

1996

Neldon C. Nielsen and Mary Y. Nielsen v. Phillip Warren : Petition for Rehearing

Utah Court of Appeals

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Brad C. Smith; David S. Kunz; Attorney for Appellee.

William J. Critchlow, II; Attorney for Appellants.

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FILED
Utah Court of Appeals
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Marilyn M. Branch
Clerk of the Court

IN THE UTAH COURT OF APPEALS

Neldon C. Nielsen and Mary Y . Nielsen,	:	
Plaintiffs and Appellants,	:	Case No. 960088CA
v.	:	
Phillip Warren,	:	
Defendant and Appellee.	:	

PETITION FOR REHEARING

Honorable Jon M. Memmott, Judge,
Second Judicial District Court for Davis County

William J. Critchlow, III
2610 Washington Boulevard
Ogden, Utah 84401
(801) 399-3303

Attorney for Appellants

Brad C. Smith, No. 6656
David S. Kunz, No. 1864
2605 Washington Blvd., No. 300
Ogden, Utah 84401
(801) 394-4573

Attorney for Appellees

Pursuant to Utah R. App. 35, Appellee hereby requests a rehearing of the above-entitled matter to consider an award of attorney's fees to Defendant/Appellee.

STATEMENT OF FACTS

1. On 10 October 1996, the Utah Court of Appeals issued a Memorandum Decision affirming the trial court's order of dismissal and judgment.
2. As part of the trial court's order of dismissal and judgment from which Plaintiff/Appellant appealed, Defendant/Appellee was awarded attorney's fees.
3. Defendant/Appellee requested an award of attorney's fees on appeal in Defendant/Appellee's brief. See Appellee's Br. at 31.
4. Plaintiff/Appellant did not appeal the trial court's award of attorney's fees and has failed to in any way challenge such an award in either their Brief in Chief or their Reply Brief.

ARGUMENT

"A party who was awarded attorney's fees and costs at trial is also entitled to attorney's fees and costs if that party prevails on appeal" Living Scriptures, Inc. v. Kudlik, 890 P.2d 7,11 (Utah Ct. App. 1995). See also, Wade v. Stengle, 869 P.2d 9, 13 (Utah Ct. App. 1994); Utah Dep't of Social Services v. Adams, 806 P.2d 1193, 1197 (Utah Ct. App. 1990).

Inasmuch as attorney's fees were awarded by the court below

and such an award has in no way been challenged in this case, an award of attorney's fees would be appropriate. Appellants bore the burden of challenging this award on appeal and they have not done so in any manner. Accordingly, Defendant/Appellee is entitled to an award of attorney's fees in accordance with the determination of the trial court. Cf. Call v. City of West Jordan, 788 P.2d 1049, 1053-54 (Utah Ct. App. 1990).

CONCLUSION

Petitioner certifies that this petition is presented in good faith and not for delay. Defendant/Appellee requests the court reconsider this case for the purpose of awarding attorney's fees to the Defendant/Appellee and remanding the matter to the trial court for determination of an appropriate amount.

DATED this 24 day of October, 1996.



BRAD C. SMITH
Attorney for Defendant/Appellee

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to William J. Critchlow, III, Attorney for Appellants, 2610 Washington Boulevard, Ogden, Utah 84401, this 24th day of October, 1996.

