.Affirmed and Memorandum Opinion filed October 20, 2022.

In The

Fourteenth Court of Appeals

NO. 14-21-00012-CV

HOWARD F. LEDERER, Appellant

V.

JAMES C. LEDERER, SUSAN LEDERER RUSSELL, KATHLEEN T. LEDERER, AND MARJORIE E. LEDERER, Appellees

On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause No. 2015-29219

MEMORANDUM OPINION

This appeal of a lawsuit, resolved primarily by the trial court's denial of appellant Howard Lederer's Uniform Declaratory Judgments Acts (UDJA) claim through summary judgment, is before us a second time on the issue of attorney's fees. When the issue was first tried, appellees James C. Lederer, Susan Lederer Russell, Kathleen T. Lederer, and Marjorie E. Lederer (the Lederer Parties) did not segregate the attorney's fees attributable to services performed in connection with

their successful defense of Howard's UDJA claim from legal work performed solely attributable to the Lederer Parties' other causes of action that were voluntarily dismissed. This court affirmed the trial court in part, reversed the fee-award portion of the judgment, severed the fee-award claim, and remanded the case for further proceedings limited to the issue of attorney's fees. *Lederer v. Lederer*, 561 S.W.3d 683, 703 (Tex. App.—Houston [14th Dist.] 2018, no pet.) ("*Lederer I*").

On remand, the trial court held a new trial on attorney's fees and rendered judgment on the Lederer Parties' attorney's-fees claim. In three issues, Howard challenges the judgment of the trial court arguing primarily that the evidence presented by the Lederer Parties in the form of billing records and the expert testimony of their lead attorney did not constitute credible evidence on which the trial court could properly award attorney's fees. We overrule Howard's three issues and affirm the final judgment of the trial court.[1]

I. BACKGROUND

The underlying lawsuit arises out of a dispute in construing a joint ownership agreement (JOA) formed in 1973. A comprehensive discussion of the dispute at issue is contained in *Lederer I*. The JOA provided for a "Coordinating Agent" to manage the payment of expenses, liabilities, and obligations relating to property acquired on behalf of the JOA-interest owners. Howard was the trustee and coordinating agent for the JOA. Agreements between the owners stated that Howard was entitled to a $200 monthly fee for his services.

In 2015, Howard sent the interest owners a letter informing them of

[1] The final judgment contains the following unequivocal "finality" language: "This Final Judgment finally disposes of all claims and all parties and is appealable." *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93, 200 (Tex. 2001).

upcoming property sales and distributions. He also detailed his efforts to preserve the ownership interests involved in the JOA and provide a profitable return on the original investment. His letter mentioned that one of the JOA-interest owners suggested he should get a commission, in the form of a "fifteen percent overriding share on all 2015, 2016 and future sales." The letter included a form on which interest owners could vote to approve a 15% override payment for Howard. While over 88% of the interest owners approved the 15% override, a group of the interest owners voted against it. The parties also argued over whether the JOA required unanimous approval by the interest owners to change the compensation structure and pay Howard the override.

The Lederer Parties, all of whom voted against the 15% override, filed suit against Howard in 2015 alleging claims of breach of fiduciary duty and breach of contract. They also sought removal of Howard as trustee under the Texas Trust Code.[2] All claims arose in part out of their allegations Howard had taken commissions and/or was prospectively seeking commissions (here, in the form of an override payment) to which he was not contractually entitled. The Lederer Parties later added a request that the court enjoin Howard from, among other things, taking the 15% override. Howard, in response, filed a UDJA claim seeking a declaration that the majority of the JOA-interest owners had the right to reward Howard for the work he performed in the form of the override. One of the major legal disputes in the first appeal was whether a majority of the JOA-interest owners was required to approve an override for Howard or whether it required unanimous agreement of the interest owners.

The parties filed cross-motions for traditional-summary judgment on

[2] Texas Trust Code, Tex. Prop. Code Ann. §§ 111.001–117.012 (Property Code title 9, subtitle B).

