DISTRICT OF COLUMBIA COURT OF APPEALS

Purcell v. Thomas; Thomas v. Accredited Surety and Casualty Company, Inc.

Purcell v. Thomas; Thomas v. Accredited Surety and Casualty Co., 28 A.3d 1138 (D.C. 2011) · No. Nos. 09-CV-501, 10-CV-485 · Decided September 29, 2011

SUMMARY

The District of Columbia Court of Appeals affirmed an award of attorney fees entered approximately six years after the prevailing party filed a timely fee motion following a sexual-harassment judgment. The court also held that a supersedeas bond securing the underlying judgment did not cover the later, separately entered attorney-fee award.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Steadman, Senior Judge; Washington, Chief Judge; Fisher, Associate Judge
JURISDICTION	District of Columbia
DECIDED	September 29, 2011
DOCKET	Nos. 09-CV-501, 10-CV-485
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from Superior Court rulings concerning an award of attorney fees and the liability of a supersedeas-bond surety for that award.
STANDARD OF REVIEW	The interpretation of the supersedeas bond is reviewed de novo. The court otherwise reviewed the Superior Court's rulings concerning preservation and timing of the attorney-fee request for legal error.
PRECEDENTIAL VALUE	Published District of Columbia Court of Appeals opinion
PARTIES	George Purcell, Fedora, Inc., Marva E. Thomas v. Marva E. Thomas, Accredited Surety and Casualty Company, Inc.

TOPICS

attorney fees · appellate procedure · civil procedure · costs · insurance

PRACTICE AREAS

civil procedure · appellate procedure · attorney fees · surety and bond law · employment discrimination

QUESTIONS PRESENTED

1. Whether a timely filed motion for attorney fees remains preserved when the trial court defers ruling on it during an appeal of the merits judgment.
2. Whether a supersedeas bond securing a specified judgment also covers a later, separately entered award of attorney fees.

HOLDINGS

1. A prevailing party preserves its request for attorney fees by timely filing and serving the motion required by Superior Court Civil Rule 54(d)(2)(B); no additional step, such as obtaining a deferment order, requesting an immediate ruling, or appealing the lack of a ruling, is required merely because the trial court defers ruling while the merits appeal is pending.
2. The supersedeas bond did not cover the March 2009 attorney-fee award because the bond was tied exclusively to the June 2003 judgment, which did not include attorney fees.

KEY QUOTATIONS

> *"At bottom, Superior Court rules do not mandate that an additional step, beyond timely filing, is necessary to preserve a motion for attorney fees pending the outcome of the appeal."* (28 A.3d at 1143)

> *"The "surety's obligation must be measured by the conditions stated in the bond. . . .""* (28 A.3d at 1144)

> *"The March 2009 order awarding Thomas attorney fees is independent of, and separate from, the June 2003 judgment to which the supersedeas bond applies."* (28 A.3d at 1146)

FACTUAL BACKGROUND

Thomas obtained a $165,000 judgment against Purcell and Fedora, Inc. in a sexual-harassment action. Fourteen days after entry of judgment, Thomas filed a motion for attorney fees, but the Superior Court deferred ruling while the defendants appealed the merits judgment. After the appellate affirmance, the Superior Court awarded Thomas $590,807 in attorney fees. A $300,000 supersedeas bond secured the stay of execution of the 2003 judgment, and the court had to decide whether that bond also secured the later attorney-fee award.

PROCEDURAL HISTORY

After an eight-day jury trial, the Superior Court entered a June 18, 2003 judgment awarding Thomas $165,000 against Purcell and Fedora, Inc. Thomas timely moved for attorney fees, while Purcell and Fedora appealed the underlying judgment. The District of Columbia Court of Appeals affirmed the underlying judgment in 2007. The Superior Court then awarded Thomas $590,807 in attorney fees in March 2009, and separately ruled in March 2010 that Accredited was not liable for those fees under the supersedeas bond. The parties filed consolidated appeals from those rulings.

DISPOSITION

affirmed

CASES CITED

- Purcell v. Thomas, 928 A.2d 699 (D.C. 2007)
- Weaver v. Grafio, 595 A.2d 983, 986 (D.C. 1991)
- Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201-203 (1988)
- District of Columbia v. Jackson, 878 A.2d 489, 492, 494 & n.5 (D.C. 2005)
- Breiner v. Daka, Inc., 806 A.2d 180, 183 (D.C. 2002)
- Goldberg, Marchesano, Kohlman, Inc. v. Old Republic Sur. Co., 727 A.2d 858, 860-861 (D.C. 1999)
- May v. Cont'l Cas. Co., 936 A.2d 747, 750 (D.C. 2007)
- Tillery v. District of Columbia Contract Appeals Bd., 912 A.2d 1169, 1176 (D.C. 2006)
- Dyer v. Bilaal, 983 A.2d 349, 354-355 (D.C. 2009)
- Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-1191 (5th Cir. 1979)
- Fed. Pres. Serv. v. Am. Pharm. Ass'n, 636 F.2d 755, 760 (D.C. Cir. 1980)
- Bevard v. New Amsterdam Cas. Co., 132 A.2d 157, 160 (D.C. 1957)
- Omaha Hotel Co. v. Kountze, 107 U.S. 378, 386, 392, 394 (1883)
- Young & Simon, Inc. v. Brown, 387 A.2d 724, 725 (D.C. 1978)
- Faggins v. Fischer, 853 A.2d 132, 137 (D.C. 2004)
- Calomiris v. Calomiris, 3 A.3d 1186, 1193 (D.C. 2010)