

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **29th day of January, 2020** are as follows:

BY Hughes, J.:

2019-C-00749

LUV N' CARE, LTD. VS. JACKEL INTERNATIONAL LIMITED
(Parish of Ouachita)

This case presents the res nova issue of whether La. R.S. 13:4611(1)(g) authorizes an award of attorney fees to a party in a contempt proceeding, who has been found not guilty of contempt of court, or whether an award of attorney fees is only authorized in favor of a party who successfully prosecutes a contempt action. The district court awarded, and the appellate court affirmed, attorney fees to the defendant herein, who was found not to be in contempt, as the “prevailing party.” For the reasons that follow, we reverse and vacate the award of attorney fees.

JUDGMENT REVERSED IN PART; VACATED IN PART.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

01/29/20

SUPREME COURT OF LOUISIANA

No. 2019-C-0749

LUV N' CARE, LTD.

VERSUS

JACKEL INTERNATIONAL LIMITED

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF OUACHITA**

HUGHES, J.*

This case presents the res nova issue of whether La. R.S. 13:4611(1)(g) authorizes an award of attorney fees to a party in a contempt proceeding, who has been found not guilty of contempt of court, or whether an award of attorney fees is only authorized in favor of a party who successfully prosecutes a contempt action. The district court awarded, and the appellate court affirmed, attorney fees to the defendant herein, who was found not to be in contempt, as the “prevailing party.” For the reasons that follow, we reverse and vacate the award of attorney fees.

FACTS AND PROCEDURAL HISTORY

The underlying suit in this matter was instituted on May 24, 2010 by Luv N' Care, Ltd. (“LNC”), a Louisiana corporation, against Jackel International Limited (a corporation established under the laws of England and Wales, having its principal place of business in England), and the petition was later amended to add as defendants: Mayborn Group Limited, Product Marketing Mayborn Ltd., Mayborn

* Retired Judge James H. Boddie Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

USA, Inc., Jackel China Limited, and Mayborn ANZ Pty. Ltd.¹ (collectively referred to herein as “Jackel/Mayborn”). It was alleged that the parties had previously entered into a “Distribution Agreement,” on April 17, 2008, which named Jackel/Mayborn as the exclusive distributor of certain LNC products, including baby bottles, cups, and related child and baby care items. LNC further alleged that Jackel/Mayborn agreed in the contract not to copy any of LNC’s products, product design, drawings, prototypes, packaging, procedures and methods, or any other proprietary designs or information without LNC’s written permission. Jackel/Mayborn also agreed not to disclose, make accessible to anyone, or make use of the knowledge or information of the foregoing, or any colorable imitation thereof, which it had obtained during the term of the agreement.

However, LNC alleged that, on or about October 2009, it learned that Jackel/Mayborn had been selling child and baby products not covered under the terms of the distribution agreement with LNC, but which closely resembled LNC products. Furthermore, in April of 2010, LNC learned that Jackel/Mayborn began to commercialize additional child and baby products, which allegedly incorporated LNC’s products, design, and/or packaging in violation of the contract between the parties.

Following a 2013 jury trial, judgment was rendered by the district court, in favor of LNC, which awarded LNC over one million dollars in damages, and a permanent injunction was issued against Jackel/Mayborn, enjoining it from “selling, offering for sale, advertising, marketing and/or promoting any of the Litigated Products, as well as any further versions thereof or other products that are copies and/or colorable imitations of [LNC]’s silicone compression valve: (1) soft spout cups; (2) flip-top cups; or (3) straw cups.”

¹ These defendants were subsequently found by the district court to have acted as a single business enterprise with Jackel International Limited.

Subsequently, on October 20, 2016, LNC filed a “Motion for Rule to Show Cause Why an Order of Contempt and Damages Should Not be Entered Against Defendants and for Expedited Discovery,” alleging that Jackel/Mayborn violated the 2013 permanent injunction by “selling, offering for sale, advertising, marketing, and promoting products” prohibited under the permanent injunction, causing LNC damages, which included incurring attorney fees and expenses. LNC requested, inter alia, that Jackel/Mayborn be held in contempt of court for failing to obey the permanent injunction. After an October 5, 2017 hearing, the district court ruled on December 15, 2017 that the Jackel/Mayborn product(s) at issue did not violate the 2013 permanent injunction, and LNC’s rule for contempt was dismissed, with costs (including reasonable expert fees) assessed against LNC (this ruling was later incorporated into the court’s July 25, 2018 written judgment).

