

SUPREME COURT OF OREGON

Colby v. Gunson, 349 Or. 1

238 P.3d 374 (2010) · No. SC S057691 · Decided August 26, 2010

SUMMARY

The Supreme Court of Oregon held that an attorney who represents himself in a public-records action may recover reasonable attorney fees under ORS 192.490(3). The court interpreted “attorney fees” to include the reasonable value of legal services performed by an attorney acting pro se, without requiring a separate client or an obligation to pay for the services. The court reversed the Oregon Court of Appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	August 26, 2010
DOCKET	SC S057691
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On review of the Court of Appeals' denial of plaintiff's request for attorney fees after the Court of Appeals had reversed and remanded the trial court's public-records ruling.
STANDARD OF REVIEW	The court reviewed the meaning of ORS 192.490(3) as a question of statutory interpretation, determining the plain and ordinary meaning of the statutory terms.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential.
PARTIES	Craig Colby v. Karen Gunson, State Medical Examiner

TOPICS

attorney fees statutory interpretation plain meaning rule appellate procedure administrative law

PRACTICE AREAS

Oregon public-records law statutory attorney fees statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether an attorney who represents himself in a public-records action may recover attorney fees under ORS 192.490(3).
2. Whether the phrase "attorney fees" in ORS 192.490(3) requires that the prevailing party incur an obligation to pay for legal services or have a separate client.

HOLDINGS

1. An attorney who represents himself in a public-records action may recover attorney fees under ORS 192.490(3) for the reasonable value of the legal services he performs on his own behalf.
2. For purposes of ORS 192.490(3), "attorney" means an individual who practices law and does not require an agency relationship with a separate client.

KEY QUOTATIONS

"Instead, the term "attorney fees," as used in the context of attorney fee awards, means the reasonable value of services performed by an attorney, whether or not anyone incurs an obligation to pay for those services." (376-377)

"Because plaintiff is an attorney and because he performed legal services in seeking disclosure of public records, he is entitled to collect attorney fees for those services. It is irrelevant that he performed those legal services on his own behalf." (378)

FACTUAL BACKGROUND

Colby, an attorney and member of the Oregon State Bar, sought disclosure of autopsy and laboratory reports concerning a police shooting from the state medical examiner. After the medical examiner refused disclosure and the Attorney General denied Colby's petition, Colby brought a public-records action. The trial court found the records exempt, but the Court of Appeals reversed and remanded; Colby then sought attorney fees for the legal services he performed on his own behalf.

PROCEDURAL HISTORY

Colby sought autopsy and laboratory reports from the state medical examiner under Oregon's public-records law. The Marion County Circuit Court held that the records were exempt from disclosure, but the Court of Appeals reversed and remanded for consideration of another possible exemption. After that successful appeal, Colby sought attorney fees under ORS 192.490(3); the Court of Appeals denied fees because he had represented himself. The Oregon Supreme Court reversed and remanded to the Court of Appeals for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Court of Appeals for further proceedings, including consideration of Colby's entitlement to a reasonable attorney-fee award under ORS 192.490(3).

CASES CITED

- State v. Tate, 347 Or. 318, 324, 220 P.3d 1176 (2009)
- Chalmers v. Oregon Auto. Ins. Co., 263 Or. 449, 455, 502 P.2d 1378 (1972)
- Domingo v. Anderson, 325 Or. 385, 938 P.2d 206 (1997)
- Colby v. Gunson, 229 Or. App. 167, 210 P.3d 917 (2009)
- Colby v. Gunson, 224 Or. App. 666, 199 P.3d 350 (2008)
- In re Glass, 308 Or. 297, 301-02, 779 P.2d 612 (1989)
- State ex rel. Binschus v. Schreiber, 141 Or. App. 288, 294, 917 P.2d 1063 (1996)

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