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Oct 21 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2022-000162

Tammy Batten West, Appellant

v.

American Honda Motor Co., Inc., Respondent

FINAL BRIEF OF RESPONDENT

BOWMAN AND BROOKE, LLP
Patrick J. Cleary, Esq.
1441 Main Street, Suite 1200
Columbia, SC 29201
(803) 726-7420
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

Did the trial court abuse its discretion when it determined the Plaintiff was entitled to a reasonable award of \$27,585 in aggregate cost and expenses, including attorney's fees, pursuant to the South Carolina Enforcement of Motor Vehicle Express Warranties Act (S.C. Code Ann. § 56-28-50(D)), after reviewing the submissions by the parties, applying the six factors set forth in *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989), and making findings of fact to support its determination?

STATEMENT OF THE CASE

a. Overview.

This case involves a straightforward appellate review of a trial court's award of reasonable cost and expenses, including attorney's fees, pursuant the South Carolina Enforcement of Motor Vehicle Express Warranties Act, S.C. Code Ann. § 56-28-10 (1976) *et. seq.* ("Warranty Act").

Plaintiff Tammy Batten West ("Plaintiff") was the prevailing party in a case arising under the Warranty Act, which contains provisions allowing a prevailing plaintiff to seek recovery of costs and expenses (including attorney's fees) in an amount determined by the court to have been reasonably incurred by the plaintiff. Plaintiff and Defendant American Honda Motor Co., Inc. ("Honda") submitted briefing on the issue, and both parties submitted what they believed were appropriate and reasonable costs and expenses, including attorney's fees.

The trial court evaluated the parties' briefs and ordered that Plaintiff was entitled to an attorney's fee award of \$27,585, with specific factual findings in support of its determination. Plaintiff filed a motion for reconsideration. Honda submitted an opposing brief, and the trial court affirmed its original decision, and (again) included specific findings in support of its determination. Plaintiff now appeals the trial court's attorney fee award, claiming that by reducing the amount requested by Plaintiff, the trial court misapplied South Carolina law.

b. Plaintiff's purchase of a new vehicle, her reported concerns, and pre-suit attempts to resolve Plaintiff's claims.

Plaintiff purchased a new 2017 Honda CR-V ("Subject Vehicle") on March 4, 2017. After her purchase, Plaintiff experienced various issues with the Subject Vehicle, all of which were repaired at no charge because the Subject Vehicle was still under warranty. (R. pp. 990-991). In September 2018, Plaintiff participated in non-binding arbitration through the National Center for Dispute Settlement ("NCDS") pursuant to the provisions of the Magnuson-Moss Act (15 U.S.C. §

2310) and the S.C. Warranty Act (S.C. Code Ann. § 56-28-60 (1976)) and was awarded a repurchase. (R. pp. 973-974). Plaintiff exercised her right to reject the repurchase¹ awarded through the NCDS, and instead sued Honda on November 11, 2018.

c. Plaintiff's Complaint, Honda's attempts to resolve the case, and the resolution before the trial court.

In her complaint, Plaintiff alleged that Honda breached common law warranties applicable to the Subject Vehicle, was in breach of the South Carolina Enforcement of Motor Vehicle Warranty Act, was in breach of the federal Magnuson-Moss Warranty Act, committed actions that violated the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10 (1976) *et. seq.*), and committed actions that violated the South Carolina Regulation of Manufacturers, Distributors and Dealers Act (S.C. Code Ann. § 56-15-10 (1976) *et. seq.*). (R. pp. 51-56). During the pendency of the case, Honda presented several settlement offers, all of which included a complete repurchase of the Subject Vehicle *and* an amount for Plaintiff's attorney's fees. (R. pp. 992-993). Plaintiff's counsel repeatedly rejected these offers during the thirty-one-month period from November 2018 to May 2021. *Id.* Plaintiff's counsel even acknowledged in August 2020 that Honda made settlement offers which would fully repurchase the Subject Vehicle, but that he was continuing this litigation solely in the attempt to obtain more attorney's fees. (R. pp. 994, 1100-1102).