Thereafter, on February 7, 2018, Jackel/Mayborn filed a “Motion for Attorney Fees and to Set Expert Fees,” asserting that the parties had been unable to agree on the amount of costs previously awarded by the court and contending that it was also entitled to recover attorney fees under La. R.S. 13:4611(1)(g) as the “prevailing party” in the contempt proceeding. These matters were heard by the district court on June 21, 2018, and the trial judge ruled at the conclusion of the hearing that La. R.S. 13:4611(1)(g) authorized an award of attorney fees to the party who prevailed in the contempt of court proceeding. The district court allowed the parties to submit post-hearing briefs on the issue of the amount of attorney fees to be awarded; thereafter, the court issued a written judgment on July 25, 2018 awarding Jackel/Mayborn \$172,621.10 in attorney fees, along with \$19,433.23 in expert witness fees.

LNC appealed the award of expert witness fees and attorney fees, and the appellate court amended the amount of the expert witness fees, to reduce the award from \$19,433.23 to \$13,320.00, but otherwise affirmed the July 25, 2018 district

court judgment. **Luv N’ Care, Ltd. v. Jackel International Limited**, 52,615 (La. App. 2 Cir. 4/10/19), 269 So.3d 1136. This court granted LNC’s subsequent writ application. **Luv N’ Care, Ltd. v. Jackel International Limited**, 19-0749 (La. 10/8/19), ___ So.3d ___.

In two assignments of error, LNC contends in this court that the award of attorney fees to Jackel/Mayborn was erroneous since La. R.S. 13:4611(1)(g) does not authorize attorney fees to be awarded to a party not adjudged guilty of contempt and because Jackel/Mayborn failed to satisfy its burden to prove that the fees billed “by three New York lawyers, two Monroe lawyers, and two local legal assistants” were warranted, asserting there was no evidence as to “the particular services performed, the necessity of hiring out-of-state counsel, or the prevailing community rates for similar services.”

LAW AND ANALYSIS

“The power to punish for contempt of court shall be limited by law.” La. Const. Art. V, § 2. “The ***punishment*** which a court may impose upon a person adjudged guilty of contempt of court is provided in R.S. 13:4611.” La. C.C.P. art. 227 (emphasis added). Revised Statute 13:4611 has, at all pertinent times, provided:

Except as otherwise provided for by law:

(1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city ***courts may punish a person adjudged guilty of a contempt of court*** therein, ***as follows***:

(a) For a direct contempt of court committed by an attorney at law, by a fine of not more than one hundred dollars, or by imprisonment for not more than twenty-four hours, or both; and, for any subsequent contempt of the same court by the same offender, by a fine of not more than two hundred dollars, or by imprisonment for not more than ten days, or both;

(b) For disobeying or resisting a lawful restraining order, or preliminary or permanent injunction, by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or both.

(c) For a deliberate refusal to perform an act which is yet within the power of the offender to perform, by imprisonment until he performs the act; and

(d)(i) For any other contempt of court, including disobeying an order for the payment of child support or spousal support or an order

for the right of custody or visitation, by a fine of not more than five hundred dollars, or imprisonment for not more than three months, or both.

(ii) In addition to or in lieu of the penalties provided by this Paragraph, the court may order that the person perform litter abatement work or community service in a court-approved program for each day he was to be imprisoned, provided that the total days of jail, litter abatement work, and community service do not exceed the maximum sentence provided by this Paragraph.

(e) In addition to or in lieu of the above penalties, when a parent has violated a visitation order, the court may order any or all of the following:

(i) Require one or both parents to allow additional visitation days to replace those denied the noncustodial parent.

(ii) Require one or both parents to attend a parent education course.

(iii) Require one or both parents to attend counseling or mediation.

(iv) Require the parent violating the order to pay all court costs and reasonable attorney fees of the other party.

(f) A pattern of willful and intentional violation of this Section, without good cause, may constitute a material change in circumstances warranting a modification of an existing custody or visitation order.

