

COURT OF APPEALS OF NORTH CAROLINA

Phillips v. Brackett, 156 N.C. App. 76

575 S.E.2d 805 (2003) · No. COA02-385 · Decided February 4, 2003

SUMMARY

The North Carolina Court of Appeals affirmed an award of attorney's fees to a plaintiff who recovered \$3,829.98 in damages following a vehicle collision. The court held that North Carolina General Statutes § 6-21.1 applies based on the amount of damages recovered rather than the amount initially demanded, and that the trial court sufficiently supported its discretionary fee award. The court also held that several appellate arguments were unpreserved or waived.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Bryant; Wynn; Geer
JURISDICTION	North Carolina
DECIDED	February 4, 2003
DOCKET	COA02-385
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a judgment awarding plaintiff personal-injury damages and attorney's fees, together with an order denying defendant's motions for relief from the order and reconsideration.
STANDARD OF REVIEW	Attorney's-fee awards under N.C. Gen. Stat. § 6-21.1 are reviewed for abuse of discretion. Preservation and waiver issues are reviewed under the North Carolina Rules of Appellate Procedure. An evidentiary error, even if assumed, does not warrant reversal if harmless.
PRECEDENTIAL VALUE	published opinion
PARTIES	Jesse Cornelieus Brackett v. Brenda Macon Phillips

TOPICS

- personal injury
- remedies
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

- torts
- personal injury
- attorney's fees
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether plaintiff's initial demand exceeding \$10,000 precluded an attorney's-fee award under N.C. Gen. Stat. § 6-21.1 when the judgment obtained was less than \$10,000.
2. Whether defendant preserved the argument that the trial court's ruling on attorney's fees was an improper advisory opinion.
3. Whether defendant waived appellate review of the trial court's reliance on affidavits concerning the insurer's general claims practices.
4. Whether the attorney's-fee award improperly punished the insurer for investigating and conducting discovery.
5. Whether the trial court made sufficient findings concerning the time and labor expended by plaintiff's counsel.

HOLDINGS

1. The amount of the judgment obtained, not the amount demanded, governs whether the monetary threshold in N.C. Gen. Stat. § 6-21.1 is satisfied. Because plaintiff obtained a judgment of \$3,829.98, the statute applied.
2. Defendant failed to preserve the argument that the attorney's-fee ruling was an improper advisory opinion because he did not object before the trial court ruled on plaintiff's motion for a new trial.
3. The issue was waived because defendant cited no relevant supporting authority. In any event, assuming the trial court erred in relying on the affidavits, the error was harmless because an unjust exercise of superior bargaining power is not required for an attorney's-fee award when the other statutory factors support the award.
4. The trial court did not abuse its discretion by considering the insurer's failure to make settlement offers and awarding attorney's fees where the insurer offered no justification for failing to offer payment for damages supported by timely documentation.
5. The trial court made sufficient findings concerning the time and labor expended by plaintiff's counsel; it was not required to allocate hours specifically among each activity.

KEY QUOTATIONS

"It is "[t]he amount of the judgment obtained, not the amount of the judgment sought, [that] governs applicability of the statute." (807)

"As long as the trial court's consideration of the other relevant Washington factors justifies an award of attorney's fees under section 6-21.1, there is no abuse of discretion." (808)

"Such detail, however, is not required to support an award of attorney's fees." (809)

FACTUAL BACKGROUND

Defendant negligently drove into the rear of plaintiff's stopped vehicle and admitted negligence. Plaintiff pursued damages for personal injuries, medical expenses, and lost income; despite receiving documentary

support for at least some damages, defendant's insurer made no settlement offer for approximately three years before mediation. The jury awarded plaintiff \$3,829.98, and the trial court awarded \$15,231.50 in attorney's fees after considering the statutory factors and the work performed by plaintiff's counsel.

PROCEDURAL HISTORY

Plaintiff sued after defendant admitted negligent driving but denied the extent of plaintiff's injuries, medical expenses, and lost income. A jury awarded plaintiff \$3,829.98 in personal-injury damages. The trial court then awarded plaintiff \$15,231.50 in attorney's fees under N.C. Gen. Stat. § 6-21.1. Defendant appealed, challenging the fee award and related procedural and evidentiary issues; the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Purdy v. Brown, 56 N.C. App. 792, 796, 290 S.E.2d 397, 399 (1982), rev'd on other grounds, 307 N.C. 93, 296 S.E.2d 459 (1982)
- Washington v. Horton, 132 N.C. App. 347, 351, 513 S.E.2d 331, 334-35 (1999)
- Robinson v. Shue, 145 N.C. App. 60, 66-69, 550 S.E.2d 830, 834-36 (2001)
- PHC, Inc. v. N.C. Farm Bureau Mut. Ins. Co., 129 N.C. App. 801, 806, 501 S.E.2d 701, 704 (1998)
- Thorpe v. Perry-Riddick, 144 N.C. App. 567, 572, 551 S.E.2d 852, 856 (2001)
- Mickens v. Robinson, 103 N.C. App. 52, 59, 404 S.E.2d 359, 363 (1991)