Following a hearing before the trial court on May 17, 2021, Plaintiff voluntarily dismissed all causes of action except for her claim under the Warranty Act and finally accepted a repurchase of the Subject Vehicle. Honda offered \$15,000.00 in attorney's fees at the May 17, 2021 hearing to resolve any claim of attorney's fees. Plaintiff's counsel rejected Honda's offer and sought

¹ Honda made multiple offers to repurchase the Subject Vehicle consistent with the Warranty Act. (R. pp. 991-992).

approximately \$87,000 in attorney’s fees and costs.² The trial court then directed the parties to submit briefing on the appropriate amount of attorney’s fees and costs.

d. The trial court received full briefing on the issue of attorney’s fees, and the parties agreed on the case law that controlled the court’s determination.

It is undisputed that Plaintiff prevailed on her Warranty Act claim—all other claims were dismissed. Pursuant to the Warranty Act and well-settled case law, Plaintiff filed her motion for attorney’s fees on May 21, 2021. Despite 28 pages of briefing with extensive citation to non-controlling authorities from other jurisdictions and various policy arguments, Plaintiff ultimately identified the same six factors as Honda that South Carolina trial courts must consider when determining an award of attorney’s fees. (R. p. 700 citing *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997)).³ On May 28, 2021, Honda submitted a detailed brief opposing Plaintiff’s request for attorney’s fees, outlining Honda’s repeated attempts to repurchase the Subject Vehicle from Plaintiff both before and throughout the litigation. (R. pp. 970-987). Honda’s Opposition also analyzed and briefed each of the six factors and identified *inter alia* Plaintiff’s counsel’s needless expansion of the case and Plaintiff’s counsel’s failure to identify which work was actually performed for the Warranty Act cause of action rather than Plaintiff’s dismissed causes of action. (R. pp. 980-981). Plaintiff submitted a reply in support of her Motion for attorney’s fees on June 21, 2021, rearguing the same six factors. (R. pp. 1128-1143). Plaintiff

² Plaintiff’s counsel demanded \$84,646.25 in attorney’s fees (\$82,260) and costs (\$2,386.28) for expenses incurred up to the filing of Plaintiff’s Motion for Attorney’s Fees, and then added an additional \$2,500 in attorney’s fees as an estimate of the amount of attorney’s fees Plaintiff would incur “through the date of turning in the vehicle.” (R. pp. 724-725). Under Plaintiff’s interpretation, the aggregate amount of \$87,146.25 represents “the amount involved on appeal,” but Honda’s position is that the trial court’s award of \$27,585 is correct. Rules 208(b)(1)(C) and 208(b)(2), SCACR (requiring Initial Briefs to include “the amount involved on appeal”).

³ The six factors cited in *Jackson* are identical to the factors outlined in *Baron*. Compare *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 with *Baron*, 297 S.C. at 384–85, 377 S.E.2d at 297.

explicitly acknowledged *and argued* that the six factors in *Jackson* guide the trial court's decision when determining attorney's fees in both her initial request and reply.

e. The trial court applied the correct law to the facts and made an independent determination of the amount of attorney's fees to award Plaintiff.

The trial court considered the parties' briefing and awarded Plaintiff \$27,585 in attorney's fees on June 28, 2021. (R. pp. 31-40). The trial court began by acknowledging Honda's repeated attempts to repurchase the Subject Vehicle before Plaintiff sued Honda:

The evidentiary record before the Court identifies that *Honda made multiple offers to repurchase the 2017 CR-V prior to November 11, 2018*, and that Honda's offers to repurchase the 2017 CR-V were made consistent with its obligations under the Warranty Act. The evidentiary record also indicates that Honda and Plaintiff participated in an informal dispute settlement process prior to filing suit, and that at that hearing Honda did not contest Plaintiff's request for a repurchase of the 2017 CR-V.

(R. pp. 32-33) (emphasis added). The trial court further noted Honda's attempts to repurchase the Subject Vehicle after Plaintiff sued Honda:

The evidentiary record indicates that Honda made multiple attempts to resolve this matter following suit. These settlement offers included monetary amounts for the repurchase of the 2017 CR-V, a process for Honda to take possession of the 2017 CR-V, and amounts designated for attorney's fees.

