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COVER: Deer Creek Reservoir in December by Mark Dalton Dunn.

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# The Recovery of Attorney Fees in Utah: A Procedural Primer for Practitioners – Part II

By James E. Magleby

*Editor's note: Part I was published in the December 1996 issue of the Bar Journal.*

## d. Reasonableness of Fees

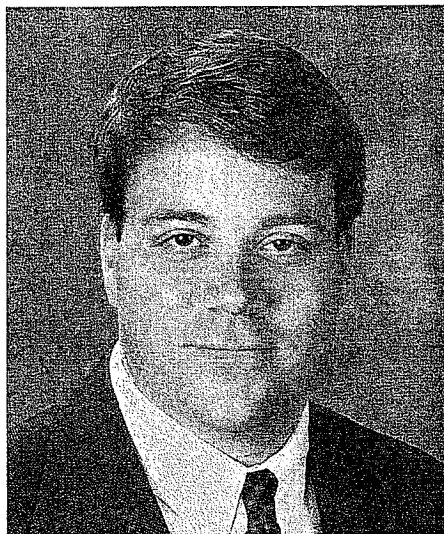
Once the initial evidentiary burdens are met,<sup>57</sup> the trial court must determine what constitutes a "reasonable" attorney fee, the issue upon which practitioners will probably find the majority of their energy focused once an award of fees is made.<sup>58</sup>

In determining a reasonable attorney fee, Utah trial courts have considered a number of factors, although it is important to note that "[t]he question of what is a reasonable attorney[] fee in a contested matter is not necessarily controlled by any set formula."<sup>59</sup> Among others,<sup>60</sup> Utah courts have considered the following factors:<sup>61</sup>

1. The difficulty of the litigation.
2. The efficiency of the attorneys in presenting the case.
3. The fee customarily charged in the locality for similar services.
4. The amount involved in the case.
5. The result attained.
6. The expertise and experience of the attorneys involved.<sup>62</sup>
7. The amount in controversy.
8. The extent of services rendered.
9. "[O]ther factors which the trial court is in an advantaged position to judge."<sup>63</sup>
10. The relationship of the fee to the amount recovered.
11. The novelty and difficulty of the issues involved.
12. The overall result achieved.
13. The necessity of initiating the lawsuit.<sup>64</sup>

In addition, although never explicitly listed as a factor, the courts have considered whether the opposing party pursued an "inconsistent and unmeritorious" litigation strategy,<sup>65</sup> or acted to "complicate[] and make more difficult" the discovery process.<sup>66</sup>

However, in *Dixie State Bank v.*



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*Bracken*,<sup>67</sup> the Utah Supreme Court recognized the confusion created by Utah case

law,<sup>68</sup> and "in order to foster consistent and equitable fee awards . . . constructed 'practical guidelines' for analyzing the reasonableness of attorney fees, by consolidating the approaches advocated in then-existing case law into a simple four-step procedure."<sup>69</sup> The court announced the general rule that although many "factors may be explicitly considered in determining a reasonable fee, as a practical matter the trial court should find answers to four questions:"<sup>70</sup>

1. What legal work was actually performed?
2. How much of the work performed was reasonably necessary to adequately prosecute the matter?
3. Is the attorney's billing rate consistent with the rates customarily charged in the locality for similar services?
4. Are there circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility?<sup>71</sup>

Accordingly, at the minimum, practitioners who seek an award of attorney fees should argue these four factors before the trial court to withstand appeal. If additional factors are to be argued, practitioners should alert the court that they are properly considered under the fourth step of *Dixie*.<sup>72</sup>

The *Dixie* court's attempt to clarify the appropriate procedure for determining reasonable attorney fees has not, however, eliminated the confusion over the issue. Despite the *Dixie* court's attempt to create a uniform format for considering the reasonableness of an award of attorney fees, Utah courts have not demanded rigorous adherence to the four factors,<sup>73</sup> even as recently as 1996.<sup>74</sup> At first glance, this may suggest that so long as the trial court's award is based upon consideration of some mix of factors, and is supported by the evidence, it will withstand review. This is not, however, always the case.<sup>75</sup>

