

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CA 0465

CYNTHIA D. SAMUEL

VERSUS

**CHRISTINE FALGOUST REMY, PERSONALLY AND AS
DIRECTOR OF/AND THE REMY FIRM, A/K/A CHRISTINE REMY
AND ASSOCIATES, P.L.C.; CHARLES N. BRANTON,
PERSONALLY; CHARLES N. BRANTON, L.L.C.; BRANTON &
ASSOCIATES, LLC; ABC INSURANCE COMPANY; EFG
INSURANCE COMPANY; XYZ INSURANCE COMPANY; AND
TUV INSURANCE COMPANY**

Judgment Rendered: **AUG 3 1 2016**

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2013-15489**

The Honorable Martin E. Coady, Judge Presiding

**Cynthia D. Samuel
New Orleans, Louisiana**

**Plaintiff/Appellant
In Proper Person**

**Gus A. Fritchie, III
New Orleans, Louisiana**

**Counsel for Defendants/Appellees
Christine Falgoust Remy, the Remy
Firm, and Christine Remy and
Associates, P.L.C.**

**James G. Wyly, III
Thear J. Lemoine
Gulfport, Mississippi**

**Counsel for Defendants/Appellees
Charles N. Branton, Charles N.
Branton, LLC, and Branton &
Associates, LLC**

BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.

THERIOT, J.

This is a companion case to **Samuel v. Remy**, 15-0464 (La. App. 1 Cir. --/--/--) (unpublished), handed down this same date. For the following reasons, we affirm the trial court's judgment granting the defendants-appellees each \$3,000.00 in attorney fees, plus court costs, as the prevailing parties on special motions to strike. In addition, we grant certain defendants' answer to the appeal seeking an additional award of attorney fees for costs incurred in defense of the trial court's judgment on appeal.

FACTS AND PROCEDURAL BACKGROUND¹

The plaintiff-appellant, Cynthia D. Samuel, initiated this suit by filing a petition for damages against the defendants-appellees, Christine Falgoust Remy, her law firm, and insurers (together "Remy defendants") and Charles N. Branton, his law firm, and insurers (together "Branton defendants") (collectively "the defendants"). Samuel's suit derives from allegedly defamatory statements and allegations made by the defendants in motions for sanctions and supporting memoranda filed against her in a separate family law custody dispute pending before the Twenty-Second Judicial District Court, docket no. 2012-13474.

The Branton defendants responded to this suit by filing exceptions of no cause of action, no right of action, and prematurity, as well as a special motion to strike. The Remy defendants responded by filing exceptions of no cause of action, no right of action, a motion for summary judgment, and a special motion to strike.² The trial court heard arguments on the several

¹ The factual and procedural background of this case is discussed in greater detail in the companion appeal, see Samuel v. Remy, 15-0464, p. ---, wherein we affirmed the trial court's judgment granting special motions to strike in favor of the defendants-appellees and ordering the dismissal of the plaintiff-appellant's claims with prejudice.

² Pursuant to a motion filed on March 24, 2014, the Branton defendants joined in and adopted by reference the exceptions of no cause of action and no right of action, the

exceptions and motions, took the matters under advisement, and, on April 24, 2014, signed comprehensive written reasons for judgment granting each of the exceptions and motions.³ Thereafter, on May 28, 2014, the trial court signed a written judgment in accordance with its written reasons for judgment, ordering the dismissal of Samuel's claims with prejudice.

The trial court's judgment did not address the defendants' entitlement to reasonable attorney fees and costs as the prevailing parties on the special motions to strike under La. C.C.P. art. 971. Thus, the defendants separately filed motions seeking attorney fees and costs as the prevailing parties on the special motions to strike. The Branton defendants also filed a "motion for new trial" for the limited purpose of seeking an assessment of attorney fees. On September 29, 2014, the trial court signed a judgment on the motions for attorney fees, awarding the Remy defendants and the Branton defendants each \$3,000 in attorney fees, plus costs of court, as the prevailing parties on the special motions to strike in accordance with La. C.C.P. art. 971, thereby disposing of all remaining issues in this case.

