

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Corporation of Harpers Ferry v. Taylor

227 W. Va. 501 (2011) (W. Va. Ct. App. 2011) · No. No. 101438 · Decided May 26, 2011

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an order denying the Corporation of Harpers Ferry's motion to alter or amend an award of attorney's fees and costs to Ralph Taylor. The court held that the evidence supported the fee award based on the City's prelitigation conduct and that the City waived its right to an evidentiary hearing by failing to timely request one. The court also concluded that the City's challenge to costs was waived.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	May 26, 2011
DOCKET	No. 101438
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City appealed from the Circuit Court of Jefferson County's order denying its West Virginia Rule of Civil Procedure 59(e) motion to alter or amend an order awarding Ralph Taylor attorney's fees in an underlying declaratory judgment action.
STANDARD OF REVIEW	An appeal from a Rule 59(e) motion to alter or amend is reviewed under the same standard applicable to the underlying judgment. An award or denial of attorney's fees is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Corporation of Harpers Ferry v. Ralph Taylor

TOPICS

[attorney fees](#) [motion for reconsideration](#) [waiver](#) [appellate procedure](#) [due process](#)

PRACTICE AREAS

[civil procedure](#) [appellate procedure](#) [attorney fees](#) [municipal law](#) [constitutional law](#)

QUESTIONS PRESENTED

1. Whether the evidence supported an award of attorney's fees based on the City's prelitigation conduct.
2. Whether the City was entitled to an evidentiary hearing before the circuit court ruled on Taylor's request for attorney's fees.
3. Whether the City waived its right to request an evidentiary hearing by failing to make a timely request before the fee award.

HOLDINGS

1. The circuit court did not abuse its discretion in awarding Taylor attorney's fees because the City's prelitigation conduct was vexatious, oppressive, and unjustifiable, including the imposition of escalating conditions without legal authority and the failure to provide an impartial hearing.
2. The City was not entitled to relief based on the absence of an evidentiary hearing because it had notice that the fee motion would be decided on the pleadings and record and had an opportunity to participate in the fee proceedings.
3. The City waived its right to request an evidentiary hearing by failing to request one before the circuit court entered judgment awarding attorney's fees and raising the issue for the first time in its Rule 59(e) motion.

KEY QUOTATIONS

“The decision to award or not to award attorney's fees rests in the sound discretion of the circuit court, and the exercise of that discretion will not be disturbed on appeal except in cases of abuse.” (574)

“As a general rule each litigant bears his or her own attorney's fees absent a contrary rule of court or express statutory or contractual authority for reimbursement.” (574)

“There is authority in equity to award to the prevailing litigant his or her reasonable attorney's fees as ‘costs,’ without express statutory authorization, when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons.” (575)

“The facts of this case show that the City waived its right to request an evidentiary hearing on the issue of attorney's fees.” (576)

FACTUAL BACKGROUND

The City initially approved Ralph Taylor's request to create an access path to property adjacent to a publicly dedicated but unimproved street, subject to stated conditions. After a City Council member who lived near the proposed path participated in discussions and objected to the project, the City imposed increasingly burdensome requirements, including professional engineering drawings costing approximately \$25,000 to \$30,000, without providing applicable standards or guidelines. Taylor brought a declaratory judgment action, and the circuit court found the requirements unauthorized and unreasonable, found that the conduct deprived Taylor of due process, and awarded attorney's fees and costs.

PROCEDURAL HISTORY

Taylor sued the City seeking declaratory relief from burdensome and allegedly unlawful conditions imposed on access to his property. After a bench trial, the circuit court concluded that the engineering requirements were unauthorized, unreasonable, and unenforceable, that the conduct of a City Council member deprived Taylor of due process, and that Taylor could seek attorney's fees and costs. The court later awarded attorney's fees and costs. The City opposed the fee award but did not request an evidentiary hearing before judgment; after the award, it filed a Rule 59(e) motion asserting that an evidentiary hearing was required. The circuit court denied that motion, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Wickland v. American Travellers Life Ins. Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- Beto v. Stewart, 213 W. Va. 355, 359, 582 S.E.2d 802, 806 (2003)
- Sanson v. Brandywine Homes, Inc., 215 W. Va. 307, 310, 599 S.E.2d 730, 733 (2004)
- Daily Gazette Co., Inc. v. West Virginia Development Office, 206 W. Va. 51, 521 S.E.2d 543 (1999)
- Bond v. Bond, 144 W. Va. 478, 109 S.E.2d 16 (1959)
- Cummings v. Cummings, 170 W. Va. 712, 296 S.E.2d 542 (1982)
- Ball v. Wills, 190 W. Va. 517, 438 S.E.2d 860 (1993)
- Sally-Mike Props. v. Yokum, 179 W. Va. 48, 365 S.E.2d 246 (1986)
- Richardson v. Town of Kimball, 176 W. Va. 24, 340 S.E.2d 582 (1986)
- Nelson v. West Virginia Public Employees Insurance Board, 171 W. Va. 445, 451, 300 S.E.2d 86, 92 (1982)
- Dunbar Fraternal Order of Police v. City of Dunbar, 218 W. Va. 239, 624 S.E.2d 586 (2005)
- Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999)
- Booker T. Washington Construction & Design Co. v. Huntington Urban Renewal Authority, 181 W. Va. 409, 415, 383 S.E.2d 41, 47 (1989)
- Horkulic v. Galloway, 222 W. Va. 450, 665 S.E.2d 284 (2008)
- In re John T., 225 W. Va. 638, 648, 695 S.E.2d 868, 878 (2010) (Davis, C.J., concurring)
- In re Marriage of Jones, 187 Ill. App. 3d 206, 231, 134 Ill. Dec. 836, 853, 543 N.E.2d 119, 136 (1989)
- Thomas v. Makani, 218 W. Va. 235, 239, 624 S.E.2d 582, 586 (2005)
- State v. LaRock, 196 W. Va. 294, 316, 470 S.E.2d 613, 635 (1996)
- Hanlon v. Logan County Board of Education, 201 W. Va. 305, 316, 496 S.E.2d 447, 458 (1997)
- Cooper v. City of Charleston, 218 W. Va. 279, 290, 624 S.E.2d 716, 727 (2005) (per curiam)
- Aetna Casualty & Surety Co. v. Pitrolo, 176 W. Va. 190, 342 S.E.2d 156 (1986)
- Tiernan v. Charleston Area Medical Center, Inc., 203 W. Va. 135, 140 n. 10, 506 S.E.2d 578, 583 n. 10 (1998)