

STATE OF INDIANA
IN THE COUNTY OF ST. JOSEPH

TAMARA KAY,

Plaintiff

vs.

THE IRISH ROVER, INC.,

Defendant.

IN THE ST JOSEPH SUPERIOR COURT 4

CIVIL DIVISION

CAUSE NO.71D04-2305-CT-000264

FILED

May 15, 2026

ST. JOSEPH CIRCUIT & SUPERIOR COURT
CP

ORDER AWARDING ATTORNEY FEES

1. A virtual hearing was held on this matter on February 26, 2026. The remaining issue in this litigation was the Courts determination of the appropriate amount of attorney fees that should be awarded pursuant to the Defendant's Motion for Award of Attorney Fees and Costs.
2. Counsel appeared on behalf of the parties, but the parties did not appear for the hearing. The parties, by counsel, by agreement waived an in-person hearing on the issue and neither party called any witnesses at the virtual hearing. Counsel presented oral argument before the Special Judge, relying on the pleadings and affidavits and declarations filed in this matter. No testimony was heard and no additional evidence offered.
3. The matter was thereafter taken under advisement. The Court commends counsel for their excellent briefing, presentation, and argument.
4. Having considered the pleadings and affidavits, the arguments of counsel, the record in this proceeding, the applicable case law and all other relevant matters for consideration, the Court enters its **ORDER AWARDING ATTORNEY FEES TO THE DEFENDANT, THE IRISH ROVER, INC., ORDER AWARDING ATTORNEY FEES** to the Defendant, The Irish Rover, Inc., against Tamara Kay, Plaintiff, in the amount of \$199,450.40. Such amount is to be paid within thirty days.
5. On May 22, 2023, Plaintiff, Tamara Kay, (hereinafter "Plaintiff" or "Ms. Kay") filed suit against the Defendant, The Irish Rover, Inc., (hereinafter "Defendant" or "The Irish Rover"), alleging defamation based upon two articles written and published by the Defendant.

6. The Defendant timely filed its Motion to Dismiss Under Indiana's Anti-SLAPP Law.
7. Both parties engaged in discovery, including sending and responding to interrogatories and request for production pursuant to an Order entered by Judge Cristal Brisco.
8. Thereafter the undersigned was appointed Special Judge in this matter.
9. The Defendant's counsel took depositions.
10. Plaintiff filed her Response in Opposition to Defendant's Motion to Dismiss on November 3, 2023.
11. The Defendant filed its Reply in support of the Motion to Dismiss on November 27, 2023.
12. Both parties filed designated evidence in this matter.
13. This Court held a hearing on the Motion to Dismiss on December 20, 2023.
14. On January 8, 2024, this Court issued its Findings of Fact and Conclusions of Law on the Defendant's Motion to Dismiss pursuant to Indiana's Anti-SLAPP statute.
15. This Court found that "the allegedly defamatory statements were made in furtherance of the Defendant's right to free speech, were made in connection with a public issue, were made with good faith and with a reasonable basis in law and fact."
16. This Court further found that "the allegedly defamatory statements were true, within the meaning of the law, not made with actual malice, did not contain a defamatory reference, and there were no damages that were causally linked to the Irish Rover's articles." In addition, this Court held that "Dr. Kay's defamation claim fails and the statements in the Articles were lawful."
17. This Court concluded that the Defendant was entitled to have the Plaintiff's complaint dismissed under the Indiana Anti-SLAPP law.
18. This Court also made it clear that "counsel for the Irish Rover may petition the Court for a hearing on attorneys' fees and costs."
19. The Trial Court's decision was appealed.

