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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR - 8 2024

NEAL CATTLE COMPANY,

Plaintiff/Appellee,

vs.

JACE E. KING,

Defendant/Appellant.

Rec'd (date)	3-8-24
Posted)
Mailed)
Distrib)
Publish	yes <input checked="" type="checkbox"/> no

JOHN D. HADDEN
CLERK

Case No. 120,921

APPEAL FROM THE DISTRICT COURT OF
GARVIN COUNTY, OKLAHOMA

HONORABLE STEVEN KENDALL, ASSOCIATE DISTRICT JUDGE

REVERSED

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For Plaintiff/Appellee

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For Defendant/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Jace E. King appeals a judgment of the district court awarding the Neal Cattle Company \$9,518 in attorney fees after Neal Cattle prevailed in a declaratory judgment action. We hold that Oklahoma law does not provide for attorney fees in the action below and therefore reverse the award.

I.

This matter arises from a declaratory judgment action involving an order of a Missouri court that King sought to domesticate and enforce against Neal Cattle in Garvin County. The Missouri case arose from King's sale of a used pickup truck to Neal Cattle. Neal Cattle filed suit in Missouri, alleging that King had made false representations and concealed defects in the pickup. The Missouri court found in favor of Neal Cattle and entered a judgment against King in the amount of \$7,227.24.

Execution apparently issued, but there was substantial confusion and irregularity in the execution, and the sheriff allegedly attempted to seize the wrong property, including a horse belonging to King's daughter. Neal Cattle allegedly demanded that King immediately pay it \$25,000 or it would seize the horse. King paid the demanded \$25,000 and then returned to the Missouri court challenging this execution. In January 2021, the Missouri court held, in its *Order Voiding Levy and Requiring Return of Monies Paid*, this:

Based upon the evidence and the law, the Court finds that the Execution levied by the Sheriff's Office for Replevin is void and of no effect, the court further finds that, under the circumstances of the execution of such void levy, the extracting of monies from the Defendant was coercive in nature and not supported by consideration.

THEREFORE, IT IS ORDERED that [Neal Cattle] return to [King] the sum of \$25,000 cash within 10 days of the date of this order.

R. 4, 23 ("Missouri order"). Nothing in the record evidence suggests that Neal Cattle complied with the Missouri order.

In January 2022, King filed the Missouri order as a foreign judgment in Garvin County, Oklahoma, and sought enforcement there. Neal Cattle filed a petition seeking declaratory judgment that the Missouri order was not entitled to full faith and credit in Oklahoma. The accompanying motion for summary judgment argued that the Missouri order was not a final judgment under Missouri law and was therefore not entitled to full faith and credit. The district court agreed, finding that the Missouri order was not a final judgment and could not be domesticated. This decision was not appealed and is not at issue here.

Neal Cattle then filed for some \$8,650 in attorney's fees, arguing that it was the prevailing party in the declaratory judgment action and entitled to attorney fees under 12 O.S. § 936 since the Missouri case concerned a "contract relating to the purchase or sale of goods." The court awarded Neal Cattle \$9,518¹ in fees. King appeals.

II.

"[W]here the question of whether an attorney fee is authorized by law is presented, such a claim is reviewed *de novo*. Under this standard, this Court affords a 'non-deferential, plenary and independent review' of the trial court's legal ruling." *State ex rel. Comm'rs of the Land Office v. Stephens & Johnson Operating Co., Inc.*, 2020 OK 84, ¶ 5, 474 P.3d 869.

¹ Neal Cattle sought \$8,650 in fees up to and including the fee application and subsequent fees incurred in prosecuting the application. The trial court granted the full \$8,650 requested plus \$868 for fees incurred subsequent to the application.

III.

