STATE OF MICHIGAN

COURT OF APPEALS

In re Attorney fees of Atchison and Hartman.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES CURTIS MERRIMAN,

Defendant,

and

MICHAEL J. ATCHISON and DANIEL J. HARTMAN,

Appellants.

UNPUBLISHED
January 19, 2012

No. 292281
Charlevoix Circuit Court
LC No. 07-036010-FC

Before: WHITBECK, P.J., and MARKEY and K.F. KELLY, JJ.

PER CURIAM.

Appellants Michael Atchison and Daniel Hartman appeal as on delayed leave granted from the trial court's order granting Atchison $5,000 in additional attorney fees and $641.14 in costs in connection with Atchison and Hartman's representation of defendant Charles Merriman in a lengthy open murder trial. (A jury convicted Merriman of second-degree murder, and the trial court sentenced him to serve 20 to 40 years in prison. *People v Merriman*, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2009 (Docket No. 285959).) We affirm that portion of the order that awarded appellants $641.41 in costs associated with representing defendant, but reverse that portion of the order that awarded appellants only $5,000 in additional attorney fees.

I. BASIC FACTS

Attorney Michael J. Atchison was a member of a consortium of four attorneys who agreed to provide public defender services for indigent defendants in Charlevoix County. Each year, the county bestowed the consortium with a fixed stipend; however, the consortium agreement provided that an attorney working on a case that was "extraordinary in nature, severity, complexity or duration" could petition the trial court for additional compensation. The

agreement further provided that the consortium could "provide such other qualified attorneys as may be needed," but that use of other attorneys had to be approved by the judge.

Defendant Charles Merriman was charged with murdering his brother, Bill. The case was highly unusual in that Bill's body was never found and there were no witnesses who actually witnessed the murder or the disposal of Bill's body. In defending the case, Atchison immediately sought the help of his colleague, Daniel J. Hartman, an attorney that had far more experience in defending complex criminal matters. In fact, as the matter proceeded to trial, it was Hartman who took over as lead counsel, with the trial court's knowledge and consent.

The prosecution believed it had sufficient evidence to convict Merriman based on his inconsistent statements to police, his incriminating statements to third parties, and the physical evidence found in the home that defendant and Bill shared. Defendant argued that the blood found in the home was the result of an injury to Bill's hand. The prosecution presented numerous expert witnesses who all testified that the amount of blood found in the home could not have simply been the result of a cut to the hand, as defendant claimed; rather, the loss of blood indicated, at the very least, a life-threatening injury. An extensive search of a landfill was conducted to look for evidence in the case. The Charlevoix County Board of Commissions approved $50,000 in expenditures to help pay for a twenty-one day "dig." Zucker, Steve, "Prosecutors, Defense React to Guilty Verdict in Merriman Murder Trial," *Petoskey News-Review* (May 12, 2008). The article quotes the prosecutor:

> "The type of investment that had to be done to prove a murder without a body is huge," [the prosecutor] said. "That's just the police digging and digging and digging to get the evidence and having a jury that will follow the law; because you don't need a body to prove murder."
>
> [The prosecutor] praised the efforts of Charlevoix County Sheriff's Det./Lt. Mike Wheat, who has spent nearly all of his time since Sept. 5, 2006, working on the case. He also thanked the Charlevoix County Board of Commissioners who approved $50,000 to help pay for the 21 days investigators spent digging in a downstate landfill looking for evidence in the case.

In fact, "[t]he verdict comes on the heels of what is likely the longest criminal trial and one of the most expensive investigations in the county's history." The trial, which was originally estimated to take five days, took sixteen days. The lower court file includes four full boxes of records and transcripts.

At the completion of trial, Atchison and Hartman, believing the case unusually complex and long in duration, petitioned the trial court for additional compensation and reimbursement of expenses, setting forth that they devoted a combined 1,173 hours on the case. This was in stark contrast to the average 270 hours spent on a standard consortium case. Appellants sought compensation for the additional 903 hours and proposed an hourly fee of $75 for a total of $67,725. Without conducting a hearing on the issue, the trial court issued an order awarding $5,000 in additional attorney fees and $641.41 in costs.