The Utah Court of Appeals has addressed this apparent deviation, noting that *Cabrera* "is often cited for the same principles as *Dixie*."<sup>76</sup> Although it is not immediately obvious from a comparison of the cases,<sup>77</sup> the *Quinn* court concluded that both *Cabrera* and *Dixie* "ultimately recommend consideration of the same factors."<sup>78</sup> However, the *Quinn* court went on to apply *Dixie*, "both because it was decided after *Cabrera*, and because we believe its four step approach is simpler to apply, and will therefore lead to more consistently correct results."<sup>79</sup>

The confusion is enhanced by occasional reliance by Utah courts upon Rule 4-505 of the Utah Code of Judicial Administration to affirm the reasonableness of attorney fees. Although Rule 4-505 appears designed to facilitate the submission of evidence regarding attorney fees, and does not specifically<sup>80</sup> call for practitioners to submit evidence on all four factors enunciated in *Dixie*,<sup>81</sup> practitioners who comply with the rule can argue that under Utah law, they have offered sufficient evidence of reasonableness to withstand appeal.<sup>82</sup>

In addition, practitioners should take care that the trial court does not improperly

modify a request for attorney fees based upon considerations disfavored by Utah appellate courts. First, it should be noted that attorney fees in excess of a damages award are not *per se* unreasonable.<sup>83</sup> Furthermore, "what an attorney bills or the number of hours spent on a case is not determinative."<sup>84</sup> Finally, "although the amount in controversy can be a factor in determining a reasonable fee, care should be used in putting much reliance on this factor."<sup>85</sup> Accordingly, if the trial court appears inclined to base an award of attorney fees on one or more of these factors, a practitioner should encourage the trial court to do so as part of its consideration of the four factors enumerated in *Dixie*.

Because of the inconsistent manner in which the reasonableness analysis is conducted in Utah case law, practitioners face the dilemma of how to proceed in presenting reasonableness arguments. The best possible approach appears to be that taken in *Quinn*, which suggests that practitioners should urge trial courts to explicitly consider, at the minimum, the first three factors enunciated in *Dixie*. The trial court should then undertake evaluate the fourth *Dixie* factor, and

determine if other evidence would be helpful. If the answer is affirmative, then any of the additional factors may be considered.<sup>86</sup>

#### e. Findings

Once an award of attorney fees has been made, the trial court must make written findings of fact explaining the grounds for the award, and why the amount awarded constitutes a reasonable fee. The only established exception<sup>87</sup> to this rule under Utah law is where all the relevant facts are undisputed, as in a summary judgment motion.<sup>88</sup> However, even in this context, practitioners should be wary, as it takes little to create a disputed issue of fact.<sup>89</sup> However, trial courts often fail to make findings in support of an award of attorney fees,<sup>90</sup> or make findings which fails to consider the appropriate factors,<sup>91</sup> requiring the case to be remanded after appeal. Practitioners who prevail at trial should therefore take care that the trial court makes findings articulating the grounds for an award of attorney fees in a manner which will withstand appellate review.

Findings are required in almost every situation where attorney fees have been contested. Utah appellate courts "have con-

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sistently encouraged trial courts to make findings to explain the factors which they considered relevant in arriving at an attorney fee award. Findings are particularly important when the evidence on attorney fees is in dispute . . . .<sup>92</sup> Detailed findings are also particularly important in complex cases.<sup>93</sup> Trial courts have also shown a tendency to reduce attorney fee awards sua sponte, or in the face of uncontested evidentiary submissions.<sup>94</sup> In this event, the necessity of detailed findings is even more imperative.

Where the evidence supporting the reasonableness of requested attorney fees is both adequate and entirely undisputed, as it was here, the court abuses its discretion in awarding less than the amount requested unless the reduction is warranted by one or more of the factors described in *[Dixie State Bank]*. . . . To permit meaningful review on appeal, it is necessary that the trial court, on the record, identify such factors and otherwise explain the basis for its sua sponte reduction.<sup>95</sup>

Accordingly, in order for almost any award of attorney fees to survive appeal, the trial court must enter findings in support of the award. Practitioners, therefore, should encourage the trial court to make findings regarding the award. Although it may be counter-intuitive, this is particularly true in cases where a party does not oppose a fee request, but has the fee reduced by the trial court in their favor. Utah appellate courts are especially demanding about findings in this situation.

