

SUPREME COURT OF WASHINGTON

Hudson v. Hapner

239 P.3d 579 (Wash. 2010) · No. No. 82409-6 · Decided September 23, 2010

SUMMARY

The Washington Supreme Court held that Washington's mandatory arbitration rules imply a unilateral right to withdraw a request for a trial de novo. However, the court concluded that withdrawal must occur before the start of trial proceedings and therefore remanded the case for a new trial. The court also addressed attorney-fee and cost requests under MAR 7.3 and RAP 14.2.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Madsen, C.J.; Charles W. Johnson, J.; Gerry L. Alexander, J.; Tom Chambers, J.; Susan Owens, J.; Debra L. Stephens, J.; Sanders, J.; James M. Johnson, J.; Mary E. Fairhurst, J.                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | September 23, 2010                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | No. 82409-6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | After a mandatory-arbitration award for Hudson, Hapner requested a trial de novo. A jury awarded Hudson substantially more, but the Court of Appeals reversed and remanded for a new trial. On remand, Hapner moved to withdraw his request for a trial de novo and to pay the original arbitration award. The superior court denied the motion, and the Court of Appeals reversed. The Washington Supreme Court granted review, reversed the Court of Appeals, and remanded for a new trial. |
| STANDARD OF REVIEW    | Interpretation of the mandatory arbitration statute and rules presents a question of law reviewed de novo.                                                                                                                                                                                                                                                                                                                                                                                    |
| PRECEDENTIAL VALUE    | Published, precedential Washington Supreme Court decision                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PARTIES               | Clifford and Jane Doe Hapner, Matthew Norton v. Lea Hudson                                                                                                                                                                                                                                                                                                                                                                                                                                    |

TOPICS

arbitration

appellate procedure

statutory interpretation

attorney fees

civil procedure

## PRACTICE AREAS

Civil procedure

Mandatory arbitration

Appellate procedure

Attorney fees and costs

Statutory and rule interpretation

## QUESTIONS PRESENTED

1. Whether RCW 7.06.060(1) and MAR 7.3 create a unilateral right to withdraw a request for a trial de novo.
2. If such a unilateral right exists, when must it be exercised?
3. Whether Hudson preserved her requests for attorney fees and costs under RAP 18.1(b) and MAR 7.3.
4. Whether Hapner was the substantially prevailing party entitled to appellate costs under RAP 14.2.

## HOLDINGS

1. RCW 7.06.060(1) and MAR 7.3 imply a party's unilateral right to withdraw a request for a trial de novo without the opposing party's consent.
2. The unilateral right to withdraw a request for a trial de novo must be exercised before the start of trial proceedings.
3. Hudson preserved her claims for attorney fees and costs by devoting a separate section of each appellate brief to the request and citing MAR 7.3 and supporting authority; the requests were not invalid merely because they were contingent on prevailing.
4. Hapner substantially prevailed in the first appeal because he obtained reversal of the trial-de-novo result and a remand for a new trial, so the Court of Appeals correctly awarded him appellate costs under RAP 14.2. That determination is distinct from Hudson's potential entitlement to fees and costs under MAR 7.3 after the retrial.

## KEY QUOTATIONS

*“The language of MAR 7.3 and RCW 7.06.060(1) contemplates that a party may withdraw a request for trial de novo without the consent of the other party.”* (582)

*“Accordingly, we hold the mandatory arbitration rules create an implied right to unilateral withdrawal.”* (583)

*“Accordingly, we hold the unilateral right to withdrawal must be exercised prior to the start of trial de novo.”* (584)

*“An appellate decision reversing and remanding for a new trial does not restart the clock.”* (586)

## FACTUAL BACKGROUND

Hapner rear-ended Hudson in an automobile accident, and Hudson received a \$14,537.97 award in mandatory arbitration. Hapner requested a trial de novo, after which a jury awarded Hudson \$292,298, together with attorney fees and costs. After the Court of Appeals reversed and remanded for a new trial because of evidentiary error, Hapner sought to withdraw his request for a trial de novo and pay the original arbitration award.

## PROCEDURAL HISTORY

Hudson obtained a \$14,537.97 mandatory-arbitration award following an automobile accident. Hapner requested a trial de novo, and a jury awarded Hudson \$292,298 plus fees and costs; the Court of Appeals reversed because of evidentiary error and ordered a new trial. After remand, Hapner sought to withdraw the trial-de-novo request, but the superior court denied the motion and the Court of Appeals held that withdrawal was available unilaterally at any time. The Supreme Court held that withdrawal was unilateral but had to occur before trial proceedings began, so Hapner could not withdraw after the first trial and appellate remand.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Hapner may not unilaterally withdraw his request for a trial de novo after the first trial and appellate remand. The parties must proceed to a second trial de novo unless they reach a settlement. The trial court must determine attorney fees and costs under MAR 7.3 after the case is concluded, including whether Hapner failed to improve his position.

## CASES CITED

- Hudson v. Hapner, noted at 126 Wash. App. 1057, 2005 WL 834433
- Hudson v. Hapner, 146 Wash. App. 280, 187 P.3d 311 (2008)
- Wiley v. Rehak, 143 Wash. 2d 339, 343, 20 P.3d 404 (2001)
- Svendsen v. Stock, 143 Wash. 2d 546, 555, 23 P.3d 455 (2001)
- Thomas-Kerr v. Brown, 114 Wash. App. 554, 559 n. 16, 59 P.3d 120 (2002)
- Nevers v. Fireside, Inc., 133 Wash. 2d 804, 815, 947 P.2d 721 (1997)
- Haywood v. Aranda, 143 Wash. 2d 231, 238, 19 P.3d 406 (2001)
- Du Do v. Farmer, 127 Wash. App. 180, 187, 110 P.3d 840 (2005)
- Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wash. 2d 692, 710 n. 4, 952 P.2d 590 (1998)
- Tribble v. Allstate Prop. & Cas. Ins. Co., 134 Wash. App. 163, 174-75, 139 P.3d 373 (2006)