Howard's UDJA claim. On March 1, 2017, the trial court denied Howard's motion for summary judgment and for declaratory judgment, granted the Lederer Parties' traditional motion for partial summary judgment, and declared that "[Howard] is not entitled to a 15% Override" on the basis that the JOA required unanimous consent from interest owners to change Howard's compensation structure. The Lederer Parties then dismissed their remaining claims, leaving only the issue of attorney's fees. *See* Tex. R. Civ. P. 162. Howard next filed a motion to clarify the declaratory-judgment order, which the trial court denied shortly thereafter, and amended his pleadings.

After the bench trial on attorney's fees, the trial court signed a final judgment which memorialized its prior interlocutory rulings and further ordered that Howard, "individually and not from the assets of the entity governed by the [JOA]" pay reasonable and necessary attorney's fees and expenses of $107,000.00 through judgment, plus court costs and post-judgment interest.[3] In addition, Howard was to "reimburse the entity governed by the [JOA] for all attorney's fees, costs, and expenses that he has taken out of the entity governed by the [JOA] in the amount of $76,474.22, plus any attorney's fees, costs, and expenses removed since the day of trial, if any." Howard filed a motion to modify, vacate, correct, or reform the judgment, which the trial court denied.

In the first appeal, this court reversed the portion of the trial court's judgment awarding attorney's fees to appellees. *Lederer I*, 561 S.W.3d at 703. "Because the Lederer Parties voluntarily dismissed or abandoned all of their affirmative claims after prevailing on the 15% override, they could only recover attorney's fees for their defense of Howard's declaratory judgment action on the 15% override." *Id*. We held the Lederer Parties offered no testimony substantiating

[3] The Lederer Parties sought $300,000 in attorney's fees in the first trial.

what "portion of attorney time was allotted for work incurred in the successful defense of Howard's declaratory judgment claim and what portion was allotted for work incurred solely to advance claims for which attorney's fees were unrecoverable." *Id*. We then remanded the case to the trial court "for a new trial on the issue of the Lederer Parties' attorney's fees." *Id.*

On remand, the trial court conducted several hearings discussing this court's mandate and then conducted a new trial on attorney's fees. After a bench trial, the trial court signed findings of fact and conclusions of law including the following:

> Between November 23, 2015 and April 28, 2017, [the Lederer Parties] incurred attorney's fees in the amount of $325,360. 79.850012% of that amount constitutes the $259,800 in reasonable and necessary attorney fees incurred by [The Lederer Parties] for their successful defense of [Howard's] declaratory-judgment action. The $65,560 difference constitutes attorney fees that were either (1) segregated because the fees solely advanced claims for which attorneys fees were unrecoverable or (2) found to be unreasonable or unnecessary.

In its conclusions of law, the trial court further stated: "[Howard] first filed his declaratory-judgment action on November 23, 2015. All pending claims under the Declaratory Judgments Act—except claims for attorneys fees—were disposed of on April 28, 2017, in favor of Plaintiffs."

II. ANALYSIS

In this second appeal, Howard raises three issues: (1) the trial court abused its discretion by ignoring this court's mandate in awarding fees that were not related to the Lederer Parties' defense of Howard's UDJA claim; (2) the trial court erred because the award was not based on credible evidence; and (3) the trial court abused its discretion by failing to exclude the testimony of Frank Ikard, the Lederer Parties' lead attorney and expert witness on the issue of attorney's fees.

We begin first with Howard's first issue.

A. Award of attorney's fees

1. Applicable law

In Texas, each party generally must pay its own attorney's fees unless a statute or contract authorizes fee-shifting. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 483–84 (Tex. 2019). Here, the UDJA provides for discretionary fee-shifting. *See* Tex. Civ. Prac. & Rem. Code Ann. § 37.009. When fee-shifting is authorized, the factfinder must determine the reasonable hours worked multiplied by a reasonable hourly rate. *Rohrmoos*, 578 S.W.3d at 498. We presume this base lodestar calculation is the reasonable and necessary amount of attorney's fees to be shifted to the opposing party, so long as the amount is supported by sufficient evidence. *Id*. at 499. Sufficient evidence includes evidence of: "(1) particular services performed; (2) who performed those services; (3) approximately when the services were performed; (4) the reasonable amount of time required to perform the services; and (5) the reasonable hourly rate for each person performing such services." *Id*. at 498.

