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Moyer v. Empire Lodge Homeowners' Ass'n, 78 P.3d 313 (Colo. 2003)

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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.

Stacy Hochman

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.

Moyer argued that the water court should have granted this motion because of Empire Lodge's failure to submit a timely objection. The court held that Empire Lodge's failure to object did not deprive the water court of its power to deny the motion for extension. Moyer also contended that the filing of the motion tolled the expiration deadline of the previous motion. The court disagreed, stating that the failure to address the motion did not extend the expired deadline. With respect to the subsequent motion to reconsider, Moyer argued that because the water court did not rule on her second motion to extend, her missed deadline was due to excusable neglect. The court disagreed and held that her actions were not based on an erroneous court order and that her circumstances were different than circumstances of excusable neglect. The court stated that failing to meet a deadline because she decided to wait to hear the ruling of a request to extend the deadline was not the same as relying on an erroneous court order. Thus, the court affirmed the water court's decision.

Robert E. Wells

CONNECTICUT

Prestige Builders, LLC v. Inland Wetlands Comm'n of Ansonia, 831 A.2d 290 (Conn. App. 2003) (holding that an inland wetlands commission must enact a formal regulation granting it authority over upland review areas before it can regulate those areas.)

In 2000, in the Superior Court of Connecticut at Ansonia, Prestige Builders sought review of the inland wetlands commission's denial of its application to construct a nine lot residential subdivision. The complaint addressed two issues: (1) whether current statutes provided the Inland Wetlands Commission of the City of Ansonia ("Commission") authority to regulate activities in upland review areas without first enacting a regulation governing activities in such areas, and (2) whether common law provided the Commission with such authority. The superior court dismissed the complaint and Prestige Builders appealed to the Appellate Court of Connecticut. On appeal, the court found in favor of Prestige Builders and remanded the case, directing the commission to grant the construction application.

Prestige Builders owned property within the City of Ansonia. Several areas of wetlands and watercourses totaling one acre existed on the property. In 2000, Prestige Builders proposed a nine lot residential subdivision on approximately 7.5 acres of the property. The Commission determined that because the property contained wetlands and watercourses, any activity in and around those areas constituted regulated activity, as defined by the Commission's regulations. Therefore, the Commission indicated it had authority to analyze the environmental impacts of the proposed construction.