7-17-2018

Kenworth Sales Co. v. Skinner Trucking, Inc. Respondent's Brief Dckt. 45883

IN THE SUPREME COURT OF THE STATE OF IDAHO

KENWORTH SALES COMPANY, a Utah corporation, doing business in the state of Idaho,

Plaintiff/Respondent,

vs.

SKINNER TRUCKING, INC., an Idaho corporation;
JAMES E. SKINNER, an individual; and
DAVID C. SKINNER, an individual;

Defendants/Appellants.

Supreme Court No. 45883

Twin Falls County District Court
Case No. CV42-16-2539

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

HONORABLE JON J. SHINDURLING, DISTRICT JUDGE PRESIDING

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Twin Falls County, Honorable Jon J. Shindurling, presiding.

I. STANDARD OF REVIEW

An award of attorney fees and costs is within the discretion of the trial court and subject to an abuse of discretion standard of review. *Smith v. Mitton*, 140 Idaho 893, 901, 104 P.3d 367, 375 (2004). Therefore, the party disputing an award of attorney fees has the burden of showing an abuse of discretion. *Id.* This determination requires application of a three-factor test: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Burns v. Baldwin*, 138 Idaho 480, 486-87, 65 P.3d 502, 508-09 (2003).

Whether a district court has correctly determined that a case is based on a commercial transaction for the purpose of I.C. § 12-120(3) is a question of law, subject to free review. *Lincoln Land Co., LLC v. LP Broadband, Inc.*, 163 Idaho 105, 408 P.3d 465, 472–73 (2017).

II. STATEMENT OF THE CASE

A. Statement of the Case

This case presents questions regarding the district court's decision to award costs and deny fees. Specifically, the Court must decide whether or not the Appellants may even challenge the district court's ruling regarding costs, when the district court held that it would allow Appellants' costs, if they would only notice up a hearing on the matter.[1] Further, the Court must decide whether or not the Appellants are entitled to fees under § I.C. 12-120(3) where there was no commercial

[1] The Appellants never followed the court's instructions to do so, choosing instead to bring this appeal.

transaction between the parties to the suit or under § I.C. 12-121, where there were legitimate, triable issues of fact and law.

B. Statement of Facts

Kenworth Sales Company ("Kenworth") is a licensed dealer engaged in the business of selling and buying commercial trucks. R. 185. Skinner Trucking, Inc. ("STI") is a business engaged in the commodity transportation business. R. 185-186. The two companies have done business together for more than forty years, during which STI leased a number of trucks sold by Kenworth. R. 186; Tr. 67.[2] GE TF Trust ("GE") is a financing entity that, among other things, purchases vehicles from Kenworth for lease to companies such as STI. R. 186.

In 08/18/11, STI selected three new Kenworth trucks, which Kenworth sold to GE and GE leased to STI under a four-year TRAC lease. *Id.* The provisions of the lease established a residual payoff amount that was due on each of the three trucks at the end of the lease period. *Id.* That amount was set at $58,051.20 per truck. R. 187. At the end of the lease period, STI had the option of purchasing the trucks for that amount or turning them in and waiting for the trucks to be sold. R. 186. If the sales amount exceeded the residual amount, STI was to receive a surplus. *Id.* If the trucks were to sell for less than that amount, STI was obligated to pay the difference. *Id.* James and David Skinner personally guaranteed STI's lease obligations to GE. *Id.*

As the lease period ended in October of 2015, STI was experiencing financial hardship. *Id.* Therefore, STI found itself unable to (1) sell the trucks, (2) purchase the trucks by paying off the residual amount, or (3) obtain financing to pay off the residual amount. *Id.* At this time, STI was also behind on its lease payments to GE by approximately $7,000.00. *Id.*

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[2] Most references to the Transcript on Appeal in this case will be to the transcript prepared by Tracy Barksdale, which includes the trial transcript. To avoid any confusion, these references will use the designation "Tr." while any citation to the transcript prepared by Candice Childers will use the designation "Supp. Tr." for supplemental transcript.

