

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 29, 2010**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP823**

**Cir. Ct. No. 2008CV3476**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE AWARD OF ATTORNEY FEES:**

**MARK A. KAUFFMANN,**

**PLAINTIFF-APPELLANT,**

**v.**

**VOLKSWAGEN GROUP OF AMERICA, INC. AND HALL IMPORTS, INC.,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Waukesha County:  
RALPH M. RAMIREZ, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. This case involves a challenge to the circuit court's award of attorney's fees. The appellant, Mark A. Kauffmann, argues that the

circuit court erred by not determining that he was the prevailing party and by not awarding him one-hundred percent of his attorney's fees. We conclude, however, that the circuit court properly exercised its discretion when it awarded the appellant fifty-percent of his fees. We affirm the circuit court's judgment.

¶2 Kauffmann brought the underlying action against Volkswagen Group of America, Inc., and Hall Imports, Inc., alleging breach of Wisconsin's Lemon Law statute, WIS. STAT. § 218.0171 (2007-08) and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. The dispute involved a car that Kauffmann and his wife leased from Hall Imports. The parties settled the case after mediation. The settlement agreement provided that the defendant was to pay the attorney's fees and costs of the plaintiff "as determined by the court." The defendant also agreed that it would not argue that the plaintiff was entitled to "no costs or fees."

¶3 At the hearing on the award of fees, Kauffmann argued to the circuit court that he was the prevailing party and, as such, was entitled to one-hundred percent of his attorney's fees. Volkswagen argued that Kauffmann was not the prevailing party and was not entitled to the amount of fees he claimed given the nature of his case and the amount of money he actually obtained.

¶4 The circuit court began by noting that the parties had entered into an agreement that provided that the fees would be determined by the court. The court then said: "that by coming to an agreement in the course of mediation, both sides win. Each side has the certainty of resolution, each side has the certainty of an amount of money in regards to the claim, and each side has the certainty of putting an end to the litigation." The court further considered that Kauffmann had obtained a good result for a very weak case, and that Volkswagen had obtained a

good result when it agreed to settle what was clearly a weak case against them to avoid the cost of going to trial. The court then determined that since both sides had received a favorable outcome, it would award Kauffmann fifty percent of his attorney's fees and costs.

¶5 Kauffmann argues to us that he was the prevailing party under the relevant fee shifting statutes, and the circuit court erred by not considering him as such. We conclude, however, that Kauffmann and Volkswagen entered into a settlement agreement under which they both agreed that the award of attorney's fees would be determined by the court. When the parties settled and agreed that the circuit court would decide the amount of attorney's fees and costs, they agreed that the analysis of the results obtained and success of the litigation would be left to the court's discretion, and not under the fee-shifting statutes. *See Kolupar v. Wilde Pontiac Cadillac*, 2004 WI 112, ¶20, 275 Wis. 2d 1, 683 N.W.2d 58. This was a risk that both parties agreed to take.

¶6 Consequently, the issue we review is not which party prevailed, but whether the circuit properly exercised its discretion when it determined the amount of the award. We defer to the circuit court's decision to award fees, and do not substitute our judgment for its. Rather, we review the court's explanation to determine if it provided a logical rationale based on the appropriate legal principles and facts of record. *Id.*, ¶22. The factors the court is to consider are listed in Supreme Court Rule 20:1.5(a). *Kolupar*, 274 Wis. 2d 1, ¶¶24-25.

¶7 We conclude that the circuit court properly exercised its discretion when it awarded Kauffmann fifty percent of his attorney's fees. The court began by considering the amount of hours spent on the matter multiplied by the hourly rates charged by the attorneys. The court then addressed the fourth factor, SCR

20:1.5(a)(4), which is “the amount involved and the results obtained.” As we have discussed, the court determined that both sides had won a favorable result in a very weak case. The court then awarded Kauffmann half of the fees he sought. The record establishes that the circuit court considered the relevant legal principles and applied those to the facts of record. We conclude that the court properly exercised its discretion when it awarded fees and costs to Kauffmann, and we affirm the court’s judgment.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

