

SUPREME COURT OF ARKANSAS

Swindle v. Southern Farm Bureau Casualty Insurance Co.

2015 Ark. 241 (2015) · No. CV-14-250 · Decided May 28, 2015

SUMMARY

The Arkansas Supreme Court held that Swindle was not the prevailing party entitled to attorney’s fees under Arkansas Code Annotated section 16-22-308 because the insurer’s payment was not the result of an adjudication on the merits. The court reversed the Rule 11 sanctions because the required procedural protections, including notice, were not provided. The circuit court’s decision was affirmed in part, reversed in part, and the court of appeals’ opinion was vacated.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Josephine Linker Hart, Associate Justice; Jim Hannah, Chief Justice; Danielson, Justice; Wood, Justice; Wynne, Justice, not participating
JURISDICTION	Arkansas
DECIDED	May 28, 2015
DOCKET	CV-14-250
DISPOSITION	reversed
PROCEDURAL POSTURE	Swindle appealed from a Benton County Circuit Court order granting Southern Farm Bureau Casualty Insurance Company summary judgment and awarding the company attorney's fees as Rule 11 sanctions.
STANDARD OF REVIEW	De novo review applies to statutory interpretation. Imposition of Rule 11 sanctions is generally reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Ken David Swindle v. Southern Farm Bureau Casualty Insurance Company

TOPICS

- sanctions
- attorney fees
- statutory interpretation
- summary judgment
- breach of contract

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Swindle was the prevailing party entitled to attorney's fees under Arkansas Code Annotated section 16-22-308 because SFB paid the \$24,500 after the lawsuit was filed.
2. Whether the circuit court could impose Rule 11 sanctions without the notice and separate-motion procedures required under the version of Arkansas Rule of Civil Procedure 11 in effect when the action was filed.
3. Whether SFB could alternatively recover attorney's fees under section 16-22-308 when the circuit court awarded fees only as Rule 11 sanctions and did not rule on the statutory fee request.

HOLDINGS

1. Swindle was not the prevailing party and was not entitled to attorney's fees under section 16-22-308 because SFB's payment was not the result of a court adjudication resolving the merits of the underlying claim.
2. The circuit court could not impose Rule 11 sanctions on Swindle without notice and the procedural protections required by the applicable version of Rule 11.
3. The court declined to affirm the attorney's-fee award on the alternative statutory basis because the circuit court did not award fees under section 16-22-308 or rule on SFB's request for fees under that statute.

KEY QUOTATIONS

"The 'key to being the prevailing party is that there has been an adjudication on the merits of issues central to the litigation.'" (2015 Ark. 241, at 4)

"The clear holding of Weaver is that an attorney or party is entitled to notice before the circuit court can impose Rule 11 sanctions." (2015 Ark. 241, at 5)

FACTUAL BACKGROUND

Swindle represented two clients whose motor-vehicle-collision claims were insured by SFB and asserted attorney's liens on those claims. After the clients accepted settlements, SFB issued checks totaling \$24,500, but the checks were initially rejected by the bank. Swindle filed a breach-of-contract action seeking the \$24,500; SFB later reissued the checks, and Swindle received the funds. The circuit court nevertheless found that Swindle had filed a frivolous claim without proper and reasonable investigation and imposed attorney's fees as Rule 11 sanctions.

PROCEDURAL HISTORY

Swindle sued SFB for breach of contract seeking \$24,500 after checks issued in connection with settlements for his clients were initially dishonored. After SFB reissued the checks and Swindle received the funds, Swindle moved for judgment on the pleadings and requested attorney's fees. SFB opposed the fee request and sought summary judgment and Rule 11 sanctions. The circuit court granted SFB summary judgment and awarded

\$6,785.65 in attorney's fees as sanctions. The Supreme Court of Arkansas affirmed the denial of Swindle's prevailing-party fee request, reversed the Rule 11 sanctions, and vacated the court of appeals' opinion.

DISPOSITION

reversed

CASES CITED

- Berryhill v. Synatzske, 2014 Ark. 169, 432 S.W.3d 637 (2014)
- Burnette v. Perkins & Assocs., 343 Ark. 237, 33 S.W.3d 145 (2000)
- BKD, LLP v. Yates, 367 Ark. 391, 240 S.W.3d 588 (2006)
- Weaver v. City of West Helena, 367 Ark. 159, 238 S.W.3d 74 (2006)
- Arkansas Judicial Discipline & Disciplinary Commission v. Simes, 2011 Ark. 193, 381 S.W.3d 764 (2011)
- Arnold v. Camden News Publishing Co., 353 Ark. 522, 110 S.W.3d 268 (2003)
- S. Bank of Commerce v. Union Planters National Bank, 375 Ark. 141, 289 S.W.3d 414 (2008)

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