The fee claimant bears the burden of proving the reasonableness of the amount awarded. *Id*. at 484. If the opposing party wants to reduce the amount of attorney's fees awarded, that party must provide specific evidence to overcome the presumption of reasonableness. *Id*. at 501.

Because attorney's fees are recoverable only when provided for by statute or the parties' contract, a fee claimant must segregate attorney's fees that are recoverable from those that are not. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 310, 313–14 (Tex. 2006). When "discrete legal services" that advance both a recoverable and unrecoverable claim are intertwined, they need not be segregated. *Id.* at 313–14. When segregation is required, attorneys do not have to keep separate time records for each claim. *Id.* at 314. Rather, an attorney's opinion

that a certain percentage of the total time was spent on the claim for which fees are recoverable will suffice. *Id.*

The need to segregate attorney's fees is a question of law, and the extent to which certain claims can or cannot be segregated is a mixed question of law and fact. *Id.* at 312–13. When a fee claimant fails to properly segregate attorney's fees, we may remand the issue to the trial court for reconsideration. *Kinsel v. Lindsey*, 526 S.W.3d 411, 428 (Tex. 2017).

2. Standard of review

A mandate is a writ giving official notice of the action of the appellate court, directed to the court below, advising the lower court of the appellate court's action and commanding the lower court to have the appellate court's judgment duly recognized, obeyed, and executed. *See Min v. H & S Crane Sales, Inc.*, 472 S.W.3d 773, 778–79 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). A trial court has a ministerial duty to observe and carry out an appellate court's mandate. *Id.* However, once an appellate court reverses a trial court's judgment and remands the case to the trial court, the trial court is authorized to take all actions that are necessary to give full effect to the appellate court's judgment and mandate. *Phillips v. Bramlett*, 407 S.W.3d 229, 234 (Tex. 2013). Trial judges must do the best they can to follow what the court of appeals says in its mandate. *Madeksho v. Abraham*, 112 S.W.3d 679, 691 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (en banc). A trial court abuses its discretion when it does not. *Id*. at 685.

3. Trial court followed mandate

In *Lederer I*, we held that the Lederer Parties were entitled to fees "for their defense of Howard's declaratory judgment action on the 15% override." *See Lederer I*, 561 S.W.3d at 703. In *Lederer I*, we acknowledged at least three of the

claims dismissed in the trial court were unrelated to the override issue. *Id*. ("To the contrary, the Lederer Parties' expert acknowledged that at least two of the claims were unrelated to the 15% override issue, and another claim became moot during the pendency of the case."). Therefore, on remand, the Lederer Parties had the opportunity to present expert testimony as to what portion of attorney time was allotted for work incurred in the successful defense of Howard's UDJA claim. *See id*. We did not address the appropriate time frame for the award of attorney's fees as the issue was not raised in the trial court.

In issue 1, Howard complains the trial court disregarded this court's mandate when it awarded attorney's fees for the period of November 24, 2015 through April 28, 2017. Because the trial court denied Howard's summary-judgment motion on his UDJA claim on March 1, 2017, Howard asserts the Lederer Parties' successful defense of his UDJA claim necessarily ended immediately after the trial court ruled on the summary-judgment motion and denied his requested declaratory relief. In essence, Howard appears to argue that a fee claimant must be able segregate its billing records by date and claim to successfully recover attorney's fees when some claims allow for the recovery of fees and others do not.

