

Preserving Premature Rulings

May 07, 2019

The jury was still deliberating over the personal injury case in *Showan v. Pressdee*, No. 1:16-cv-00468-ODE (N.D. Ga.), when the senior U.S. district judge decided to “get the ball rolling” on an expected motion for damages for frivolous claims. Georgia law allows a prevailing party to bring a motion “at the time that the verdict or judgment is rendered” asking the finder of fact to decide whether an opposing party presented a frivolous claim or defense. O.C.G.A. § 9-11-68(e). The statute requires the court to hold a bifurcated hearing where the finder of fact determines: (1) whether the party asserted a frivolous claim or defense; and (2) what damages, if any, to award. *Id.* The plaintiff planned to make a motion under O.C.G.A. § 9-11-68(e) if he prevailed at trial. But rather than wait for the verdict, the court heard arguments and “dismissed” the plaintiff’s claim preemptively. See *Showan v. Pressdee*, No. 17-15547, 2019 WL 1891785 at* 9 n.10 (11th Cir. Apr. 29, 2019). A less alert lawyer might have left it there. Instead, plaintiff’s counsel renewed his motion — knowing the court had already denied it — after the jury rendered a \$330,000 verdict in his client’s favor. That was a good call. The U.S. Court of Appeals for the Eleventh Circuit found the plaintiff had preserved his objection to the court’s ruling by making the motion a second time when the jury returned as required by O.C.G.A. § 9-11-68(e). *Showan*, 2019 WL 1891785 at* 9 n.10. On appeal, the plaintiff won the reversal he sought solely on his objection to the court’s premature ruling. The Eleventh Circuit held that Georgia law required the district court in this diversity case to hold a hearing *after* the verdict. The jury would decide at the hearing whether the defendant’s claims or defense were frivolous and set damages. *Showan*, 2019 WL 1891785, at *14. **Practice Tip** When a statute requires a party to make a motion or take action at a particular time, do it at that particular time. If the court takes up the motion prematurely, renew the motion at the time required by law — even if you have already lost the motion. Otherwise, you will waive the right to appeal the court’s ruling.

Authored By



David A. Karp

Related Practices

Appellate & Trial Support

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.