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Summary of Breeden v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 12

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NEVADA RULES OF APPELLANT PROCEDURE

Summary

The Court held that an appellant who voluntarily dismisses a non-frivolous writ petition, after an answer has been filed, cannot be required to pay the appellee's attorney's fees as a condition of the dismissal.

Background

Appellant, Breeden and his law firm, filed a petition for extraordinary writ relief in the Nevada Supreme Court. They challenged a district court order regarding attorney liens and distribution of settlement funds pertaining to Elvia Gonzalez, their former client in a personal injury claim. Gonzales, who was the real party in interest, filed an answer with the Court shortly thereafter. After receiving the answer, Breeden decided that a contract claim was more appropriate and moved to dismiss the petition under Nevada Rules of Appellate Procedure 42(b).² Gonzalez opposed the motion, requesting that the Court decide the case on its merits or, in the alternative, require Breeden to pay costs and attorney's fees.

Discussion

The Court first determined that Breeden was free to dismiss the petition and pursue the contract claim. The Court then considered the payment of attorney's fees, declaring that "[i]t does not make sense to penalize a party who voluntarily dismisses a nonfrivolous appeal when, under Rule 38, the same party with the same nonfrivolous appeal would not have to pay the other side's fees if he or she stayed with the appeal to the bitter end." The Court found that courts should encourage "self-determined case resolutions." Requiring the payment of attorney's fees could encourage parties to proceed with claims that they would otherwise be inclined to dismiss. It held that Nevada has no such requirement. In other words, the payment of attorney's fees are not required by an appellant seeking to voluntarily dismiss a non-frivolous writ petition after appellee files an answer. The Court did hold, however, that costs could be awarded.

Conclusion

Gonzales' motion was denied. However, the Court denied her motion, without prejudice, because Gonzales remained free to file a bill of costs with the district court.

¹ By Erik Foley.

² "The Clerk may dismiss an appeal or other proceeding if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no remittitur or other process shall issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court." Nev. R. App. P. 42 (2015).