

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PRECEDENTIAL VALUE	nonprecedential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