

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

CITY OF BOTHELL,	)	No. 66052-7-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
1982 MERCEDES BENZ 240,	)	
LICENSE NO. 532TOP,	)	
VIN WDBAB23AXCB334543,	)	
	)	
Defendant In Rem,	)	
	)	
ROBERT WALLACE,	)	
	)	
Respondent.	)	FILED: September 12, 2011
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Appelwick, J. — The City appeals from the trial court’s order granting Wallace’s motion for attorney fees. The City argues that the trial court lacked jurisdiction to award attorney fees and that Wallace’s failure to follow RALJ 11.2 resulted in prejudice to the City. This court’s prior decision declining to award

RAP 18.1 attorney fees on appeal did not preclude the trial court from awarding Wallace attorney fees incurred at the administrative and superior court levels. And the City was not prejudiced by a lack of notice. We affirm.

#### FACTS

The Bothell Police Department seized and impounded Robert Wallace's car. Wallace contested the forfeiture of his car under RCW 69.50.505. The City of Bothell (City) prevailed at Bothell Municipal Court and at King County Superior Court. But, on February 22, 2010, this court reversed those rulings and reversed the order of forfeiture, holding that Wallace's car was unlawfully seized. City of Bothell v. 1982 Mercedes Benz 240, noted at 154 Wn. App. 1041, 2010 WL 609971, at \*4. On March 4, 2010, Wallace submitted a cost bill and a request for attorney fees to this court. The cost bill reflected Wallace's request for both appellate and nonappellate attorney fees. In a March 22, 2010 commissioner's ruling, this court denied Wallace appellate attorney fees, stating:

A party must request attorney fees a[s] provided in RAP 18.1 and a commissioner will award fees only if there is a decision awarding a party the right to fees. RAP 18.1(d). A request for fees is not appropriate in a cost bill. Because the decision in this case does not award Wallace the right to attorney fees, no such fees will be awarded.

While that ruling denied Wallace attorney fees on appeal under RAP 18.1, it granted costs pursuant to RAP 14.3(a). This court then mandated the case back to King County Superior Court for further proceedings in accordance with the decision.

On June 21, 2010, Wallace moved the trial court for an award of

nonappellate attorney fees. The trial court granted Wallace's motion and awarded him \$15,000 for nonappellate attorney fees. The City timely appeals.

### DISCUSSION

We review the legal basis for an award of attorney fees de novo. Hulbert v. Port of Everett, 159 Wn. App. 389, 407, 245 P.3d 779, review denied, 171 Wn.2d 1024, 275 P.3d 662 (2011). RCW 69.50.505(6) provided the basis for the trial court's award of attorney fees to Wallace.

In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

RCW 69.50.050(6).

#### I. The Appellate Court Ruling on Fees was not Preclusive

The City first argues that the trial court did not have the jurisdiction to award Wallace the attorney fees he incurred at the administrative and superior court levels. It argues that the trial court was bound by this court's March 22, 2010 commissioner's ruling, which denied Wallace's request for attorney fees. This argument is based on the City's reading of RAP 12.2, which provides, in relevant part:

Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and *governs all subsequent proceedings in the action in any court.*

(Emphasis added.) The City contends that this court's ruling denying Wallace's motion for attorney fees was thus prospectively binding on the trial court below,

when it subsequently considered the matter of attorney fees. But, the City's reasoning fails to acknowledge that this court's ruling on attorney fees was procedural, not substantive, and limited solely to Wallace's request for appellate fees.

"RAP 18.1 sets forth the procedure that a party must follow to obtain attorney fees *incurred on appeal to the Court of Appeals or Supreme Court.*" Hedlund v. Vitale, 110 Wn. App. 183, 185, 39 P.3d 358 (2002) (emphasis added). Indeed, the language of RAP 18.1(a) expressly provides: "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court." RAP18.1(b) provides: "The party must devote a section of its opening brief to the request for fees or expenses. . . . The request should not be made in the cost bill." Here, Wallace's request for attorney fees on appeal was presented improperly in a cost bill. The commissioner's ruling stated: "A party must request attorney fees a[s] provided in RAP 18.1 and a commissioner will award fees only if there is a decision awarding a party the right to fees. RAP 18.1(d). A request for fees is not appropriate in a cost bill." RAP 18.1 thus provided the procedural basis for denying consideration of Wallace's request for fees.

In Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 535 n.13, 79 P.3d 1154 (2003), while the Supreme Court declined to award Malted Mousse appellate attorney fees, it expressly stated that "Malted Mouse is not precluded,

however, from seeking reasonable attorney fees on remand for those fees incurred at the trial court level.” Similarly, while Wallace’s request for attorney fees on appeal was denied based on noncompliance with RAP 18.1, it did not preclude his right to seek nonappellate fees on remand pursuant to RCW 69.50.050(6). The trial court did not err by awarding Wallace attorney fees.

II. Noncompliance with RALJ 11.2 was not preclusive

The City next argues that Wallace should not be entitled to attorney fees based on his failure to comply with RALJ 11.2. We review the interpretation of a court rule de novo. Kaye v. Lowe’s HIW, Inc., 158 Wn. App. 320, 325, 242 P.3d 27 (2010).

The language in RALJ 11.2 is not mandatory. RALJ 11.2(a) provides: “If applicable law grants to a party the right to recover reasonable lawyer’s fees or expenses, the party *should* request the fees or expenses as provided in this rule.” (Emphasis added.) The rule also states the requesting party “should” devote a section of the brief to the request for fees, “should” serve and file an affidavit detailing the fees, and “should” make a request for fees during oral argument. RALJ 11.2(c)-(e).

The City concedes that there is no published case law to support the notion that RALJ 11.2 imposes a strict requirement on a party seeking attorney fees. But, the City contends that the lack of notice was fundamentally unfair and that it suffered significant prejudice as a result. The City alleges it made the strategic decision not to appeal the February 10, 2010 decision from this court dismissing the forfeiture. By the time Wallace filed his motion for attorney fees

with the trial court on June 21, 2010, the City had become time-barred from pursuing an appeal to the Supreme Court. The City contends that its strategic decision was based at least in part on its belief that Wallace would not be entitled to seek attorney fees.

But, to the extent that the City's strategic decision relied on that erroneous understanding, that reliance was unjustified. Neither this court's decision denying Wallace appellate attorney fees, nor any other case law, supported the City's mistaken belief that Wallace would not still be entitled to seek nonappellate attorney fees. And, RCW 69.50.505(6) clearly provided for Wallace's right to such attorney fees, based on his status as the prevailing claimant in a forfeiture proceeding. We hold that the City was not unduly prejudiced by noncompliance with RALJ 11.2, nor did the trial court's award of attorney fees violate the principle of fundamental fairness.

### III. Attorney Fees for this Appeal

Finally, Wallace requests attorney fees and expenses for his costs incurred in responding to this appeal by the City, under RAP 18.1 and RCW 69.50.505(6). Because Wallace prevails on appeal, he is entitled to such fees and costs.

We affirm.

Appelwick, J

WE CONCUR:

Dupe, C. S.

Grosse, J