

IN THE UTAH COURT OF APPEALS

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William Campbell and Marjorie Campbell,)	ORDER OF AFFIRMANCE
)	(Not for Official Publication)
)	
Plaintiffs and Cross-appellees,)	Case No. 20080295-CA
)	
v.)	F I L E D
)	(November 5, 2009)
)	
Christopher Stuhmer and Michelle Stuhmer, as Trustees of the Stuhmer Family Trust,)	2009 UT App 316
)	
Defendants and Cross-appellants.)	

Third District, Silver Summit Department, 030500815
The Honorable Bruce C. Lubeck

Attorneys: Korey D. Rasmussen, Salt Lake City, for Cross-appellants
 Troy L. Booher, Emily V. Smith, and Michael D. Zimmerman, Salt Lake City, for Cross-appellees

Before Judges Orme, Davis, and McHugh.

ORME, Judge:

Following oral argument, we have concluded that this "case satisfies the criteria set forth in Rule 31(b)," Utah R. App. P. 30(d), namely, that the appeal involves "uncomplicated factual issues based primarily on documents" and "uncomplicated issues of law," id. R. 31(b)(1), (5). We accordingly "dispose of the case by order without written opinion." Id. R. 30(d).

It is now settled that the reciprocal attorney fees statute, see Utah Code Ann. § 78B-5-826 (2008), applies only when one party to a lawsuit could potentially recover attorney fees from the other by the contract's terms, and only so as to extend that same benefit to another party to the lawsuit who is not eligible to recover the same measure of attorney fees by the contract's terms. See Bilanzich v. Lonetti, 2007 UT 26, ¶¶ 14-16, 18-19, 160 P.3d 1041; Hooban v. Unicity Int'l, Inc., 2009 UT App 287, ¶¶ 9-10 (mem.). It is likewise settled that if neither party has

contractual entitlement to an award of attorney fees, the statute has no application. See Jones v. Riche, 2009 UT App 196, ¶¶ 5-6, 216 P.3d 357 (mem.) (holding reciprocal attorney fees statute does not apply when both parties are on same footing under contract and "'neither party ha[s] a contractual advantage'") (quoting Giusti v. Sterling Wentworth Corp., 2009 UT 2, ¶ 77, 201 P.3d 966).

We are persuaded that the plain meaning of the Declaration is as outlined by the Campbells' attorney at oral argument, meaning that neither party to this lawsuit would be entitled to recover attorney fees, pursuant to the Declaration's terms, in any action to enforce the Declaration. It follows that the reciprocal attorney fees statute is not triggered. We are of the view that the language of the Declaration is unique, if not aberrational, such that no useful purpose, by way of establishing interpretative precedent or otherwise, would be served in belaboring in a published opinion the Declaration's organization, phraseology, and peculiar regime. Accordingly, by this order, we affirm the trial court's refusal to award attorney fees.

Gregory K. Orme, Judge

I CONCUR:

James Z. Davis, Judge

I CONCUR IN THE RESULT:

Carolyn B. McHugh, Judge