

2008

Kaylnn Jones, Charles Jones, CJ's Rentals v. Tammie Riche, Paul Riche : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KAYLNN JONES and CHARLES
JONES, dba CJ'S RENTALS

Plaintiffs/Appellants

v.

TAMMIE RICHE and PAUL RICHE,
Defendants/Appellees

Appellate No.: 20080464-CA

On Appeal from the Seventh District Judicial Court
for the State of Utah

The Honorable Judge Douglas B. Thomas

APPELLEE'S RESPONSE BRIEF

APPELLEE REQUESTS ORAL ARGUMENT

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UTAH APPEL

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STATEMENT OF JURISDICTION

The Jones' appeal from an *Order Re: Attorney Fees* entered on March 20, 2008, and from the final order and judgment entered by Judge Douglas B. Thomas on April 29, 2008. This court has jurisdiction by assignment from the Utah Supreme Court.¹

STATEMENT OF THE ISSUES

- I. Whether the district court properly granted the Riches' attorney's fees when the written language subject to litigation restricted an award to the "defaulting party", and a Utah statute permits the court to use its discretion in reciprocating attorney's fees based on written contractual language?
 - a. **Standard of Review:** Whether or not attorney fees can be granted is reviewed for correctness.²
- II. Whether the district court properly exercised its discretion by finding the Riches were the prevailing party because of their success on their defense claims and their success in minimizing the damages sought by the Jones?
 - a. **Standard of Review:** Prevailing party determinations regarding an award of attorney's fees are reviewed for an abuse of discretion.³

¹ Utah Code Ann. §78A-4-103(2)(j) (2008).

² *R.T. Nielson Co. v. Cook*, 40 P.3d 1119, 1125 (Utah 2002).

³ *Id.* at 1127.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

§ 78B-5-826. Attorney fees -- Reciprocal rights to recover attorney fees

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.⁴

⁴ Utah Code Ann. §78B-5-826 (2008).

STATEMENT OF THE CASE AND FACTS

A jury trial was conducted on February 12, 2008 on all of Jones's causes of action. The trial court found at trial that Plaintiffs brought breach of contract claims in excess of \$17,000, yet obtained a jury verdict for less than one-tenth of that amount. The trial court also determined that at trial Defendants practically abandoned their counterclaims against Plaintiffs and no evidence was presented to the jury regarding the counterclaims. The trial court determined the trial concerned almost exclusively Plaintiffs' claims for damages against Defendants.

On March 17, 2008, the Court entered its Order awarding attorney's fees to Defendants. The trial court relied on Utah Code Annotated § 78-27-56.5, the prevailing party analysis as set forth in *A.K. & R. Whipple Plumbing and Heating v. Guy*, 94 P.3d 270 (Utah 2004); *R.T. Nielsen v. Cook*, 40 P.3d 1119 (Utah 2002); *J. Pochynok Co. v. Smedsrud*, 157 P.3d, 822 (Ut. Ct. App. 2007).

SUMMARY OF ARGUMENT

The District Court properly granted an award of attorney's fees to the Riches as a matter of law because the litigation was based on a written contract that allowed attorney's fees and Utah's statute further allows a reciprocal award at the district court's discretion. The award of attorney's fees is supported by both the plain language of the statute and the legislative intent. In addition, when a statute contradicts the common law, the statute prevails.

Furthermore, the District Court properly exercised its discretion by finding the Riches were the prevailing party based on the facts and context of the trial. At trial, the Riches successfully defended against a majority of the damages sought by the Jones's and it was within the Court's discretion to find they prevailed.

Finally, the Riches should be awarded attorney's fees for any appellate costs incurred. The prevailing party determination at trial carries over the appellate procedures, and therefore, the Riches should be awarded the costs of appeal.

ARGUMENT

- I. THE DISTRICT COURT'S GRANT OF ATTORNEY FEES SHOULD BE AFFIRMED BASED ON A CORRECTNESS STANDARD OF REVIEW AND THE DISTRICT COURT'S DETERMINATION THAT THE RICHES WERE THE PREVAILING PARTY SHOULD BE AFFIRMED BASED ON AN ABUSE OF DISCRETION STANDARD.

