

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Roth v. Coleman

438 F. App'x 725 (10th Cir. 2011) · No. No. 10-1538 · Decided September 21, 2011

SUMMARY

The Tenth Circuit affirmed an award of attorney’s fees and costs imposed on attorney Robert J. Mulhern under 28 U.S.C. § 1927 in connection with a civil rights action. The court held that the Durango Defendants had not waived their request for fees and that the district court acted within its discretion by considering subsequently submitted time records and reducing the award for insufficiently informative entries.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Paul J. Kelly, Jr.; Eugene E. Siler, Jr.; Scott M. Matheson, Jr.
JURISDICTION	Federal
DECIDED	September 21, 2011
DOCKET	No. 10-1538
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney Robert J. Mulhern appealed a remand judgment awarding attorney fees and costs as sanctions under Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927. He challenged the Durango Defendants' alleged waiver of their fee request and the district court's reliance on subsequently submitted billing records.
STANDARD OF REVIEW	The award was reviewed for abuse of discretion, with factual findings reviewed for clear error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Robert J. Mulhern, Attorney v. Jeff Coleman, Al Bell, City of Durango, Michael F. Green, Dennis Spruell, Matt Buffington, Brooks Bennett, Hugh Richards, Danny Dufur, Tim Rowell, Tom Halper, Mike Meuer, Ken Brackett, Sam Hager, Roy C. Lane, Jerry Martin, Joey M. Chavez, Sydney “Duke” Schirard, Dale Wood, City of Cortez, Dolores County Board of County Commissioners, La Plata County Board of County Commissioners, Montezuma County Board of County Commissioners, John Does 1-50

TOPICS

sanctions

attorney fees

costs

appellate procedure

standard of review

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether the Durango Defendants waived their right to attorney fees and costs by failing to submit detailed time records with their original sanctions motion.
2. Whether the district court abused its discretion by relying on subsequently submitted, allegedly non-contemporaneous billing records to calculate attorney fees and costs.

HOLDINGS

1. The Durango Defendants did not waive their request for attorney fees and costs merely because they initially failed to submit detailed time records; the district court had discretion on remand to reject the waiver argument and permit a corrected submission.
2. The district court did not abuse its discretion by crediting an affidavit stating that the time entries were contemporaneously recorded and by using the records to calculate fees and allowable costs, subject to a ten-percent reduction for non-informative entries.

KEY QUOTATIONS

“We decline to circumscribe a district court’s discretion by holding that it may never allow a party to remedy a deficient submission.” (at 725)

“In light of what was presented, the district court could credit the affidavit, find that the time records adequately showed the work performed subject to a 10% reduction for non-informative entries, the amount charged, and the allowable costs.” (at 726)

FACTUAL BACKGROUND

The underlying suit alleged that defendants used a ruse checkpoint that resulted in an unlawful stop, detention, search, and arrest. After dismissal and appeal of that action, defendants sought sanctions under Rule 11 and § 1927. On remand, the Durango Defendants supplied detailed time records and affidavits supporting their fee request, and the district court relied on those records while applying a ten-percent reduction for insufficiently informative entries.

PROCEDURAL HISTORY

The underlying civil-rights action was dismissed, and the defendants sought sanctions. In prior appeals, the Tenth Circuit held that sanctions violations had been established but remanded for compliance with Rule 11 procedures and determination of the proper amount under § 1927; it later reversed an award based on insufficient billing documentation and required review of actual records. On remand, the district court rejected Mulhern's

waiver argument, considered detailed time records and affidavits, reduced the award by ten percent for inadequately informative entries, and awarded fees and costs. The Tenth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Roth v. Green, 123 Fed. App'x 871, 874 (10th Cir. 2005)
- Roth v. Green, 466 F.3d 1179, 1193 (10th Cir. 2006)
- Roth v. Spruell, 388 Fed. App'x 830 (10th Cir. 2010)
- Browder v. City of Moab, 427 F.3d 717, 719 (10th Cir. 2005)
- Mares v. Credit Bureau of Raton, 801 F.2d 1197, 1208 (10th Cir. 1986)
- Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)
- Ramos v. Lamm, 713 F.2d 546, 553 (10th Cir. 1983)
- Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 717 n.4, 725 (1987)