(R. p. 33). The trial court then considered the six factors for determining an award of attorney's fees and awarded Plaintiff \$27,585 in attorney's fees and included specific findings of facts and conclusions of law for each. (R. pp. 36-39) (citing *Baron*, 297 S.C. at 384, 377 S.E.2d at 297). Neither party disputed that Plaintiff prevailed on the Warranty Act, but Plaintiff failed to delineate which billing entries corresponded to work actually performed for each cause of action. (R. pp. 726-753). The trial court took notice of this deficiency, noting that Plaintiff's request for fees did not include specific references in the timesheets to the Warranty Act cause of action, versus the

other causes of action initially identified and then dismissed by counsel. (R. p. 37).⁴ The trial court's award included costs sought by Plaintiff. (R. p. 39).

f. Plaintiff filed a motion for reconsideration, rearguing her original motion for fees.

Plaintiff filed a Motion to Amend, Alter or Reconsider Judgment Regarding Award of Attorney's Fees on July 8, 2021, alleging a variety of errors in the trial court's June 28 Order. (R. pp. 1154-1161). Honda submitted its opposition to Plaintiff's Motion to Reconsider, noting that Plaintiff largely restated the same arguments set forth in her original Motion for Attorney's Fees. (R. pp. 1162-1167). The trial court affirmed the June 28 Order on January 18, 2022, awarding Plaintiff \$27,585. (R. pp. 41-44). Pursuant to Rule 52 and Rule 59(e) of the South Carolina Rules of Civil Procedure, the trial court determined the June 28 Order was supported by applicable South Carolina law as applied to the factual record, and provided "findings of fact and conclusions of law which support the grounds of its action." (R. p. 43).

g. Plaintiff appealed the trial court's orders.

Plaintiff filed her Notice of Appeal on February 14, 2022, appealing both the June 28, 2021 Order and the January 18, 2022 Order.

⁴ Plaintiff's counsel affidavit submitted in support of Plaintiff's Motion for Attorney's fees states: "Include I was not churning the file." The trial court noted that the statement warranted "a more detailed look at every entry submitted by [Plaintiff's] counsel." (R. p. 37).

STANDARD OF REVIEW

The standard of review is abuse of discretion when considering a trial court's decision to award or deny attorneys' fees under a state statute. *S.C. Dep't of Transp. v. Revels*, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014) (citing *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009)). Similarly, "the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Kiriakides*, 382 S.C. at 20, 675 S.E.2d at 445. "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012) (citing *Kiriakides*, 382 S.C. at 20, 675 S.E.2d at 445)).

ARGUMENT

I. The trial court did not abuse its discretion when determining the amount of reasonable attorney's fees to which Plaintiff is entitled in this case.

The trial court, following the briefing of both parties, determined an award of attorney's fees pursuant to the Warranty Act and the six factors governing an award of attorney's fees under South Carolina case law. (R. pp. 35-36). Well-settled case law holds that the trial court's determination of the appropriate amount of attorney's fee to award plaintiff was *not* an abuse of discretion. *Kiriakides*, 382 S.C. at 20, 675 S.E.2d at 445. "Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by *any* competent evidence." *Baron*, 297 S.C. 384, 377 S.E.2d at 296 (emphasis added) (citing *Singleton v. Collins*, 251 S.C. 208, 161 S.E.2d 246 (1968)). The plain language of the Warranty Act indicates an attorney's fee award is permissive, not mandatory, and the trial court is directed to make its own determination of a reasonable amount:

"(D) Any consumer who finally prevails in any action brought under this chapter, **may** be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorney's fees based on actual time expended) and other such costs which are directly attributable to the nonconformity of the motor vehicle **determined by the court to have been reasonably incurred** by the plaintiff for or in connection with the commencement and prosecution of such action, **unless the court in its discretion** determines that such an award of attorney's fees would be inappropriate."

S.C. Code Ann. § 56-28-50(D) (1976) (emphasis added). Like other statutes awarding attorney's fees to the prevailing party, the trial court applies well-settled South Carolina law when determining the amount of fees awarded to those reasonably incurred to obtain the repurchase remedy provided in the Warranty Act. The language of the Warranty Act clearly imbues the trial court with discretion, and "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has

no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

- a. **The trial court correctly applied the six factors from *Baron* when determining Plaintiff’s attorney’s fees award and included sufficiently detailed factual findings and conclusions of law.**

In *Baron*, the Supreme Court of South Carolina enumerates six non-controlling factors for a trial court to consider when determining a reasonable amount of attorney’s fees. 297 S.C. 384–85, 377 S.E.2d at 297. Those six factors are (1) the nature, extent and difficulty of services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Id.* The trial court must consider each factor in determining reasonable attorney’s fees and no single factor is controlling. *Id.* (citing *Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974)).

