging, Inc.</u>	Discussed at Length
<u>2010 OK 39, 236 P.3d 116,</u>	<u>IN THE MATTER OF THE ADOPTION OF BABY BOY A</u>	Discussed
<u>2011 OK 56, 260 P.3d 1271,</u>	<u>ACOTT v. NEWTON & O'CONNOR</u>	Discussed
<u>2014 OK 42, 328 P.3d 1192,</u>	<u>SMITH v. CITY OF STILLWATER</u>	Discussed
<u>2017 OK 42, 396 P.3d 210,</u>	<u>ANDREW v. DEPANI-SPARKES</u>	Discussed
<u>1979 OK 115, 598 P.2d 659,</u>	<u>STATE EX REL. BURK v. CITY OF OKLAHOMA CITY</u>	Discussed at Length
<u>1980 OK 120, 615 P.2d 291,</u>	<u>Oliver's Sports Center, Inc. v. National Standard Ins. Co.</u>	Discussed
<u>2021 OK 16, 485 P.3d 242,</u>	<u>STATE ex rel. HARRIS v. THREE HUNDRED TWENTY FIVE THOUSAND AND EIGHTY DOLLARS</u>	Discussed
<u>2022 OK 79, 518 P.3d 531,</u>	<u>WESTERN HEIGHTS INDEPENDENT SCHOOL DISTRICT v. STATE</u>	Discussed
<u>2023 OK 86, 540 P.3d 1,</u>	<u>U.S. BANK NATIONAL ASSOC. v. HILL</u>	Discussed at Length
<u>1998 OK 130, 977 P.2d 357, 70 OBJ 59,</u>	<u>Morgan v. Galilean Health Enterprises, Inc.</u>	Discussed at Length
<u>1986 OK 30, 720 P.2d 721, 57 OBJ 1415,</u>	<u>Chamberlin v. Chamberlin</u>	Discussed

Title 12. Civil Procedure

Cite	Name	Level
<u>12 O.S. 1141.5,</u>	<u>Liability for Damages, Costs, and Attorney Fees</u>	Discussed at Length
<u>12 O.S. 696.4,</u>	<u>Provision for Costs, Attorney Fees, and Interest</u>	Discussed at Length
<u>12 O.S. 990.2,</u>	<u>Post-Trial Motions - Matters Taken Under Advisement - Costs, Attorney Fees, and Interest</u>	Cited
<u>12 O.S. 2401,</u>	<u>Relevant Evidence Defined</u>	Cited