#### f. Sufficient Findings

Although it is clear that trial courts must make findings in support of a fee award, the amount of detail required is not as obvious. The exact amount of detail required to survive appellate review is difficult to determine from a review of Utah case law, as each decision seems to involve different reasoning, and some have reached conflicting results. For example, one Utah Supreme Court Justice has upheld a reduction in attorney fees based only upon an oral ruling from the bench that the fees were "excessive."<sup>96</sup> However, the remainder of the court was not in agreement,<sup>97</sup> and this position was inconsistent with that taken by the Court of Appeals two years earlier.<sup>98</sup>

Despite the confusion created by such comparisons, the courts have offered some general guidance. It appears, at least in the

context of a sua sponte reduction of fees, that merely listing some of the factors involved in the determination of "reasonableness," without more, is not adequate. For example, in *Selvae v. J.J. Johnson & Assocs.*,<sup>99</sup> the trial court's entire findings merely stated that the fee award was based upon:

"the amount in dispute, the complexity of the issues presented, the hourly rates charged by the plaintiffs' attorneys and the total evidence presented at trial."<sup>100</sup>

Although the trial court evaluated some of the factors which could be considered under the fourth *Dixie* factor,<sup>101</sup> and made written findings of fact, the Utah Court of Appeals remanded the case to the trial court to enter more detailed findings, noting that "[s]uch conclusory statements do not satisfy the requirement that awards of attorney fees must be supported by adequate findings of fact."<sup>102</sup> The court also noted that "[v]ague statements which require speculation as to the actual reasons behind the ruling are not enough to meet this burden."<sup>103</sup> To withstand review, findings should be as detailed as findings supporting a damages award.<sup>104</sup> Furthermore, "[t]hese findings must be sufficiently detailed, and include enough subsidiary facts, to disclose the steps by which the trial court's decision was reached."<sup>105</sup>

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*"Practitioners should urge the trial court to make as detailed findings as possible."*

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Although Utah case law does little to clarify the exact amount of detail necessary to sustain an award of attorney fees on appeal, it does indicate that practitioners should urge the trial court to make as detailed findings as possible.<sup>106</sup> In order to create as thorough a record as possible, practitioners should urge the trial court to make written findings which track the steps in the decision to award attorney fees. The trial court should therefore make a written record<sup>107</sup> which does the following: (1) identify the legal basis for the decision to award attorney fees, whether it be by statute, contract, or equity; (2) identify or acknowledge the evidence submitted by the party or parties requesting fees; (3) identify any

evidence offered in opposition to the fee request; (4) identify any allocation issues, and the role they played in the fee award; (5) identify the factors it considered in determining what constitutes a "reasonable" attorney fee;<sup>108</sup> and (6) explain how the factors affected the calculation of the amount of the award.

#### g. Scope of Attorney Fees Request

Utah case law has also partially defined what may be included in an award of attorney fees. The Utah Supreme Court has allowed recovery of fees incurred by paralegals in preparing the case.<sup>109</sup> It has similarly upheld a trial court's inclusion of paralegal fees in an award of attorney fees.<sup>110</sup>

Practitioners should also investigate whether they are entitled to prejudgment interest on attorney fees.<sup>111</sup>

Finally, for those practitioners who are representing themselves, it should be noted that Utah follows "the general rule that pro se litigants should not recover attorney fees for successful litigation."<sup>112</sup> This rule applies even if the pro se litigant is a licensed attorney,<sup>113</sup> although one member of the Utah Supreme Court argued in favor of "the position . . . that non-attorney pro se litigants may be entitled to an award of attorney fees in appropriate circumstances."<sup>114</sup>

### III. CONCLUSION

The ability to sustain a recovery of attorney fees is made difficult by the confusing nature of Utah case law on the subject. Because the confusion is shared by trial courts and practitioners, a practitioner who wishes to sustain an award of attorney fees on appeal must first meet the initial burdens of pleading and evidentiary production. Next, the practitioner should encourage the trial court to follow the procedural steps outlined by Utah appellate courts, in particular the consideration of the appropriate factors in making the fee award. Finally, practitioners should urge trial courts to place their reasoning on the record, so that the award will withstand appellate review.