In response, the Lederer Parties argue our opinion in *Lederer I* does not limit recovery of attorney's fees to any specific time period because the applicable timeframe is a fact issue for the trial court to determine. Further, the Lederer Parties argue that Howard continued to contest the trial court's ruling after the summary-judgment order was signed. Accordingly, the Lederer Parties believe the trial court did not err in awarding attorney's fees through April 28, 2017. We agree. Howard continued to contest the trial court's ruling well past the date of the summary-judgment ruling on March 1, 2017. The trial court, in its findings of fact, explains that the end date for the attorney's fees was determined to be April 28,

2017, because that was the date the trial court struck Howard's remaining motions and counterclaims which related to the trial court's previous ruling on the declaratory judgment.

The trial court's findings of fact further reflect that the award of fees was based on testimony reflecting the percentage of attorney time devoted to tasks that advanced the successful defense of Howard's UDJA claim:

> The awarded amount of attorney fees does not include attorney fees or time attributable solely to claims for which attorneys fees were unrecoverable. The awarded amount of attorney fees represents fees that were reasonable and necessarily incurred by [the Lederer Parties] for their successful defense of [Howard's] declaratory-judgment action. The Court found that it was reasonable and necessary for the attorneys representing [the Lederer Parties] to expend 866 hours on tasks that advanced [the Lederer Parties'] successful defense of [Howard's] declaratory-judgment action and that $300 was a reasonable and necessary average hourly rate.

The trial court's conclusions of law further state that its final judgment and the evidence offered at the second trial was done in accordance with our opinion in *Lederer I*. Although we are not bound by its legal conclusion, the trial court's findings of fact and conclusions of law certainly reflect the trial court's intent to give full effect to our appellate mandate. *See Phillips*, 407 S.W.3d at 234.

Howard does not explain why it was inappropriate for the trial court to segregate unrecoverable attorney's fees based on an overall percentage of time spent on unrecoverable claims as opposed to some other method when this court has repeatedly approved such as procedure. *See Alief Indep. Sch. Dist. v. Perry*, 440 S.W.3d 228, 246 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing *Tony Gullo Motors*, 212 S.W.3d at 314).

The trial court had discretion to award attorney's fees based on the trial

testimony as to the segregated attorney's fees.[4] Ikard, the lead attorney for the Lederer Parties, testified that 1,128.70 hours were expended on the case and, of that time, 10-13% was attributable to work that did not advance the successful defense of Howard's UDJA claim. Therefore, the trial court's determination that it was necessary for the Lederer Parties' attorneys to expend "866 hours on tasks that advanced [the Lederer Parties'] successful defense of [Howard's] declaratory-judgment action" reflects clear compliance with this court's mandate. The trial court further reduced the fees awarded to 79.85% of the total amount requested by the Lederer Parties.

We overrule Howard's first issue.

4. Trial court did not err in awarding the attorney's fees

In issue 2, Howard argues the trial court erred by awarding unsegregated attorney's fees up to three days before trial which were not based on credible evidence. Despite repeatedly invoking *Rohrmoos*, we note Howard does not challenge the legal sufficiency of the evidence of attorney's fees. Instead, he seeks to preclude the Lederer Parties from recovering fees for their successful defense of Howard's UDJA claim because the Lederer Parties' "block-billed evidence, when examined, simply does not support their blanket claims that all matters within the initial trial were inextricable intertwined."

In *State Farm Lloyds v. Hanson*, we considered an appellant's argument that the only way to properly segregate attorney's fees is to examine each billing entry and deduct amounts that are not recoverable. 500 S.W.3d 84, 104 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Citing *Tony Gullo Motors*, we concluded

[4] At the second trial, Ikard testified the Lederer Parties incurred $325,360 from the time Howard filed a counterclaim for declaratory judgment through April 28, 2017. Ikard testified that this did not include over $125,000 in fees that the firm wrote off.

that such a procedure was sufficient, but not required. *Id*. (citing *Tony Gullo Motors*, 212 S.W.3d at 314). We have also previously described the standard for evaluating the segregation of attorney's fees between claims as a "relaxed standard." *Citizens Nat. Bank of Tex. v. NXS Const., Inc.*, 387 S.W.3d 74, 88 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Howard's argument here effectively reasserts the argument in *State Farm.*

