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Winters v. Schulman

Court of Appeals of Utah

April 5, 2001, Filed

Case No. 20000114-CA

Reporter

2001 Utah App. LEXIS 139 *; 2001 UT App 105

David Winters, Plaintiff, Appellant, and Cross-appellee, v.
Joanne Schulman and Allison Abizaid, individually,
Defendants, Appellee, and Cross-appellant.

Notice: [*1] NOT FOR OFFICIAL PUBLICATION

Prior History: Third District, Salt Lake Department. The
Honorable William A. Thorne, Jr.

[Winters v. Schulman, 977 P.2d 1218, 1999 UT App 119, 1999
Utah App. LEXIS 72 \(1999\)](#)

Disposition: Affirmed.

Counsel: W. Kevin Jackson, Salt Lake City, for Appellant

Ellen Maycock and David C. Wright, Salt Lake City, for
Appellee

Judges: Russell W. Bench, Judge. I CONCUR: Norman H.
Jackson, Associate Presiding Judge. I CONCUR IN THE
RESULT: Judith M. Billings, Judge

Opinion by: Russell W. Bench

Opinion

MEMORANDUM DECISION

Before Judges Jackson, Bench, and Billings.

BENCH, Judge:

Appellant's first challenge is to the trial court's award of \$ 1,000 in statutory damages after finding that Appellant had suffered no actual damages from the wrongful lis pendens. Appellant contends that his "out-of-pocket damages" amount to \$ 4,797.64, which should have been trebled pursuant to [Utah Code Ann. § 38-9-4\(2\)](#) (1997). [Section 38-9-4\(2\)](#) reads, in part:

If the person in violation of this Subsection (1) refuses to release or correct the wrongful lien within 20 days from the date of written request from a record interest holder of the real property . . . , the person is liable to that record interest holder for \$ 1,000 or for treble actual damages, whichever is greater, [*2] and for reasonable attorney fees and costs.

Id. The statute thus provides for reimbursement of \$ 1,000 or trebled actual damages, *and* attorney fees and costs.

The trial court properly found that Appellant had suffered no actual losses from the wrongful lis pendens, and awarded him \$ 1,000 in statutory damages. The \$ 4,797.64 that Appellant claims should have been trebled were essentially legal costs incurred to have the lis pendens released. By calling this amount his "out-of-pocket damages," Appellant tries to blur the line between damages and costs of litigation. *Black's Law Dictionary* defines damages as "money claimed by, or ordered to be paid to, a person as compensation for *loss or injury*." *Black's Law Dictionary* 393 (7th ed. 1999) (emphasis added). Costs are defined as "the expenses of litigation, prosecution,

or other legal transaction." *Id.* at 350. The items Appellant would have us award as damages, his California attorney fees, travel and telephone costs, and "lost interest on expended funds," are actually his costs of litigation, not his "actual damages proximately caused by the wrongful lien" as identified in the statute. [Utah Code Ann. § 38-9-4\(1\) \[*3\]](#) (1997). Our review of the record does not support Appellant's claim that the trial court's finding that Appellant suffered no actual damages was clearly erroneous, and we decline to set it aside on appeal. See [Maughan v. Maughan, 770 P.2d 156, 159 \(Utah Ct. App. 1989\)](#).

Appellant next contends that the trial court should have ordered prejudgment interest on the \$ 1,000 award of statutory damages. In [Fell v. Union Pacific Railroad Co., 32 Utah 101, 88 P. 1003 \(1907\)](#), the supreme court explained that the purpose behind ordering prejudgment interest was to place the injured party "in statu quo." *Id.* at 1006. However, the court also identified cases in which prejudgment interest is not appropriate, such as "where exemplary damages are permitted, where the statute fixes a penalty or determines the damages to be allowed." *Id.* Appellant suffered no actual damage from the wrongful lien, therefore no prejudgment interest is required to "provide full compensation for actual loss." [Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App 355, P 24, 993 P.2d 222](#). Additionally, the \$ 1,000 awarded to Appellant, which was a penalty fixed [*4] by the statute, was clearly distinguished by the *Fell* court as a damage award for which prejudgment interest is not allowable. See [Fell, 88 P. at 1006](#). The \$ 1,000 penalty, identified in [section 38-9-4](#) as an alternative to trebled actual damages, is not so much to compensate the record interest holder as to punish the wrongful lien claimant. We conclude, therefore, that the trial court properly declined to order prejudgment interest on the \$ 1,000 statutory damage award.

Appellant's final issue is with the amount of attorney fees the trial court awarded Appellant. He claims the trial court awarded less than the amount of fees reasonably incurred. Appellee cross-appeals this portion of the trial court's decision, arguing that the trial court's award of attorney fees to Appellant was too large. "It is generally within the trial court's discretion to determine the reasonable attorney fees which should be awarded and we will not overturn the award absent an abuse of discretion." [Regional Sales Agency, Inc. v. Reichert, 784 P.2d 1210, 1215 \(Utah Ct. App. 1989\)](#), *vacated on other grounds, 830 P.2d 252 (Utah 1992)*. In determining [*5] reasonable attorney fees, we have instructed trial courts to consider:

"the difficulty of the litigation, the efficiency of the attorneys in presenting the case, the reasonableness of the number of hours spent on the case, the fee customarily charged in the locality for similar services,

the amount involved in the case and the result attained, and the expertise and experience of the attorneys involved."

Id. (citation omitted). If the trial court awards less than the amount of fees requested, when there is adequate evidence to support that amount, the trial court must "offer an explanation for the reduction." *Id.*

Appellant contends that the trial court's findings of fact are inadequate to explain the fee award reduction. We have previously held that when there are multiple claims and the party prevails on only a portion of them, if the claims all involve a common core of facts and legal theories, the party may recover all attorney fees reasonably incurred. See [Dejavue, 1999 UT App 355 at P 20](#). However, in this case the trial court made a specific finding that although the facts and legal theories involved in the three claims originally brought [*6] by Appellant may overlap, they are not "so intertwined that they could not be categorized according to the theory at issue." The trial court then provided two methods for calculating the final fee award. In the first calculation, the trial court identified the reasonable fee amount for each of the different stages of the litigation in Utah and in California, arriving at the sum of \$ 10,240. Alternatively, the trial court identified reasonable fees of \$ 27,576 and explained that it was reducing that amount by two-thirds, because the Appellant prevailed on only one of three very different claims. The trial court reduced the award by an additional \$ 1,200, because it found certain work completed in Utah duplicative of that in California. After adding in reasonable California attorney fees and costs, the trial court reached the same amount of \$ 10,240 as in the first calculation. The trial court has adequately explained the reasons behind its reduced fee award in the findings of fact. We thus conclude that there was no abuse of discretion in the award of attorney fees.

We affirm the judgment of the trial court.

Russell W. Bench, Judge

I CONCUR:

Norman H. Jackson, Associate [*7] Presiding Judge

I CONCUR IN THE RESULT:

Judith M. Billings, Judge