Appellants' delayed application for leave to appeal to this Court was denied. *People v Merriman*, unpublished order of the Court of Appeals, entered October 6, 2009 (Docket No. 292281). The Michigan Supreme Court remanded the case to this Court for consideration "as on leave granted." *People v Merriman*, 486 Mich 868; 780 NW2d 570 (2010). We then granted appellants' motion to remand to the trial court for an evidentiary hearing "for the trial court to provide either an oral or written explanation of additional attorney fees and expenses." *People v Merriman*, unpublished order of the Court of Appeals, entered June 4, 2010 (Docket No. 292281). We retained jurisdiction.

II. EVIDENTIARY HEARING

The trial court conducted a full evidentiary hearing on July 13, 2010. The parties entered into a stipulation that included a written statement by Michael Atchison. Atchison averred that Hartman was brought into the case because of his level of experience. They had previously worked together on a complicated armed robbery case that resulted in the defendant's acquittal. When Judge Pajtas asked Atchison to take the appointment in the Merriman case, Atchison specifically advised the judge that "because of the complexity and difficulty of the case" Hartman would be "assisting" him. The judge not only allowed Hartman to enter the case as co-counsel, but also allowed him to assume the role of lead counsel. Atchison spent an inordinate amount of time on defendant's case and was unable to accept additional clients. Atchison also spent a great deal of his own money on the investigation. Work on defendant's case "was the straw that broke the camel's back" and Atchison ultimately left the practice of law.

Hartman testified that he "didn't get involved [in the case] with the idea of submitting the Court a bill, I got involved because the case and its complexities I thought needed me and I grossly underestimated the amount time . . . I had no idea the number of witnesses, the number of complex financial issues. I had no idea about the DNA issues, the toxi – the crime scene investigation issues. So, when I got involved, there was no real clear picture of what my role would be in the case." Working on defendant's case was extraordinarily time-consuming and even necessitated hiring a secretary to work at night and hiring a private detective. It also included out-of-state trips to meet with experts and witnesses. Hartman testified that "it wasn't until I looked at the, shall we say, the wreckage of what the case had cost me at the end, the cash outlays, the cases that I hadn't taken for four months, the amount of time I put in that I really stopped and looked at it." Hartman's effort in the case "was above and beyond what I could give back to the legal community for any pro bono allotment. It did have a negative impact on my practice, it had a negative impact on my personal life and it definitely had a negative impact on my finances to the point where I know that I could not get involved in another case like that without compensation and it has changed the way I would handle things as it sits."

The following exchange took place between the prosecutor and Hartman:

> *Q.* And I agree and I don't think that this Court, but I can't speak for the Court, but speaking for myself in the amount of time Mr. Merriman had a very vigorous defense, put on by you and by Mike [Atchison] and it was a battle because it was an extraordinary case.

> The problem I have is civil [sic] comes before the county as a prosecutor and what is reasonable and if Mike is the only one that's on there, does Mike have to compensate you, because you were brought in voluntarily? You were asked to come in. You wanted to come in by yourself.
>
> *A.* Sure.
>
> *Q.* You didn't have a dog in that fight.
>
> *A.* I agree –
>
> *Q.* You joined it and now you're asking for something reasonable and then it's a precedent setting thing for something down the road.
>
> *A.* Sure, and I want to address that as it's a valid point. Mike would be handling this case by himself from day one. So it was assumed that he would be drawing from the pond, my time experience to some point and there is a certain amount of that I have given this County in the past.
>
> I didn't submit a bill on Waltonen [another case]. I didn't submit a bill on those other ones. And you could say, you could reasonably say I shouldn't submit a bill on this one. But the problem was that developed in this case was because of all the moving parts.
>
> It was no longer me assisting Mike, it was me doing the case and it wasn't because I was trying to grab the spotlight and the celebrity of the case or anything like that, but what we were doing, we had a very novel case and I will probably never in my career see a case with no body again, Mr. Prosecutor.
>
> Murder trials don't happen in northern Emmet County. There aren't a lot of guys who have[] done murder trials. I have experience – I've done a murder jury trial previous to this and lots of other homicide cases, negligent homicide, involuntary manslaughters. And for me to bring my resources and time to a novel case setting precedent with this county took a novel case on with a novel theory and spent a lot more money on the other side, it's still if you compare the equities of effort and expense to prosecute this man vs defending him, reasonable compensation is fair and owed and that's all I'm saying.