Kenworth was aware of these circumstances and, as STI was a valued long-term customer, did not wish to see its financial situation worsen if the trucks were to be sold quickly at auction. R. 186-187. Kenworth discussed the matter with James Skinner on a number of occasions and ultimately, in the late fall and early winter of 2015, STI surrendered the trucks to Kenworth. R. 187. At the time of surrender, the value of each truck was $42,000.00. *Id.*

Kenworth subsequently paid off the residual amount on each truck and the $7,073.17 in delinquent lease payments, ending the Defendants' obligation under the lease to GE. R. 187. This was done in an effort to buy STI more time to make good on their financial obligations, without incurring additional late fees and legal costs. R. 186-187; Tr. 111-112. In January of 2016, Kenworth invoiced STI for $55,226.77, the difference between the value of the trucks at surrender and their respective residual amounts, as well as the unpaid lease payments. R. 187. The trucks remained unsold on Kenworth's lot until the Spring of 2017, when they sold for $34,500 each. R. 188. Neither STI, Jim Skinner, nor David Skinner ever responded to Kenworth's invoice. Tr. 76-77.

C. The Proceedings Below

On 7/26/16, the Respondent filed a *Complaint* against the Appellants alleging unjust enrichment. An *Answer* was filed on 8/18/16 and on 12/6/17, a one-day court trial was held, after which the parties were given until 12/11/17 to file closing briefs. Each party submitted briefs and the court subsequently issued its *Findings of Fact and Conclusions of Law* (the "Decision"). R. 127-136. In the Decision, the court entered judgment in favor of the Appellants. The court also stated in its decision that the parties should bear their own costs. R. 135.

On 12/29/17, the Appellants filed a *Motion for Fees and Costs*, a *Memorandum of Fees and Costs*, a *Motion for Reconsideration*, a *Declaration in Support of Motion for Reconsideration*,

and a *Memorandum in Support of Motion for Reconsideration.* Through these filings, the Appellants sought reconsideration of the trial court's determination that the parties should bear their own costs. In their *Memorandum of Costs and Fees*, the Appellants requested a total of $18,000.30 in fees and $564.29 in costs.

The Respondents filed an *Objection to Defendants' Motion for Fees and Costs*, as well as an *Opposition to Defendants' Motion for Reconsideration.* A hearing was held on 1/16/18, after which the court issued its *Memorandum Opinion Denying Defendants' Motion to Reconsider.* R. 197-201. On 3/14/18, the court issued a document titled *Corrected Memorandum Opinion Denying Defendants' Motion to Reconsider and Partially Granting Defendant's Motion for Attorney's Fees and Costs*, in which it held that as a prevailing party, the Appellants were entitled to costs under I.R.C.P. 54(d). R. 204-210. The court acknowledged that the Appellants' costs had already been briefed and directed the Appellants to notice the matter for a hearing. *Id.* The Appellants ignored that directive and filed this appeal instead.

III. ISSUES PRESENTED ON APPEAL

A. Is the issue of costs ripe for determination on appeal, given the fact that the district court held that it would grant costs to the Appellants following a hearing on the matter, which the Appellants never acted on?

B. Did the district court err in determining that fees pursuant to I.C. § 12-120(3) were unavailable in this case, as there was no commercial transaction between the parties?

C. Did the district court err in determining that Kenworth had a good faith, factual basis for its claim and, therefore, that fees pursuant to I.C. § 12-121 were unwarranted?

D. Is I.R.C.P. 68 a valid basis for the award of attorney fees?

E. Is the Respondent entitled to fees and costs on appeal pursuant to I.A.R. 40 and 41, as well as I.C. § 12-121?

IV. ARGUMENT

A. The Matter of Costs Lacks Ripeness.

An issue must be "ripe" in order for there to be a live case or controversy appropriate for judicial review. *Gibbons v. Cenarrusa*, 140 Idaho 316, 317, 92 P.3d 1063, 1064 (2002); see also *Miles v. Idaho Power Co.*, 116 Idaho 635, 642, 778 P.2d 757, 764 (1989) ("Ripeness asks whether there is any need for court action at the present time."). The ripeness doctrine "requires a petitioner or plaintiff to prove 1) that the case presents definite and concrete issues, 2) that a real and substantial controversy exists, and 3) that there is a present need for adjudication." *Paddison Scenic Props., Family Trust, L.C. v. Idaho Cnty.*, 153 Idaho 1, 4, 278 P.3d 403, 406 (2012).

