

SUPREME COURT OF NORTH DAKOTA

Riemers v. O'Halloran

678 N.W.2d 547 (N.D. 2004) · No. No. 20030280 · Decided April 13, 2004

SUMMARY

The Supreme Court of North Dakota affirmed dismissal of Roland C. Riemers's action against a court-appointed forensic accounting expert and the expert's firm. The court held that the defendants were absolutely immune from suit based on their testimony and work as a court-appointed expert in the underlying divorce proceeding. The court also determined that Riemers's appeal was frivolous and awarded the defendants \$5,210.15 in attorney fees and costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Neumann, Justice; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Dale V. Sandstrom, J.; Neumann, J.
JURISDICTION	North Dakota
DECIDED	April 13, 2004
DOCKET	No. 20030280
DISPOSITION	affirmed
PROCEDURAL POSTURE	Riemers appealed the trial court's order dismissing his action against a court-appointed accounting expert and the expert's accounting firm on the ground of absolute witness immunity.
STANDARD OF REVIEW	The Supreme Court reviewed the dismissal and application of witness immunity; the opinion does not state a separate formal standard-of-review formulation.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Roland C. Riemers v. Thomas J. O'Halloran, Buckhoff & O'Halloran & Associates, LLP

TOPICS

- civil procedure
- appellate procedure
- sanctions
- attorney fees
- family law procedure

PRACTICE AREAS

civil procedure

appellate procedure

professional liability

family law

QUESTIONS PRESENTED

1. Whether a court-appointed forensic accounting expert and the expert's firm are absolutely immune from a civil action based on their testimony and work performed in the divorce proceeding.
2. Whether Riemers's unsupported constitutional, statutory, international-law, and witness-immunity arguments demonstrated error in the dismissal.
3. Whether the appeal was frivolous and warranted attorney fees and costs under North Dakota Rule of Appellate Procedure 38.

HOLDINGS

1. A court-appointed expert is absolutely immune from suit based on the expert's testimony in the judicial proceeding, even when the plaintiff alleges that the testimony or related conduct was false, fraudulent, unethical, or otherwise wrongful.
2. Bare, conclusory assertions of constitutional or statutory claims, unsupported by reasoning or relevant authority, are without merit and do not establish reversible error.
3. An appeal is frivolous under North Dakota Rule of Appellate Procedure 38 when it is flagrantly groundless, devoid of merit, or reflects persistence in litigation suggesting bad faith; such an appeal may result in an award of reasonable attorney fees and costs.

KEY QUOTATIONS

“Witnesses are, as a general rule, absolutely immune from suit based on their testimony.” (at 550-551)

“It has long been the established rule that a witness, even if he knowingly gives false testimony, is entitled to absolute immunity from civil damages.” (at 551)

“Under Roberdeau and Loran, the trial court correctly concluded O'Halloran, as a court-appointed expert, enjoyed absolute immunity as a witness and properly dismissed Riemers' action.” (at 552)

FACTUAL BACKGROUND

In the underlying divorce action, a judicial referee appointed Buckhoff, O'Halloran & Associates, LLP as the court's forensic accounting expert under North Dakota Rule of Evidence 706. The firm investigated Riemers's income and financial affairs, prepared a report, and O'Halloran testified at trial. Riemers then sued the firm and O'Halloran, alleging that they falsely reported his income, tax violations, and ability to pay child and spousal support, causing inflated support and property awards.

PROCEDURAL HISTORY

During the parties' divorce proceedings, the court appointed Buckhoff, O'Halloran & Associates, LLP as a forensic accounting expert, and Thomas J. O'Halloran prepared a report and testified. Riemers later sued the firm and O'Halloran, alleging false and fraudulent reporting that affected support and property awards. The trial court

held the defendants absolutely immune from suit as witnesses and dismissed the action. The North Dakota Supreme Court affirmed and awarded appellees \$5,210.15 in attorney fees for a frivolous appeal, plus costs.

DISPOSITION

affirmed

CASES CITED

- Peters-Riemers v. Riemers, 2003 ND 96, 663 N.W.2d 657
- Peters-Riemers v. Riemers, 2004 ND 28, 674 N.W.2d 287
- Peters-Riemers v. Riemers, 2002 ND 72, 644 N.W.2d 197
- Peters-Riemers v. Riemers, 2002 ND 49, 641 N.W.2d 83
- Flattum-Riemers v. Peters-Riemers, 2001 ND 121, 630 N.W.2d 71
- Peters-Riemers v. Riemers, 2001 ND 62, 624 N.W.2d 83
- Snyder v. North Dakota Workers Compensation Bureau, 2001 ND 38, 622 N.W.2d 712
- Grand Forks Prof'l Baseball, Inc. v. North Dakota Workers Compensation Bureau, 2002 ND 204, 654 N.W.2d 426
- Kautzman v. Kautzman, 2003 ND 140, 668 N.W.2d 59
- Olander Contracting Co. v. Gail Wachter Invs., 2002 ND 65, 643 N.W.2d 29
- New Town Pub. School Dist. No. 1 v. State Bd. of Pub. School Educ., 2002 ND 127, 650 N.W.2d 813
- Lythgoe v. Guinn, 884 P.2d 1085 (Alaska 1994)
- Mattco Forge, Inc. v. Arthur Young & Co., 5 Cal. App. 4th 392, 6 Cal. Rptr. 2d 781 (1992)
- Murphy v. A.A. Mathews, a Div. of CRS Group Eng'rs, Inc., 841 S.W.2d 671 (Mo. 1992)
- Levine v. Wiss & Co., 97 N.J. 242, 478 A.2d 397 (1984)
- LLMD of Michigan, Inc. v. Jackson-Cross Co., 559 Pa. 297, 740 A.2d 186 (1999)
- James v. Brown, 637 S.W.2d 914 (Tex. 1982)
- Stone v. Glass, 35 S.W.3d 827, 828 (Ky. Ct. App. 2000)
- Lawrence v. Roberdeau, 2003 ND 124, 665 N.W.2d 719
- Briscoe v. LaHue, 460 U.S. 325 (1983)
- Butz v. Economou, 438 U.S. 478, 511-12 (1978)
- Municipal Servs. Corp. v. State, 483 N.W.2d 560, 563 (N.D. 1992)
- Questa Res., Inc. v. Stott, 2003 ND 51, 658 N.W.2d 756
- Mitchell v. Preusse, 358 N.W.2d 511, 514 (N.D. 1984)