Hartman believed that the defense required two full-time attorneys and "[w]hat happened is the case just got beyond our understanding even when we were into it a month." Atchison received roughly $27,000 under the consortium contract. Hartman was seeking compensation not on the basis of contract, "but on the basis of equity and fairness."

The trial court was not sympathetic to Hartman's arguments, finding that Hartman's involvement on the case was strictly pro bono and he was not entitled to additional compensation:

So, again, the Contract does not authorize one of the members to, without prior Court approval at least, to hire another attorney not a member of the Consortium to provide services and then demand the County to pay.

Mr. Hartman, who is an experienced attorney, has developed a history of coming into cases that get a lot of exposure in the local media, all of which have been on a pro-bono basis prior to the Merriman case. The Waltoren [ph] case which was mentioned in the testimony not only received local exposure, it received national exposure and not only national exposure, it was written up in the European news media.

The Thorpe case referred to in the testimony was an egregious CSC case, as I recall. And, the Russell case was a robbery was a robbery-armed case downtown in Charlevoix, so obviously that received a lot of publicity.

I happened to look at Mr. Hartman's website this morning, trying to think of the other case that he handled, and both the Russell case and the Merriman case appear on his web site, apparently as an advertising tool to acquire paying clients. And in none of these previous cases did he seek compensation. So when it came to the Merriman case, the Court anticipated that he was coming in another high publicity case on a pro-bono basis and, so, according to the testimony today, did Mr. Hartman and, obviously, Mr. Atchison.

Mr. Hartman testified he didn't seek pre-approval because he didn't expect to be reimbursed. He testified that he got in as a volunteer and then the case exceeded what he expected, "by a lot", as he said, and he only learned of this right before the trial.

At no time did either attorney come to the Court seeking compensation until the case was over. And, so, it was a pro-bono case for Mr. Hartman that turned out to be more work than he expected and he now seeks to be compensated by public funds.

So, to this Court, the issue is not reasonable compensation for assigned Counsel, it is whether or not Counsel can bind the Court and the county after the fact, and that's a precedent I don't think would be prudent to set.

This matter now returns to us to review the trial court's decision. Atchison requests $14,200 of additional attorney fees, as well as $2,502.97 for expenses incurred. Hartman requests $53,257.50 in attorney fees.

III. STANDARD OF REVIEW

The findings of fact underlying an award of costs and attorney fees are reviewed for clear error, while underlying questions of law are reviewed de novo. *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007); *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 438; 695 NW2d 84 (2005). The decision whether to award costs and attorney fees and the determination of the reasonableness of the fees are within the trial court's discretion and will be

reviewed on appeal for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008); *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008); *Windemere Commons I Assoc v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 296; 769 NW2d 234 (2009). An abuse of discretion occurs when the decision is outside the range of reasonable and principled outcomes. *Smith, supra*, 481 Mich at 526.

IV. ANALYSIS

A. ATTORNEY FEES

The right to counsel requires the State to provide appointed counsel to indigent defendants who request legal counsel. *Gideon v Wainwright*, 372 US 335, 342-345; 83 S Ct 792; 9 LEd2d 799 (1963); *People v Jackson*, 483 Mich 271, 278; 769 NW2d 630 (2009). MCL 775.16 provides, in part, that "[t]he attorney appointed by the court shall be entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rendered, the amount which the chief judge considers to be reasonable compensation for the services performed."