(g) **The court may award attorney fees to the prevailing party** in a contempt of court proceeding provided for in this Section.

(2) Justices of the peace may punish a person adjudged guilty of a direct contempt of court by a fine of not more than fifty dollars, or imprisonment in the parish jail for not more than twenty-four hours, or both.

(3) The court or justice of the peace, when applicable, may suspend the imposition or the execution of the whole or any part of the sentence imposed and place the defendant on unsupervised probation or probation supervised by a probation office, agency, or officer designated by the court or justice of the peace, other than the division of probation and parole of the Department of Public Safety and Corrections. When the court or justice of the peace places a defendant on probation, the court or the justice of the peace may impose any specific conditions reasonably related to the defendant's rehabilitation, including but not limited to the conditions of probation as set forth in Code of Criminal Procedure Article 895. A term of probation shall not exceed the length of time a defendant may be imprisoned for the contempt, except in the case of contempt for disobeying an order for the payment of child support or spousal support or an order for the right of custody or visitation, when the term of probation may extend for a period of up to two years.

(Emphasis added.)

LNC contends that the Louisiana Legislature, in adding Paragraph (1)(g) to La. R.S. 13:4611, via 2016 La. Acts, No. 132, § 2, contemplated that it would only authorize the imposition of attorney fees after a party has been “adjudged guilty of

a contempt” by a court. LNC asserts that 2015 Senate Resolution No. 199 (which requested that the Louisiana State Law Institute “study whether the granting of attorney fees should be allowed in civil contempt of court proceedings”), along with the testimony of William Forrester (Reporter for the Louisiana State Law Institute Committee on Civil Procedure), who testified before the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A,² and the testimony of State Representative Robby Carter, who also testified before the House Committee on Civil Law and Procedure,³ support its position that attorney fees under La. R.S. 13:4611(1)(g) were intended to be assessed only against a person “adjudged guilty of a contempt.”⁴ In addition, LNC maintains that statutes authorizing attorney fees must be strictly construed, with any doubt resolved against an award of such fees, citing **Bowens v. General Motors Corp.**, 608 So.2d 999, 1005 (La. 1992); **Cracco v. Barras**, 520 So.2d 371, 372 (La. 1988); **Frank L. Beier Radio, Inc. v. Black Gold Marine, Inc.**, 449 So.2d 1014, 1015-16 (La. 1984).

Jackel/Mayborn contends, in support of the award of attorney fees in its favor, that Paragraph (1)(g) unambiguously authorizes a court to award attorney fees to a

² A video recording of the April 6, 2016 meeting of the Senate Committee on Judiciary A is available at http://senate.la.gov/video/videoarchive.asp?v=senate/2016/04/042616JUDA_0; the testimony of Mr. Forrester begins at 1:45:08.

³ A video recording of the March 29, 2016 House Committee on Civil Law and Procedure is available at http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2016/mar/0329_16_CL; the testimony of Mr. Forrester begins at 47:45, and the testimony of Representative Carter begins at 55:50.

⁴ In testifying before the House and Senate committees, Mr. Forrester indicated that, via S.R. 199, the Legislature asked the Louisiana State Law Institute “to study whether we ought to put attorney’s fees in the . . . list of things that trial judges can do when they’re holding someone in contempt,” and the amendment recommended by the Law Institute would “make attorney’s fees available to the successful party in a contempt proceeding.” State Representative Robby Carter also testified before the House Committee, and he offered his support for the amendment to La. R.S. 13:4611, adding Paragraph (1)(g), stating that, as an attorney, he has had clients who, after receiving a judgment in their favor (for example, in a boundary action when a defendant has been ordered by the court to move a fence and fails to do so), had to return to court on a contempt motion in order to obtain the defendant’s compliance with the court’s order and were upset by the fact that they had to pay attorney’s fees in order to have the court’s order enforced.

“prevailing party” and that term can mean a party who prevails either in the prosecution or defense of a motion for contempt. Jackel/Mayborn also asserts that “[t]he legislature’s placement of the attorney fee provision in sub-part (g) of Section 4611(1) is inconsequential and cannot override the clear meaning of the statutory provision.” Jackel/Mayborn further contends that the statute is clearly-written and does not limit imposition of attorney fees only against a party guilty of contempt.