The district court relied on *JP Energy Mktg., LLC v. Commerce & Indus. Ins. Co.*, 2018 OK 11, 419 P.3d 215, in holding that the prevailing party in a declaratory judgment action is entitled to fees if the underlying case is fee bearing. Neal Cattle repeats this claim in its briefing, claiming that “when there is a statute which allows attorney fees to be awarded for the underlying claim, attorney fees are awardable in the declaratory action.” *Brief-in-chief*, 5. The underlying fee statute cited was 12 O.S. § 936, which provides fees to the prevailing party in a contract action “relating to the purchase or sale of goods”. We find that this interpretation improperly states and expands the rule of *JP Energy* and reject it.

At no point does *JP Energy*, broadly hold that a “prevailing party” in a declaratory judgment action is entitled to fees if the underlying case is fee bearing. *JP Energy* held the fees for a declaratory judgment action were available in a specific context—an insurance case governed by 36 O.S. § 3629. The relevant provision of § 3629 was this:

B. It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to the insured within sixty (60) days of receipt of that proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party.

When the statutory prerequisites for recovering a fee under § 3629 are examined, it is clear that § 3629 is an insurance statute aimed at claim settlement practices and encouraging timely resolution of claims. The purpose

of § 3629 is to create “an incentive for insurance companies to promptly investigate and resolve claims submitted by their insureds.” *Hamilton v. Northfield Ins. Co.*, 2020 OK 28, ¶ 2, 473 P.3d 22, 24. “[T]he whole purpose of the statute is to avoid litigation by creating fee-shifting disincentives if the insured’s claim is not speedily resolved.” *Id.* ¶ 2.

Pursuant to § 3629, an insured may gain fees if, after proof of loss, the insurer improperly denies coverage² or makes an offer that is less than the insured’s eventual recovery.³ An insurer may gain fees only if three requirements are met. First, the insurer must have received a proof of loss. Second, the insurer must have submitted a written offer of settlement or rejection of the claim to the insured within sixty days of receipt of that proof of loss. Third, the insured must eventually recover less than the written offer, *or* the court must find that the insurer was correct that there was no coverage.⁴

These requirements to become a “prevailing party” are unique to § 3629. We see no rational reason why the availability of fees for certain declaratory

² See e.g. *An-son Corp. v. Holland-Am. Ins. Co.*, 767 F.2d 700 (10th Cir. 1985) (insurer denied coverage, declaratory judgment found that loss was covered, and a fee awarded to insured under § 3629).

³ See e.g., *Linn v. Oklahoma Farm Bureau Mut. Ins. Co.*, 2020 OK CIV APP 62, ¶ 55, 479 P.3d 1013, 1026 (timely written offer of settlement after proof of loss was less than the amount recovered by insured—fee awarded under § 3629).

⁴ The insurer in *JP Energy* was granted a fee after the insurer timely denied coverage and a declaratory judgment held that the denial was proper. The text of § 3629 bases fee entitlement only on *the amount offered against the judgment recovered*. To apply the statute to denial of coverage cases, the Court appears to reason that the insured’s recovery did not exceed the insurer’s offer because no coverage was offered, and no coverage was recovered. Conversely, where coverage is denied, and a declaratory judgment later finds the loss was covered, the rationale appears to be that no coverage was offered, but a covered loss was found. Hence, the insured’s judgment exceeded the offer by the insurer, even before the final value of the loss is ascertained.

judgements under a specialized claims settlement statute should translate to all declaratory judgments being fee bearing if the underlying case is fee bearing. We thus reject the invitation to expand *JP Energy* into a rule that the prevailing party in any declaratory judgment action is entitled to fees simply because the underlying case is fee bearing.

We further note that this Court specifically addressed the question of fees in an action to domesticate a judgment in *Hi-Pro Animal Health v. Halverson*, 2002 OK CIV APP 61, ¶ 17, 48 P.3d 119, 122. *Hi-Pro* notes that fees are only available in an action to domesticate a judgment when the underlying cause of action authorizes fee awards for such post-judgment proceedings. We find no such authorization in 12 O.S. § 936.

For these reasons, we find that Oklahoma law does not provide for attorney fees in this case. Because we find Neal Cattle was not entitled to any award of fees, we do not address King's claim that the requested fees were unreasonable.

REVERSED.

HUBER, P.J., and HIXON, J., concur.

March 8, 2024