Although in the context of case evaluation sanctions, *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008), lays out the procedural steps a trial court must take in determining a reasonable attorney fee award. The goal of such an award is to compensate an attorney for reasonable fees, and "is not intended to 'replicate exactly the fee an attorney could earn through a private fee arrangement with his client.'" *Smith*, 481 Mich at 534. The burden of proving the reasonableness of a request for attorney fees rests with the party requesting such fees. *Id.* at 528-529. As, such the "fee applicant bears the burden of supporting its claimed hours with evidentiary support," including "detailed billing records, which the court must examine and opposing parties may contest for reasonableness." *Id.* at 532.

The trial court must first "determine the fee customarily charged in the locality for similar legal services," including the use of "reliable surveys or other credible evidence." *Id.* at 537. The trial court's next step is to "multiply that amount by the reasonable number of hours expended in the case." *Id.* at 537. After determining this base line for compensation, the trial court "may consider making adjustments up or down to this base number in light of the other factors listed in *Wood* [*v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982)] and MRPC 1.5(a)." Some of the *Wood* and MRPC 1.5(a) factors overlap. The *Wood* factors include "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Id.* at 529. The eight factors to be considered under MRPC 1.5(a) are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent. [*Id.* at 529-530.]

As an aid for appellate review, the trial court should briefly discuss each of the factors on the record. *Id.* at 529 n 14.

Appellants worked a combined 1,173 hours on Merriman's criminal defense. The first 270 hours constituted the normal consortium hourly workload; thus, appellants seek compensation for the additional 903 hours. Atchison worked 193 of those hours, while Hartman worked 710 hours. The trial court awarded additional attorney fees in the amount of $5,000, ostensibly to Atchison, but then declined to award any further compensation for Hartman. We find this to be an abuse of discretion under the circumstances.

Neither the prosecution nor the trial court disputed that the average hourly rate under the consortium agreement is $75. Thus, the fee "customarily charged in the locality for similar legal services," was not in question. Nor did the trial court or prosecutor dispute the number of hours both Atchison and Hartman spent on the case. As such, the trial court's next step was to multiply $75 "by the reasonable number of hours expended in the case," which would have resulted in a base line fee of $67,725 subject to any adjustments under *Wood*. In awarding only an additional $5,000, the trial court concluded that no additional compensation was due Hartman, as his work was strictly pro bono. The mere fact that Hartman initially entered the case on a pro bono basis is not the end of the analysis; it is simply one factor to be considered and weighed by the trial court. Moreover, such a finding implies that any fee under the initial consortium agreement is finite when, in fact, the agreement specifically allows a trial court to exercise discretion in awarding additional fees. Under the agreement, an appointed attorney could petition the trial court for additional compensation on a case that was "extraordinary in nature, severity, complexity or duration."

Utilizing the *Wood* and MRCP 1.5(a) factors, Hartman is clearly entitled to additional fees. Hartman was a highly experienced criminal defense attorney, having undertaken to defend many high-profile cases. The underlying "no body" murder was novel and difficult, requiring Hartman's particular expertise. The attorneys both incurred additional expenses in retaining a private investigator and staff. Significantly, both attorneys also had to forego taking other, possibly lucrative, cases because the Merriman case was so time-consuming.

The trial court was well aware of Hartman's involvement from the inception of the case and gave its express approval for Hartman to take over as lead counsel. And, while it is true that Hartman may have originally intended to defend the case pro bono, it is indisputable that the case was ultimately "extraordinary in its nature, severity, complexity, or duration," allowing Atchison to request additional compensation for the time spent on the case.

The trial court's reliance on Hartman's failure to request additional compensation in other high-profile cases is at odds with the record. Although Hartman did not make a habit of requesting compensation, there was at least one case in which the same trial court ordered that additional compensation be paid. In *People v Russel*[1], Atchison was appointed to represent the defendant in an armed robbery case. Hartman appeared as co-counsel and the two attorneys split responsibilities. The jury trial lasted five days and required work well beyond that contemplated by the consortium agreement. The trial court had no trouble awarding an additional $3,608.46, as was requested. Here, however, the trial court awarded a mere $5,000 for what was most assuredly a far more complex case than *Russell*, including sixteen days of testimony.

