

SUPREME COURT OF OREGON

Halperin v. Pitts

352 Or. 482 (2012) · No. SC S059505; CA A139639; CC C064436CV · Decided October 4, 2012

SUMMARY

The Oregon Supreme Court held that ORS 20.080(2) does not require a defendant asserting a qualifying counterclaim to make a prelitigation demand before recovering attorney fees. The court concluded that a contrary statement in *Bennett v. Minson* was dictum and lacked sufficient persuasive force to justify adding language to the statute. The court reversed the Court of Appeals order denying attorney fees and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Landau, J.; Kistler, J.
JURISDICTION	Oregon
DECIDED	October 4, 2012
DOCKET	SC S059505; CA A139639; CC C064436CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On review of the Court of Appeals' order denying the Pitts parties' petition for attorney fees under ORS 20.080(2).
STANDARD OF REVIEW	Statutory construction based on the statutory text, context, legislative history, and relevant canons; the opinion does not separately state a formal standard-of-review label.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential.
PARTIES	Ray Pitts, Joyce Pitts v. Eric Halperin, Beatrice H. Michel

TOPICS

statutory interpretation

plain meaning rule

legislative history

appellate procedure

remedies

PRACTICE AREAS

statutory interpretation

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torts

remedies

attorney fees

QUESTIONS PRESENTED

1. Whether ORS 20.080(2) requires a defendant who prevails on a qualifying counterclaim to make a prelitigation written demand before recovering attorney fees.
2. Whether the statement in *Bennett v. Minson* that the demand and tender requirements of ORS 20.080(1) apply to subsection (2) was binding precedent or obiter dictum.
3. Whether the court should apply its interpretation of ORS 20.080(2) prospectively only.

HOLDINGS

1. ORS 20.080(2) does not impose a prelitigation demand-letter or tender requirement on a defendant seeking attorney fees after prevailing on a qualifying counterclaim.
2. Bennett's statement that the procedural requirements of ORS 20.080(1) apply to subsection (2) was obiter dictum, was not necessary to Bennett's decision, and had no binding precedential effect.
3. The court declined to apply its interpretation of ORS 20.080(2) prospectively only.

KEY QUOTATIONS

“The legislature included no statutory wording that is reasonably capable of being read to require a defendant to tender a prelitigation demand as a prerequisite to recovering attorney fees.” (484)

“there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.” (486)

“the court's remark about implicit procedural requirements in ORS 20.080(2) cannot reasonably be regarded as anything but obiter dictum.” (494)

“Legislative history may be used to identify or resolve ambiguity in legislation, not to rewrite it.” (495)

FACTUAL BACKGROUND

The parties owned adjacent parcels in Washington County and disputed their common boundary for years. Halperin and Michel sent the Pitts parties a demand letter concerning an alleged trespass and later filed claims for quiet title and trespass; the Pitts parties counterclaimed for trespass and quiet title. After trial, the circuit court dismissed both trespass claims and quieted title in favor of Halperin and Michel, while the Court of Appeals later ruled that Halperin and Michel were liable for trespass as a matter of law.

PROCEDURAL HISTORY

The parties litigated competing trespass and quiet-title claims involving an adjoining-property boundary. After a bench trial, the circuit court dismissed both trespass claims but quieted title in favor of Halperin and Michel. The Court of Appeals later concluded that Halperin and Michel were liable for trespass as a matter of law, but denied the Pitts parties' request for attorney fees because they had not made a prelitigation demand. The Oregon Supreme Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order of the Court of Appeals is reversed, and the case is remanded to the Court of Appeals for further proceedings concerning the Pitts parties' request for attorney fees.

CASES CITED

- Halperin v. Pitts, 241 Or. App. 249, 254, 250 P.3d 402 (2011)
- Bennett v. Minson, 309 Or. 309, 787 P.2d 481 (1990)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 610, 859 P.2d 1143 (1993)
- State v. Gaines, 346 Or. 160, 171-73, 206 P.3d 1042 (2009)
- Colby v. Larson, 208 Or. 121, 126, 297 P.2d 1073 (1956)
- Stull v. Hoke, 326 Or. 72, 79-80, 948 P.2d 722 (1997)
- Clackamas Cty. Assessor v. Village at Main St. Phase II, 349 Or. 330, 345, 245 P.3d 81 (2010)
- Nibler v. Department of Transportation, 338 Or. 19, 22-23, 105 P.3d 360 (2005)
- Gladhart v. Oregon Vineyard Supply Co., 332 Or. 226, 234, 26 P.3d 817 (2001)
- State v. Cloutier, 351 Or. 68, 100, 261 P.3d 1234 (2011)
- Liberty Northwest Insurance Corp. v. Watkins, 347 Or. 687, 692, 227 P.3d 1134 (2010)
- Stephens v. Bohlman, 314 Or. 344, 350 n. 6, 838 P.2d 600 (1992)
- Farmers Insurance Co. v. Mowry, 350 Or. 686, 695-96, 261 P.3d 1 (2011)
- Mastriano v. Board of Parole, 342 Or. 684, 692 n. 8, 159 P.3d 1151 (2007)
- SAIF v. Allen, 320 Or. 192, 204, 881 P.2d 773 (1994)
- State ex rel. Huddleston v. Sawyer, 324 Or. 597, 621 n. 19, 932 P.2d 1145 (1997)
- State v. Smith, 301 Or. 681, 696 n. 10, 725 P.2d 894 (1986)
- State v. Ainsworth, 346 Or. 524, 539 n. 18, 213 P.3d 1225 (2009)
- US West Communications v. City of Eugene, 336 Or. 181, 188, 81 P.3d 702 (2003)
- Dilger v. School District 24CJ, 222 Or. 108, 112, 352 P.2d 564 (1960)
- Stanley v. Smith, 15 Or. 505, 510, 16 P. 174 (1887)
- Stockton v. Silco Construction Co., 319 Or. 365, 376, 877 P.2d 71 (1994)
- Reynaga v. Northwest Farm Bureau, 300 Or. 255, 262, 709 P.2d 1071 (1985)
- Schlimgen v. May Trucking Co., 335 Or. 143, 152, 61 P.3d 923 (2003)
- Peterson v. Temple, 323 Or. 322, 332, 918 P.2d 413 (1996)
- Harper v. Virginia Department of Taxation, 509 U.S. 86, 97, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993)
- James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 537, 111 S. Ct. 2439, 115 L. Ed. 2d 481 (1991)
- Griffith v. Kentucky, 479 U.S. 314, 323, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987)