

2004

Betty Fielden v. Brent C. Hansen : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

BETTY FIELDEN,

Plaintiff/ Appellant,

v.

BRENT C. HANSEN,

Defendant/ Appellee.

APPELLEE'S BRIEF

Appellate Case No. 2005-1058-CA

BRIEF OF APPELLEE

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE GLENN K. IWASAKI

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STATEMENT OF THE ISSUE

Did Judge Iwasaki abuse his discretion when he equitably awarded Mr. Hansen the costs of photographic and medical record exhibits that were paid for by Mr. Hansen but were also used by Ms. Fielden during litigation?

SUMMARY OF THE ARGUMENT

The Court should affirm the judgment of Judge Iwasaki on the basis that it is within a trial court’s discretion to award costs to the prevailing party. Furthermore, a trial court has the equitable discretion to award costs for exhibits that were used by both parties but were only paid for by the prevailing party.

ARGUMENT

Appellant has correctly argued that, as a general rule, Utah appellate courts have not treated trial exhibits as taxable costs. However, a notable exception to that rule was created in the case of Highland Construction v. Union Pacific, 683 P.2d 1042, 1052 (Utah 1984). In that case, the Utah Supreme Court equitably awarded a party its costs for trial materials that were used by the other party. Id. The Court explained:

As the trial progressed through the district court, Carbon ordered and paid for a daily transcript of the testimony. When this appeal was filed by Highland, it certified as part of the record those transcripts and Highland has used them extensively in this appeal. It is therefore equitable that Highland should reimburse Carbon for the transcripts.

Id.

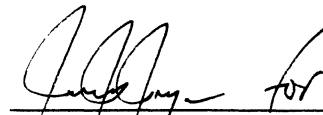
In the present case, Judge Iwasaki equitably awarded Mr. Hansen the cost of the trial exhibits because Ms. Fielden used them extensively throughout the litigation. Judge Iwasaki's reasoning was revealed in his minute entry which reads, "As to the trial exhibits, it is the Court's recollection that both sides litigated the photographs and the medical records and the Court exercises its discretion and grants the request." (Addendum G to Appellant's Brief.) The Court should affirm Judge Iwasaki's order because it was an equitable decision based on the specific facts of this case. See e.g., Parduhn v. Bennett, 2005 UT 22, ¶23, 112 P.3d 495 (Utah 2005) ("The abuse of discretion standard recognizes both the district court's ability to balance facts and craft equitable remedies and our hesitance to act as a Monday morning quarterback in such matters.").

CONCLUSION

In sum, this Court should affirm the order of Judge Iwasaki as it relates to the award of costs for the photographs and medical records that were prepared by Mr. Hansen but were also used by Ms. Fielden. In cases such as this, it is soundly within the discretion of the trial court to equitably award costs for trial exhibits and other materials.

DATED this 11th day of August, 2005.

STRONG & HANNI



Kristin A. VanOrman
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing APPELLEE'S BRIEF via the United States Mail, postage prepaid, on this the 11 day of August, 2005, to the following:

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