

SUPREME COURT OF OREGON

Mulier v. Johnson, 332 Or. 344

29 P.3d 1104 (2001) · No. SC S47132 · Decided August 9, 2001

SUMMARY

The Supreme Court of Oregon held that a party's complete failure to allege entitlement to attorney fees in a motion for summary judgment, as required by ORCP 68 C(2)(b), could not be excused under ORCP 12 B. The court reversed the attorney-fee award to the University of Oregon and remanded for further proceedings, while leaving the grant of summary judgment undisturbed.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Leeson, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Leeson, Justice; Riggs, Justice
JURISDICTION	Oregon
DECIDED	August 9, 2001
DOCKET	SC S47132
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On review from the Oregon Court of Appeals, which affirmed summary judgment for defendants but vacated and remanded the trial court's attorney-fee award.
STANDARD OF REVIEW	Interpretation of the Oregon Rules of Civil Procedure is reviewed as a question of law using the methodology applied to statutory construction; the court examines text and context.
PRECEDENTIAL VALUE	Published precedential opinion of the Oregon Supreme Court
PARTIES	Vincent Mulier v. Mark Johnson, Lorraine Davis, Linda King, University of Oregon

TOPICS

attorney fees summary judgment civil procedure appellate procedure

PRACTICE AREAS

civil procedure appellate procedure attorney fees summary judgment

QUESTIONS PRESENTED

1. Whether ORCP 12 B permits a court to disregard a party's complete failure to allege its entitlement to attorney fees in a motion seeking judgment, as required by ORCP 68 C(2)(b), when a supporting memorandum asserts the fee claim.
2. Whether the University was entitled to attorney fees on Mulier's statutory-duty claim.

HOLDINGS

1. ORCP 12 B does not permit a court to disregard a party's complete failure to allege a right to attorney fees in a motion seeking judgment under ORCP 68 C(2)(b). A supporting memorandum is not a motion and does not constitute an attempt to comply with ORCP 68 C(2)(b).

KEY QUOTATIONS

“A complete failure to allege the right to attorney fees in a motion under ORCP 68 C(2)(b) does not demonstrate an attempt to comply with the requirements of that rule.” (332 Or. at 348; 29 P.3d at 1108)

“Just as a memorandum claiming an entitlement to attorney fees does not cure a failure to allege the right to attorney fees in a motion under ORCP 68 C(2)(b), such a memorandum does not transform that failure into an attempt to comply with the rules of civil procedure for purposes of ORCP 12 B.” (332 Or. at 349; 29 P.3d at 1108)

FACTUAL BACKGROUND

Mulier was a graduate teaching fellow at the University of Oregon whose appointment was reduced from 0.4 to 0.2 full-time equivalent, and he was placed on probation after an allegation that he violated the department's fraternization policy by sexually harassing a female student. He sued university employees under 42 U.S.C. § 1983 for alleged deprivations of liberty and property without due process and sued the University for violation of statutory duty. Although the University sought summary judgment, it did not allege its entitlement to attorney fees in the motion; it asserted that entitlement only in a supporting memorandum.

PROCEDURAL HISTORY

Defendants obtained summary judgment on all three of Mulier's claims. The trial court then awarded defendants costs, disbursements, and attorney fees before the expiration of the 14-day objection period. The Court of Appeals affirmed the summary judgment, held that the University's failure to allege its fee entitlement in the summary-judgment motion was immaterial, and remanded to permit an objection to the fee motion. The Oregon Supreme Court accepted review solely concerning the University's entitlement to fees on the statutory-duty claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings consistent with the holding, including reversal of the attorney-fee award on the University's statutory-duty claim.

CASES CITED

- Mulier v. Johnson, 163 Or. App. 42, 986 P.2d 742 (1999)
- McCarthy v. Oregon Freeze Dry, Inc., 327 Or. 84, 88, 957 P.2d 1200 (1998), adhered to on reconsideration, 327 Or. 185, 957 P.2d 1200 (1998)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-12, 859 P.2d 1143 (1993)
- Preble v. Department of Revenue, 331 Or. 320, 324, 14 P.3d 613 (2000)
- Hawkins v. City of La Grande, 315 Or. 57, 63-64, 843 P.2d 400 (1992)