

SUPREME COURT OF WYOMING

Orcutt v. Shober Investments, Inc.

69 P.3d 386 (Wyo. 2003) · No. No. 02-133 · Decided March 19, 2003

SUMMARY

The Wyoming Supreme Court affirmed summary judgment in favor of Shober Investments and the individual Shober defendants in a construction-contract and lien foreclosure dispute. The court held that the Orcutts' untimely responses to requests for admissions were deemed admitted under Wyoming Rule of Civil Procedure 36 and could be relied upon by other parties. The court also awarded appellate sanctions based on the inadequate appellate record and unsupported arguments.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Kite, Justice; Hill, C.J.; Golden, J.; Lehman, J.; Kite, J.; Voigt, J.
JURISDICTION	Wyoming
DECIDED	March 19, 2003
DOCKET	No. 02-133
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Orcutts appealed a district court order granting summary judgment to Shober Investments and the individual third-party defendants based on the Orcutts' untimely responses to requests for admissions.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standards applied by the district court. The appellate court independently reviews the interpretation of W.R.C.P. 36 and the scheduling order as questions of law, without deference.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Charles R. Orcutt, Mary L. Orcutt v. Shober Investments, Inc., d/b/a Shober Builders, Mickey Shober, Mike Shober, Linda Shober

TOPICS

- summary judgment
- discovery dispute
- appellate procedure
- sanctions
- construction law

PRACTICE AREAS

civil procedure

appellate procedure

construction law

contracts

QUESTIONS PRESENTED

1. Whether a district court scheduling order establishing a discovery-completion deadline supersedes the thirty-day deadline for responding to requests for admissions under W.R.C.P. 36.
2. Whether a plaintiff or another defendant may rely on admissions made by a party in response to requests for admissions propounded by third-party defendants.
3. Whether sanctions should be imposed for the appellants' failure to provide an adequate appellate record and cogent legal argument.

HOLDINGS

1. The court affirmed the summary judgment because the appellants failed to provide the scheduling order and other portions of the record necessary to determine whether the district court had modified the W.R.C.P. 36 deadline. In the absence of a complete record and supporting argument, the appellate court presumed that the district court's ruling was legally correct.
2. A party may rely on admissions made by another party in the pending action even if that party did not propound the requests for admissions.
3. Sanctions were warranted because the appellants failed to comply with the rules requiring designation of an adequate appellate record and failed to support their contentions with cogent argument and pertinent legal authority.

KEY QUOTATIONS

“As the appellants, the Orcutts had the burden of providing this Court with a complete record on which to base a decision.” (¶ 9)

“We conclude the admissions were properly utilized in this case.” (¶ 12)

“Affirmed and award sanctions.” (¶ 14)

FACTUAL BACKGROUND

The Orcutts hired Shober Builders under an oral contract to perform concrete work on their home. After the work was completed, Shober Builders invoiced the Orcutts for \$50,845; they paid \$32,235, leaving an unpaid balance of \$18,610, and Shober Builders recorded a lien. The Orcutts asserted counterclaims and third-party claims alleging breach of contract, construction negligence, and related damages. They failed to timely respond to two requests for admissions, and the district court relied on the resulting deemed admissions to grant summary judgment.

PROCEDURAL HISTORY

Shober Investments sued the Orcutts for a balance due for concrete work and lien foreclosure. The Orcutts answered, counterclaimed, and filed a third-party complaint against the individual Shobers. After the Orcutts

failed to timely answer two sets of requests for admissions, the district court deemed the matters admitted and entered summary judgment for Shober Investments and the third-party defendants, dismissing the counterclaim and third-party complaint. The Supreme Court of Wyoming affirmed and directed Shober Investments to submit its costs and attorney fees incurred on appeal for consideration as sanctions.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. Shober Investments was directed to submit a statement of costs and attorney fees incurred in responding to the appeal, after which the court would determine the appropriate sanctions award.

CASES CITED

- Reed v. Miles Land and Livestock Co., 2001 WY 16, 18 P.3d 1161 (Wyo. 2001)
- Mercado v. Trujillo, 980 P.2d 824 (Wyo. 1999)
- Aztec Gas & Oil Corporation v. Roemer Oil Company, 948 P.2d 902 (Wyo. 1997)
- Pecha v. Smith, Keller & Associates, 942 P.2d 387 (Wyo. 1997)
- Anderson v. Bommer, 926 P.2d 959 (Wyo. 1996)
- JBC of Wyoming Corp. v. City of Cheyenne, 843 P.2d 1190 (Wyo. 1992)
- Griffin v. Bethesda Foundation, 609 P.2d 459 (Wyo. 1980)
- TZ Land & Cattle Co. v. Conduct, 795 P.2d 1204 (Wyo. 1990)
- Parsons v. Parsons, 2001 WY 62, 27 P.3d 270 (Wyo. 2001)
- G.C.I., Inc. v. Haight, 7 P.3d 906 (Wyo. 2000)
- Conner v. Board of County Commissioners, Natrona County, 2002 WY 148, 54 P.3d 1274 (Wyo. 2002)
- Cottonwood Valley Ranch, Inc. v. Roberts, 874 P.2d 897 (Wyo. 1994)
- Basolo v. Gose, 994 P.2d 968 (Wyo. 2000)
- Ahearn v. Hollon, 2002 WY 125, 53 P.3d 87 (Wyo. 2002)
- Gray v. Stratton Real Estate, 2001 WY 125, 36 P.3d 1127 (Wyo. 2001)
- Small v. Convenience Plus Partners, Ltd., 6 P.3d 1254 (Wyo. 2000)