

SUPREME COURT OF THE STATE OF MONTANA

Loken Builders, Inc. v. Sharon R. Boyce

Loken Builders, Inc. v. Boyce, 2012 MT 93N · No. DA 11-0575 · Decided April 24, 2012

SUMMARY

The Montana Supreme Court affirmed the District Court's orders in a construction-contract dispute involving attorney fees, an amended judgment, a supersedeas bond, and an alleged settlement agreement. The Court held that Boyce received an adequate opportunity to challenge the amended judgment after the initial order, that the fee award was supported by substantial evidence and was not an abuse of discretion, and that no enforceable settlement agreement was shown. The Court declined to impose sanctions on either party and designated the decision as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Jim Rice; Mike McGrath; Michael E. Wheat; Brian Morris; Beth Baker
JURISDICTION	Montana
DECIDED	April 24, 2012
DOCKET	DA 11-0575
DISPOSITION	affirmed
PROCEDURAL POSTURE	Boyce appealed from the District Court's orders upholding an amended judgment that added appellate attorney fees and costs, rejecting her settlement and notice objections, and declining to impose sanctions against Loken.
STANDARD OF REVIEW	The attorney-fee findings were reviewed for substantial evidence, the discretionary award of attorney fees for abuse of discretion, and the District Court's application of settled legal principles for legal error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Sharon R. Boyce v. Loken Builders, Inc.

TOPICS

construction law

contracts

attorney fees

sanctions

appellate procedure

PRACTICE AREAS

construction law

contracts

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the District Court properly awarded Loken attorney fees and costs incurred in defending the judgment on appeal.
2. Whether the March 8 amended judgment was void because Boyce did not receive notice and an opportunity to be heard before its entry.
3. Whether the parties reached a settlement agreement that Loken breached.
4. Whether sanctions should be imposed against Loken or Boyce.

HOLDINGS

1. The District Court's award of attorney fees and costs incurred by Loken in defending the judgment on appeal was supported by substantial evidence and was not an abuse of discretion.
2. Any lack of an opportunity to be heard before the March 8 amended judgment was entered did not invalidate the final judgment because the District Court subsequently provided both parties an opportunity to present evidence and argument before entering the judgment from which Boyce appealed.
3. The record contained substantial evidence that the parties had not reached a final settlement agreement, so Boyce could not establish that Loken breached such an agreement.
4. Boyce was not entitled to sanctions against Loken, and the Supreme Court declined Loken's request for sanctions against Boyce.

KEY QUOTATIONS

“This case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (¶ 1)

FACTUAL BACKGROUND

Boyce hired Loken to perform remodeling work on her house but was dissatisfied with the work and refused to pay the final installment. Loken obtained a construction lien and prevailed at trial, resulting in a judgment that included foreclosure, a deficiency, and attorney fees. After the Supreme Court affirmed, Loken sought additional fees and costs incurred on appeal; although the District Court entered an amended judgment before Boyce responded, it later conducted a hearing and allowed both parties to present evidence and argument. The record did not establish a final settlement agreement, and the District Court found no basis for sanctions against either party.

PROCEDURAL HISTORY

Loken sued Boyce concerning unpaid amounts under a remodeling construction contract, filed a construction lien, and obtained a jury verdict, foreclosure sale, deficiency judgment, and attorney fees. The Montana Supreme Court affirmed the original judgment in an earlier noncitable opinion. After remittitur, the District Court

amended the judgment to include fees and costs incurred on appeal, later held a hearing concerning the fees and Boyce's objections, and entered a final judgment. Boyce appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Loken Builders, Inc. v. Boyce, 2011 MT 8N

OPINION

PER CURIAM.

April 24 2012 DA 11-0575 IN THE SUPREME COURT OF THE STATE OF MONTANA 2012 MT 93N LOKEN BUILDERS, INC., Plaintiff and Appellee, v. SHARON R. BOYCE, Defendant and Appellant. APPEAL FROM: District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DV 06-1036 Honorable Robert L. Deschamps, III, Presiding Judge COUNSEL OF RECORD: For Appellant: Sharon R. Boyce, (self-represented); Missoula, Montana For Appellee: David J. Steele, II.; Geiszler & Froines, PC; Missoula, Montana Submitted on Briefs: April 4, 2012 Decided: April 24, 2012 Filed: _____ Clerk Justice Jim Rice delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 This protracted dispute over a construction contract between Sharon R. Boyce (Boyce) and Loken Builders, Inc. (Loken) began six years ago when "Boyce was dissatisfied with the work and refused to pay a final installment payment" to Loken for its remodeling work on a house owned by Boyce.