<sup>57</sup>It should be reiterated that if the evidence in support of an award of attorney fees is insufficient, the trial court's finding that an attorney fee award was "reasonable" will not withstand appeal. "When the evidence presented is insufficient, the court's evaluation of [the reasonableness of] those fees will also be insufficient." *Cottonwood Mall*, *supra* note 34 at 269.

<sup>58</sup>"Perhaps the most frequently litigated issue involving attorney[] fees in Utah is that of determining what constitutes a 'reasonable fee.'" *Sager*, *supra* note 3 at 563.

<sup>59</sup>*Wallace v. Build, Inc.*, 402 P.2d 699, 701 (Utah 1965); see also *Dixie*, *supra* note 6 at 989 ("[W]hat constitutes a reasonable fee is not necessarily controlled by any set formula") (cit-

ing Wallace).

<sup>60</sup>The factors considered by trial courts have varied over time. For example, trial courts once considered "whether the acceptance of employment . . . will preclude the lawyer's appearing for others in cases likely to arise out of the transactions," "will involve the loss of other employment," "the contingency or the certainty of the compensation," and "the character of the employment, whether casual or for an established and constant client." *Thatcher v. Industrial Comm'n.*, 115 Utah 568, 207 P.2d 178, 183-84 (1949); see also *FMA Fin. Corp. v. Build, Inc.*, 404 P.2d 670, 673 (Utah 1965) (noting, with regard to the value of legal services, "that the judge may fix it on the basis of his own knowledge and experience; and/or in connection with reference to a Bar approved schedule"). These factors have not been considered in recent decisions, and so are omitted from the list.

<sup>61</sup>The reader's conclusion that the list may repeat itself is correct. The listed factors are taken from cases cited in the *Dixie* decision, and are listed as they appear in the cases cited, with care taken to maintain nearly identical language with that in the decisions. The result gives a glimpse of the similarity of the factors considered by the courts, but also reveals the haphazard and sometimes confusing manner in which evaluation of the reasonableness of attorney fees has been conducted.

<sup>62</sup>Factors 1 through 6 were discussed in *Dixie*, *supra* note 6 at 989 (citing *Cabrera*, *supra* note 12 at 625). These factors were derived from the Code of Professional Responsibility. *Cabrera* at 624. However, consideration of these factors is not mandatory, as the court noted only that "the trial court may take into account the provisions" of the Code of Professional Responsibility in setting reasonable attorney fees. *Id.*

<sup>63</sup>Factors 7 through 9 were discussed in *Dixie*, *supra* note 6 at 989 (citing *Wallace v. Build, Inc.*, 16 Utah 2d 410, 402 P.2d 699, 701 (1965)).

<sup>64</sup>Factors 10 through 13 were discussed in *Dixie*, *supra* note 6 at 989 (citing *Trayner v. Cushing*, 688 P.2d 856, 858 (Utah 1984)).

<sup>65</sup>*Dixie*, *supra* note 6 at 991. In this regard, the court noted that the losing party's litigation strategy "converted the action from a routine collection action . . . into a brouhaha of much larger proportions" which "increased [the attorney fees] severalfold over what they should have been . . ." *Id.*

<sup>66</sup>*Morgan v. Morgan*, 854 P.2d 559, 570 (Utah App. 1993); see also *Finlayson v. Finlayson*, 874 P.2d 843, (Utah App. 1994) (noting that trial "court correctly based its award of attorney

fees on Husband's noncompliance with its interim orders").

<sup>67</sup>*Supra* note 6.