The parties fully briefed the issue of Plaintiff’s request for attorney’s fees, and the trial court received and considered “the relevant Court record, Plaintiff’s Motion for Fees, Brief in Support and supporting exhibits, Plaintiff’s Affidavits and itemized time statement, [Honda’s] Opposition to Plaintiff’s Motion, and [Honda]’s Affidavit and supporting documents.” (R. p. 31). Applying all six factors, the trial court articulated specific factual findings and conclusions of law for each and issued Plaintiff an award of \$27,585 consistent with the Warranty Act, well-settled case law, and the facts of this case. (R. pp. 36-39). There was no abuse of discretion in this case, nor any misapplication of the *Baron* factors to the facts.

II. The trial court was not required to automatically accept as reasonable the amount of attorney’s fees requested by Plaintiff.

On appeal, the gravamen of Plaintiff’s argument is that the trial court was *required* to accept the amount of attorney’s fees requested by Plaintiff unless good cause was shown that the

amount requested was unreasonable. (Final Brief of Appellant at 31–34). Plaintiff presents no case law that supports such an argument or that would create any such construct for the trial court. This interpretation also misreads the plain language of the Warranty Act (S.C. Code Ann. § 56-28 - 50(D) (1976)) (“Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover . . . attorney’s fees based on actual time expended[.] . . . determined by the court to have been reasonably incurred).

a. Plaintiff incorrectly presents *Taylor* and *Stokes* with respect to the trial court’s discretion to determine the amount of reasonable fees.

Citing *Taylor v. Nix* and *Austin v. Stokes-Craven*, Plaintiff incorrectly argues that the trial court committed reversible error by apportioning Plaintiff’s work on the case between the work performed on the Warranty Act cause of action, and the work performed on the other causes of action which Plaintiff voluntarily dismissed. (Final Brief of Appellant at 31) (citing *Taylor*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992) and *Austin*, 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010)). Plaintiff misreads both *Taylor* and *Austin*, as neither case alters the discretion of the trial court to determine what it concludes is the appropriate and reasonable amount of time spent on a given cause of action and to determine the attorney’s fees awarded under the plain language of the Warranty Act, nor does either case hold that apportionment of fees is improper amongst causes of action. Indeed, a trial court is *required* to apportion attorney’s fees between causes of action on which a party prevails, and those causes of action to which a plaintiff is not entitled to fees. *See Rice v. Multimedia, Inc.*, 318 S.C. 95, 100, 456 S.E.2d 381, 384 (1995) (upholding trial court’s reduced award because plaintiff only partially prevailed).

Nix holds that a party asserting the right to attorney’s fees must produce an itemized affidavit of their fees (and by extension time) that they believe are related to the statutory claim that they prevailed upon. 307 S.C. at 557, 416 S.E.2d at 623. Additionally, *Nix* is distinguishable

because the plaintiff in that case prevailed on several causes of action, whereas Plaintiff in this case prevailed only on the Warranty Act claim. *Id.* at 555, 416 S.E.2d at 621.

In this case, the trial court pointed out that Plaintiff's attorney did *not* delineate which time entries represent work performed related to the Warranty Act, which is the only cause of action that Plaintiff prevailed on and the only basis for which Plaintiff is entitled to recover attorney's fees. (R. p. 37). The trial court, therefore, after review of the affidavit submitted by Plaintiff's counsel, determined what it considered an appropriate amount of time counsel spent on the Warranty Act, and based its award on that determination. (R. pp. 37-38).

b. The trial court appropriately determined the amount of attorney's fees, and there is no basis to substantially disagree with that determination.