Here, with regard to the issue of costs, the Appellants admit that they filed a Motion for Fees and Costs on December 29, 2017.[3] *Appellants' Brief*, p. 6. Appellants also admit that they filed a Motion for Reconsideration that same day and that on February 28, 2018, the district court issued an opinion denying their motion. *Id.* at p. 6-7. Finally, Appellants admit that on March 13, 2018, the district court issued a corrected order *granting* costs, at an amount to be determined following a hearing. *Id.* at p. 7. Instead of setting the matter for a hearing, the matter was appealed.

The Appellants were given the opportunity to receive their requested costs by the district court. That opportunity still stands, as the last order of the district court instructed the Appellants to notice the issue of costs up for hearing. Therefore, as the matter of costs is still pending before the lower court, there is no need for adjudication of the matter on appeal. In short, the issue is unripe for determination by this Court and be left to the district court for determination as ordered.

[3] The total requested costs was $564.29. R. 145.

B. The Appellants are not Entitled to Fees Under I.C. § 12-120(3), as there was no Commercial Transaction between the Parties, either Proven or Alleged.

I.C. § 12-120(3) states that:

> In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.
>
> The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

The Appellants have maintained throughout this litigation, as well as on appeal, that there was absolutely no contract or agreement of any kind between them and Kenworth.[4] Instead, they have argued that there was a commercial transaction sufficient to entitle them to fees under I.C. § 12-120(3), and that the district court erred in finding otherwise. The Appellants misunderstand the law.

I.C. § 12-120(3) does not entitle a party to fees based solely on the existence of a commercial transaction tangentially related to the case. In order for fees to be awardable under this statute, one must show a commercial transaction *between the parties*. *See Bryan Trucking, Inc. v. Gier*, 160 Idaho 422, 426, 374 P.3d 585, 589 (2016) ("[O]nly the parties to the commercial transaction are entitled to attorney fees under I.C. § 12–120(3)."); *Lincoln Land Co.,* 163 Idaho at 112, 408 P.3d at 472 (same). There is no evidence on the record of any commercial transaction *between Respondent and the Appellants* that has any relation whatsoever to this case.

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[4] *See Appellants Brief*, p. 14 ("The Trial Court was correct when they found that there was no agreement or contract between the two parties....").

The Appellants, however, argue that because Kenworth sold the trucks at issue to GE, and GE then leased them to STI, and because the litigation "would not have arisen but-for the existence of the lease," the gravamen of Kenworth's lawsuit was a commercial transaction. Appellant's Brief p. 14-15.[5] This grossly misstates the underlying nature of the case.

It is true that "even where no commercial transaction occurs between the parties," Idaho's appellate courts "have allowed attorney fees to a prevailing party where the losing party has alleged a commercial transaction between the parties." *DAFCO LLC v. Stewart Title Guar. Co.*, 156 Idaho 749, 758, 331 P.3d 491, 500 (2014); *see also Garner v. Povey*, 151 Idaho 462, 470, 259 P.3d 608, 616 (2011) (holding that "allegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that transaction, are sufficient to trigger the application of I.C. § 12–120(3)"). However, Kenworth never alleged anything of the sort.

Kenworth alleged (1) that STI leased three trucks from GE, (2) that at the end of the lease, STI could not pay off its obligations to GE, (3) that because STI was a longtime customer, Kenworth paid off STI's obligation to GE, and (4) that STI was unjustly enriched thereby. Kenworth *never* alleged that it was entitled to relief due to any contract or commercial transaction between Kenworth and STI and STI argued strenuously at trial against the existence of any agreement between the parties that obligated STI to repay Kenworth. In fact, the very lack of a commercial transaction between the parties necessitated Kenworth's decision to sue in equity instead of at law.

