

1982

Robinson & Wells v. Barbara Warren : Petition For Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROBINSON & WELLS, P.C.,
Plaintiff - Respondent,
v.
BARBARA WARREN,
Defendant - Appellant.

Case No. 18413

PETITION FOR REHEARING

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROBINSON & WELLS, P.C.,

Plaintiff-Respondent

v.

BARBARA LARSEN,

Defendant-Appellant.

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) PETITION FOR REHEARING
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) Case No. 18413
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Comes now the plaintiff-respondent, pursuant to the provisions of Rule 76 (e) and submits the following petition for rehearing.

NATURE OF CASE

This is a petition for a rehearing on the decision in the above-entitled case filed July 28, 1983 wherein this honorable Court affirmed the decision of the Honorable Judge James Sawaya of the Third Judicial District Court confirming the award of arbitrators on a claim for attorney's fees rendered in

an arbitration proceeding conducted pursuant to the rules of the American Arbitration Association.

DISPOSITION ON APPEAL

On July 28, 1983, this honorable Court entered its decision affirming the judgment of the lower Court. Said decision awarded costs to the plaintiff-respondent, but made no mention with regard to attorney's fees being awarded to plaintiff-respondent.

RELIEF SOUGHT ON REHEARING

Respondents seek an Order of this Court awarding to the plaintiff-respondent attorney's fees for defending against appellant's appeal to the Supreme Court in this matter pursuant to the terms of the original contract between plaintiff-respondent and defendant-appellant.

STATEMENT OF THE ISSUE

Should this Court award attorney's fees to plaintiff-respondent for defending the appeal in this case.

STATEMENT OF FACT

Plaintiff-respondent is a professional corporation. Defendant-appellant by written agreement (R.4-5) retained the plaintiff-respondent to represent her in a divorce action. Said retainer agreement provided that in the event the matter had to be referred to an attorney for collection, that defendant-appellant would pay all necessary costs of collection including

reasonable attorney's fees. When Mrs. Warren refused to pay the billings, plaintiff-respondent submitted the matter to arbitration and the award of the arbitrator granted to plaintiff-respondent fees incurred by Mrs. Warren in the prosecution of her divorce. The award of the arbitrator was subsequently confirmed by the Third Judicial District Court, the Honorable Judge James Savaya. Defendant-appellant then appealed the refusal of Judge Savaya to alter or amend the award of the arbitrators to this honorable Court. Plaintiff has had to hire counsel to respond to the appeal, and prevailed on the merits.

Point V of Respondent's original brief in this matter argued for the following proposition:

"This Court should award costs and Attorney's fees to Plaintiff-respondent for prosecuting this appeal".

In the opinion handed down by this honorable Court, through the Honorable Justice Dallin Oaks, on July 28, 1933, no mention was made with respect to the award of attorney's fees. Although costs were awarded to plaintiff-respondent, the clerk's office has informed respondent that in the normal context, costs does not include attorney's fees, and therefore it is necessary where attorney's fees can be recovered for this Court to make a ruling on whether or not the plaintiff-respondent is entitled to recover the attorney's fees expended in defending against the appeal of defendant-appellant.

ARGUMENT

THIS COURT SHOULD AWARD ATTORNEY'S FEES TO PLAINTIFF-RESPONDENT FOR THE FEES INCURRED IN DEFENDING AGAINST DEFENDANT-APPELLANT'S APPEAL

The retainer agreement signed by defendant-appellant provided for payment of interest and reasonable attorney's fees and collection costs in the event that the matter was taken to Court. See R. at 5., "Payments". This Court has repeatedly held that the recovery of attorney's fees is proper where the parties have agreed by contract to allow for such recovery. Biesinger v. Behunin, 584 P.2d 801 (Utah 1973); Stubbs v. Hemmert, 567 P.2d 168 (Utah 1977).

In this case, the plaintiff-respondent on appeal has a contract with the defendant-appellant that provided defendant-appellant would pay reasonable attorney's fees incurred in collecting monies owed to respondent by appellant. Defendant-appellant filed and prosecuted this appeal, which she lost. Plaintiff-respondent was forced to expend monies for attorney's fees to defend on the appeal. It is only proper the respondent, the prevailing party, be awarded its reasonable attorney's fees.

CONCLUSION

Wherefore it is respectfully submitted that this honorable Court enter its Order granting to the plaintiff-respondent in this matter, reasonable attorney's fees for the defense of the appeal.

Respectfully submitted this 17 day of August, 1983

SUMNERHAYS, WELLS, & CLAWSON

By 

~~Edward F. Wells - Attorney for Respondent~~