This issue has already been addressed by this court, and the Lederer Parties were not required to segregate their attorney's fees by date or by billing entry. *See Hanson*, 500 S.W.3d at 104; *see also Alief Indep. Sch. Dist.*, 440 S.W.3d at 246; *Citizens Nat. Bank*, 387 S.W.3d at 88. However, Howard further argues that *Rohrmoos* changed the law on segregation of attorney's fees because the "specificity expected of the party attempting to testify for their recovery" applies now to the standard for evaluating the segregation of attorney's fees.

In *Rohrmoos*, the supreme court answered the question of how Texas courts evaluate reasonable and necessary attorney's fees in cases when fee shifting is allowed or required. *Rohrmoos*, 578 S.W.3d at 498–99. *Rohrmoos* says nothing about the segregation of attorney's fees between claims as segregation was not an issue in that case. Instead, the court in *Rohrmoos* confronted a fact scenario in which the attorney for the fee claimant testified to $800,000 in attorney's fees without any billing records or other documents to support his testimony and offered little explanation of why the requested fees were reasonable or necessary. *Id*. at 505. Presuming the attorney's fees are otherwise established as reasonable and necessary, we conclude that *Rohrmoos* has not changed the "relaxed standard" by which we evaluate segregation of attorney's fees between claims. *See id*. at 503 (court cautioned they were not "endorsing satellite litigation as to attorney's fees" and noted "fact finder will generally not benefit from attorneys cross-examining

each other point-by-point on every billable matter"); *see also Citizens Nat. Bank*, 387 S.W.3d at 88.

Ikard's testimony together with his firm's billing records satisfy the "relaxed standard" for establishing the segregation of attorney's fees between claims. To the extent that Howard's complains about Ikard's credibility and the credibility of the evidence, the factfinder is the sole judge of the credibility of witnesses and the weight to be given to evidence. *See Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003). We conclude the trial court did not err in awarding attorney's fees to the Lederer Parties.

We overrule Howard's issue 2.

B. Denial of Howard's motion to exclude expert testimony

In issue 3, Howard argues that the trial court abused its discretion in denying Howard's motion to exclude the testimony of Ikard, who testified at both trials regarding the Lederer Parties' attorney's fees. In the first trial, Ikard testified that segregating fees between recoverable claims and nonrecoverable claims was impossible. Before the second trial, Howard sought to exclude Ikard's testimony on the basis he was unqualified to give an expert opinion on the segregation of attorney's fees. Howard also took issue with Ikard's lack of familiarity with specific details of time entries in his firm's invoices for work performed by four attorneys and a paralegal assisting in representing the Lederer Parties.

At the second trial, Ikard provided expert testimony to establish the reasonableness and necessity of the Lederer Parties' attorney's fees. He testified to his hourly rate, as well as the hourly rate of all individuals in his firm who worked on the case.[5] He testified to the total amount of attorney's fees the Lederer Parties

[5] The Lederer Parties retained local counsel in Houston to perform some work. Ikard did

sought to recover. He also testified that 10-13% of the total legal work performed advanced only claims that were dismissed and did not advance their successful defense of Howard's UDJA claim. He then testified to the total amount of fees less 10%, less 12%, and less 13%.

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's . . . specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." *See* Tex. R. Evid. 702. Expert testimony is admissible when (1) the expert is qualified and (2) the testimony is relevant and based on a reliable foundation. *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 800 (Tex. 2006) (citing *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995)). We review the trial court's determination that an expert is qualified for abuse of discretion. *Cooper Tire*, 204 S.W.3d at 800. The test for abuse of discretion is whether the trial court acted without reference to guiding rules or principles. *Robinson*, 923 S.W.2d 549, 558.

