

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

9-22-2005

Summary of Miller v. Wilfong, 121 Nev. Adv. Op. 61

Jason Peck
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Law Commons](#)

Recommended Citation

Peck, Jason, "Summary of Miller v. Wilfong, 121 Nev. Adv. Op. 61" (2005). *Nevada Supreme Court Summaries*. 577.

<https://scholars.law.unlv.edu/nvscs/577>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Miller v. Wilfong, 121 Nev. Adv. Op. 61 (September 22, 2005)¹

FAMILY LAW – ATTORNEY FEES

Summary

The Nevada Supreme Court upheld district court ruling that awarded Wilfong's counsel, serving pro bono, \$3,000 in attorney fees. The court also held that NRS 126.171 authorizes attorney fees in paternity actions.

Factual and Procedural History

Wilfong and Miller were involved in an intimate relationship which produced a child. Miller filed a petition to determine paternity and sought joint physical custody of the child. Pro bono counsel represented Wilfong. The district court awarded Wilfong primary physical custody, child support, and \$3,000 in attorney fees. The district court based the award of attorney fees on *Sargeant v. Sargeant*.² Miller appealed the award of attorney fees.

Discussion

The court stated when a district court may properly award attorney fees. First, attorney fees must be authorized by express or implied agreement or by statute or rule.³ When attorney fees are authorized, the trial court must evaluate factors such as qualities of the advocate, character and difficulty of the work performed, and the result obtained; as set forth in *Brunzell v. Golden Gate National Bank*.⁴ Also, in family law cases, the trial court must consider the disparity in income of the parties under *Wright v. Osburn*.⁵

The court found significant public policy rationales to support awarding fees to pro bono counsel. First, responsible parties should not be absolved of their financial obligations because the other party is represented by pro bono legal assistance. Also, in domestic matters, one partner has often created the other partner's limited financial means by leaving the household, failing to remit child support, drawing funds from a shared account, or other similar conduct. In those cases, if fees are not awarded, the wealthier partner is benefiting from creating conditions that force the other party to seek pro bono assistance.

Here, the district court granted attorney fees under *Sargeant v. Sargeant*.⁶ The court determined *Sargeant* is limited to divorce proceedings and therefore was not an appropriate basis on which to award fees. Moreover, the financial hardship concern in *Sargeant* is not present in this case because Wilfong was represented by pro bono counsel.

The court found that attorney fees are authorized in this case under NRS 126.171 which provides that “[in paternity actions,] the court may order reasonable fees of counsel . . . to be paid by the parties in proportions and at times determined by the court.”

¹ By Jason Peck

² 88 Nev. 223, 495 P.2d 618 (1972).

³ Schouweiler v. Yancey Co., 101 Nev. 827, 830, 712 P.2d 786, 788 (1985).

⁴ 85 Nev. 345, 455 P.2d 31 (1969).

⁵ 114 Nev. 1367, 970 P.2d 1071 (1998).

⁶ *Sargeant* involved a divorce action where the court found an award of \$50,000 proper because the wife, although she had the resources to pay the amount, would have been required to liquidate her savings and jeopardize her financial future in order to meet her adversary in court on an equal basis. 88 Nev. 223, 495 P.2d 618.

The court found that the record revealed that Wilfong's counsel was an able advocate, the work was difficult, the result favorable to Wilfong and that counsel provided the equivalent of \$27,000 in time representing Wilfong, thus satisfying the *Brunzell* factors. The district court found that there was a disparity in income, which satisfied *Wright*. Thus the award of attorney fees was proper.

Conclusion

An award of attorney fees to pro bono counsel is appropriate provided that a legal basis exists and the proper factors are applied to support an award. Also, attorney fees may be awarded in paternity actions pursuant to NRS 126.171.