Samuel timely filed a motion and order for suspensive appeal following rendition of the trial court's final judgment. The trial court granted her single motion and order for suspensive appeal, but, for unknown reasons, the clerk of court for the trial court forwarded two notices of appeal to this court. The matter was thus docketed as separate appeals under consecutive docket numbers. The trial court's May 28, 2014 judgment was lodged as the subject of the companion appeal, docket no. 2015 CA 0464 ("**Samuel I**"), while the trial court's September 29, 2014 judgment was

motion for summary judgment, the special motion to strike, and the memorandum in support submitted by the Remy defendants.

³ We note that the trial court denied an exception of prescription raised by the Branton defendants in memoranda but which had not been filed as an exception in the record.

lodged as the subject of the instant appeal, docket no. 2015 CA 0465 (“**Samuel II**”).

The Remy defendants and the Branton defendants both answered the appeal in **Samuel II**, seeking an increase in the trial court’s award of attorney fees.⁴ In addition, in their answer to the appeal, the Branton defendants requested an additional award of attorney fees relative to those costs incurred in defense of the trial court’s judgment on appeal. The defendants’ answers are the sole issues pending adjudication in this appeal.

As we explained in our opinion in **Samuel I**, 15-0464, p. ---, Samuel failed to timely file an appellant’s brief bearing the docket number of the instant appeal. Accordingly, on July 6, 2015, we issued an order of dismissal dismissing the appeal in **Samuel II** as abandoned. Two days later, on July 8, 2015, we issued a corrected order of dismissal, clarifying that the appeal was dismissed as to Samuel only and maintaining the defendants’ answers to the appeal.

STANDARD OF REVIEW

In the context of the special motion to strike, the trial court’s award of attorney fees is subject to the deferential abuse of discretion standard of review. See **Davis v. Benton**, 03-0851 (La. App. 1 Cir. 2/23/04), 874 So.2d 185, 191 (finding “no abuse of discretion” in the trial court’s award of attorney fees). See also **Delta Chemical Corp. v. Lynch**, 07-0431 (La. App. 4 Cir. 2/27/08), 979 So.2d 579, 584-88, writs denied, 08-0683 (La. 5/30/08), 983 So.2d 898 and 08-0761 (La. 5/30/08), 983 So.2d 904 (holding that Louisiana courts are required to assess the reasonableness of attorney

⁴ We note that the Remy defendants filed duplicative answers regarding the trial court’s award of attorney fees bearing the docket numbers of both **Samuel I** and **Samuel II**. In **Samuel I**, 15-0464, p. ---, we deferred consideration of the Remy defendants’ answer to the instant appeal.

fees on special motions to strike under the “manifest error/clearly wrong” standard of review).

DISCUSSION

In this case, the trial court awarded the defendants each \$3,000.00 in attorney fees, plus costs of court, as the prevailing parties on the special motions to strike. The Remy defendants and the Branton defendants both answered this appeal, arguing that the trial court erred by failing to award them the full amount of attorney fees each requested in their motions for attorney fees. The defendants both note they submitted evidence proving they incurred fees exceeding the trial court’s award, and they request this court modify the trial court’s judgment to award them the full amount of fees they incurred in defense of the underlying action before the trial court.

Under Louisiana law, the factors to be considered when determining the reasonableness of attorney fees include: 1) the ultimate result obtained; 2) the responsibility incurred; 3) the importance of the litigation; 4) the amount of money involved; 5) the extent and character of the work performed; 6) the legal knowledge, attainment, and skill of the attorneys; 7) the number of appearances made; 8) the intricacies of the facts involved; 9) the diligence and skill of counsel; and 10) the court’s own knowledge. **Capital City Press v. Bd. of Sup’rs of Louisiana State Univ.**, 01-1692 (La. App. 1 Cir. 6/21/02), 822 So.2d 728, 731.

