

Attorney's fees

5/18 (1985)

memo re: costs recoverable by UL in
Mt. Laurel suits

pg 5

p.i. #4053

AF000023D

TO: Barbara Williams

FROM: Alex Watson

DATE: 5/18/85

RE: Costs Recoverable by the Urban League in Mt. Laurel Suits

The conclusions drawn in the following memorandum were based on a fairly thorough examination of the case law, treatises, Am. Jur., C.J.S., ALR, Lexis, N.J. Digest, N.J. Practice, N.J.S.A., and Law Review Articles, among other sources. Unfortunately, there is a paucity of detailed analysis of recoverable costs in New Jersey. The following memorandum reflects what information exists in relevant areas.

TO: Barbara Williams

FROM: Alex Watson

DATE 5/18/85

RE: Costs Recoverable by the Urban League in Mt. Laurel Suits

R. 4:42-8(a) states that "(u)nless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party." This view is a relatively new one to the New Jersey law due to the fact that under Common Law the ability to recover court costs was non-existent. Katz v. Farber, 4 N.J. 333, 72 A. 2d 862 (1951). As such, the right of the prevailing party to receive the costs of suit has depended not on case law but on statutory provisions and the rules of the court. Trenton Malleable Iron Co. v. Faley, 115 N.J.L. 599, 181 A. 149 (1935). It is evident from the case law that the court must find statutory authority in the absence of specific authorization by Supreme Court Rule to grant court costs in the exercise of its discretion. Finch, Pruyn & Co., Inc. v. Martinelli, 108 N.J. Super. 156 (Ch. 1969). In fact, the successful party is not entitled to collect costs and expenses from a defeated party in the absence of a contractual or statutory provision or court rule. Textileather Corp. v. American Mut. Liability Ins. Co., 110 N.J.L. 483, 166 A. 214 (1933); N.J. Tnpk. Authority v. Bayonne Barrel & Drum Co., 110 N.J. Super. 506, 266 A. 2d 164 (L. Div. 1970).

As a result of the rule excluding costs which are not explicitly provided for, or perhaps because of the small dollar amounts generally related to this area, there is a paucity of reported case law.

One of the few cases dealing with this subject in New Jersey is of particular relevance to our situation. In Schlott v. Morton, 107 N.J. Super. 16 (Ch Div. 1963) the court held that a legal services project should be able to recover court costs as a prevailing party, even though the service was provided at no charge, and the government bore the cost of this legal assistance.

The language of N.J.S.A. 22A:2-8 more fully describes which costs are recoverable:

A party to whom costs are awarded or allowed by law or otherwise in any action, motion or other proceeding, in the Law Division of the Superior Court is entitled to include in his bill of costs his necessary disbursements, as follows;

The legal fees of witnesses, including mileage for each attendance, masters, commissioners and other officers;

The costs of taking depositions when taxable, by order of the court;

The legal fees for publication where publication is required;

The legal fees paid for a certified copy of a deposition or other paper or document, or map, recorded or filed in any public office, necessarily used or obtained for use in the trial of an issue of fact or the argument of an issue of law, or upon appeal, or otherwise;

Sheriff's fees for service or process or other mandate or proceeding;

All filing and docketing fees and charges paid to the clerk of court;

Such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law, or rule of court.

There are very few cases interpreting the meaning of each of these clauses.

The cases which deal with recovery of costs beyond these specified costs also are few. In Huber v. Zoning Board of Adjustment, Howell Township, 124 N.J. Super. 26 (Law Div. 1973), the Court dealt with whether or not to include the expense of a transcript of proceedings before the Zoning Board of Adjustment as a taxed cost. Although no case granted such costs at the municipal level, the Court cited analogous statutes: N.J.S.A. 22A:2-3 which permitted reimbursements of transcripts before the Supreme Court, and N.J.S.A. 22A:2-5 and R. 2:11-5 which permitted the recovery of the costs of transcripts on appeal by the prevailing party. The Court in Huber held that in this case the plaintiff was an interested citizen whose land was close to the property at issue so that he had standing to challenge the decisions of the Board. However, all the citizens in the community benefitted from Mr. Huber's effort to ensure that the Board correctly applied the local zoning regulations. The action was brought at considerable cost to the plaintiff and the Court held that citizens should not be discouraged from bringing such actions. Therefore, the cost of the transcript was included in the recovery so as not to penalize the plaintiff's initiative. The Court applied a reasonable degree of discretion to consider the extent to which the public interest was advanced in this particular case. Id. Although some of the same equitable considerations may apply to the ^{case} sub judice as in Huber, statutory or court rule bases must be applied to the cost issue at hand in order to obtain a recovery.

Though N.J.S.A. 22A:2-8(a) contemplates that in certain cases justice will require that the losing party bear the expense of depositions taken during the course of the proceedings, the general rule is that each litigant should bear his or her own expenses of

taking depositions. Finch, Pruyn & Co. v. Martinelli, 103 N. J. Super. 156, 260 A. 2d 259 (Ch. Div. 1969). In Finch, the defendant conveyed to his wife, subsequent to the filing of the complaint, property which probably would have been recoverable by the plaintiff if he prevailed. The plaintiff amended the complaint to name the wife as a party and conducted further depositions with regard to the transfer. The Court ultimately ruled in the plaintiff's favor, and also held that the conveyance was fraudulent since it was designed to frustrate the plaintiff's ability to satisfy his claim. As a result, the Court ruled that the two depositions held subsequent to the amended complaint were costs recoverable by the plaintiff. The three other depositions involving other aspects of this case, were not recoverable costs.

As such, the costs of taking depositions are recoverable by the prevailing party only in rare instances such as "fraud," "reprehensible conduct," or in some other "extraordinary circumstances."

Finch, supra.