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INCREASING THE CAP ON ATTORNEY FEES IS A PROCEDURAL CHANGE,
APPLICABLE TO ONGOING CASES WHEN PARTIES HAVE PRIOR NOTICE AND TIME
TO WITHDRAW THEIR SHORT TRIAL REQUEST.

Summary

If an amendment that increases the amount of attorney fees a short trial judge may award goes into effect before trial, and the parties had reasonable notice of this change, the new rules will be applicable to the trial. This applies even if the request for trial was filed before the amendment was ordered, and litigation was still pending when the amendment took effect. This is because an increase in the amount of attorney fees that a short trial judge may award is not an alteration of a substantive right, but rather a procedural change to an already existing remedy.

Background

After Zoe Rivera and her daughter L.R. (“respondents”) were successful at arbitration against Storm Griffith and Isaias Luna-Cortez (“appellants”)—stemming from a vehicle collision—appellants filed a request for trial de novo. The request was filed on October 25, 2022. The very next day, the Nevada Supreme Court issued an amendment to the Nevada Short Trial rules,² raising the amount of attorney fees a short trial judge may award from \$3,000 to \$15,000.³ The amendment was slated to take effect on January 1, 2023, and the short trial was held on March 3, 2023.

When appellants lost at trial, the short trial judge awarded \$15,000 in attorney fees to each respondent. Appellants now appeal, contending that because they filed their request for trial prior to the rule change, the \$3,000 attorney fee cap should apply.

Discussion

Appellants argued that the increased cap on attorney fees changed one of their substantive rights, and that rules which change substantive rights should not apply to litigation pending at the time the new rule took effect. As such, appellants argued, it was improper for the judge to apply the amended rule⁴ to their trial and award respondents more than the pre-amendment cap of \$3,000 in attorney fees. Respondents argued that raising the cap on attorney fees was merely a procedural change and that its application to pending litigation was proper.

Recognizing that the act of distinguishing between what constitutes a substantive right or a procedural change may be characterized as a “legal morass,”⁵ the court ultimately agreed with the respondents’ characterization of the increased cap on attorney fees as a procedural change. They ruled that the change to allowable attorney fees “did not create or remove any duty, right, or obligation,” but instead modified an already existing remedy. They explained that although a prospective application of new rules or amendments is generally favored, this general

¹ By William Ewell.

² NSTR 27(b)(4).

³ *In re Creation of a Comm. To Study the Rules Governing Alternative Dispute Resolution* and Nev. Short Trial Rules, ADKT 0595 (Order Amending the Rules Governing Alternate Dispute Resolution and Nevada Short Trial Rules, Oct. 26, 2022).

⁴ NSTR 27(b)(4).

⁵ *Mistretta v. United States*, 488 U.S. 361, 392 (1989).

presumption applies only when the amendment changes a substantive right.⁶ When an amendment effects a change to a procedural rule, then that change “will be applied to any cases pending when ... enacted.”⁷ Therefore, because the increased cap on attorney fees was a procedural change, it was proper to apply it to the new trial between respondents and appellants.

The court also ruled that, even if the increased cap on attorney fees were to be considered a change to a substantive right, appellants had fair notice of the rule change and “ample opportunity to change course” rather than proceed with trial. The court highlights the fact that the short trial was held more than four months after the amendment was issued, and two months after the increased cap on attorney fees took effect. Thus, appellants cannot be said to have reasonably relied upon the expectation that attorney fees would be capped at \$3,000.

Conclusion

Given the fact that the court-ordered amendment to NSTR 27(b)(4) which raised the cap on attorney fees was a procedural change, and that appellants had fair notice of that change prior to the trial they requested, the court ruled that it was appropriate for the short trial judge to apply the amended rule on attorney fees to this case and affirmed the judgement of the district court.

⁶ Valdez v. Emps. Ins. Co. of Nev., 123 Nev. 170, 179-80, 162 P.3d 148, 154 (2007).

⁷*Id.* at 180, 162 P.3d at 154.