<sup>68</sup>The Utah Supreme Court felt that *Dixie*, "which involves only the issue of attorney fees, provides us with a unique opportunity to clarify our standards for evaluating attorney fees awards against an abuse-of-discretion standard.

<sup>69</sup>*In re Quinn*, 830 P.2d 282, 285 (Utah App. 1992).

<sup>70</sup>*Dixie State Bank*, *supra* note 6 at 992.

<sup>71</sup>*Dixie State Bank*, *supra* note 6 at 992. This last consideration is a catch-all which may include some, or all, of the other factors considered in awarding attorney fees. Although appropriate because of the many possible issues which may arise in evaluating the reasonableness of an award of attorney fees, because of the broad nature of the fourth step, the Utah Supreme Court's attempt to "clarify" the "standards for evaluating attorney fee awards" may be less effective than hoped.

<sup>72</sup>The Utah Court of Appeals describes the process as follows: "After consideration of the first three criteria, a trial court can establish a preliminary fee by multiplying the number of necessary hours of legal work performed by the appropriate hourly rate." *Quinn*, *supra* note 69 at 285. The court then noted that "after the preliminary fee is established, *Dixie's* fourth step asks that courts adjust the amount of that fee, when necessary, to reflect the court's consideration of various criteria set forth in Utah Code of Professional Responsibility DR 2-106." *Id.* The author believes this procedure is incorrect. First, multiplying the necessary hours by the hourly rate completely ignores the first factor, consideration of the legal work actually performed. Second, the author does not read *Dixie* to require consideration of only the criteria set forth in the Code of Professional Responsibility. See *Dixie*, *supra* note 6 at 990 (noting that court should consider whether there are "circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility") (emphasis added).

<sup>73</sup>See, e.g. *Baldwin v. Burton*, 850 P.2d 1188, 1200 (Utah 1993) (upholding trial court's award of attorney fees based upon mix of factors); *Equitable Life & Cas. Ins. Co. v. Ross*, 849 P.2d 1187, 1194 (Utah App. 1993) (same); *Cottonwood Mall*, *supra* note 34 at 269 (considering only the factors enumerated in *Cabrera*, *supra* note 12 at 625); see also *infra* note 72 (discussing failure of Utah Court of Appeals to consider fact that trial court did not consider any of the first three factors enunciated in *Dixie*).

<sup>74</sup>See *Salmon*, *supra* note 4 at 893 (considering only the factors

enumerated in *Cabrera*, *supra* note 12 at 625).

<sup>75</sup>See *Brown v. Richards*, 840 P.2d 143, 155 (Utah App. 1992) (trial court abused its discretion where "none [of the factors considered] answer[ed] the basic questions posed in *Dixie State Bank*"); *Govert Copier Printing v. Van Leeuwen*, 801 P.2d 163, 174 (Utah App. 1990) (remanding case where, although trial court "explained its reason for reducing the attorney fee award, [it] did not utilize the factors established by appellate courts as relevant to a reduction of fees"); *American Vending Services, Inc. v. Morse*, 881 P.2d 917, 926 (Utah App. 1994) ("[T]he trial court's cursory statement that the requested attorney fees were 'excessive,' failed to show that it had undergone an analysis similar to that contemplated in *Dixie State Bank*"); *Hoth* at 220; *Rappleve v. Rappleve*, 855 P.2d 260, (Utah App. 1993) (remanding case where findings, "failed to demonstrate that the . . . award was arrived at after proper consideration of the relevant factors for determining the reasonableness of attorney fee awards"); *Mountain States Broadcasting*, *supra* note 50 at 649 n. 10 (remanding case for determination of "reasonableness" under *Dixie State Bank* factors where trial court had "simply awarded each [party] the total amount of its accumulated billing statements."); *Sorensen v. Sorensen*, 769 P.2d 820, 832 (Utah App. 1989) (reversing award of attorney fees where evidence offered "reflect[ed] only the time spent and the rates charged").

<sup>76</sup>*Quinn*, *supra* note 69 at 285 n.3.

