

MD v WF

The Legal Aid (Scotland) Com.
to
Messrs. J. & B. Caldwell & Co.
Solicitors, Motherwell.
I.C.

PURSUER
against

DECEMBER.

1969

Section 5 Certificate 354-69

Oct.

30 Meeting Pursuer noting information as to her association with Defender resulting in the birth of a child, advising and taking instructions to proceed with enquiries with a view to raising an action of affiliation and aliment. Eng. $\frac{3}{4}$ hr.

3 -

31 Writing Secretary, Hamilton & Lanark Legal Aid Committee enclosing Section 5 Legal Aid Application for Pursuer.

- 5

Nov.

10 On receipt of letter from Secretary, Hamilton & Lanark Legal Aid Committee enclosing Section 5 Legal Aid Certificate for Pursuer, writing him acknowledging.

- 5

13 Writing Pursuer reporting, advising and requesting her to call.

- 10

25 Meeting Pursuer recording her precognition. Eng. $1\frac{1}{2}$ hrs.

4 10

Drawing precognition. (wsg) 4 shs.

4 -

Extending same.

1 -

Copy thereof.

- 16

26 Writing Messrs. R.M. Watson & Maitland, Solicitors, Greenock, enquiring if they have any information as to reaction of American Naval authorities in such cases, etc. 2 pgs.

1 -

Dec.

3 On receipt of letter from Messrs. R.M. Watson & Maitland reporting regarding their difficulties in similar cases, writing them acknowledging and commenting.

- 10

Writing Mr. George Lawson, M.P., reporting circumstances and enquiring if he has any information concerning any arrangements with the U.S. Naval authorities designed to facilitate the enforcement of Decrees in such cases, etc. 4 pgs.

2 -

£17 16

Handwritten notes:
97
13-01
14-01
15-01
16

Handwritten note:
2-11-69

Handwritten note:
14

Handwritten note:
12-01

1969

Brought forward

£ 17 16 -

Dec.

9 On receipt of letter from Department of Health & Social Security, Bellshill, enquiring if we have been consulted by Pursuer and as to evidence etc., writing them reporting up to date position. 3 pps.

1 10 -

Writing Pursuer enquiring regarding witnesses whom she was to endeavour to trace, etc.

- 10 -

22

On receipt of letter from Mr. George Lawson, M.P., reporting that he has arranged for enquiries to be made with a view to tracing any record of an arrangement with the U.S. Naval Authorities referred to in Parliament, writing him acknowledging and thanking him for his assistance.

-- 10 =

1970

Feb. 2

On receipt of letter from Mr. George Lawson M.P. enclosing a photocopy of an excerpt from Hansard relating to this matter, writing him acknowledging and commenting.

- 10 -

Perusing and considering Excerpt.

- 15 -

9

Writing Pursuer reporting and again enquiring if she has been successful in tracing the witnesses with whom she proposed to get in touch, etc.

- 10 -

Posts & Incidents.

2 4 -

£ 2 4 -

22 1 -

Add Outlays ...

2 4 -

£ 24 5 -

The Auditor of the Sheriff Court at Hamilton is respectfully requested to tax the foregoing Account.

For and on behalf
THE LAW SOCIETY OF SCOTLAND
LEGAL SECRETARIES

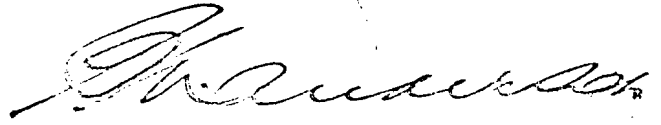
J.H. Cairns

LEGAL SECRETARY

1.11.71

Auditors Fee R.O.L.

HAMILTON, 26 March 1971. Having examined the foregoing Account of Expenses in presence of Mr J W B Caldwell representing the firm of Messrs J W B Caldwell & Co., Solicitors, Motherwell and Mr Wilkie representing The Law Society of Scotland Legal Aid Central Committee, I hereby tax the said Account at the sum of FIFTEEN POUNDS THIRTY PENCE.



Auditor of Court
Hamilton

NOTE: At the diet of taxation in this case I was moved by Mr Wilkie to disallow half of the drawing fee for the pursuer's precognition on the grounds that the Solicitor was receiving an attendance fee covering the period of one and half hours during which time he took down very exhaustive notes from which the precognition was eventually drawn. He stated that the practice of the Auditor of the Court of Session was to allow in these circumstances only half of the drawing fee and urged me to follow the said practice. I am, of course, not bound by said Auditor's practice. In the circumstances however I felt some modification of the drawing fee was appropriate and would have reduced the drawing fee to half if another aspect of the case had not emerged to which I will now refer. Later entries in the Account relating to correspondence with Solicitors in Greenock and a Member of Parliament came under attack by Mr Wilkie on the grounds that these were irrelevant to the case. Mr Wilkie contended that at Mr Caldwell's meeting with the pursuer on 10 October 1969 he would have substantially learned the facts and that at that stage Mr Caldwell's duty to ascertain the position regarding enforcement of a decree against the defender were he to attempt to obtain one. It is a fact that Mr Caldwell did not take any steps regarding the possibility of enforcement of a decree till after he had taken the

I think it is appropriate at this juncture to briefly narrate the facts of the case. Mr Caldwell's client - a lady in her early twenties - alleges that the defender, a sailor with the United States Navy and then serving on the U S S Simon Lake in the Holy Loch, Sandbank, Dunoon, was the father of a child to which she had given birth. This information Mr Caldwell received at his first interview with pursuer. He did not, however, make inquiries regarding enforcement for four weeks later and in the interval proceeded to take pursuer's precognition. I think that Mr Caldwell is in the circumstances only entitled to (a) fees for inquiries or (b) precognition fees but certainly not both.

Mr Wilkie's attack went further when he claimed that all Mr Caldwell should have done was to write a letter to the Law Society on 30 October explaining the facts and asking if there would be any hope of enforcing a decree in the circumstances were he to obtain one. To such a letter the reply would have been that, in view of previous similar experience, immediately on service of a Writ on the defender the U S Naval Authorities would post him back to America and there would then be little hope of success in pursuing the matter.

Mr Caldwell chose to write ^{to} Solicitors in Greenock whom he probably thought would have had experience in matters of this kind and also to a Member of Parliament. I do not think this was an unreasonable course for him to take but in my opinion it should have been taken much earlier. If he had done so he could have advised the pursuer of the likely result of an action against defender without proceeding to take her precognition. As the amount in fees involved here is not great the principle is important to both Mr Caldwell and The Law Society. I feel that justice to parties should be done if I allow Mr Caldwell's fees for said enquiries as if these were made earlier and to disallow the fees for drawing etc. pursuer's precognition. I should perhaps make it clear that I have allowed Mr Caldwell a half hour attendance with pursuer when she could have been advised of her position of enforcement. The net result, after allowing for certain minor adjustments in the Account, is that it falls to be reduced from £24.25 to £15.30.