

SUPREME COURT OF OREGON

McCarthy v. Oregon Freeze Dry, Inc., 334 Or. 77

46 P.3d 721 (2002) · No. SC S46603 · Decided May 9, 2002

SUMMARY

The Oregon Supreme Court held that the Court of Appeals applied the correct standard for awarding attorney fees to a prevailing defendant in an employment-discrimination action. However, the plaintiff’s appellate arguments concerning relief from a voluntary dismissal had a legal basis and were not frivolous, unreasonable, or without foundation. The court reversed the attorney-fee award.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Durham, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Leeson, Justice; Riggs, Justice
JURISDICTION	Oregon
DECIDED	May 9, 2002
DOCKET	SC S46603
DISPOSITION	reversed
PROCEDURAL POSTURE	Petition for review of the Court of Appeals' award of attorney fees to defendant after affirming the trial court's refusal to set aside a judgment of voluntary dismissal.
STANDARD OF REVIEW	The Supreme Court reviewed whether the Court of Appeals correctly applied the governing legal standard for discretionary attorney-fee awards against a plaintiff pursuing an appeal. The underlying ORCP 71 B(1) relief issue was reviewed for abuse of discretion in the lower court, but the Supreme Court did not decide the ultimate correctness of McCarthy's legal arguments.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Terry B. McCarthy v. Oregon Freeze Dry, Inc.

TOPICS

- attorney fees
- appellate procedure
- employment law
- remedies
- civil procedure

PRACTICE AREAS

appellate procedure

employment law

remedies

civil procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the correct standard in determining that McCarthy's appellate arguments were frivolous, unreasonable, or without foundation for purposes of awarding attorney fees to the prevailing defendant.
2. Whether McCarthy's arguments that the trial court abused its discretion in refusing to set aside the dismissal had any legal or factual basis.
3. Whether the attorney-fee inquiry was limited to the substantive merits of McCarthy's discrimination claim or could include procedural and appellate arguments.

HOLDINGS

1. Under former ORS 659.121(1), a prevailing defendant may receive attorney fees on appeal only when the plaintiff's position is frivolous, unreasonable, or without foundation. An appellate argument meets that standard when a reasonable lawyer would know that it is not well grounded in fact or warranted by existing law or by a reasonable argument for extending, modifying, or reversing existing law.
2. The inquiry into whether a plaintiff's position is frivolous, unreasonable, or without foundation is not limited to the factual merits of the underlying discrimination claim; procedural or appellate arguments may also render the position meritless if they lack legal or factual support.
3. McCarthy's appellate arguments were not frivolous, unreasonable, or without foundation because they had at least some support in Oregon case law and constituted a reasonable argument that the trial court abused its discretion in refusing to relieve him from the consequences of his attorney's legal error.

KEY QUOTATIONS

"A court correctly characterizes a party's appeal as frivolous, unreasonable, or without foundation when a reasonable lawyer would know that each of the arguments on appeal is not well grounded in fact or is not warranted either by existing law or by a reasonable argument for the extension, modification, or reversal of existing law." (334 Or. at 726)

"Consequently, plaintiff's argument on appeal was not frivolous, unreasonable, or without foundation." (334 Or. at 729)

FACTUAL BACKGROUND

McCarthy alleged that Oregon Freeze Dry unlawfully discriminated against him for filing a workers' compensation claim. Acting on counsel's advice that ORS 12.220 would permit dismissal and refiling within one year, McCarthy voluntarily dismissed the action before trial. After counsel discovered contrary authority, McCarthy sought relief from the judgment under ORCP 71 B(1), arguing mistake, inadvertence, surprise, or excusable neglect and contending that his attorney's legal error and his own lack of fault justified reinstatement.

PROCEDURAL HISTORY

McCarthy brought an unlawful-employment-practice action alleging discrimination for filing a workers' compensation claim, then voluntarily dismissed the action before trial. The trial court denied his motion under ORS 12.220 and ORCP 71 B(1) to set aside the dismissal and reinstate the action, and the Court of Appeals affirmed. The Court of Appeals later awarded Oregon Freeze Dry \$12,000 in attorney fees on appeal, the Oregon Supreme Court vacated that award and remanded for explanation, and the Court of Appeals again awarded fees after finding McCarthy's appellate arguments frivolous, unreasonable, or without foundation. The Supreme Court granted review and reversed the fee award.

DISPOSITION

reversed

CASES CITED

- McCarthy v. Oregon Freeze Dry, Inc., 142 Or. App. 595, 922 P.2d 729 (1996), rev. den. 324 Or. 322, 927 P.2d 598 (1996)
- McCarthy v. Oregon Freeze Dry, Inc., 327 Or. 84, 957 P.2d 1200, on reconsideration, 327 Or. 185, 957 P.2d 1207 (1998)
- McCarthy v. Oregon Freeze Dry, Inc., 158 Or. App. 654, 976 P.2d 566 (1999)
- Schlumberger Technologies, Inc. v. Tri-Met, 145 Or. App. 12, 21 n. 9, 929 P.2d 331 (1996), modified on other grounds, 149 Or. App. 316, 942 P.2d 862 (1997)
- Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 98 S. Ct. 694, 54 L. Ed. 2d 648 (1978)
- Dobie v. Liberty Homes, 53 Or. App. 366, 632 P.2d 449 (1981)
- Robinson v. School District No. 1, 92 Or. App. 627, 632, 759 P.2d 1116 (1988)
- Payne v. American-Strevell, Inc., 65 Or. App. 265, 268, 670 P.2d 1065 (1983)
- Mattiza v. Foster, 311 Or. 1, 8 & n. 10, 803 P.2d 723 (1990)
- Westfall v. Rust International, 314 Or. 553, 559, 840 P.2d 700 (1992)
- Financial Indemnity v. Howser, 38 Or. App. 369, 371-72, 590 P.2d 276 (1979)
- Longyear, Admx. v. Edwards, 217 Or. 314, 319-20, 342 P.2d 762 (1959)
- Carlson v. Bankers' Discount Corp., 107 Or. 686, 695-98, 215 P. 986 (1923)
- Hicklin v. McClear, 19 Or. 508, 510-11, 24 P. 992 (1890)
- O.R. & N. Co. v. Gates, 10 Or. 514, 518 (1883)
- Tikka v. Martin, 271 Or. 287, 292, 532 P.2d 18 (1975)
- White v. Pacific Tel. & Tel. Co., 168 Or. 371, 123 P.2d 193 (1942)
- Wolfe Investments v. Shroyer, 249 Or. 23, 25, 436 P.2d 554 (1968)
- Vandermeer v. Pacific Northwest Dev. Corp., 284 Or. 517, 587 P.2d 98 (1978)
- Haworth v. Ruckman, 249 Or. 28, 436 P.2d 733 (1968)
- Federal Reserve Bank of S.F. v. Weant, 113 Or. 1, 5, 231 P. 134 (1924)
- Newbern v. Gas-Ice Corp., 263 Or. 250, 254, 501 P.2d 1294 (1972)