<sup>77</sup>*Cabrera* appears to involve the consideration of factors not contained in *Dixie*. Specifically, *Cabrera* calls for evaluation of "the difficulty of the litigation," "the amount involved in the case and the result attained," and "the expertise and experience of the attorneys involved." *Cabrera*, *supra* note 12 at 625. A review of the first three factors in *Dixie* does not yield the obvious conclusion that these factors should be considered.

<sup>78</sup>*Id.*

<sup>79</sup>*Id.*

<sup>80</sup>The rule makes the general statement that the affidavit submitted in support of a request for attorney fees should "affirm the reasonableness of the fees for comparable legal services." See *supra* note 40. While the use of the term "reasonable" could be read to call for consideration of all four *Dixie* factors, the plain meaning of the phrase more likely coincides with only the third factor, the rates customarily charged in the locality for similar services. See *infra* note 81.

<sup>81</sup>Rule 4-505 calls for a description of "the nature of the work

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performed by the attorney," probably equivalent to the first *Dixie* factor, the legal work actually performed. The rule also mandates that the affidavit "affirm the reasonableness of the fees for comparable legal services," probably equivalent to the third *Dixie* factor, the rates customarily charged in the locality for similar services. The rule does not, however, call for consideration of the amount of work reasonably necessary to adequately prosecute the matter, or circumstances which may require consideration of additional factors, the second and fourth factors considered in *Dixie*.

<sup>82</sup>See *Estate of Covington v. Josephson*, 888 P.2d 675, 679 (Utah App. 1994) (upholding award of attorney fees where un rebutted affidavit "comple[d] with the requirements of Rule 4-505," noting that "the trial court was not required to take further evidence regarding attorney fees."); *Equitable Life & Cas. Ins. Co. v. Ross*, 849 P.2d 1187, 1194-95 (Utah App. 1993) (finding that trial court's award of attorney fees "is amply supported by the evidence and appears to be reasonable, especially in light of the fact that . . . affidavit with detailed billing statements attached . . . strictly complied with Rule 4-505 of the Utah Code of Judicial Administration."); *LMV Leasing, supra*, note 41 at 198-99 (upholding reasonableness of attorney fees where affidavit complied with Rule 4-505).

<sup>83</sup>"The total amount of the attorney fees awarded in this case cannot be said to be unreasonable just because it is greater than the amount recovered on the contract. The amount of the damages awarded in a case does not place a necessary limit on the amount of attorney[] fees that can be awarded." *Cabrera, supra* note 12 at 625.

<sup>84</sup>*Dixie State Bank, supra* note 6 at 990; see also *Mountain States Broadcasting, supra* note 50 at 649 n.10 (remanding case for determination of "reasonableness" under *Dixie State Bank* factors where trial court had "simply awarded each [party] the total amount of its accumulated billing statements."); *Sorensen v. Sorensen*, 769 P.2d 820, 832 (Utah App. 1989) (reversing award of attorney fees where evidence offered "reflect[ed] only the time spent and the rates charged").

<sup>85</sup>*Dixie State Bank, supra* note 6 at 990. In this regard, the court made the salient point that "[i]t is a simple fact in a lawyer's life that it takes about the same amount of time to collect a note in the amount of \$1,000 as it takes to collect a note for \$100,000." *Id.*

<sup>86</sup>Although it should be noted that some factors have apparently fallen into disfavor. See *supra* note 60.

<sup>87</sup>One potential way to survive appeal is to argue in favor of implied findings. See, e.g., *Hall v. Hall*, 858 P.2d 1018, 1025 (Utah App. 1993) (findings "can be implied if it is reasonable to assume that the trial court actually considered the controverted evidence and necessarily made a finding"). However, this tactic has not met with favorable results. In *Selvage*, for example, the Utah Court of Appeals rejected the argument that a "fair reading" of the record supported the trial court's award, applying a strict interpretation of the *Hall* test. *Taylor, supra* note 55 at 1265.