20. On June 24, 2025, the Indiana Court of Appeals unanimously AFFIRMED the decision of this Court in a twenty-two page For Publication Opinion.
21. Thereafter, the Defendant (Appellee in the Court of Appeals) on February 21, 2025, filed a Motion for Appellate Attorney's Fees, Expenses, and Costs.
22. After the Indiana Supreme Court denied the Plaintiff's (Appellant in the Court of Appeals) Petition to Transfer, the Defendant (Appellee) filed a Second Motion for Determination and Award of Appellate and Trial Court Attorney Fees, Expenses, and Costs, and a Motion to Grant and to Remand to the Trial Court for Determination and Award of Attorney Fees, Expenses and Costs for Work Related to Transfer Proceedings.
23. The Appellant thereafter filed a Response with the Court of Appeals and a Motion for Leave to File a Reply.
24. On August 1, 2025, the Court of Appeals DENIED the Appellant's Motion for Leave to File a Reply and GRANTED all three motions made by the Appellee (the Defendant in the trial court).
25. Thus, in addition to the determination of the award of attorney fees in the trial court pursuant to the Anti-SLAPP law, which this Court had specifically referred to in its decision dismissing Plaintiff's complaint, and to which the Defendant had not as of yet requested the hearing on attorney fees, the Court of Appeals remanded to this Court the issue of reasonable attorney fees to be awarded to Appellee, as contemplated by Appellate Rule 67.
26. Thereafter, as described above the matter was returned to the Trial Court and the hearing referenced in paragraph 1 above, took place.
27. At the hearing on Attorney Fees held on February 26, 2026, this Court considered and has thoroughly and meticulously reviewed the following Defendant's exhibits: Exhibit A – First Declaration made under oath of James Bopp, Jr. together with two attachments (relating to trial court work and trial court attorney fees) ; Exhibit B – Affidavit of Charles P. Rice (Plaintiff's Exhibit); Exhibit C – Second Declaration made under oath of James Bopp, Jr., together with two attachments (relating to appellate work and appellate attorney fees); Exhibit D – Declaration made under oath of James Bopp, Jr., together with two attachments; and Exhibit E – Declaration under Oath of James Bopp, Jr. with one attachment.
28. As stated previously this matter was vigorously and aggressively prosecuted and vigorously and aggressively defended.

29. The Defendant had the potential to be ordered to compensate the Plaintiff for a substantial monetary award, including the potential for attorney fees.
30. The Affidavit of Mr. Rice made it clear to the Court that Mr. Rice was imminently aware of the going hourly rate for civil litigators in St. Joseph County. His two-page affidavit was correct, as far as this Court is concerned in listing the hourly rates of the Defendant's legal team, led by Mr. Bopp, Jr. at \$630.00 per hour, with 51 years of experience, including the other four attorneys who were other members of the Defendant's legal team, with the least experienced attorney, Mr. Earls, with five years' experience and an hourly rate of \$155.00.
31. Mr. Rice's affidavit, paragraph 6 stated that he had reviewed the Slip Opinion in this case dated January 8, 2024, as well as selected filings submitted by Defendant's counsel in the case.
32. Mr. Rice states in paragraph 7 of his Affidavit that "based on my experience, review of the filings in this case and my understanding of the background and experiences of Defendant's counsel who billed time in this matter, it is my opinion that the hourly rates requested are comparable to the range of hourly rates of attorneys of similar experience, skill, and expertise for comparable work in Indiana courts and St. Joseph County in particular".
33. The Plaintiff did not seek to have Mr. Rice testify at the attorney fees hearing.
34. The Court finds this Affidavit persuasive, helpful, and informative.
35. The Court also reviewed the Plaintiff's Designation of Evidence in Response to the Defendants Motion for Attorney Fees, costs, and expenses. Specifically, it meticulously and thoroughly reviewed Plaintiff's Exhibit 1, Affidavit of J. Thomas Vetne; Exhibit 2, Declaration of Kimberly Jeselskis with over 359 pages of Attachments (1-9).
36. Mr. Vetne's Affidavit submitted in support of the Plaintiff's position is 147 pages long, but only the first ten pages are his affidavit, the balance of the 138 pages is the case he cites from the Federal Court, *Ermold v. Davis*, from the Eastern District of Kentucky.
37. His resume is impressive and his reputation is outstanding. He states "Based upon my review of these materials, it is my professional opinion that charging a client \$244, 538.30 to obtain a dismissal in routine, two-party defamation claim, and then defend that dismissal on appeal is patently unreasonable. And because lawyers cannot charge clients an unreasonable fee, lawyers cannot collect an unreasonable fee from others who are potentially on the hook for them," citing *Wernle, Ristine & Ayers v. Yund*, (Ind. 2003).

