

SUPREME COURT OF VERMONT

Katherine, Bradley and Jordan Lawson v. Brown's Day Care Center, Inc., et al.

172 Vt. 574 (2001) (Vt. 2001) · No. 98-447 · Decided April 16, 2001

SUMMARY

The Vermont Supreme Court reviewed a \$2,000 sanction imposed on defense counsel Duncan Kilmartin for filing confidential mediation materials with the trial court. The court held that sanctions based on the court's inherent powers required a finding of bad faith and that counsel lacked fair warning that his disclosure, which he claimed was required by professional-responsibility rules, could result in a punitive sanction. The court reversed and remanded for a determination of Kilmartin's motivation.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Amestoy, C.J.; Dooley, J.; Morse, J.; Johnson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	April 16, 2001
DOCKET	98-447
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Counsel for defendants appealed a \$2,000 sanction imposed by the Caledonia Superior Court for filing unsealed information from a confidential mediation session with the court.
STANDARD OF REVIEW	The Supreme Court reviewed the superior court's exercise of inherent sanctioning power and its compliance with due-process notice requirements.
PRECEDENTIAL VALUE	Published opinion; binding Vermont Supreme Court precedent.
PARTIES	Duncan Kilmartin v. Brown's Day Care Center, Inc., et al.

TOPICS

- sanctions
- mediation
- contempt
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a court may impose a punitive monetary sanction under its inherent powers for disclosure of confidential mediation materials without finding bad faith.
2. Whether due process requires fair warning that the conduct may subject an attorney to a punitive sanction.
3. Whether Kilmartin's asserted duty to report opposing counsel's possible misconduct required consideration before sanctions were imposed.

HOLDINGS

1. A finding of bad faith is essential to the court's inherent power to impose the punitive sanction imposed here; the superior court erred by imposing the sanction without finding improper motive or bad faith.
2. An attorney may not receive a punitive sanction without fair warning that the conduct could subject the attorney to that sanction; a finding of bad faith would have addressed the lack of fair warning in these circumstances.
3. The superior court erred by ignoring Kilmartin's asserted justification for disclosure and by failing to determine whether he acted from an improper motive or in bad faith.

KEY QUOTATIONS

"A finding of bad faith is essential to the court's power to impose the sanction it did." (393)

"Although we recognize that Kilmartin had notice of the hearing and an opportunity to be heard, see Rich v. Montpelier Supervisory Dist., 167 Vt. 415, 420, 709 A.2d 501, 504 (1998), our concern is whether he had notice that the conduct he engaged in could subject him to sanction." (394)

FACTUAL BACKGROUND

During court-ordered mediation, the parties and counsel agreed that the mediation proceedings would remain confidential. Kilmartin later filed an unsealed disclosure describing mediation discussions and attaching a proposed settlement agreement, asserting that opposing counsel had engaged in unethical or potentially criminal conduct and that he was obligated to report it. The superior court imposed a \$2,000 punitive sanction without finding that Kilmartin acted in bad faith or considering his asserted justification.

PROCEDURAL HISTORY

The underlying personal-injury action settled after mediation. The superior court sanctioned Kilmartin \$2,000 and opposing counsel \$1,000 for filing documents disclosing mediation discussions and settlement terms. Kilmartin appealed, and the Supreme Court of Vermont reversed and remanded for a determination whether he acted in bad faith.

DISPOSITION

REMAND INSTRUCTIONS

The trial court must determine whether Kilmartin revealed the mediation materials in bad faith or from an improper motive. If it finds bad faith, a sanction may be an appropriate exercise of the court's inherent powers.

CASES CITED

- In re Anderson, ___ Vt. ___, 769 A.2d 1282 (2000) (mem.)
- Van Eps v. Johnston, 150 Vt. 324, 326-27, 553 A.2d 1089, 1091-92 (1988)
- Roadway Express, Inc. v. Piper, 447 U.S. 752, 764, 767, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980)
- In re Sherman Hollow, Inc., 160 Vt. 627, 630, 641 A.2d 753, 756 (1993) (mem.)
- Chambers v. NASCO, Inc., 501 U.S. 32, 53-54, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)
- In re Paschal, 77 U.S. (10 Wall.) 483, 491, 19 L. Ed. 992 (1870)
- State v. Pownal Tanning Co., 142 Vt. 601, 605, 459 A.2d 989, 991 (1983)
- Rich v. Montpelier Supervisory Dist., 167 Vt. 415, 420, 709 A.2d 501, 504 (1998)
- Bigelow v. Bigelow, 171 Vt. ___, 759 A.2d 67, 72-73 (2000)
- Mackler Prods., Inc. v. Cohen, 146 F.3d 126, 129-30 (2d Cir. 1998)
- Law v. Nat'l Collegiate Athletic Ass'n, 134 F.3d 1438, 1443-44 (10th Cir. 1998)
- Satcorp Int'l Group v. China Nat'l Silk Import & Export Corp., 101 F.3d 3, 5-6 (2d Cir. 1996)
- In re Himmel, 125 Ill. 2d 531, 127 Ill. Dec. 708, 533 N.E.2d 790, 794 (1988)