

## SUPREME COURT OF NORTH CAROLINA

### Preiss v. Wine & Design Franchise, LLC

372 N.C. 65 (2019) · No. 390A18 · Decided March 29, 2019

#### SUMMARY

The North Carolina Supreme Court affirmed an order imposing sanctions under North Carolina Rule of Civil Procedure 37(d) after plaintiffs' counsel failed to appear at a court-ordered deposition. The court held that the mistaken belief about the deposition time did not substantially justify the failure to appear and upheld an award of \$4,100 in attorneys' fees and costs against counsel individually.

#### CASE DETAILS

|                    |                                                                                                                                                                                                                                              |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of North Carolina                                                                                                                                                                                                              |
| JURISDICTION       | North Carolina                                                                                                                                                                                                                               |
| DECIDED            | March 29, 2019                                                                                                                                                                                                                               |
| DOCKET             | 390A18                                                                                                                                                                                                                                       |
| DISPOSITION        | affirmed                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE | Plaintiffs' counsel appealed under N.C.G.S. § 7A-27(a) from an order of the North Carolina Business Court imposing Rule 37(d) sanctions and awarding \$4,100 in attorney fees and costs for failure to appear at a court-ordered deposition. |
| STANDARD OF REVIEW | The sanctions ruling was reviewed for abuse of discretion.                                                                                                                                                                                   |
| PRECEDENTIAL VALUE | published and precedential                                                                                                                                                                                                                   |
| PARTIES            | Emily N. Preiss, Wine and Design, LLC v. Wine and Design Franchise, LLC, Harriet E. Mills, Patrick Mills, Capital Sign Solutions, LLC                                                                                                        |

#### TOPICS

[sanctions](#)[discovery dispute](#)[attorney fees](#)[appellate procedure](#)[commercial litigation](#)

#### PRACTICE AREAS

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#### QUESTIONS PRESENTED

1. Whether the trial court properly imposed sanctions under North Carolina Rule of Civil Procedure 37(d) for plaintiffs' counsel's failure to appear at a court-ordered deposition.
2. Whether the award of \$4,100 in attorney fees and costs was authorized and supported by sufficient evidence.

## HOLDINGS

1. The trial court properly sanctioned plaintiffs' counsel under Rule 37(d) for failing to appear at the court-ordered deposition.
2. The \$4,100 award of attorney fees and costs was reasonable and properly awarded.

## KEY QUOTATIONS

*“Hofler, as Plaintiffs’ Counsel, is hereby sanctioned pursuant to Rule 37(d), is individually liable to counsel for the Mills Defendants for \$4,100.000” (at 9)*

## FACTUAL BACKGROUND

The trial court twice expressly ordered the depositions of Emily Preiss and Wine and Design, LLC to occur on April 25, 2018, at 9:00 a.m. at defense counsel's Raleigh office. Defense counsel and a court reporter appeared at the designated location, but neither Preiss nor her counsel, R. Hayes Hofler, appeared at the scheduled time. Hofler later stated that he mistakenly believed the deposition began at 10:00 a.m.; Preiss arrived alone at approximately 10:30 a.m.

## PROCEDURAL HISTORY

The Superior Court, Wake County, designated as a mandatory complex business case, ordered plaintiffs Emily Preiss and Wine and Design, LLC to appear for depositions on April 25, 2018. Neither Preiss nor plaintiffs' counsel appeared at the appointed time and location; Preiss later arrived alone. The Business Court granted the defendants' motion for sanctions and ordered plaintiffs' counsel, R. Hayes Hofler, to pay \$4,100. The Supreme Court of North Carolina affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Couch v. Private Diagnostic Clinic, 146 N.C. App. 658, 672, 554 S.E.2d 356, 366 (2001)