<sup>88</sup>In *Taylor, supra* note 88 at 168, the Utah Court of Appeals examined whether the rule "that findings of fact are unnecessary in connection with summary judgment decisions," *Id.* at 168, applied to summary judgment regarding an award of attorney fees. The court found that "[a]lthough it may be unusual for the facts concerning attorney fees to be undisput-

ed, the rule is no different where the subject of the summary judgment is a claim for attorney fees." *Id.* (footnote omitted). In support, the Utah Court of Appeals noted "[o]ther cases recognize that finding are unnecessary to support an award of fees where the relevant facts are undisputed." *Taylor*, at 169 n.6 (citing *Freed Fin. Co. v. Stoker Motor Co.*, 537 P.2d 1039, 1040 (Utah 1975) (attorney fees may be awarded on summary judgment if the record contains a stipulation, an un rebutted affidavit, or evidence supporting the reasonableness of the award); *South Sanpitch Co. v. Pack*, 765 P.2d 1279, 1283 (Utah App. 1988) (uncontroverted testimony concerning amount of reasonable fee provides adequate basis for fee award)). It is also possible that findings in support of an award of attorney fees could be implied, although no Utah court has yet to do so. See *supra* note 87 and accompanying text.

<sup>89</sup>In this regard, a request for attorney fees by summary judgment is no different from any other summary judgment motion. "It takes only one competent sworn statement to dispute the averments on the other side of the controversy and create an issue of fact." *Redevelopment Agency v. Daskalas, supra* note 19 at 1126 (reversing trial court's award of attorney fees where opposing party filed affidavit controverting reasonableness of fee); see also *Provo City Corporation v. Cropper*, 497 P.2d 629, 630 (Utah 1972) ("[U]nless the parties agree otherwise, the court is obliged to take evidence on the issue of reasonableness of attorney[] fees and to make findings thereon") (emphasis added); *F.M.A. Financial, supra* (reversing award of attorney fees where no evidence was presented and no findings made because the award "was an issue of fact which was denied").

<sup>90</sup>See, e.g., *Rappleye v. Rappleye*, 855 P.2d 260, 266 (Utah App. 1993) (remanding case to trial court where "trial court articulated no reasonable basis for its ultimate award"); *Saunders v. Sharp*, 818 P.2d 574, 580 (Utah App. 1991) (remanding case to trial court "for an adequate explanation of the amount of fees awarded" where trial court "gave no explanation to support" award); *In re Estate of Quinn*, 784 P.2d 1238, 1249 (Utah App. 1989) ("The absence in the record before us of findings and conclusions on the issue of attorney fees compels remand to the trial court to correct that deficiency in the record, *cert denied*, 795 P.2d 1138 (Utah 1990).

<sup>91</sup>See *supra* note 84 and cases therein discussing failure of trial courts to properly consider the *Dixie* factors.

<sup>92</sup>*Regional, supra* note 32 at 1215.

<sup>93</sup>See *Brown, supra* note 75 at 156 (finding that trial court's findings where "simply too sparse" where "award of attorney fees is a complex matter due to the adjudication of multiple claims arising under several contracts with each party winning some and losing some").

<sup>94</sup>See, e.g., *Selvage, supra* note 55 at 1265 (trial court reduced fees where "the reasonableness of the fee and the supporting affidavit where uncontroverted by the opposing party."); *Regional, supra* note 32 at 1215.

<sup>95</sup>*Martindale v. Adams*, 777 P.2d 514, 517-18 (Utah App. 1989) (emphasis added; see also *Selvage, supra* note 55 at 1265 (noting that "[t]he need for sufficiently detailed findings is especially great where, as here, the reasonableness of the fee and the supporting affidavit where uncontroverted by the opposing party") (quoting *Martindale*); *Regional Sales Agency, Inc., supra* note 32, 1215 ("Findings are particularly important when . . . the trial court has reduced the attorney fees from those requested and

supported by undisputed evidence.")). In fact, it may be a trial court's duty to reduce an uncontroverted request for attorney fees. See *Hoth v. White*, 799 P.2d 213, 220 (Utah App. 1990) ("A court need not award the entire amount requested, but [it] must evaluate the requested fees to determine if a lesser amount is reasonable under the circumstances") (emphasis added). However, although the *Hoth* court cited *Regional, supra* note 32 at 1215, in support of this proposition, it is not clear that *Regional* stands for a mandatory evaluation of the fees. *Regional* at 1215 ("[E]ven if there is no opposing testimony . . . [a] trial court can evaluate the fees requested and determine a lesser amount is reasonable under the circumstances") (emphasis added). It is also unclear if a court must engage in such considerations if there is no dispute regarding the reasonableness of the requested fees. See *infra* note 88, discussing whether a trial court must make findings in context of summary judgment motion.