We also note the extreme disparity between the prosecution's resources in prosecuting Merriman in comparison to the resources available to appellants in defending him. The prosecution had a team of attorneys, police officers, and investigators working on the case. The county approved the expenditure of $50,000 for search of a landfill, which took twenty-one days to complete. In contrast, the trial court is content to compensate only one attorney for what was undoubtedly a daunting task. The judge's fear that the consortium contract was at risk if every appointed attorney could assemble a "dream team" and then demand additional compensation should not have resulted in such an inequitable outcome. Moreover, the trial court's fear is unjustified as it will always retain the ability to determine the reasonableness of any requested attorney fee. Here, however, it is simply an abuse of discretion to deny any compensation for the extraordinary amount of work done by court-approved lead counsel of case that was "extraordinary in its nature, severity, complexity and duration." The trial court was not exercising its discretion; rather, it was refusing to do so.

Though the trial court complained that Hartman failed to ask for additional compensation until the conclusion of trial, we are left to wonder what Hartman's other options were. Hartman had an ethical duty to continue to represent Merriman. Once preliminary work was completed and the nature and complexity of the case revealed itself, it is doubtful that the trial court would have allowed Hartman to withdraw as counsel.

It is clear that the trial court's decision to award $5,000 in additional compensation for 903 of legal work on defendant's behalf falls outside of the range of principled outcomes. We therefore vacate the award and remand this matter for the trial court to determine an appropriate award.

B. FEES

[1] While the trial court and the appellants all discussed the *Russell* case, the docket number does not appear in the lower court record.

Atchison provided an appendix listing expenses adding up to $3,144.11, which the trial court reimbursed in the amount of $641.14, leaving a difference of $2,502.97. The trial court reasoned:

> Some of the expenses that have been requested in this hearing were admittedly not pre-approved such as this $1,625 for a secretary and certain reference and other materials that can supposedly be used in subsequent cases. The additional $651.14 was allowed because the Court felt that those expenses were specific to the case and authorized them per the Consortium contract.

Our examination of Atchison's claimed expenses leads us to the same conclusion. Many of the claimed expenses are for things of general usefulness in legal practice, not matters particular to the underlying case. And the costs of secretarial help, reference materials, and office equipment are not among the "expert witness fees and costs, polygraph examination costs, forensic, psychiatric or psychological examination costs, and investigative fees" for which the consortium agreement authorizes compensation. Similarly, Atchison's failure to indicate how much of various packages of crime-scene testing materials were actually devoted to the underlying representation invited the trial court's concern that such expenses were not specific to the underlying case.

The only expense that raises some question is the $450 claimed for a defense investigator. Investigative fees are included among expenses the consortium agreement listed as compensable, and we have no reason to doubt that that expense was for the underlying representation. However, the trial court reported that it had earlier awarded $4,000 for a defense investigator and expressed its concern that some of the additional expenses claimed were not preapproved. Additionally, the briefs on appeal do not assert that the additional $450 was preapproved. Given that the trial court awarded $4,000 for an investigator, we hold that it did not abuse its discretion by declining to award $450 more for additional work that it did not preapprove.

We affirm that portion of the trial court's order that awarded appellants $641.41 in costs associated with representing defendant, but reverse that portion of the order that awarded appellants only $5,000 in additional attorney fees.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

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Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

WHITBECK, J. (*concurring in part and dissenting in part*).