The standard of review for affirming a grant of attorney's fees is for correctness.⁵ The standard of review of affirming a designation of the prevailing party is an abuse of discretion.⁶ In order for the District Court's decision to be overruled on an abuse of discretion standard it must be found that the decision was "so inherently unfair" as to constitute abuse of discretion.⁷ Based on a correctness standard of review, the district court's grant of attorney fees should be affirmed because it was authorized by both a statute and a contract. Furthermore, based on an abuse of discretion standard, the district court's determination of the Riches as the prevailing party should be affirmed because they successfully defended against a majority of the claims and damages brought against them.

⁵ *Id.* at 1125.

⁶ *Id.* at 1127.

⁷ *State v. Killpack*, 2008 UT 49, P18 (Utah 2008).

II. THE DISTRICT COURT PROPERLY AWARDED THE RICHES ATTORNEY’S FEES BECAUSE THE GRANT WAS BASED ON CONTRACTUAL AND STATUTORY AUTHORITY AND THE RICHES WERE THE PREVAILING PARTY AT TRIAL BECAUSE THEY SUCCESSFULLY DEFENDED AGAINST A VAST MAJORITY OF THE DAMAGES SOUGHT.

In Utah, the general rule is courts may only award attorney’s fees when authorized by statute or contract.⁸ The standard of review for the district courts awarding attorney’s fees is a correctness standard.⁹ Once it is determined the court has the authority through either statute or contract to award attorney’s fees, then it is in the court’s discretion to define the prevailing party and award attorney fees.¹⁰ The standard of review for the district court’s prevailing party determination is abuse of discretion.¹¹

As a matter of law, the district court properly awarded attorney’s fees in favor of the Riches based on the written contract in conjunction with the statute. Furthermore, the court properly exercised its discretion and found the Riches were the prevailing party because they successfully defended against a majority of the claims and damages sought

⁸ *Bilanzich v. Lonetti*, 160 P.3d 1041, 1044 (Utah 2007).

⁹ *Cook* at 1125.

¹⁰ *Cook* at 1127.

¹¹ *Id.*

against them and because the Riches effectively surrendered their causes of action set forth in their counterclaim.

A. As a Matter of Law the District Court Properly Awarded the Riches Attorney's Fees Because the Written Contract Allowed for Attorney Fees to be Awarded to at Least One Party and Utah's Statute Allows the Court to Award Attorney Fees to Either Party at Trial.

In Utah, courts may award attorney's fees to either party in a civil action when it is based upon a written contract or note and the writing of the contract or note allows at least one party to recover attorney fees.¹² In the Riches' case, the statute's 1) plain text, 2) legislative intent, and 3) statutory authority support the district court's grant of attorney fees to the Riches. Therefore, the district court's grant of attorney fees should be affirmed.

- i. The plain text of the statute supports the district court's grant of attorney fees to the Riches because the suit was based on a written contract and it's language entitled at least one party to recover attorney's fees.

The plain language of the statute allows a court to grant attorney's fees when two conditions are met: 1) the civil action is based on a written contract, and 2) the provisions

¹² Utah Code Ann. §78B-5-826 (2008).

of the writing allow for “at least” one party to collect attorney’s fees.¹³ The first requirement is satisfied if at least one party seeks to enforce the written agreement.¹⁴ The second requirement is met if the written agreement grants attorney’s fees to at least one of the litigation parties.¹⁵ In *Bilanzich*, the Court upheld the lower court’s grant of attorney fees because the suit was based upon a personal guaranty and the agreement named only one party who could be awarded attorney fees.¹⁶

Like *Bilanzich*, the Riches’ litigation is based completely on a written lease agreement and its enforcement. Furthermore, the written lease agreement sets forth that attorney’s fees are recoverable by the “defaulting party”. Under the plain text of the statute, this contract language allows at least one party to collect attorney fees at trial. Although this language could be read to allow either party to collect fees depending on who defaults, the plain text of the statute does not require that *only* one party be allowed to collect, but instead requires *at least* one party be able to collect fees. Therefore, under the plain text of the statute, the District Court properly granted the Riches attorney’s fees in this matter.

¹³ *Bilanzich* at 1045.

¹⁴ *Id.*

¹⁵ *Id.* at 1046

¹⁶ *Id.* at 1045-1046.