Plaintiff also incorrectly argues that what it considers is an inadequate fee award is inherently an abuse of discretion, because the trial court only awarded 29.9% of what Plaintiff requested. (Final Brief of Appellant at 26) (citing *Rish v. Rish*, 296 S.C. 14, 15–16, 370 S.E.2d 102, 103 (Ct. App. 1988)). The amount of attorney's fees to be awarded is within the discretion of the trial judge provided the award is reasonable, and courts have held that awarding 10 or 15 percent of the requested fees by the prevailing party is reasonable. *See, e.g., Farmers and Merchants Bank v. Fargnoli*, 274 S.C. 23, 26, 260 S.E.2d 185, 187 (1979) (holding the trial court's order awarding 10% of attorney's fees demanded was not an abuse of discretion); *Assoc. Comm. Corp. v. Hammond*, 285 S.C. 277, 279, 330 S.E.2d 82, 83 (Ct. App. 1985) (affirming a trial court's determination to award 15% of the amount of attorney's fees requested by the prevailing party).

And *Rish* itself holds that the trial court's determination of attorney's fees will not be disturbed on appeal unless there is "substantial or violent disagreement" with the trial court's decision. 296 S.C. at 16, 370 S.E.2d at 103. Plaintiff presents no argument or evidence to support such a conclusion by this Court. To the contrary, the trial court reviewed the submissions of the

parties, applied the controlling law, made evidentiary findings, and made its determination of an appropriate and reasonable fee award.

CONCLUSION

This Court should affirm the trial court's award of \$27,585 to the prevailing Plaintiff pursuant to the Warranty Act. The trial court evaluated the briefing and supporting affidavits of both parties and determined an appropriate amount of attorney's fees and costs based on its application of controlling South Carolina law to the facts of this case. The trial court articulated findings of fact in support of its decision, animated by competent references to the record. Appellant does not cite any legal authorities that require this Court to disturb the well-reasoned decision of the trial court.

Respectfully submitted,

Bowman and Brooke LLP

By: *s/ Patrick J. Cleary*
Patrick J. Cleary (SC Bar No. 80808)
1441 Main Street, Suite 1200
Columbia, SC 29201
(803) 726-7420
(803) 726-7421 (Fax)
Patrick.Cleary@bowmanandbrooke.com

Attorney for Respondent
American Honda Motor Co., Inc.

December 8, 2022

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2022-000162

Tammy Batten West, Appellant

v.

American Honda Motor Co., Inc., Respondent

CERTIFICATE OF COMPLIANCE

I, Patrick J. Cleary, am the attorney for the Respondent and hereby certify that I have read and complied with Rule 211(b), SCACR upon the filing of the Final Brief of Respondent.

Respectfully submitted,

BOWMAN AND BROOKE, LLP

By: s/ Patrick J. Cleary
Patrick J. Cleary (SC Bar No. 80808)
1441 Main Street, Suite 1200
Columbia, SC 29201
T: (803) 726-7420
F: (803) 726-7421
E: Patrick.cleary@bowmanandbrooke.com

Attorney for Respondent
American Honda Motor Co., Inc.

December 8, 2022

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Tammy Batten West, Appellant

v.

American Honda Motor Co., Inc., Respondent

PROOF OF SERVICE

I certify that I have served a copy of the Final Brief of the Respondent by serving Appellant’s Counsel of Record, Brooks R. Fudenberg, via email addressed to:

brooks.r.fudenberg@fudenberglaw.com

A copy of the email serving Appellant is attached.

Respectfully submitted,

BOWMAN AND BROOKE, LLP

By: s/ Patrick J. Cleary

Patrick J. Cleary (SC Bar No. 80808)

1441 Main Street, Suite 1200

Columbia, SC 29201

T: (803) 726-7420

F: (803) 726-7421

E: Patrick.cleary@bowmanandbrooke.com

Attorney for Respondent

American Honda Motor Co., Inc.

December 8, 2022

October 21, 2024

VIA HAND DELIVERY and EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

Re: Tammy Batten West, Appellant v. American Honda Motor Company, Inc., Respondent
Case No. 2022-000162

Dear Ms. Kitchings:

As requested, Respondent respectfully submits 6 bound copies by hand delivery of its final brief (complying with Rule 267 SCACR) for filing in the above referenced matter according to the letter received from the South Carolina Court of Appeals on October 17, 2024.

By copy of this letter, I am serving opposing counsel by email.

Sincerely,



Patrick J. Cleary
Partner

PJC/saw

cc: Brooks R. Fudenberg (brf@fudenberglaw.com)
C. Steven Moskos (steve@moskoslawfirm.com)