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Court Costs - Award to Party Substantially Prevailing

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COURT COSTS —
AWARD TO PARTY SUBSTANTIALLY PREVAILING

One of the most troublesome and sometimes most expensive items of any litigation is the court costs. This may well be accounted for by the fact that the allowance of costs depends entirely upon statute as no costs were allowed at common law.[1] The statutes of Virginia make different provision for costs in the trial and in the appellate courts. In the trial court, costs are awarded to "the party for whom final judgment is given."[2] A court of equity always retains discretion over the subject of costs.[3] However in the Supreme Court of Appeals, costs are recovered "by the party substantially prevailing."[4]

Court costs are of greatly added importance in annexation proceedings due to the expense of obtaining evaluating commissioners, a special three judge court and usually prolonged litigation. As a result, special statutes as to court costs apply in such cases. When the city asks for annexation, all costs in the lower court are to be paid by the city.[5] Costs in the appellate court are again to be awarded to the party substantially prevailing.[6] Prior to 1946, in cities over 150,000, costs in the annexation court were left to the discretion of that court.[7]

Two real estate improvement companies had developed certain lands just beyond the city limits of Richmond by installing gas, water and sewer facilities. The city annexed this territory and became bound by statute[8] to pay the fair value of these improvements. Failing to come to an agreement with the City, the land companies filed a petition in the annexation court and were given judgment. The burden of paying the annexation court costs was placed on the city. The annexation court relied on a now repealed statute permitting discretion in awarding of costs.[9] On appeal, the Supreme Court of Appeals greatly modified the judgment against the city and awarded appellate costs to the city in that they were the "substantially prevailing" party in the appellate court. On rehearing, *held*, the award of appellate costs does not relieve the city from payment of lower court costs as the land companies received a modified but final judgment in the lower court. *Richmond v. County of Henrico,* 185 Va. 859, 41 S. E. 2d 35 (1947).

The city was already bound to pay the fair value of the improvements annexed. The issue, therefore, in the trial court was as to amount as distinguished from liability. As the appellate court remanded with directions for a substantial reduction of the judgment, a question arises as to whom final judgment, in the prevailing sense,

was awarded. With the city bound to pay some amount, it is submitted that when it gets a substantial reduction from the demands of the land owner, it has won its case. Otherwise, in light of the statute, final judgment could never be entered for the city and it must be forced to bear the court costs for each non-concurring land owner.

Appellate costs however are separate and distinct and are to be awarded to the party "substantially prevailing" in the appellate court.[10] What is meant by substantially prevailing has frequently been decided in accordance with the essence and right of the case, upon its disposal by the appellate court, independent of the technical right of either party to an affirmance or a reversal.[11]

Where plaintiff sued for and recovered $450.00 in the lower court and the appellate court directed the maximum recovery to be $300.00 and awarded a new trial, it was held that appellant had "substantially prevailed" in the appellate court.[12]

The "prevailing party" is the party in whose favor the decision or verdict in the case is or should be entered, and in determining this question, the general result should be considered and inquiry made as to who has, in the view of the law, succeeded in the action.[13]

Appeal costs will be awarded to the appellant where a decree is reversed in part. Under such circumstances, the appeal is necessary to obtain relief from error in the decree and the appellant is therefore regarded as the party substantially prevailing.[14] Generally, an appellant who succeeds in reducing the amount of recovery is entitled to the costs of appeal providing the reduction is substantial.[15]

From the peculiar facts of the instant case, and the corresponding difficulty in applying the provisions of the lower court costs, it appears the annexation court might have, at most, apportioned the costs.[16] Where the imposition of costs is left to the lower court's discretion, it will not be overturned except by a palpable abuse of discretion.[17] As said by Lord Mansfield,[18] "Discretions must be governed by rule; it must not be arbitrary, vague and fanciful, but legal and regular." In the instant case, the amount awarded by the trial court was reduced by approximately $75,000.00 It is difficult to visualize a situation in which there would be a more palpable abuse of discretion.

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FOOTNOTES

1. E. g. Burdette v. Campbell, 126 W. Va. 591, 30 S. E. 2d 713 (1944); Scott v. Doughty, 130 Va. 523, 107 S. E. 729 (1923); Fecklin v. Danville, 146 Va. 426, 131 S. E. 689 (1926).
2. VA. CODE §14-175 (1950).
3. VA. CODE §14-174 (1950).
4. VA. CODE §14-178 (1950).
5. VA. CODE §15-132 (1950).
6. VA. CODE §15-137 (1950).
7. VA. CODE ANN. §5222 (k) (Michie, 1942). This section was limited to cities of over 150,000 population and was repealed by ACTS GENERAL ASSEMBLY, 1946, c. 369.
8. VA. CODE §15-127 (1950).
9. The court would have reached the same result by applying either of the general cost statutes, §14-174 or §14-175.
10. VA. CODE §§14-178, 15-137 (1950).
11. Fecklin v. Danville, 146 Va. 426, 131 S. E. 689 (1926).
12. Reddick v. King, 142 Va. 350, 128 S. E. 462 (1925).
13. Wallerstein v. Brander, 136 Va. 543, 118 S. E. 224 (1923).
14. Douglas Land Co. v. Thayer Co., 113 Va. 239, 74 S. E. 215 (1912); Eppes v. Eppes, 181 Va. 970, 27 S. E. 2d 164 (1943).
15. 20 CORPUS JURIS SECUNDUM 323.
16. McLean v. Hill, 185 Va. 346, 38 S. E. 2d 583 (1946).
17. 14 Am. Jur. "Costs," sec 95, p. 19.
18. Harris v. Harris, 31 Gratt. (72 Va.) 13 (1878).