

Korth v. Luther

Case Number

S-18-0670)

S-18-0671)

Case Audio

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Call Date

August 26, 2019

Case Time

9:00 AM

Court Number

Douglas

Case Location

Lincoln

Court Type

District Court

Case Summary

S-18-0670) Gerald C. Korth v. Laura Luther and Michael Luther v. Atelier Partners

Douglas County, Hon. W. Mark Ashford

Attorneys: Mark C. Laughlin & Jaqueline M. Deluca (Fraser Stryker, P.C., L.L.O.) (David J. Koukol, Appellant/Interested Party) --- Lisa M. Meyer (Pansing Hogan Ernst & Bachman LLP) (representing Appellee/Cross-Appellant Gerald C. Korth) --- Kathryn J. Derr (Berkshire & Burmeister) (Representing Intervenor-Appellee/Cross-Appellant Atelier Partners) --- Julie Jorgensen (Morrow Willnauer Church LLC) (representing Appellee/Cross-Appellant Kathryn J. Derr) --- M.H. Weinberg (Weinberg & Weinberg, P.C.) (representing Appellee Michael Luther) --- Richard L. Anderson & David J. Skalka (Croker, Huck, Kasher, DeWitt, Anderson & Gonderinger, L.L.C.) (representing Appellee Laura Luther)

Civil: Sanctions; frivolous filing; summary judgment; fraud

Proceedings Below: The district court denied the Luthers' motion for summary judgment and later dismissed the claims of Korth and Atelier Partners with prejudice. In a subsequent proceeding, Laura Luther was granted \$82,000 in attorney's fees. The district court denied Koukol's motion to alter or amend the order for him to pay \$13,667 to Laura Luther in attorney's fees. Koukol appealed and filed a Petition to Bypass, which was granted by the Nebraska Supreme Court.

Issues: 1) The district court erred and abused its discretion when it found that frivolous pleading sanctions were appropriate against Koukol, Korth's attorney, when it had previously and consistently made findings and issued orders denying Luther's requests to dismiss Korth's claims against them, 2) the district court abused its discretion when it entered an order awarding attorney's fees as sanctions against Koukol, Korth's attorney, when it had previously and consistently made findings and issued orders denying Appellees' requests to dismiss Korth's claims against them, 3) the district court erred when it denied Koukol's motion to alter or amend judgment, 4) the district court erred when it granted Laura's motion

for sanctions and entered an order awarding her attorney's fees, and 5) the district court erred when it received in evidence altered summaries of Laura's attorney's fees as such exhibits did not fulfill the requirements of Neb. Rev. Stat. §27-1006 (Reissue 2016).

Issues on Cross-Appeal (Korth): The district court erred when it 1) found that Michael did not act with the intent to hinder, delay or defraud his creditors in the challenged March 20, 2014 transfer and dismissed Korth's claims of fraudulent transfer, 2) found that Laura acted in good faith in the March 20, 2014 transfer and dismissed Korth's claims of fraudulent transfer, 3) found that Korth's fraudulent transfer claim against Laura was frivolous under Neb. Rev. Stat §25-824, and as a sanction awarded Laura attorney's fees and assessed a portion of Laura's attorney's fees against Korth, and 4) received in evidence altered summaries of Laura's attorney's fees as such exhibits did not fulfill the requirements of Neb. Rev. Stat §27-1006 (Reissue 2016).

Issues on Cross-Appeal (Atelier Partners): The district court erred when it 1) found that Michael did not act with the intent to hinder, delay or defraud his creditors in the challenged March 20, 2014 transfer, 2) found that Laura acted in good faith in the March 20, 2014 transfer, 3) found that Atelier Partner's claims against Laura was frivolous under Neb. Rev. Stat §25-824, and assessing a portion of Laura's attorney's fees against Atelier Partners, and 4) assessed Atelier Partners for a portion of Laura's attorney fees incurred prior to the district court's order granting Atelier Partners leave to intervene in the case.

Issues on Cross-Appeal (Derr): 1) The district court abused its discretion when it found that sanctions were appropriate against Derr, Atelier's counsel, on the basis of frivolous pleading and claims brought on behalf of her client, 2) the district court abused its discretion when it entered an award of attorney fees as sanctions against Derr, 3) the district court erred when it granted Laura Luther's motion for sanctions and entered an order awarding her attorney fees, 4) to the extent, if any, sanctions were appropriately granted, the district court erred when it assessed the same percentage of Laura Luther's awarded attorney fees to Derr and to Atelier as it did to Korth and Koukol, when Derr and her client Atelier entered the case almost a year after the case had commenced and were not part of the case when a large amount of the fees were incurred, and 5) the district court erred when it received into evidence altered summaries of Laura Luther's attorney fees.

Schedule Code

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