
JUDY HEUMANN and NORMAN HEUMANN
Plaintiffs

vs.

HARVEY BARNETT, individually, and INFANT SWIMMING RESOURCE, LLC, a Florida
limited liability company
Defendants

ORDER RE: PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

This Court granted Plaintiffs' motion for attorneys' fees in a ruling from the bench this date. The Court reserved ruling, however, on two issues: whether defendant, Dr. Barnett's, motion to dismiss lacked substantial justification and whether Plaintiffs are entitled to fees incurred for the attorney fee litigation.

The Court has now reviewed the sworn affidavit of Dr. Barnett attached to, and forming the factual basis for, his motion to dismiss this case for lack of personal jurisdiction. After hearing the evidence in the trial to the Court, the Court can see that the affidavit sets forth the same facts that the Court found to be not true at trial. It also omits information that would be relevant to the issue of personal jurisdiction such as Dr. Barnett's promotional trips to Colorado and his Colorado media appearances on behalf of his programs.

Defendants were entitled to challenge the jurisdiction of this Court to hear the dispute at issue between Plaintiffs and themselves but not in a substantially groundless (not supported by any credible evidence) or substantially vexatious (stubbornly litigious and disrespectful of truth) way. The Court therefore includes the fees incurred in addressing the motion to dismiss in the award of attorney fees.

Defendants are entitled to challenge the request for attorney fees made pursuant to C.R.S. 13-17-101. The Court is not persuaded that doing so lacks substantial justification or is groundless or frivolous and the Court therefore DENIES Plaintiffs' supplement to its original motion.

Counsel for Plaintiffs is requested to submit a form of judgment.

This 20 May 2011

So ordered

A handwritten signature in black ink, appearing to read "L. Montgomery". The signature is written in a cursive, slanted style.

Lael Montgomery
District Court Judge