Loken Builders, Inc. v. Boyce, 2011 MT 8N, ¶ 2. Loken filed a construction lien and initiated an action, and Boyce filed counterclaims. The case was tried to a jury, which held in favor of Loken. Boyce's counterclaims were dismissed.

The District Court ordered a foreclosure sale and awarded a deficiency judgment and attorney fees to Loken. Boyce appealed, and we affirmed. Loken, ¶¶ 2, 12. ¶3 After remittitur issued on February 11, 2011, the parties entered negotiations to settle the matter, which ultimately proved unsuccessful.

On March 4, 2011, Loken moved the District Court to amend the judgment to include attorney fees and costs incurred in defending its judgment on appeal. Boyce was served with the motion and

filed a response on March 14, 2011, objecting to the fees and requesting that Loken be sanctioned for reneging on the asserted settlement agreement and for proceeding improperly against the supersedeas bond issued by Travelers Casualty and Surety Company of America that Boyce had posted. ¶4 However, on March 8, the District Court entered an amended judgment in response to Loken's motion, including the fees and costs incurred by Loken on appeal.

The amended judgment was entered in the amount of \$88,319.63. Boyce was apparently not served with the 2 amended judgment and only learned of it when Travelers contacted her on March 24 in response to a demand for payment from Loken. Boyce filed an affidavit averring this sequence of events, following which the District Court set a hearing to consider Boyce's objections to Loken's motion to amend the judgment.

Boyce then filed a notice of appeal. This Court dismissed the appeal and remanded the matter to the District Court. ¶5 The District Court conducted a status conference on July 5, 2011, after which it entered an order.

The court noted that, during the status conference, "Boyce stated she would accept \$50,000 to resolve the case," after which the court reminded Boyce that Loken was entitled to payment of its judgment. The court ruled that Loken was entitled to fees and costs on appeal as a matter of law and scheduled a reasonableness hearing to take evidence on the amount of fees.

It also upheld the March 8 amended judgment, but stayed the judgment pending the hearing. It found no basis to award sanctions against Loken. ¶6 At the reasonableness hearing, Loken presented expert testimony and declined to seek additional fees incurred in responding to seven additional pleadings filed by Boyce and in making two court appearances since filing its motion on March 4.

Boyce raised the issue of the asserted settlement agreement, and the District Court permitted Boyce to submit additional materials in support of this claim after the hearing, but she did not do so. On September 2, 2011, the District Court entered an order granting Loken's motion to add costs and fees in the amount of \$5,271.96 to the judgment.

The court reasoned that "after litigating one of the most protracted, contentious, vexatious and disorganized cases in the Court's recent experience, Loken's attorneys finally prevailed and secured positive results for their client," and upheld the amended judgment entered on March 8, 2011, as the final judgment. 3 ¶7 Boyce appeals, arguing that Loken breached the parties' settlement agreement, that she was not given notice and opportunity to be heard on Loken's motion to amend the judgment, rendering the March 8 judgment void, and that all subsequent orders, including the order directing payment of the supersedeas bond, were likewise void.

Boyce also requests imposition of sanctions in the form of "compensation for the exorbitant time and expense incurred as a result of Loken's attorneys' deceit and wrongdoing in this case," similar

to her claim for sanctions in the District Court. Loken defends and asks for the imposition of sanctions in a specified amount against Boyce for her abusive litigation actions. ¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions.

The District Court's findings with regard to the attorney fee issue were supported by substantial evidence and its discretionary grant of attorney fees was clearly not an abuse of discretion. The legal issues are controlled by settled law, which the District Court correctly applied. While the District Court acknowledged that Boyce did not receive an opportunity to be heard prior to the March 8 amended judgment, the court thereafter held a hearing on the matter and gave both parties the opportunity to submit evidence and argument prior to entering the final judgment from which appeal is taken.

There is substantial evidence in the record that the parties had not reached a final settlement agreement that was breached by Loken. Boyce's request for imposition of sanctions against Loken is clearly without merit.

After careful consideration, we decline to grant Loken's request for sanctions against Boyce. ¶9 Affirmed. /S/ JIM RICE 4 We concur: /S/ MIKE McGRATH /S/ MICHAEL E WHEAT /S/ BRIAN MORRIS /S/ BETH BAKER 5