38. He noted that the billing records he reviewed reflected 476 hours through dismissal and another one hundred hours for the fee petition and appeal, and he stated such hours were “far more than a case of this scope reasonably required”.
39. He noted that the fees charged by the Defendants legal team, exceeded local norms and that Mr. Bopp billed substantial time “reviewing” his associate’s work. He opined that the level of oversight was inconsistent for the level of experience they had and the hourly rate they charged.
40. As stated, Mr. Vetne cited the Ermold v. Davis case by comparison commencing on page 7 of his Affidavit. The case is helpful but not controlling, reinforcing the discretion that Courts have, on a case-by-case basis to determine what reasonable attorney fees are, based upon what is being sought and applying the applicable legal precedent, factors and tests to determine reasonableness of the attorney fee award.
41. He further opined, on page 8, of his Affidavit, that that he believes that “a total award in the range of \$50,000.00 to \$70,000.00 would fairly compensate competent counsel for the work required to obtain a dismissal and defend that dismissal on appeal. The current request exceeds that range by a wide and unjustifiable margin.”
42. Unfortunately, there is very little rationale or discussion about how he arrived at that calculation other than his reference earlier that Mr. Bopp “over- reviewed” his associates time and as lead counsel and that Mr. Bopp and his team spent too many hours on the case. That may be a legitimate difference of opinion, but reasonable minds may differ on what is reasonable.
43. It is therefore difficult to track or find a reference to exactly what entry or entries or what work was too much or what review was too much or unreasonable or what made it unreasonable.
44. The trial court could have benefited from his testimony and his elaboration on his analysis, such as explaining how he got from the Defendant’s request for attorney fees to his range of \$50,000.00 to \$70,000.00 dollars, other than his professional opinion.
45. This is a difference of \$200,000 plus or minus without much to go on other than his 10 page Affidavit which, while helpful, doesn’t give the trial court judge a sufficient basis to accept his range, or where to go to verify his calculations of how he got to his opinion of what is reasonable. Again, testimony of this witness and cross examination of the witness at a hearing would have been helpful to the trial court. But that did not happen and was not requested by Plaintiff.

46. It was the parties' counsel that requested that the hearing be by virtual by zoom and they consented to the zoom hearing. It was the trial court's thought that one or more party would want an in-person evidentiary hearing and that is what was originally set.
47. Even at the zoom hearing, the Court inquired as to whether anyone would be called as a witness to testify and both counsel said no testimony would be taken and they would stand on the affidavits and declarations submitted and the oral arguments at the hearing.
48. Counsel for the Plaintiff's Declaration (Exhibit 2 to the Plaintiffs Designation) raises two interesting points. One, it seems to challenge the fact that the Defendant's legal team may have been representing the Defendant pro bono, according to an interview she cited with one of the Defense counsel. The inference, if not the argument was that this fact, if true, would and should affect the Court's ruling and impact on what the reasonable fees would be.
49. No statute or case law was provided to the Court and the trial court knows of no rule or no law that prevents an attorney or a law firm from taking a case on a pro bono basis, whether they are prosecuting or defending a claim in our Indiana court system, and if successful and if attorney fees are provided by law or by contract, from recovering them from the adverse party.
50. Quite the contrary, this is how many cases are brought and defended. An attorney or a law firm represents a person or entity pro-bono and is either successful or not. If not, their time is pro-bono pursuant to their agreement with their client. If they are successful and if there is a statute or case law that allows them to seek attorney fees, the fact that they were pro-bono does not prevent them from seeking attorney fees. The same reasonableness test applies.
51. It would undermine, most likely significantly reduce pro bono cases, do immeasurable harm to a litigants access to our courts, cause access to justice issues and right to counsel issues and would have a profoundly chilling effect upon the ability of many to seek recourse or defense in our court systems.
52. Indeed, the trial judges research suggests that this argument has been made in the Federal courts and at least one Federal Circuit Court has said that it is erroneous to rely on pro bono status to justify the denial or reduction of attorney fees.
53. Plaintiff's counsel's other point in her Declaration suggests that three of the Defendant's lawyers never entered their appearance in the matter. This trial judge does not believe that is a requirement to do work or to bill for work performed. No authority was provided to the court to support Plaintiff's counsel's position.

