

SUPREME COURT OF TENNESSEE

Mindy Donovan v. Joshua R. Hastings

No. M2019-01396-SC-R11-CV · No. M2019-01396-SC-R11-CV · Decided June 27, 2022

SUMMARY

The Supreme Court of Tennessee interprets Tennessee Code Annotated section 20-12-119(c), which authorizes attorney-fee and cost awards following dismissal of a claim under Tennessee Rule of Civil Procedure 12.02(6). The court holds that recoverable fees and costs are not limited to those incurred after an amended pleading was filed when the amended pleading asserts the same claim as the original pleading. The court reverses the Court of Appeals, vacates the trial court's award, and remands for reconsideration of reasonable attorney fees and costs.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Holly Kirby; Roger A. Page; Sharon G. Lee; Jeffrey S. Bivins
JURISDICTION	Tennessee
DECIDED	June 27, 2022
DOCKET	M2019-01396-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by permission from the Tennessee Court of Appeals concerning the amount of attorney fees and costs recoverable after dismissal of a claim under Tennessee Code Annotated section 20-12-119(c).
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo without a presumption of correctness. The trial court's fee determination is reviewed under the applicable reasonableness standard and for abuse of discretion, subject to the correct legal standard.
PRECEDENTIAL VALUE	published Tennessee Supreme Court opinion; precedential
PARTIES	Mindy Donovan v. Joshua R. Hastings

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QUESTIONS PRESENTED

1. Whether attorney fees and costs recoverable under Tennessee Code Annotated section 20-12-119(c) are limited to those incurred after the filing of an amended pleading containing the dismissed claim.
2. Whether the appellee waived an argument that the statutory sixty-day filing limitation barred recovery because the issue was not properly presented under the appellate briefing rules.
3. Whether Tennessee Rule of Professional Conduct 1.5 provides the correct legal standard for assessing the reasonableness of attorney fees and costs under section 20-12-119(c).

HOLDINGS

1. When the same claim is asserted in an original countercomplaint and repeated without change in an amended countercomplaint, attorney fees and costs recoverable under Tennessee Code Annotated section 20-12-119(c) are not limited to those incurred after the amended countercomplaint was filed. They may include reasonable and necessary fees and costs incurred as a consequence of the dismissed claim during the proceedings beginning with the original pleading.
2. The appellee waived the argument that section 20-12-119(c)(5)(B)'s sixty-day limitation barred recovery because he neither properly designated the issue nor presented a sufficient supporting argument in his brief.
3. Tennessee Rule of Professional Conduct 1.5 provides the correct legal standard for assessing the reasonableness of attorney fees and costs under Tennessee Code Annotated section 20-12-119(c).

KEY QUOTATIONS

“The fees and costs recoverable by Ms. Donovan in connection with the dismissal of Mr. Hastings’s breach of contract claim are not limited to those incurred after the amended countercomplaint was actually filed.” (at -8-)

“Consequently, we vacate the trial court’s award and remand to the trial court for reconsideration of the award of reasonable attorney fees and costs.” (at -10-)

FACTUAL BACKGROUND

Donovan hired Hastings to construct an addition to and renovate portions of her Nashville home under a residential construction contract requiring approximately \$176,300 in payment. After paying \$130,000 and remaining dissatisfied with the work, Donovan sued Hastings for several claims. Hastings filed a countercomplaint alleging breach of contract, later amended it to assert the same claim with revised damages, and the trial court dismissed the countercomplaint for failure to state a claim. Donovan sought attorney fees and costs under Tennessee Code Annotated section 20-12-119(c), including expenses incurred before the amended countercomplaint was filed.

PROCEDURAL HISTORY

Donovan sued Hastings in the Davidson County Chancery Court, and Hastings filed an original and then amended countercomplaint alleging breach of contract. The trial court dismissed the amended countercomplaint for failure to state a claim and awarded Donovan reduced attorney fees, excluding fees and costs incurred before the amended countercomplaint was filed. The Court of Appeals affirmed in a split decision. The Tennessee Supreme Court granted permission to appeal, reversed the limitation on recoverable fees and costs, vacated the fee award, and remanded for reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the trial court's attorney-fee award and remand for reconsideration of the reasonable attorney-fee and cost award under the correct legal parameters, including consideration of fees and costs not limited to those incurred after March 29, 2019.

CASES CITED

- Lemon v. Williamson Cnty. Schs., 618 S.W.3d 1, 8 (Tenn. 2021)
- Webb v. Nashville Area Habitat for Human., Inc., 346 S.W.3d 422, 426 (Tenn. 2011)
- Cracker Barrel Old Country Store, Inc. v. Epperson, 284 S.W.3d 303, 308 (Tenn. 2009)
- Taylor v. Fezell, 158 S.W.3d 352, 359 (Tenn. 2005)
- John Kohl & Co. P.C. v. Dearborn & Ewing, 977 S.W.2d 528, 534 (Tenn. 1998)
- Spires v. Simpson, 539 S.W.3d 134, 143 (Tenn. 2017)
- Coffee Cnty. Bd. of Educ. v. City of Tullahoma, 574 S.W.3d 832, 839 (Tenn. 2019)
- Mills v. Fulmarque, Inc., 360 S.W.3d 362, 368 (Tenn. 2012)
- Beard v. Branson, 528 S.W.3d 487, 494–95 (Tenn. 2017)
- Donovan v. Hastings, No. M2019-01396-COA-R3-CV, 2020 WL 6390134 (Tenn. Ct. App. Oct. 30, 2020)
- McBurney v. Aldrich, 816 S.W.2d 30, 33 (Tenn. Ct. App. 1991)
- First Cmty. Mortg., Inc. v. Appraisal Servs. Grp., Inc., No. W2020-01246-COA-R3-CV, 2021 WL 5561053, at *9 (Tenn. Ct. App. Nov. 29, 2021)
- In re Kaliyah S., 455 S.W.3d 533, 552 (Tenn. 2015)
- Hodge v. Craig, 382 S.W.3d 325, 335 (Tenn. 2012)
- Owen v. Long Tire, LLC, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011)
- Wright ex rel. Wright v. Wright, 337 S.W.3d 166, 169, 177 (Tenn. 2011)
- New v. Dumitrache, 604 S.W.3d 1, 23–24 (Tenn. 2020)

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