

SUPREME COURT OF THE STATE OF MONTANA

Gregory v. Spannagel

2003 MT 345N (2003) · No. 03-483 · Decided December 16, 2003

SUMMARY

The Montana Supreme Court reviewed an award of attorney fees, post-appeal fees, and costs following a remand for determination of sanctions under Rule 11, M.R.Civ.P. The court affirmed \$11,645 in attorney fees, vacated \$1,205.41 in costs because the costs claim was untimely under the applicable rules, and remanded for entry of a new judgment.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Karla M. Gray, Chief Justice; John Warner; James C. Nelson; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	December 16, 2003
DOCKET	03-483
DISPOSITION	other
PROCEDURAL POSTURE	Ron Gregory, Sr. appealed from a district court judgment awarding the Spannagels attorney fees, costs, and post-appeal attorney fees after remand for determination of the amount of fees.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review. The court reviewed the legal timeliness issue and the judgment awarding fees and costs.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ron Gregory, Jr., Ron Gregory, Sr. v. Eli Spannagel, Jr., Jean K. Spannagel

TOPICS

- appellate procedure
- attorney fees
- costs
- sanctions
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure
- attorney fees
- costs
- sanctions

QUESTIONS PRESENTED

1. Whether the Spannagels' request for attorney fees and costs was timely.
2. Whether the statutory and appellate-rule time limits governing routine awards of costs applied to attorney fees awarded as a Rule 11 sanction.
3. Whether the Spannagels could recover costs as prevailing parties on the prior appeal when the prior appellate decision had not awarded those costs as a sanction.
4. Whether sanctions should be imposed against Gregory under Rule 32, M.R.App.P., for taking an appeal without substantial or reasonable grounds.

HOLDINGS

1. The 30-day time limit for claims for routine awards of costs to a prevailing party under Rule 33, M.R.App.P., and § 25-10-503, MCA, does not apply to attorney fees awarded as a Rule 11 sanction.
2. Absent statutory authority authorizing attorney fees in a particular type of action, attorney fees are not an element of costs in a civil action.
3. The \$1,205.41 award for costs of the prior appeal had to be vacated because the prior appellate decision did not award those costs as a Rule 11 sanction, and the Spannagels' claim for prevailing-party costs was untimely under Rule 33, M.R.App.P., and § 25-10-503, MCA.
4. The request for Rule 32, M.R.App.P., sanctions was denied because Gregory's appeal was partially successful.

KEY QUOTATIONS

“The 30-day time limit for claims for routine awards of costs to a prevailing party under Rule 33, M.R.App.P., and § 25-10-503, MCA, does not apply to Rule 11 sanctions.” (¶ 4)

“Absent statutory authority authorizing the award of attorney fees in a particular type of action, attorney fees are not an element of costs in civil actions.” (¶ 5)

FACTUAL BACKGROUND

The Spannagels sought attorney fees and costs after the prior appeal, in which the Supreme Court had remanded for determination of reasonable attorney fees. After a hearing, the district court awarded the Spannagels \$10,315.41 for attorney fees and costs on appeal and \$2,535.00 in post-appeal attorney fees. The judgment included \$1,205.41 in costs, although the prior appellate decision had not awarded those costs as a Rule 11 sanction.

PROCEDURAL HISTORY

In the prior appeal, the Montana Supreme Court remanded to the Sixteenth Judicial District Court to determine reasonable attorney fees to be awarded to the Spannagels. On remand, the district court awarded \$10,315.41 for attorney fees and costs on appeal and \$2,535.00 in post-appeal attorney fees. Gregory appealed, and the Supreme Court affirmed the attorney-fee award, vacated the costs award, and remanded for entry of a new judgment.

DISPOSITION

other

REMAND INSTRUCTIONS

Vacate the \$1,205.41 award for costs of the prior appeal and remand for entry of a new judgment reflecting an award of \$11,645.00 in reasonable attorney fees. No costs on appeal were awarded to either party.

CASES CITED

- Gregory v. Spannagel, 2002 MT 297N, 313 Mont. 422, 63 P.3d 514
- Moore v. Imperial Hotels Corp., 1998 MT 248, 291 Mont. 164, 967 P.2d 382
- Haider v. Frances Mahon Deaconess Hosp., 2000 MT 32, 298 Mont. 203, 994 P.2d 1121
- In re Estate of Lande, 1999 MT 179, ¶ 15, 295 Mont. 277, 983 P.2d 316

OPINION

PER CURIAM.

