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Fort Morgan Reservoir and Irrigation Co. v. Groundwater Appropriators of the S. Platte River Basin, Inc., 85 P.3d 536 (Colo. 2004)

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Fort Morgan Reservoir and Irrigation Co. v. Groundwater Appropriators of the S. Platte River Basin, Inc., 85 P.3d 536 (Colo. 2004) (holding a prevailing party in a water court proceeding that has reached trial is entitled to an award of costs).

On June 30, 1998, Groundwater Appropriators of the South Platte River Basin, Inc. ("GASP") filed an application in the District Court in Water Division No. 1 ("water court") for a conditional water storage right for the proposed Ovid Reservoir in Sedgwick County, Colorado. GASP's application sought the right to store 7500 acre-feet of water, which GASP later amended prior to trial to 5772 acre-feet of water, with a right to fill and refill. Fort Morgan Reservoir and Irrigation Co. ("Fort Morgan") filed a statement of opposition with the water court claiming that GASP's application could adversely affect its vested water rights located in the South Platte River Basin. The Division Engineer filed a Summary of Consultation identifying concerns that GASP needed to address before the Engineer could approve the application. GASP then certified its intent to protest an adverse ruling of the water referee and moved to resubmit the matter to the water judge. The water court conducted a trial, during which GASP presented evidence in support of its application. Fort Morgan presented evidence in opposition to the application, arguing that GASP failed to prove by a preponderance of the evidence that GASP can and will put the water to beneficial use within a reasonable time. The water court entered an order granting GASP a conditional water storage right in Ovid Reservoir and granted GASP's Motion for Award of Cost, which Fort Morgan appealed to the Colorado Supreme Court.

Fort Morgan appealed the water court's ruling on the following points: (1) whether an applicant for water rights who obtains a decree granting conditional water rights should be considered a "prevailing party" pursuant to Rule 54(d) of the Colorado Rules of Civil Procedure for the purpose of granting costs against an opposer in an application; and (2) whether the water court's decision to award costs to GASP against Fort Morgan pursuant to Rule 54(d) in this case was unreasonable, unfair, and arbitrary, or constituted an abuse of discretion. Fort Morgan asserted that water right adjudication proceedings are not litigation under Rule 54(d), except in extraordinary circumstances, because they are not proceedings brought against another party, and therefore should not result in imposition of costs against an opposer, which would impede the right to protect senior water rights. GASP argued that when an opposer forces an applicant to a contested trial, the opposer is doing more than protecting its own water right, and therefore, an award of costs under Rule 54(d) is appropriate.

The court held that since no statute or rule prohibited the award of costs and since water right proceedings do not preclude the applicability of Rule 54(d), the award of costs rests with the discretion of the water court. The court acknowledged that water court

proceedings were unique due to the bifurcated proceedings before, first, a referee and second, after re-referral, to a discovery and trial before the water court. However, the court concluded that in the absence of a statute that states otherwise, trial courts have discretion in awarding costs to the prevailing party. The concept of prevailing party is consistent with Rule 54(d), because by the time a water case reaches the second phase in a trial before the water court, it becomes litigation where the prevailing party is entitled to costs. The court ruled that they would not generally overturn an award of costs on appeal absent an abuse of discretion. Here, the court found no abuse of discretion, as the water court's decision was supported by the record. Thus, the court affirmed the water court's order awarding costs to GASP.

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Moyer v. Empire Lodge Homeowners' Ass'n, 78 P.3d 313 (Colo. 2003) (holding that water court did not violate its discretion in rejecting Moyers' Bill of Costs filed more than twenty months late).

In the fall of 1996, Appellee Empire Lodge Homeowners' Association ("Empire Lodge") filed a complaint in the District Court for Water Division No. 2. Empire Lodge alleged enlargement of the Moyers' use of a decreed irrigation right. Moyer counterclaimed that Empire Lodge diverted water out–of–priority. In March 2003, the water court dismissed Empire Lodge's suit and issued an injunction in favor of Moyer's counterclaim. Additionally, the water court ordered costs in favor of Moyer and instructed Moyer to file a Bill of Costs. On April 6, 2000, Moyer filed a motion requesting an extension of time, specifically until April 28, to submit the Bill of Costs. The water court granted the motion. On April 25, Moyer again moved for an extension of time until June 15, 2000, or three weeks after the court had ruled on pending motions for reconsideration filed by Empire Lodge and a motion to intervene from a state engineer, whichever was later. On May 2, 2000, the water court denied those motions. On February 25, 2002, Moyer submitted her Bill of Costs, and Empire Lodge objected. The water court denied the Bill of Costs. Moyer appealed the water court's denial of the Bill of Costs and the subsequent motion for reconsideration directly to the Colorado Supreme Court.

The court addressed whether the water court had abused its discretion in rejecting Moyer's Bill of Costs. The court stated that the Colorado Rules of Civil Procedure ("CRCP") applied to water court proceedings, except where the rules expressly state otherwise. CRCP 121 requires a party to submit a Bill of Costs either 15 days after a judgment, or at a later time that the court permits. In the first motion, Moyer requested a later date, which the water court granted. The water court, however, never ruled on the second motion. Although the water court could have granted another extension, it did not.