<sup>96</sup>*Salmon, supra* note 4 at 901 ("trial court's oral ruling from the bench that [the] bills were 'excessive' is minimally sufficient to support the reduction here.") (Zimmerman, C.J., concurring) (emphasis added); *id.* at 899 (upholding award of attorney fees, noting the trial court "need only make findings sufficient to support the ultimate award.") (Russon, J., dissenting).

<sup>97</sup>*Id.* at 894 (declining to award attorney fees where evidence was insufficient and "trial court made no findings to support its reduction, except for the 'finding' that most cases have a cap.") (Durham, J., lead opinion).

<sup>98</sup>*American Vending Services, Inc. v. Morse*, 881 P.2d 917, 926 (Utah App. 1994) ("[T]he trial court's cursory statement that the requested attorney fees were 'excessive,' failed to show that it had undergone an analysis similar to that contemplated in *Dixie State Bank*").

<sup>99</sup>*Supra* note 55 at 1252.

<sup>100</sup>*Id.* at 1265 (quoting trial court's findings of fact).

<sup>101</sup>Interestingly, none of the first three factors in *Dixie* were discussed. *Id.* The Utah Court of Appeals did not comment on the propriety of the trial court's approach, presumably because the findings were so inadequate as to allow proper review. *Id.*

<sup>102</sup>*Id.*

<sup>103</sup>*Id.* at n. 12. As an example, the *Selvage* court referred to *Wiley v. Wiley*, 866 P.2d 547 (Utah App. 1993). In *Wiley*, the trial court reduced Mrs. Wiley's attorney fees, noting only that the amount of fees was a "very unfortunate use of funds." *Id.* at 556. The court noted that "[w]hile this statement may indicate the trial court believed both parties' fees were unreasonable, it does not constitute a finding addressing the reasonableness of Mrs. Wiley's attorney fees. . . ." *Id.*

<sup>104</sup>*Brown, supra* note 75 at 156 ("When a party is contractually entitled to attorney fees, the trial court's findings regarding those fees should be just as complete as its findings regarding other types of contractual damages").

<sup>105</sup>*Quinn, supra* note 69 at 286.

<sup>106</sup>Even if a practitioner does not contest the evidentiary submissions of the party requesting attorney fees, encouraging the trial court to make findings may be worthwhile in the event the trial court reduces fees sua sponte. Without such findings, a sua sponte reduction in fees is certain grounds for an appeal, which will involve additional resources and will almost certainly give an opposing party opportunity to revisit the issue with the trial court, perhaps obtaining a more favorable result.

<sup>107</sup>Although the courts have not required strict adherence to a specific format for findings in support of an award of attorney fees, "[a]s a matter of form, it would [be] preferable for the trial court to have entered separate findings of fact and conclusions of law in addition to the order and judgment for attorney[] fees." *Cabrera, supra* note 12 at 625.

<sup>108</sup>As noted, *supra* notes 67 through 72 and accompanying text, at minimum this should include some discussion of each of the four factors identified in *Dixie*. If additional factors are considered, the trial court should also be encouraged to make findings explaining why the additional considerations are relevant.

<sup>109</sup>*Baldwin v. Burton*, 850 P.2d 1188 (Utah 1993).

<sup>110</sup>*Id.* at 1200.

<sup>111</sup>*James Constructors v. Salt Lake City Corp.*, 888 P.2d 665, 671-72 (Utah App. 1994).

<sup>112</sup>*Smith v. Batchelor*, 832 P.2d 467, 473 (Utah 1992).

<sup>113</sup>*Id.* at 474.

<sup>114</sup>*Id.* (Stewart, J., dissenting).

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