No. 03-483 IN THE SUPREME COURT OF THE STATE OF MONTANA 2003 MT 345N RON GREGORY, JR., and RON GREGORY, SR., Petitioners and Appellant, v. ELI SPANNAGEL, JR., and JEAN K. SPANNAGEL, his wife, Respondents and Respondents. APPEAL FROM: District Court of the Sixteenth Judicial District, In and for the County of Rosebud, Cause No. DV 97-174 The Honorable Joe L. Hegel, Judge presiding.

COUNSEL OF RECORD: For Appellant: Ron Gregory Sr., Pro Se, Forsyth, Montana For Respondents: Geoffrey R. Keller; Matovich & Keller, Billings, Montana Submitted on Briefs: November 6, 2003 Decided: December 16, 2003 Filed: _____ Clerk Chief Justice Karla M. Gray delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court. ¶2 On December 12, 2002, we remanded this case to the Sixteenth Judicial District Court, Rosebud County, for that court's determination of the amount of reasonable attorney fees to be awarded to Eli Spannagel, Jr., and Jean K. Spannagel for the appeal.

Gregory v. Spannagel, 2002 MT 297N, 313 Mont. 422, 63 P.3d 514 (Gregory I). On remand, the Spannagels submitted a memorandum of expenses to the District Court and requested a hearing. Following the hearing, the District Court awarded the Spannagels \$10,315.41 for attorney fees and costs on appeal and post-appeal attorney fees of \$2,535.00, for a total judgment of \$12,850.41.

Ron Gregory, Sr., appeals. We affirm in part and remand. ¶3 Gregory sets forth six issues on appeal, in which he attempts to rehash issues from the first appeal and questions the evidentiary basis for--and timeliness of--the Spannagels' request for the award of attorney fees and costs.

The only issue which is properly before us after remand and on which Gregory has presented legal argument as required by Rule 23(a)(4), M.R.App.P., is whether the request for attorney fees and costs was timely. 2 ¶4 The award of attorney fees was a Rule 11, M.R.Civ.P., sanction against Gregory.

The 30-day time limit for claims for routine awards of costs to a prevailing party under Rule 33, M.R.App.P., and § 25-10-503, MCA, does not apply to Rule 11 sanctions. ¶5 Moreover, Gregory's argument that attorney fees are an element of costs is incorrect.

The two cases he cites in support of that argument--*Moore v. Imperial Hotels Corp.*, 1998 MT 248, 291 Mont. 164, 967 P.2d 382, and *Haider v. Frances Mahon Deaconess Hosp.*, 2000 MT 32, 298 Mont. 203, 994 P.2d 1121--both involved awards of costs under § 39-2- 915, MCA. Absent statutory authority authorizing the award of attorney fees in a particular type of action, attorney fees are not an element of costs in civil actions.

See *In re Estate of Lande*, 1999 MT 179, ¶ 15, 295 Mont. 277, ¶ 15, 983 P.2d 316, ¶ 15. ¶6 Gregory is correct on one point, however. Nowhere in Gregory I did we award the Spannagels their costs on appeal as a sanction against Gregory.

Therefore, costs could only have been awarded to the Spannagels as the prevailing party on the prior appeal, pursuant to Rule 33, M.R.App.P. The § 25-10-503, MCA, time limits apply to a claim for such an award of costs.

The Spannagels' memorandum of costs was not filed within the time allowed under § 25-10-503, MCA. ¶7 We conclude the portion of the judgment representing costs must be stricken. The record establishes that \$1,205.41 of the judgment was for costs. ¶8 Finally, the Spannagels request a Rule 32, M.R.App.P., award of sanctions on the basis that this appeal was taken without substantial or reasonable grounds.

Because Gregory's appeal is partially successful, that request is denied. 3 ¶9 The award to the Spannagels of \$11,645.00 for their reasonable attorney fees is affirmed, the award of \$1,205.41 for costs of the prior appeal is vacated and we remand for entry of a new judgment. No costs on appeal to either party. /S/ KARLA M. GRAY We concur: /S/ JOHN WARNER /S/ JAMES C. NELSON /S/ W. WILLIAM LEAPHART /S/ JIM RICE 4