Though the prevailing party on a special motion to strike is entitled to an award of reasonable attorney fees pursuant to La. C.C.P. art. 971(B), we must remain mindful that statutes imposing liability for penalties and attorney fees are penal in nature and must be strictly construed. See Vaughn v. Franklin, 00-0291 (La. App. 1 Cir. 3/28/01), 785 So.2d 79, 86, writ denied, 01-1551 (La. 10/5/01), 798 So.2d 969. Accordingly, courts

interpret La. C.C.P. art. 971(B) as limiting recovery to those attorney fees and costs specifically associated with the special motion to strike. As explained in **Delta Chemical Corp.**:

[The prevailing party] can recover only those fees associated with the motion to strike. We do not agree with the [prevailing party's] position that [it] is entitled to recover the attorney's fees and costs incurred from the time the suit was filed until the day the trial court made the award. Thus, for example, [it] cannot recover attorney's fees related to its litigation in this case of the venue issue. Therefore, we find the award of \$20,000.00 is excessive and reverse the judgment of the trial court.

979 So.2d at 588. Accord McIntyre v. Gilmore, 2015 WL 4129378, *1 (E.D. La. 7/8/15) (unpublished) (“Courts applying [La. C.C.P. art. 971(B)] have determined that ... a prevailing party may only recover attorneys' fees associated with the motion to strike, but not fees associated with defending the entire lawsuit.”).

In the case at bar, the trial court correctly analyzed the factors set forth in **Capital City Press**, *supra*, and made several factual findings that support its decision not to award the defendants the total amount of attorney fees each had requested. In pertinent part, the trial court noted that the defendants had filed several motions and exceptions into the record, all of which were argued contemporaneous to the special motions to strike and all of which involved the same operative set of facts. The trial court further noted that the defendants only made one court appearance on the special motions to strike and had not engaged in extensive trial preparation or prolonged litigation on the motions. The trial court therefore awarded the defendants each \$3,000.00 in attorney fees, along with court costs, which the court found to be “reasonable under the facts presented.” The trial court's

award of attorney fees is not manifestly erroneous, nor does it constitute an abuse of discretion.

Having found no error in the trial court's award of attorney fees, we next turn to address the Branton defendants' particular request for an additional award of attorney fees relative to those costs incurred in defense of the trial court's judgment on appeal. The Branton defendants' prayer for additional relief is clear, unambiguous, and fully briefed. The Branton defendants aver that they are entitled to an additional award of attorney fees for the work performed by counsel on appeal under the provisions of La. C.C.P. art. 971(B).

Louisiana Code of Civil Procedure art. 971(B) does not directly address the issue of attorney fees on appeal as requested by the Branton defendants. Nevertheless, we find merit to the Branton defendants' specific prayer for additional relief. In reaching our decision, we take guidance from the opinion in **Williams v. Nexstar Broadcasting, Inc.**, 11-887 (La. App. 5 Cir. 4/10/12), 96 So.3d 1195. In that case, the trial court granted a special motion to strike plaintiff's defamation claims and awarded defendants \$3,000.00 in attorney fees as the prevailing party. On appeal from the trial court's judgment, defendants "requested that [the appellate court] award them attorney's fees for [the] appeal." **Williams**, 96 So.3d at 1202. The appellate court found that, because defendants were entitled to an award of attorney fees for their counsels' work in the district court as related to the special motion to strike, they were also entitled to an additional award of attorney fees for the work performed by counsel on appeal relative "only to the portion of the case arising out the claims under Article 971[.]" **Id.** See also **Savoie v. Page**, 09-0415 (La. App. 3 Cir. 11/4/09), 23 So.3d 1013, 1017, writ denied, 10-0096 (La. 4/5/10), 31 So.3d 365 (awarding prevailing

party on special motion to strike \$5,000 in attorney fees for work performed at trial and on appeal).

In the instant case, we similarly find that the Branton defendants are entitled to an additional award of attorney fees for those costs incurred in defense of the trial court's judgment granting the special motions to strike on appeal. Therefore, we grant the Branton defendants an additional \$1,000.00 in attorney fees, which we believe represents the amount that is most appropriate and reasonable under the facts presented.

DECREE

For the foregoing reasons, we affirm the trial court's judgment awarding the defendants-appellees each \$3,000.00 in attorney fees. Additionally, we award the Branton defendants an additional \$1,000.00 in attorney fees for the work performed by counsel on appeal. Costs of this appeal are assessed to the plaintiff-appellant, Cynthia D. Samuel.

AFFIRMED.