54. If anything, that is a matter between the client and the lawyers and what their agreement provides.
55. There also seems to be an issue raised that one of the Defendant's legal team is licensed in Virginia, not Indiana. This is not an issue that this Court can or will address as it relates to its determination of legal fees and that attorney did not appear before this trial judge. If there was an issue, the Court never received a motion for specific relief. The Court is not suggesting that there is anything unethical or improper relating to the attorney identified, but it is not this trial court's issue, if it is one, as it relates to attorney fees.
56. Plaintiff's counsel also raises a similar issue with respect to another member of the Defendant's legal team who is a Virginia attorney but not an Indiana Attorney, however he has been admitted temporarily in Indiana. The trial court does not view this as relevant to the attorney fees determination.
57. Mr. Bopp, Jr., lead counsel for the Defendant, ("Lead counsel") submitted multiple declarations to the Court, all obviously under oath.
58. In his First Declaration, Lead counsel stated that he has been practicing since 1973; that he and his attorneys made contemporaneous time entries; that the rates billed for the various attorneys working on the matter were accurately billed; and that he and Ms. Siebert were the principal attorneys in this matter.
59. In his First Declaration, Lead counsel declared that the last review of the then existing bill for legal services was reduced approximately 12.10 hours or \$3,526.80.
60. Therefore, in his First Declaration lead counsel sought \$166,581.20 for 476 hours, with an additional \$4,160.50 in expenses, and the Motion for Attorney Fees added another \$7,186.60., therefore the amount of \$177,928.30 is owed for securing the Dismissal of the case and the request for Attorney fees.
61. In Mr. Bopp, Jr.'s Second Declaration, the focus was on the appeal following the entry of dismissal against the Plaintiff. His Second Declaration seeks compensation for 124.20 hours of appellate work and therefore attorney fees in the amount of \$43,334.00.
62. In addition, he seeks \$23,276.00 in attorney fees related to pursuing and securing statutory attorney fees for the appellate work in the amount of \$66,610.00. Therefore, the total amount of fees, costs and expenses was \$244,338.30 (\$4,160.50 in costs and expenses).

63. In Mr. Bopp, Jr.'s Third Declaration, which is an amendment to the first two Declarations, he reduced the amount charged for work performed by his law clerks by 50%, thereby reducing the total amount of attorney fees sought by \$9,951.00.
64. In addition, in his Third Declaration, he reduced his entire request for its costs and expenses which further reduced his attorney fees and costs request to \$230,000.00.
65. In his Fourth Declaration, Mr. Bopp, Jr. seeks additional attorney fees in researching and responding to the Affidavits, cases, and arguments. He therefore seeks additional attorney fees of \$25,622.50, thus bringing the total amount sought, prior to the hearing that was held on the issue of attorney fees, to the sum of \$255,623.30.
66. No questions were asked of Lead Counsel. No one asked him to be placed under oath to give additional testimony other than his previous declarations. He was not asked to justify the hours. He was not asked any questions at all that may have helped the trial court judge determine what was reasonable or unreasonable. Such an examination would seem to this trial judge as to have been very helpful to it in its determination of what is reasonable and what is not.
67. In determining what are "reasonable attorney fees and costs" the Court should consider Rule 1.5(a) of the Indiana Rules of Professional Conduct which provides:
- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services 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 the ability of the lawyer or lawyers performing the services; and
 - (8) Whether the fee is fixed or contingent.

See also Ord. for Mandate of Funds Montgomery City Council v. Mulligan, 873 N.E.2d 1043, 1049 (Ind. 2007); *In re Estate of Inlow*, 735 N.E.2d 240, 257 (Ind. Ct. App. 2000); *Cavallo v. Allied Physicians of Michigan, LLC*, 42 N.E. 2d 995, 1009-1010 (Ind. Ct. App).

68. Counsel for the Plaintiff argued that Counsel for the Defendant had not shown that the hourly rates and total attorney fees requested are reasonable, yet Lead counsel

for the Defendant was not questioned about his four declarations nor asked any questions about any of the charges of any of his legal team members, including Lead Counsel's own work.

69. There is no doubt that the attorney fees are authorized and mandated.
70. There is no doubt that the Court of Appeals directed this Court in its remand order to award reasonable attorney fees as contemplated by Appellate Rule 67.
71. This Court has carefully considered the time and labor and how much work the case genuinely required, including the novelty and difficulty of the legal questions. Had the Defendant lost, the damages could have been significant. This was a First Amendment based case. It was not a simple or routine case. The stakes were significant.
72. This Court has carefully considered whether taking the case prevented the attorney or firm from accepting other matters. Lead counsel for the Defendant utilized his team of lawyers, thereby reducing the time he, himself, spent on the case, which most likely reduced what would have been the attorney fee claim.
73. This Court carefully reviewed what attorneys in the same area (geographically and subject matter wise) charge for comparable service. While Mr. Bopp's hourly rate is higher than many attorneys, given his years of experience and expertise in First Amendment and First Amendment related issues, his hourly rate was not unreasonable, nor was it unreasonable to utilize the team approach.
74. The team approach is difficult to thoroughly dissect without some cross examination and additional perspective as it related to pro bono cases that Mr. Bopp Jr.'s firm has taken in the past and how were those hours kept and who all worked on those cases for purposes of comparison. The Court does not believe the team approach was abused was not abused, but it did result in significant charges and additional hours. The Court did find a number of entries that were questionable only from the perspective of determining what is reasonable in a situation where the Court is ordering the other party to pay those attorney fees. There are a number of entries that reasonably could have been billed to just one attorney. There are also a number of entries where the team of lawyers all billed for their time and the question for the Court was all that attorney involvement reasonable. The Court finds that it was difficult to determine whether one or two attorneys was reasonable but three or four were not and if not, what portion of those situations where the Court found the entries to be unreasonable for attorney fee calculations. The court does not question the fact that there was benefit to the Defendant for the manner in which the Defendant's law firm handled this case. That was exceptionally done. The issue the Court has is calculating the amount of fees that the Court determines to be too excessive to be reasonable. There is no doubt the fees sought are large or

