

Legault v. aRusso

CV-93-365-B 03/29/96

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Michelle Legault

v.

R.I. Civ. No. 93-CB-243-P

N.H. Civ. No. 93-365-B

Ralph aRusso, et al.

O R D E R

After protracted settlement negotiations, Legault and the Town of Johnston reached a settlement of all of Legault's claims except her claims for costs and attorney's fees.¹ Pursuant to a stipulation of settlement approved by the court on March 30, 1995, Legault dismissed her claims against Zambarano and aRusso with prejudice.² On April 4, 1995, the court signed a consent order awarding Legault damages and injunctive relief against the Town of Johnston. Although the order (which had been drafted by the parties) stated that it was being entered as a "final judgment and order of the court," the court instructed the clerk to enter judgment on a separate document in order to comply with the requirements of Federal Rule of Civil Procedure 58. See Nunez-Soto v. Alvarado, 956 F.2d 1, 2 (1st Cir. 1992). A deputy

¹ Zambarano and aRusso agreed not to oppose the settlement.

² Legault reserved her right to seek attorney's fees from both defendants.

clerk in Rhode Island nevertheless signed the April 4, 1995, order on April 10, 1995, and entered the order on the docket. Thereafter, on April 19, 1995, the clerk entered judgment for Legault on a separate document.

On May 1, 1995, Legault filed a motion seeking additional time to file her motion for costs and attorney's fees. Defendant aRusso and his former attorney, Thomas DiLuglio, opposed the motion. Legault filed her motion for fees on May 15, 1995, subject to my ruling on her motion for additional time. For the reasons that follow, I grant the motion.

I. DISCUSSION

ARusso and DiLuglio argue that the motion to enlarge time was itself untimely. Therefore, they contend, the motion should be judged under the "excusable neglect" standard for late motions contained in Federal Rule of Civil Procedure 6(b)(2) rather than the more lenient standard for timely motions contained in Rule 6(b)(1). I disagree.

The Local Rules for the District of Rhode Island provide that a motion for attorney's fees must be filed "within 10 days

after entry of judgment").³ R.I.L.R. 25(c). Federal Rule of Civil Procedure 6 provides that "[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays should be excluded in the computation." Since judgment was entered by the court on April 19, 1995, Legault's May 1, 1995, motion to enlarge was filed within the ten-day period contemplated by Local Rule 25(c) when the time is computed pursuant to Rule 6(a).

To the extent that aRusso and Zambarano argue that judgment was actually entered when the clerk signed my April 4, 1995 order, they are mistaken. Rule 58 requires that the clerk enter judgment on a separate document. Mindful of this requirement, I instructed the clerk's office to prepare a separate judgment and the clerk did so on April 19, 1995. Judgment was not entered until that date. Moreover, Legault did not waive her right to insist on the entry of judgment by a separate document because neither she nor the court intended the clerk's April 10, 1995, signature on the April 4, 1995, order to serve as the final

³ Federal Rule of Civil Procedure 54(d)(2)(b) provides that a motion for attorney's fees must be filed within 14 days of the date that judgment is entered "unless otherwise provided by . . . order of the court." Since Legault does not argue otherwise, I assume that Local Rule 25(c) is an "order of the court" as that phrase is used in Rule 54.

judgment in this case.⁴ See Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978) (separate judgment requirement waived where court and parties intended order disposing of case to also serve as final judgment).

I also conclude that Legault had good cause under Rule 6(a)(1) for her request for additional time to file her motion for attorney's fees. Legault represented in her motion that she needed the additional time because her efforts to settle the attorney's fee claim were impeded by the fact that the town's attorney was unavailable because of an illness in his family. I find this to be a sufficient reason to justify her request for additional time. Accordingly, the motion to enlarge (document no. 166) is granted.

SO ORDERED.

Paul Barbadoro, United States
District Judge for the
District of New Hampshire
(Sitting by Designation)

March 29, 1996

cc: Ina P. Schiff, Esq.
Henry F. Spaloss, Esq.
Thomas A. DiLuglio, Esq.
Jeffrey S. Michaelson, Esq.

⁴ Legault's intent is evidenced by her counsel's un rebutted statement that she relied on the April 19, 1995, judgment as the date that started the time running under Local Rule 25(c).

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