

DA 10-0598

IN THE SUPREME COURT OF THE STATE OF MONTANA

2011 MT 147N

TODD A. COUTTS, DUANE INGRAM,
SHELLEY L. GOULD, Q.C. HOLDINGS,
INC., and BERNHARD J. HARRINGTON,
Individually and as Treasurer of COALITION
FOR CONSUMER CHOICE AGAINST I-164,
a Political Committee,

Plaintiffs and Appellees,

v.

LINDA McCULLOCH, in her capacity as
Secretary of State of the State of Montana,
and STEVE BULLOCK, in his capacity as
Attorney General for the State of Montana,

Defendants,

and

CAP THE RATE, the Proponent Ballot
Committee,

Intervenor and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DV 10-295
Honorable C.B. McNeil, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jonathan R. Motl and Brian J. Miller, Morrison, Motl and Sherwood,
PLLP, Helena, Montana

For Appellees:

Milt Datsopoulos and Terance P. Perry, Datsopoulos, MacDonald, & Lind,
P.C., Missoula, Montana

Chris J. Gallus, Attorney at Law, Helena, Montana

Clayton J. Callen, Graves Bartle Marcus & Garrett, LLC, Kansas City,
Missouri

Submitted on Briefs: June 1, 2011

Decided: June 21, 2011

Filed:

Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, 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 Intervenor and Appellant Cap the Rate, a Proponent Ballot Committee, appeals the District Court's order in which it denied attorney fees. We affirm.

¶3 The Montana Secretary of State certified Initiative Petition I-164 to appear on the November 2, 2010, ballot. Todd A. Coutts, Duane Ingram, Shelley L. Gould, Q.C. Holdings, Inc., and Bernhard J. Harrington, Individually and as Treasurer of Coalition for Consumer Choice Against I-164, a Political Committee (collectively Consumer Choice), contested the Secretary of State's certification of I-164 based on its claim that proponents of I-164 illegally had collected petition signatures. Cap the Rate had registered with the Montana Commissioner of Political Practices as the primary ballot measure committee supporting I-164. Cap the Rate oversaw and organized the signature gathering for I-164. Cap the Rate successfully intervened in the action filed by Consumer Choice.

¶4 The District Court held a hearing and entered findings and conclusions. The court rejected the challenge to the manner in which the signatures had been gathered in support of I-164. The court rejected Consumer Choice's complaint and further ordered that all parties were to pay their own respective attorney fees. The court awarded costs of the suit to the Secretary of State, Attorney General, and Cap the Rate.

¶5 Cap the Rate filed a motion to alter or amend the judgment by adding an award of attorney fees and costs. The parties briefed the issue and the District Court summarily denied the motion based upon the “authority and rationale set forth in [Consumer Choice’s] Response brief.” The court further noted that Cap the Rate based its claim for attorney fees solely upon § 37-61-421, MCA, which requires that a court determine that a party multiplied the proceedings unreasonably and vexatiously. The court refused to make such a finding. The court finally noted that Cap the Rate initially had not been a party to this cause and had appeared voluntarily upon its own motion to intervene. Cap the Rate appeals.

¶6 Cap the Rate challenges the District Court’s adoption “verbatim” of the rationale and authority provided by Consumer Choice. Cap the Rate contends that the District Court failed to conduct the required “proper consideration of the facts” and that it acted arbitrarily and without employment of conscientious judgment. Cap the Rate further contends that the District Court failed to consider and apply the standards of vexatious litigation to measure the tactics and timing of the litigation engaged in by the coalition. Cap the Rate cites as examples of Consumer Choice’s tactics the fact that Consumer Choice used the tight time frame and the lack of discovery restrictions for ballot issue litigation to prosecute the broadest possible meritless claims. Cap the Rate contends that Consumer Choice adopted this approach simply in order to get access to I-164 campaign information, to take I-164 staff off the campaign work and into the courts, and to cost the I-164 campaign funds that should have been used to promote the initiative.

¶7 We review for an abuse of discretion a district court’s denial of a M. R. Civ. P. 59(g) motion to alter or amend a judgment, as well as a denial of attorney fees. *JTL Group v. New Outlook*, 2010 MT 1, ¶ 31, 355 Mont. 1, 223 P.3d 912. A district court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason that results in a substantial injustice. *Dick Anderson Const. v. Monroe Const.*, 2009 MT 416, ¶ 19, 353 Mont. 534, 221 P.3d 675.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2006, that provide for memorandum opinions. Having reviewed the briefs and the record, we conclude that the District Court did not act arbitrarily, without employment of conscientious judgment, or exceed the bounds of reason when it denied Cap the Rate’s motion to amend the judgment to add an award of attorney fees. The District Court admittedly relied on the rationale argued by Consumer Choice. It is clear, however, that the District Court exercised independent judgment in finding a fee award inappropriate under the high standard imposed by the statute. *Larchick v. Diocese of Great Falls-Billings*, 2009 MT 175, ¶ 42, 350 Mont. 538, 208 P.3d 836.

¶9 Affirmed.

/S/ BRIAN MORRIS

We Concur:

/S/ MICHAEL E WHEAT
/S/ PATRICIA COTTER

/S/ BETH BAKER
/S/ JAMES C. NELSON