[5] It is also claimed that Kenworth structured the commercial transaction by selling the trucks to GE and that Kenworth "admitted at trial that it acted as GE's representatives in the lease." *Appellant's Brief*, p. 12. No such admission was ever made.

The fact that there was no commercial transaction between Respondent and the Appellants upon which the Respondent's claim for relief was based is dispositive under the statute. Therefore, the Appellants' claim for fees under I.C. § 12-120(3) should be denied.

C. The Appellants are not Entitled to Fees Under I.C. § 12-121, as the Case Involved Legitimate, Triable Issues of Fact and Law.

I.C. § 12-121 states that "[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation." Idaho's appellate courts have determined that attorney fees may not be awarded under this statute if "there is a legitimate, triable issue of fact or a legitimate issue of law...." *Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 447, 235 P.3d 387, 397 (2010). A claim or defense is not frivolous or groundless merely because one loses. *Lowery v. Bd. of County Com'rs for Ada County*, 115 Idaho 64, 69, 764 P.2d 431, 436 (Ct. App. 1988). Instead, the question is whether the position that was pursued was not only incorrect but so plainly fallacious that it could be deemed frivolous, unreasonable or without foundation. *Id.* A denial of fees under I.C. § 12-121 is only reviewed for abuse of discretion.

The Appellants are not arguing that the district court abused its discretion. Instead, they are arguing that "Skinner still believes that Kenworth's claim was frivolous." *Appellant's Brief*, p. 13. Such re-argument of the merits of their original fees claim is improper here.

The district court considered the Appellants' argument that Kenworth pursued its case frivolously.[6] In its *Memorandum Opinion Denying Defendant's Motion to Reconsider*, the court recognized that an award of fees pursuant to I.C. § 12-121 is discretionary,[7] set forth the proper

[6] Such argument was made in the Appellants' *Memorandum of Fees and Costs* and was argued before the court on January 16, 2018.
[7] R. 199.

legal standard for an award of fees under that statute,[8] and determined through an exercise of reason that as Kenworth had a good faith, factual basis for their suit, fees under the statute would be denied.[9] Therefore, as the district court denied their claim in an exercise of proper discretion, the Appellants' renewed claim for fees under I.C. § 12-121 should be denied.

D. The Appellants are not Entitled to Fees Under I.R.C.P. 68.

The Appellants appear to be arguing that I.R.C.P. 68 entitles them to both costs and fees. *Appellant's Brief*, p. 11 ("The Trial Court was wrong in their application of I.R.C.P. 68, and Kenworth should now be required to pay Respondent's fees and costs incurred after Skinner's offer of judgment."). However, the Appellant's entire argument regarding Rule 68 addresses only costs. *Id.* at p. 9-11. Nevertheless, the Appellant's Rule 68 fees claim merits discussion.

I.R.C.P. 68 is not a basis for fees. *Vulk v. Haley*, 112 Idaho 855, 859, 736 P.2d 1309, 1313 (1987) ("Rule 68 does not include attorney fees."). Consequently, the Appellants' claim for fees under Rule 68 should be denied.

V. FEES AND COSTS ON APPEAL

I.C. § 12-121 allows for the award of reasonable attorney's fees to the prevailing party if it is determined that the case was "brought, pursued or defended frivolously, unreasonably or without foundation." Here, Appellants have done so by (1) appealing an order *granting* costs instead of scheduling a hearing so that the issue could be addressed short of appeal, (2) merely re-arguing their I.C. § 12-121 fees claim, despite the fact that the standard of review on appeal is abuse of discretion, and (3) continuing to maintain that I.R.C.P. 68 is a basis for an award of attorney's fees.

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[8] R. 199-200.
[9] R. 200.

Because this appeal was pursued frivolously, unreasonably, and without foundation, the Respondent requests attorney's fees and costs on appeal, pursuant to I.A.R. 40 and 41, as well as I.C. § 12-121.

VI. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the district court's rulings on the issues of costs and fees and that the Respondent be awarded fees and costs on appeal.

DATED this 17th day of July, 2018.

BENOIT, ALEXANDER, HARWOOD,
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By /s/ Michael D. Danielson
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Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2018, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served upon the following attorney in the following manner:

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