high, but that doesn't make them per se unreasonable. The Court has done the math for the entries it believes reflect unreasonable charges for purposes of this Order, by subtracting out the higher billed attorney and by subtracting out the lower paid attorneys which has resulted in mathematical gymnastics. The Court, after doing its review finds that there is approximately \$26,000.00 in fees the Court finds unreasonable.

75. This Court carefully reviewed the amount at stake and results obtained. A very successful result was obtained on a highly contested Motion to Dismiss filed by the Defendant. Had Defendant lost the Motion to Dismiss and lost the case, the damages against the Defendant awarded to the Plaintiff could have easily exceeded the amount of attorney fees being sought.
76. This Court carefully reviewed the time constraints that everyone was operating within.
77. This Court found no evidence that this was a long-standing client which might result in greater scrutiny of the attorney fees than was undertaken.
78. The Court does take note that Lead Counsel and his Defense team have specialized expertise in this area of the law which was relevant to this dispute.
79. The Court was not provided with evidence as to the fee structure other than the statements of counsel for both parties that the Defense team took this case pro bono, but the Court declines to hold that against the claim for legal fees nor hold that in favor of the Plaintiff's position that the attorney fees are unreasonable.
80. Again, there were no questions posed to Lead counsel or anyone as to what Mr. Bopp Jr.'s law firm's typical billing practices were with regular paying clients and/or pro-bono clients as to "team meetings," etc.
81. This Court did not find unreasonably excessive research or unreasonably excessive research on settled legal questions, nor did it find block-billed entries that lump sum multiple tasks into a single time entry.
82. The Court did not find unreasonably duplicative work.
83. The Affidavit of Defense Counsel and their expert witness did not negate the Declaration of Lead Counsel and Lead Counsel's expert witness.
84. The Court does find that it has the authority to award appellate attorney fees and costs (although no costs sought in this case).

85. The Court does conclude that there is an issue as to whether the Court has the authority to award “Fees-on-Fees.” The Court notes that it was directed to determine reasonable appellate attorney fees and the Defendants Motion for Appellate Attorney Fees was granted by the Indiana Court of Appeals so those are authorized but the Court determines that it is not appropriate in this case to award any attorney fees related to the hearing on the Motion for Attorney Fees conducted in this matter.

86. The Court therefore determines that the \$25,622.50 sought for attorney fees for bringing and defending their request for attorney fees at the hearing, under the circumstances of this case, are unreasonable.

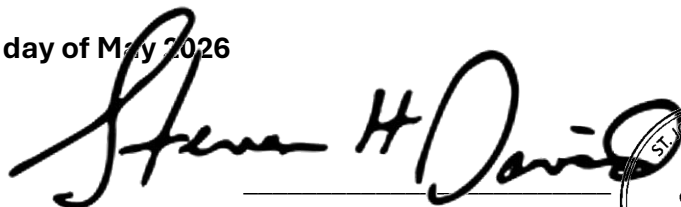
87. In addition, the Court concludes that attorney fees of \$4,530.40 are sought for work done before the Plaintiff filed its case against the Defendant and those fees should not be paid and are therefore denied as unreasonable and inappropriate.

88. From this number, the Court deducts the \$26,000.00 referenced earlier.

89. Thus, the revised attorney fees in this case are \$199,450.40.

90. The Court concludes that the reasonable attorney fees in this matter are \$204,000.80. Defendant is ordered to pay said attorney fees within thirty days.

SO ORDERED THIS 15th day of May 2026


Steven David, Special Judge



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