I agree with the majority's decision to affirm the circuit court's award of $641.41 in costs associated with appellants Michael Atchison's and Daniel Hartman's representation of defendant Charles Merriman. However, I respectfully disagree with the majority's conclusion that the circuit court abused its discretion by awarding only $5,000 in additional attorney fees. Contrary to the majority, I believe that the circuit court did not clearly err in concluding that Hartman participated in the underlying case on a pro bono basis. The Court did not, therefore, abuse its discretion either by declining to award additional fees to cover Atchison's overage or by declining to award any additional amount to Hartman. Accordingly, on the issue of additional fees, I would affirm.

I. FACTS

At the time relevant to these proceedings, a consortium of four attorneys, including Atchison, contracted to provide public defender services for all indigent criminal cases in Charlevoix County. While representing Merriman, Atchison brought Hartman into the case to

assist him. However, over the course of the trial, Hartman took over as de facto lead counsel. After the trial, characterizing the underlying case as one of unusual complexity and duration, Atchison and Hartman petitioned the circuit court for additional compensation and reimbursement of expenses. Atchison and Hartman provided records indicating that they devoted 1,173 hours to the case and that their expenses added up $3,144.11. Atchison and Hartman asserted that a consortium-based defense would normally add up to only 270 hours and that they should therefore be compensated for the additional 903 hours—193 hours for Atchison and 710 hours for Hartman. At their claimed rate of $75 an hour, Atchison and Hartman calculated that their reasonable compensation should be $67,725. The circuit court, however, authorized payment of only $641.14 for expenses and $5,000 in additional attorney fees.

On remand to the circuit court, the court held an evidentiary hearing, at the conclusion of which, the court held that Hartman's participation in the underlying case was on a pro bono basis. The circuit court characterized the issue as "not reasonable compensation for assigned Counsel," but "whether or not Counsel can bind the Court and the county after the fact," and added, "[T]hat's a precedent I don't think would be prudent to set." The circuit court reiterated that it would not award any additional fees or compensation for expenses.

II. AWARD OF FEES AND EXPENSES

A. STANDARD OF REVIEW

Atchison and Hartman argue that the circuit court erred in concluding that Hartman contributed his efforts to the underlying case pro bono and was therefore not entitled to an award of attorney fees. This Court reviews an award of costs and fees for an abuse of discretion.[1] An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.[2] This Court may not set aside a circuit court's findings of fact unless they are clearly erroneous.[3]

B. APPELLANT HARTMAN

That the underlying criminal case was an extraordinary one is not in dispute. Nor have any doubts been raised concerning the time and expenses that Hartman invested in the case. However, as the circuit court stated, the issue here is "not reasonable compensation for assigned Counsel," but "whether or not Counsel can bind the Court and the county after the fact."

Pursuant to the consortium agreement, each participating attorney was paid a fixed stipend. The agreement further provided,

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[1] See *In re Condemnation of Private Property for Highway Purposes* (*Dep't of Transportation v Curis*), 221 Mich App 136, 139-140; 561 NW2d 459 (fees); *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996) (costs).

[2] *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

[3] MCR 2.613(C).

> In the event that *a Consortium member is assigned a case* that is extraordinary in its nature, severity, complexity, or duration, *said attorney may petition* the appropriate Court for additional compensation, which may be granted by the Court in its' [sic] discretion, and if so ordered, shall be paid by the County.[4]

Additionally, the agreement stated that "[t]he Consortium shall provide such other qualified attorneys as may be needed to perform the functions stated herein, *all of whom must be approved by the appropriate Judge or his/her designee prior to performing any services*."[5]

At the evidentiary hearing held on remand, Hartman testified that he "didn't get involved [in the case] with the idea of submitting the Court a bill, I got involved because the case and its complexities I thought needed me and I grossly underestimated the amount time . . . ." Hartman added that he "got in [to the case] as a volunteer and it exceeded what I had signed on for by a lot." The circuit court noted that the consortium agreement stated that "such other qualified attorneys as may be needed . . . must be approved by the appropriate Judge or his or her designee *prior to any performance of any services*," and added that the agreement "does not authorize a member of the Consortium to hire co-Counsel and then later demand the County to pay for that attorney."[6] The circuit court expressed its opinion that "if [Hartman] is to change his status from pro-bono to that of paid counsel, he must have advance approval." The court continued:

> [W]hen it came to the [instant] case, the Court anticipated that he was coming in another high publicity case on a pro-bono basis . . . .
>
> Mr. Hartman testified that he didn't seek pre-approval because he didn't expect to be reimbursed. He testified that he got in as a volunteer and then the case exceeded what he expected . . . .
>
> At no time did either attorney come to the Court seeking compensation until the case was over. And, so, it was a pro-bono case for Mr. Hartman that turned out to be more work than he expected and he now seeks to be compensated by public funds.
>
> * * *
>
> The amount of compensation paid in this case was based on the understanding that, of everyone, I think, involved, that Mr. Hartman was serving on a pro-bono basis, as he has historically established in several previous cases. It is my opinion that if he is to change his status from pro-bono to that of paid counsel, he must have advance approval.

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[4] Emphasis added.

[5] Emphasis added.

[6] Emphasis added.

The circuit court's reasoning was sound. The circuit court correctly recognized that Hartman came into the case pro bono, did not seek to change that status until after trial, and was therefore not entitled to claim compensation after the fact. And while the case did develop into one that was "extraordinary in its nature, severity, complexity, or duration," under the terms of the consortium agreement only the "Consortium member . . . assigned [such] a case . . . may petition the appropriate Court for additional compensation . . . ." Therefore, *by contract*, only Atchison was entitled to petition for any such additional compensation. Although Hartman's efforts are worthy of commendation, because he was not a consortium member assigned to the case, he was not entitled to petition the court.

I further note that, arguably, any compensation to which Hartman may have been entitled was the responsibly of the consortium, not the county. Under the terms of the consortium agreement,

> In the case of non-representation of an indigent defendant by the Consortium, for any reason, the Consortium shall provide a qualified replacement attorney, approved by the appropriate Judge, as may be needed to perform the required services, and the Consortium shall be responsible for the remuneration of that attorney, without further expense to the County.

Here, Atchison was the consortium counsel assigned to represent Merriman, so admittedly this was not literally a case of "non-representation of an indigent defendant by the Consortium." However, as the record reflects, in reality, the case developed in such a way that Hartman was serving as a "qualified *replacement* attorney" due to his taking over as lead counsel on the case. And even though the circuit court was aware of and consented to this development, the replacement was done at the behest of the consortium and the county was contractually relieved of any compensatory responsibly for that change. Accordingly, I would conclude that the circuit court did not abuse its discretion by declining to award any additional amount to Hartman.

Additionally, I note that in addition to the terms of the consortium agreement, MCL 775.16 states, in pertinent part, "The attorney appointed by the court shall be entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rendered, the amount which the chief judge considers to be reasonable compensation for the services performed." I find Hartman's reliance on this provision misplaced for several reasons. I believe that any reasonable compensation contemplated by this provision was covered by the terms of the consortium agreement. And further, even assuming that this provision operated independently of the agreement, only the "*attorney appointed by the court*"—here, Atchison—was entitled to such reasonable compensation. Moreover, that Atchison—the approved consortium attorney—was the "1 attorney" who would have been entitled to compensation is further supported by MCL 775.18, which states,

> Only 1 attorney in any 1 case shall receive the compensation above contemplated, nor shall he be entitled to this compensation until he files his affidavit in the office of the county clerk, in which such trial or proceedings may be had, that he has not, directly or indirectly, received any compensation for such services from any other source.

In sum, I would conclude that the circuit court was correct in finding that Hartman was not entitled to compensation for his services.

C. APPELLANT ATCHISON

Atchison claimed 193 hours beyond his ordinary consortium workload, and the circuit court granted him $5,000 for that overage. By my calculation, that rate of compensation comes to slightly better than $25 an hour. Given that this compensation was supplemental in the context of a consortium case, I would conclude that the circuit court did not abuse its discretion by declining to award additional fees to cover Atchison's overage.

I would affirm.

/s/ William C. Whitbeck