- ii. The legislative intent behind the statute supports the district court's grant of attorney fees because when the matter went to trial the Riches were denied any chance of recovering attorney's fees based on the contract's language.

The legislative intent behind the statute is to eliminate unequal litigation risks caused by allowing only one party to recover attorney fees.¹⁷ In addition, the use of the word “may” gives the court broad discretion in deciding to whom to award attorney fees under the statute.¹⁸ Furthermore, district courts should award fees liberally under the statute when pursuing or defending an action results in an unequal exposure to the risk of contractual liability for attorney fees.¹⁹ In *Bilanzich*, the Court upheld an award of attorney fees based on a contract that allowed only one party to recover fees.²⁰

Like the reasoning of *Bilanzich*, the district court's grant of attorney's fees to the Riches is in harmony with the legislative intent of the statute. In this case, the Riches were placed in a similar position as *Bilanzich* where it was impossible for them to recover fees at trial because they were the defaulting party. This in turn put them on an unequal playing field and gave the Jones a tremendous incentive to litigate the matter. Under the

¹⁷ *Id.* at 1046.

¹⁸ *Id.* at 1047.

¹⁹ *Id.* at 1046.

²⁰ *Id.* at 1047.

analysis of *Bilanzich*, the district court had a duty to liberally use its discretion to correct this inequality. Although the Riches uses “defaulting party” language and this award of attorney of attorney’s fees defies the contractual language, the statute rectifies any injustice by allowing the judge discretion to award fees under the reciprocal provision of the statute. In this case the judge decided to exercise his discretion and allow the Riches to recover. Furthermore, the statute does not require the written contract to contain specific language such as “prevailing party”, but instead the statute itself uses broad language such as “party”. In conclusion, the district court’s grant of attorney’s fees to the Riches should be affirmed based on the unequal litigation risks the Riches faced at trial, which the legislators sought to cure with the statute.

iii. The district court properly granted attorney fees to the Riches, despite common law principles, because the statutes authority is interpreted broadly against conflicting common law.

In Utah, when a statute and the common law conflict over an issue, the common law must yield and the statute should be interpreted broadly.²¹ In *Bilanzich*, the court applied the statute despite the Plaintiffs argument the statute should not controvert common law.²²

²¹ *Gottling v. P.R. Inc.*, 2002 UT 95, P 7; *Bilanzich* at 1046.

²² *Bilanzich* at 1041, 1046 ft note 6.

Like the reasoning of *Gottling* and *Bilanzich*, the district court's application of the statute trumps existing common law principles set forth by the Jones'. In this case, the Jones' cite common law examples on contract interpretation that run counter to the statute's text and invalidate the legislative intent of the statute. Therefore, under the reasoning of *Bilanzich* and *Gottling*, the statute should be interpreted broadly in order to safeguard it from being circumvented. In conclusion, the statutory authority should counter the common law principles set for the by the Jones' and the district court's grant of attorney's fees to the Riches should be upheld.

B. The District Court did not Abuse its Discretion in Finding the Riches were the Prevailing Party at Trial Because They Successfully Defended Against a Majority of the Claims and Damages Sought by the Jones' and they Surrendered Their Causes of Action at Trial as Found By the Court.

The determination of the prevailing party in a dispute is a contextual issue left to the discretion of the trial court.²³ Factors which have been considered in determining the prevailing party are: 1) the contractual language, 2) the number of claims brought by the parties, 3) the importance of each claim relative to the lawsuit as a whole, and 4) the

²³ *Cook* at 1126-27.

dollar amounts awarded for various claims.²⁴ This list is illustrative and not exhaustive; other relevant factors can be utilized by the district court in exercising its discretion.²⁵

In *Cook*, the district court was affirmed in determining the prevailing party was the party who won on three important claims, in contrast to the other party only winning an insignificant claim in the context of the other party's victory.²⁶ In *Crowley*, the district court did not abuse its discretion by finding the Plaintiff as the prevailing party because he recovered a majority of his damages.²⁷ In *Carlson*, the district court did not abuse its discretion when it applied the *R.T. Nielson Co.* factors and found that neither party was a prevailing party.²⁸ In *Radman*, the district court did not abuse its discretion when it applied the *R.T. Nielson Co.* factors to find that both parties were prevailing parties.²⁹

Like the reasoning in *R.T. Nielson Co.*, the district court has complete discretion to apply relevant factors in order to determine the prevailing party. In this case, the Riches successfully defended against most of the claims for damages that were brought against

²⁴ *Id.* at 1127.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Crowley v. Black*, 167 P.3d 1087, 1091 (Utah Ct. App. 2007).

