SUPREME COURT OF WYOMING

James P. Wunsch v. Kelly M. Pickering, f/k/a Kelly M. Wunsch

Wunsch v. Pickering, 249 P.3d 717 (Wyo. 2011) · No. No. S-10-0004 · Decided April 12, 2011

SUMMARY

The Supreme Court of Wyoming reviewed a post-divorce dispute concerning fee-sharing obligations under the parties' property settlement agreement. The court upheld an order compelling discovery and the use of default as a sanction for noncompliance, concluding that the requested financial records were relevant and within the appellant's control. It also affirmed the damages award, holding that the appellant was permitted to participate in the damages hearing but could not contest liability issues established by the default.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Kite, C.J.; Golden, J.; Hill, J.; Voigt, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	April 12, 2011
DOCKET	No. S-10-0004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from post-divorce district-court orders compelling discovery and awarding damages after entry of default as a discovery sanction.
STANDARD OF REVIEW	Discovery-compulsion and evidentiary rulings are reviewed for abuse of discretion. Sufficiency of the evidence supporting damages is reviewed by assuming the prevailing party's evidence is true, giving it every favorable inference, and disturbing the trial court's findings only if they are clearly erroneous, inconsistent, or contrary to the great weight of the evidence. A legal question is reviewed de novo, but the asserted restriction on participation was treated as an evidentiary issue.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential.
PARTIES	James P. Wunsch v. Kelly M. Pickering, f/k/a Kelly M. Wunsch

TOPICS

discovery dispute · sanctions · default judgment · damages · civil procedure

PRACTICE AREAS

civil procedure · family law · contracts · remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by compelling Wunsch to produce documents that he claimed were irrelevant or outside his possession, custody, or control.
2. Whether, after default was entered as a discovery sanction, the district court improperly restricted Wunsch's participation in the damages hearing.
3. Whether the evidence was sufficient to support the damages award.

HOLDINGS

1. The district court did not abuse its discretion by compelling Wunsch to produce information concerning rep-identification numbers, commission statements, and tax records because the information was relevant to whether the inactive accounts had been replaced and was within his possession, custody, or control.
2. Entry of default established liability, including that the disputed accounts had been replaced, but did not eliminate Wunsch's right to participate and present evidence concerning unliquidated damages. The district court nevertheless properly excluded evidence offered to relitigate whether the accounts had been replaced.
3. The evidence was sufficient to support the damages award because default established that all of the inactive accounts had been replaced, and the Administrator's projected-amount calculation established the damages owed on that premise.

KEY QUOTATIONS

> *"We agree that Mr. Wunsch's argument is consistent with our precedent."* (249 P.3d at 725)

> *"An entry of default goes solely to liability and is, by definition, not a result of any trial on the merits."* (249 P.3d at 725)

> *"In contrast, a default judgment is a ruling on the merits on the issue of damages."* (249 P.3d at 725)

> *"Because the entry of default decided the issue of whether the accounts had been replaced, and decided it against Mr. Wunsch, any evidence suggesting that the accounts had not been replaced was irrelevant."* (249 P.3d at 726)

FACTUAL BACKGROUND

Before their 2004 divorce, Wunsch and Pickering jointly operated a financial-services business. Their court-approved settlement agreement required Wunsch to share fees from joint client accounts and from accounts he replaced, while Pickering was entitled to payments representing her share of the former business. After approximately 50 joint accounts became inactive, Pickering sought information to determine whether Wunsch had replaced the accounts and continued earning fees. Wunsch resisted producing rep-identification information, commission statements, and tax records; the district court ordered production, entered default when it found his responses deficient, and awarded Pickering damages calculated on the assumption that all inactive accounts had been replaced.

PROCEDURAL HISTORY

The parties' divorce settlement agreement required them to share fees from certain joint and replaced financial accounts. After disputes arose concerning approximately 50 inactive accounts, Pickering sought discovery regarding Wunsch's accounts, commissions, and tax information. The district court compelled production, entered default against Wunsch as a sanction for noncompliance, conducted a damages hearing, and awarded Pickering more than $195,000. Wunsch appealed the discovery order and damages rulings but did not appeal the entry of default. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Wunsch v. Pickering, 2008 WY 131, 195 P.3d 1032 (Wyo. 2008)
- Inskeep v. Inskeep, 752 P.2d 434, 436 (Wyo. 1988)
- Lieberman v. Mossbrook, 2009 WY 65, ¶ 64, 208 P.3d 1296, 1314 (Wyo. 2009)
- Spitzer v. Spitzer, 777 P.2d 587, 592-93 (Wyo. 1989)
- McGarvin-Moberly Construction Co. v. Welden, 897 P.2d 1310, 1315 (Wyo. 1995)
- Cramer v. Powder River Coal, LLC, 2009 WY 45, ¶ 22, 204 P.3d 974, 981 (Wyo. 2009)
- Examination Management Services v. Kirschbaum, 927 P.2d 686, 698 (Wyo. 1996)