The issue of reasonableness and necessity of attorney's fees requires expert testimony. *Twin City Fire Ins. Co. v. Vega-Garcia*, 223 S.W.3d 762, 770 (Tex. App.—Dallas 2007, pet. denied). There is no dispute concerning Ikard's qualification to provide a general opinion on the reasonableness and necessity of attorney's fees. Rather, Howard's challenge goes to the reliability of Ikard's opinion. Expert testimony is unreliable if the court concludes "there is simply too great an analytical gap between the data and the opinion proffered." *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998). In reviewing the reliability of expert testimony, "[t]he trial court is not to determine whether an

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not testify to their hourly rate because the Lederer Parties did not seek to recover the cost of any of the work done by local counsel.

expert's conclusions are correct, but only whether the analysis used to reach them is reliable." *Id*. at 728. The gravamen of Howard's complaint is that Ikard "should not have been considered credible in light of his prior inconsistent statements." That Ikard previously testified it was impossible to segregate fees between claims does not address his qualifications or preclude his testimony. Rather, Ikard's prior testimony forms a matter of credibility appropriate for cross-examination. Tex. R. Evid. 611(b) ("A witness may be cross-examined on any relevant matter, including credibility.").

Relying on *El Apple I, Ltd., v. Olivas*, Howard also argued that the block-billing practices employed by the Lederer Parties' attorneys in their invoicing and Ikard's reliance on those invoices resulted in an unreliable opinion. 370 S.W.3d 757 (Tex. 2012). *El Apple* is not controlling because it did not involve the practice of block-billing. Instead, it addressed a situation in which there was no evidence reflecting how attorneys spent any of the aggregate hours worked. *Id*. at 763. Block billing—the general practice of including multiple tasks in a single billing time entry—is generally disfavored, particularly in federal court, because it can make meaningful review of attorney's fees difficult. *See Glass v. United States*, 335 F. Supp. 2d 736, 739 (N.D. Tex. 2004); *see also DeLeon v. Abbott*, 687 F. App'x 340, 346 n.4 (5th Cir. 2017) (Elrod, J., concurring in part) ("The ability to assess the reasonableness of a fee request is greatly undermined by the practice of billing multiple discrete tasks under a single time designation—so-called 'block-billing.'"). However, billing records employing block-billing practices *may be* sufficient to support an award of attorney's fees if the records are sufficiently detailed to otherwise comply with the standard for supporting reasonable and necessary attorney's fees. *See Hanson,* 500 S.W.3d at 99–100 (addressing time entry which "provided the total daily time spent but where the description of the

work included more than one specific task"); *Canadian Real Estate Holdings, LP v. Karen F. Newton Revocable Tr.*, No. 05-20-00747-CV, 2022 WL 4545572, at *5 (Tex. App.—Dallas Sept. 29, 2022, no pet. h.) (mem. op.).

Here, the Lederer Parties' billing records are sufficiently itemized. When tasks are grouped under one time entry, they frequently relate to a particular service (e.g., reviewing a pleading, researching it, and communicating with the client). No billing entry includes more than one day's work for a timekeeper, many entries contain a single task, and many entries that contain several tasks charge for less than two hours. We conclude the breakdowns of time spent are sufficient to allow for meaningful review of the particular services provided, who provided those services, and approximately when those services were performed. *See Rohrmoos*, 578 S.W.3d at 502 ("[s]ufficient evidence includes, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed").

Howard offers no argument that Ikard lacked either the expertise as an experienced practitioner or the personal expertise as the lead attorney for the Lederer Parties to offer an opinion from a larger perspective regarding what percentage of attorney time was devoted to the successful defense of Howard's UDJA claim. *See Lederer I*, 561 S.W.3d at 703; *see also Tony Gullo Motors*, 212 S.W.3d at 314. We conclude the trial court did not err in denying Howard's motion to exclude.

We overrule Howard's issue 3.

III. CONCLUSION

We affirm the judgment of the trial court as challenged on appeal.

/s/ Charles A. Spain
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Spain.