²⁸ *Carlson Distributing Co. v. Salt Lake Brewing Co., L.C.*, 95 P.3d 1171, 1180-81 (Utah Ct. App. 2004).

²⁹ *Radman v. Flanders Corp.*, 172 P.3d 668, 679 (Utah Ct. App. 2007)

them. Unlike *Crowley*, the Jones' did not recover a majority of their damages, rather the Riches prevailed on a majority of their defenses.

Although, the Jones' did eventually prevail on a breach of contract claim and were awarded a very small portion of the damages requested, it was within the district court's discretion to view this award within the context of the case and find this victory was insufficient to name the Jones' as the prevailing party. The Court found that the Riches had effectively surrendered their claims against the Jones and made this determination on the fact that no exhibits were entered regarding their counterclaims, and sparse testimony was given by the Riches with respect to their counterclaim. In fact, the vast majority of the trial in this matter was spent on the Riches defending against the exorbitant claims for damages by the Jones.

As the cases mentioned above demonstrate, there is no set formula for a determination of the prevailing party and the district court is in the best position to make this determination based on the context of each case.

In conclusion, the district court did not abuse its discretion when it named the Riches as the prevailing party based on the facts and context of the claims brought and the claims successfully defended.

III. ON REMAND THE RICHES SHOULD BE GRANTED ATTORNEY FEES REGARDING THE APPELLATE PROCEEDINGS BECAUSE THEY WERE THE PREVAILING PARTY AT TRIAL.

In Utah, on remand, the District Court may properly award appellate attorney fees to parties who ultimately prevail in recovering attorney fees.³⁰ In this case, because the district court properly awarded attorney's fees to the Riches, they should be awarded the costs of appeal because they are the prevailing party.

CONCLUSION

In Utah, attorney's fees can be awarded when authorized by contract or by statute. When a written contract allows for at least one party to collect attorney's fees, Utah statute allows the court to use its discretion to create reciprocal rights if supported by the statute's text and legislative intent. In addition, in Utah, a statute's authority is read broadly when it conflicts with the common law.

Once the determination has been made that attorney's fees can be awarded, it is within the court's discretion to name a prevailing party and grant the award. Factors that can guide the court's discretion in this determination are: contract language, the number of claims brought by each party, the importance of the claims, and the dollar amounts awarded.

In this case, the district court properly granted attorney's fees as a matter of law. The contractual language at issue allowed for the non-defaulting party to collect attorney's fees, which in this case was the Jones. Because this put the Riches at a disadvantage, it was within the court's discretion to apply the statute and award fees to

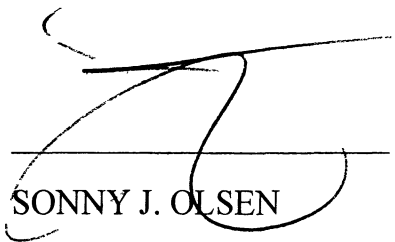
³⁰ *Bilanzich* at 1047.

the Riches. This use of the statute satisfies the legislative intent of preventing inequality in litigation. In addition, the court properly used its discretion to find the Riches as the prevailing party at trial because they successfully defended against a majority of the damages sought by the Jones'.

In conclusion, the District Court's ruling should be affirmed because the award of attorney's fees was proper as a matter of law and the determination of the Riches as the prevailing party was not an abuse of discretion.

DATED this 4th day of December 2008

ASCIONE, HEIDEMAN & MCKAY, LLC



SONNY J. OLSEN

CERTIFICATE OF SERVICE

On the 4th day of December, 2008, I hereby hand delivered a correct copy of the above and foregoing **Appellee's Brief**, by placing same in the U.S.

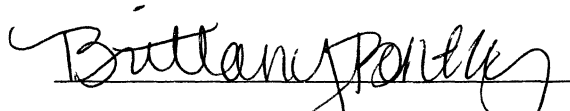
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