

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

~~11:00~~ 12⁰⁰ O'Clock, P M

AUG 25 1987

ETHEL BOUTON, Clerk
By *Mary Slaughter*
Deputy

BESSIE DAULTON, et vir.,

Plaintiffs
vs.
T.G. & Y STORES, et al.,

Defendants

NO. 46130

J U D G M E N T

The issues in the above entitled action having been regularly brought on for trial before a Jury, the parties having appeared by their respective counsel, and the issues having been duly tried, and the Jury having returned its verdict, on the 18th day of August, 19 87, in favor of the Plaintiff and against the Defendant;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the County of Yavapai, State of Arizona, have Judgment against Defendants for the sum of \$ 432.00 Dollars; said sum representing the Jury fees incurred by the County of Yavapai in the trial of the above entitled action.

Done In Open Court This 25 Day Of August, 19 87.

James Paulich

JUDGE OF THE SUPERIOR COURT
DIVISION 3



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4
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WESTOVER, KILLINGSWORTH & BESHEARS
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5 #011070
Attorneys for Defendant

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF YAVAPAI

8 BESSIE DAULTON and ED)
9 DAULTON, husband and wife,)
10 Plaintiffs,)

NO. 46130

11 vs.)

DEFENDANTS' OBJECTION TO
JUDGMENT FOR JURY FEES

12 T. G. & Y. STORES, et al.)

(Oral Argument Requested)

13 Defendants.)

(Assigned to the Honorable
James B. Sult, Division 3)

14
15 Pursuant to Arizona Rule of Civil Procedure 54(f) and
16 A.R.S. §12-332, Defendants T.G.&Y. objects to judgment for jury
17 fees assessed against it. This objection is supported by the
18 following Memorandum of Points and Authorities.

19 DATED this 1st day of September, 1987.

20 O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH & BESHEARS

21 By Felecia Rotellini

22 Michael W. Carnahan, Esq.

23 Felecia A. Rotellini, Esq.

24 One East Camelback Rd., Suite 1100

25 Phoenix, AZ 85012

26 Attorneys for Defendant T.G.&Y.

1 Since Plaintiff Ed Daulton was denied recovery, T.G.&Y.
2 was the prevailing party on his loss of consortium claim.
3 Schrader v. Neville, 207 P.2d 1057, 1059 (Calif. 1949); Wilson v.
4 Galt, 100 N.M. 227, 668 P.2d 1104, (App. 1983). By the same
5 reasoning, regarding Bessie Daulton's negligence action, since
6 the jury found T.G.&Y. 55% negligent and therefore liable, Mrs.
7 Daulton was the prevailing party on that action. At the end of
8 trial, both parties partially prevailed.

9 Other jurisdictions have looked at the positions of the
10 parties at the end of trial and apportioned costs accordingly.
11 Where a party prevailed only in part at trial, it is within the
12 trial court's discretion to award only partial costs. Matter of
13 Estate of Head, 615 P.2d 271, 94 N.M. 656, cert. den. Taute v.
14 Poppe, 1615 P.2d 992, 94 N.M. 675 (App. 1980); Ace Realty Inc. v.
15 Anderson, 106 Idaho 742, 682 P.2d 1289 (App. 1984) (trial court
16 did not abuse its discretion under Rule of Civil Procedure 54(d)
17 by ordering each party to bear their own costs since each party
18 partially prevailed at trial.) Arizona has also discussed the
19 proper interpretation of A.R.S. §12-341 as requiring the appor-
20 tionment of costs based upon the respective successful positions
21 of the parties at the conclusion of litigation. Nataros v. Fine
22 Arts Gallery of Scottsdale, 126 Ariz. 44, 612 P.2d 500, 505 (App.
23 1980).

24 The Nataros opinion discussed the Court of Appeals'
25 intimation in Watson Construction Co. v. Amfac Mortgage Corp.,
26 124 Ariz. 570, 606 P.2d 421 (App. 1979). In Watson, the court

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1 began with the proposition that awarding costs to a successful
2 party under A.R.S. §12-341 is mandatory. This assessment is
3 relatively easy to apply in a situation where "A" sues "B" in a
4 one count complaint. However, the difficulty of ascertaining who
5 is the "successful party" in a multiple count complaint was
6 exemplified in Watson. In that case, the court held that if the
7 parties had requested relief by apportionment of costs, it would
8 have been persuaded that the proper interpretation of the Arizona
9 cost statute (traced back to 1887 A.R.S. §895) would require an
10 apportioning of costs between winning and losing efforts.
11 However, since both parties held to an "all or nothing position"
12 and neither party requested such apportionment, the Court of
13 Appeals could not apportion the costs and held that the trial
14 court did not err in failing to award costs to either party.
15 Watson Construction Company v. Amfac Mortgage Corp., 124 Ariz.
16 585, 606 P.2d 436.

17 In ^{not} this case, Defendant T.G.&Y. is requesting an appor-
18 tionment of costs based upon the respective successful positions
19 of Mrs. Daulton and T.G.&Y. at the conclusion of this litigation.
20 Therefore, based on the foregoing case law and argument, T.G.&Y.
21 objects to the Judgment of Jury's Fees against it and requests
22 this court to apportion those fees so that Plaintiff Ed Daulton
23 is required to pay half.

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25 . . .
26 . . .

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RESPECTFULLY submitted this 1st day of September, 1987.

O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH & BESHEARS

By Felecia Rotellini
Michael W. Carnahan, Esq.
Felecia A. Rotellini, Esq.
One E. Camelback Rd., Suite 1100
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Attorneys for Defendant T.G.&Y.

COPY of the foregoing
mailed this 1st day
of September, 1987, to:

Louis M. Diesel
ASPEY, WATKINS & DIESEL
123 North Leroux
Flagstaff, AZ 86001
Attorney for Plaintiffs

Mary Leopold

3. This party claims these costs against the opposing parties against whom the Judgment was rendered. RCP 54(f); ARS §§ 12-331 – 12-347.

4. COPIES MAILED pursuant to RCP 5 this date to these persons, in these capacities and at these addresses:

Lou Diesel, Esq.
ASPEY, WATKINS & DIESEL
123 N. Leroux
Flagstaff, AZ 86001

5. I have read the foregoing document and know of my own knowledge that the facts stated therein are true and correct.

STATE OF ARIZONA }
County of Maricopa } ss

Felecia Rotellini
.....
Affiant FELECIA ROTELLINI

SUBSCRIBED AND SWORN this date: September 1, 1987

November 12, 1989
Notary Expiration Date

Mary J. Leopold
.....
Notary Public

STATEMENT OF COSTS & NOTICE OF TAXATION OF COSTS



1-11 © LawForms 11-67, 10-81