

IN THE UTAH COURT OF APPEALS

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Christopher Davis,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20050528-CA
v.	)	
	)	
Ronda Soccato and James	)	F I L E D
Soccato dba Central Utah	)	(April 6, 2006)
Equipment Rental, and dba	)	
Central Utah Rental Equipment,	)	2006 UT App 134
and dba C.U.R.E.,	)	
	)	
Defendants and Appellees.	)	

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Fourth District, American Fork Department, 030100374  
The Honorable Howard M. Maetani

Attorneys: Jon H. Rogers, Salt Lake City, for Appellant

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Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Christopher Davis appeals from the portion of a trial court order relating to attorney fees. Davis argues that the trial court's decision to reduce his attorney fees was unsupported by findings of fact. We vacate the judgment and remand for new findings, but on different grounds than alleged by Davis.

"The reasonableness of an award of attorney fees ordinarily presents a question of law, with some measure of discretion given to the trial court in applying the reasonableness standard to a given set of facts." Salmon v. Davis County, 916 P.2d 890, 892 (Utah 1996) (citation omitted). Moreover, "[a]n award of attorney fees must be based on the evidence and supported by findings of fact." Cottonwood Mall Co. v. Sine, 830 P.2d 266, 268 (Utah 1992). A party requesting an award of attorney fees has the burden of presenting evidence sufficient to support the award. See id.

"Attorney fees are generally recoverable in Utah only when authorized by statute or contract." Prince v. Bear River Mut. Ins. Co., 2002 UT 68, ¶52, 56 P.3d 524. Davis's case involved

alternative claims. Davis's Amended Complaint alleged a common law claim for conversion and a statutory claim under the Utah Consumer Sales Practices Act (the Act). See Utah Code Ann. §§ 13-11-1 to -23 (2005).

An award of attorney fees and costs is authorized by the Act as follows:

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney[] fee limited to the work reasonably performed if:

(a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and

(b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

Id. § 13-11-19(5).

Although section 13-11-19(5) allows the trial court to award attorney fees and costs to the prevailing party in an action under the Act, the judgment of the trial court does not support an award of attorney fees. To the contrary, the trial court specifically inserted a "0" in the space provided for damages under the Act. The trial court opted instead to award \$4000 in damages for Davis's conversion claim. As a result, Davis was not entitled to an award of attorney fees. See Prince, 2002 UT 68 at ¶52.

However, the written findings and conclusions entered by the trial court are inconsistent with the judgment. Indeed, upon review of the record, it is difficult to identify a basis for a "conversion" claim of precisely \$4000. Alternatively, it is fairly easy to understand the basis for a \$4000 judgment under the Act, to wit, statutory damages of \$2000 per defendant. See Utah Code Ann. § 13-11-19(2) ("A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.") Therefore, it is possible that the trial court erred when it ultimately ruled that the judgment was under the conversion claim.

If the trial court intended to make an award under the Act rather than the conversion claim (and therefore allow for an award of attorney fees), the findings and judgment should specifically indicate the trial court's intention.<sup>1</sup> If the trial court indeed intended to award judgment under the conversion claim only, the findings and conclusions should be consistent with the judgment and no attorney fees may be awarded.

Thus, we vacate the judgment and remand for entry of new findings, conclusions, and judgment.

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James Z. Davis, Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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1. If the trial court intended to award attorney fees pursuant to the Act, it should also enter findings that justify the reduced amount. See Endrody v. Endrody, 914 P.2d 1166, 1171 (Utah Ct. App. 1996).