

DA 09-0528

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 170N

LEN WALLACE,

Plaintiff and Appellant,

v.

NORMAN HAYES, MAGTRAC BOLUS PARTNERSHIP,
GERALD HILL, LUCILLE HILL, JACK HEYNEMAN,
RODNEY J. HAYES,

Defendants and Appellees.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DV 01-0882
Honorable Gregory R. Todd, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Arthur V. Wittich and Jason A. Delmue; Wittich Law Firm, P.C.,
Bozeman, Montana

For Appellees:

Tom Singer; Axilon Group, PLLC, Billings, Montana

Submitted on Briefs: June 23, 2010

Decided: August 4, 2010

Filed:

Clerk

Justice W. William Leaphart delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2006, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court, and its case title, Supreme Court cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The District Court for the Thirteenth Judicial District, Yellowstone County, ordered Appellant Len Wallace to pay approximately \$2.5 million in attorney's fees to the Appellees (Hays Defendants). Wallace appeals. We affirm.

¶3 The parties have been litigating this commercial dispute in various fora for nearly a decade. *Wallace v. Hayes (Wallace I)*, 2005 MT 253, ¶ 9, 329 Mont. 23, 124 P.3d 110; *Wallace v. Hayes (Wallace II)*, 2007 MT 194N, ¶ 3, 339 Mont. 536, 169 P.3d 406 (table). Four times previously Wallace has appealed the case to this Court. *Wallace I*; *Wallace II*; *Wallace v. Hayes (Wallace III)*, 2008 MT 248, 344 Mont. 523, 191 P.3d 365; *Wallace v. Hayes (Wallace IV)*, 2008 MT 415N, 348 Mont. 371, 211 P.3d 204 (table). On his fifth appeal Wallace now contends that the amount of attorney's fees awarded by the District Court is unsupported by the record.

¶4 We review a district court's grant or denial of attorney's fees for abuse of discretion. *Kuhr v. City of Billings*, 2007 MT 201, ¶ 14, 338 Mont. 402, 168 P.3d 615. Under this

deferential standard of review, we will only reverse a district court if it “acts arbitrarily, without employment of conscientious judgment, or in excess of the bounds of reason.” *Id.*

¶5 We have decided to determine this case pursuant to Section I, Paragraph 3(d)(i)(3) of our 1996 Internal Operating Rules, as amended in 2006, which provides for memorandum opinions. It is manifest on the record before us that the District Court did not abuse its discretion in this matter. We therefore affirm.

/S/ W. WILLIAM LEAPHART

We concur:

/S/ MICHAEL E WHEAT

/S/ JAMES C. NELSON

/S/ PATRICIA COTTER

/S/ BRIAN MORRIS