In ruling in favor of Jackel/Mayborn, both the district court and the appellate court concluded that the express language of La. R.S. 13:4611(1)(g) (“The court may award attorney fees to the prevailing party in a contempt of court proceeding provided for in this Section.”) means that courts may award attorney fees to the party who prevails in a contempt proceeding, whether that party is successful in proving or in defending against the contempt allegation. Notwithstanding, in so ruling, the district court and appellate court construed Subparagraph (1)(g) without reference to other provisions contained in Paragraph (1), contrary to well-established principles of statutory construction.

First and foremost is the rule that legislation is the solemn expression of the legislative will and, therefore, the interpretation of a law primarily involves the search for the legislature’s intent. **City of New Orleans v. Louisiana Assessors’ Retirement & Relief Fund**, 05-2548, pp. 19-20 (La. 10/1/07), 986 So.2d 1, 16-17, citing **Louisiana Municipal Association v. State of Louisiana**, 04-0227, p. 35 (La. 1/19/05), 893 So.2d 809, 836; **Detillier v. Kenner Regional Medical Center**, 03-3259, p. 3 (La. 7/6/04), 877 So.2d 100, 103; **Sultana Corporation v. Jewelers Mutual Insurance Company**, 03-0360, p. 3 (La. 12/3/03), 860 So.2d 1112, 1115. The starting point in ascertaining that legislative intent is the language of the statute itself. **City of New Orleans**, 05-2548 at p. 20, 986 So.2d at 17, citing **Moss v. State of Louisiana**, 05-1963, p. 16 (La. 4/4/06), 925 So.2d 1185, 1197; **Touchard v. Williams**, 617 So.2d 885, 888 (La. 1993).

“The text of a law is the best evidence of legislative intent.” La. R.S. 24:177(B)(1). It is only when the meaning of a law cannot be ascertained by the application of the provisions of Chapter 2 of the Preliminary Title of the Louisiana Civil Code (La. C.C. arts. 9-13) and Chapter 1 of Title 1 of the Louisiana Revised Statutes of 1950 (La. R.S. 1:1-1:17), that the courts will consider the intent of the legislature. La. R.S. 24:177(A).

In examining a law, language, words, and phrases are to be read in their context and to be accorded their generally prevailing meaning. **City of New Orleans**, 05-2548 at p. 20, 986 So.2d at 17, citing La. C.C. art. 11; La. R.S. 1:3. It is presumed that every word, sentence, or provision was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provisions were employed. **City of New Orleans**, 05-2548 at p. 20, 986 So.2d at 17, citing **Moss**, 05-1963 at p. 15, 925 So.2d at 1196; **Sultana Corporation**, 03-0360 at p. 9, 860 So.2d at 1119. As a result, courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to, and preserving, all words can legitimately be found. **City of New Orleans**, 05-2548 at p. 20, 986 So.2d at 17, citing **Moss**, 05-1963 at 15, 925 So.2d at 1196; **St. Martin Parish Police Jury v. Iberville Parish Police Jury**, 212 La. 886, 899-900, 33 So.2d 671, 676 (1947).

Furthermore, a statute should be construed in such way as to reconcile, if possible, apparent inconsistencies so that each part is given effect. **State v. Cazes**, 262 La. 202, 215-16, 263 So.2d 8, 12 (1972). Since the meaning is to be determined from a general consideration of the act as a whole, all parts, provisions, or sections must be read together; each must be considered with respect to, or in the light of, all the other provisions, and construed in harmony with the whole. **Id.** The intent as deduced from the whole will prevail over that of a particular part considered

separately. **Id.** Meaning should be given, if possible, to each and every section, and the construction placed on one portion should not be such as to obliterate another; so, in determining the meaning of a word, phrase, or clause, the entire statute is to be considered. **Id.** See also **Israel v. City of New Orleans**, 130 La. 980, 985, 58 So. 850, 852 (1912) (“The meaning of a word or phrase may be ascertained by the meaning of other words or phrases with which it is associated.”).

When Subparagraph (1)(g) of La. R.S. 13:4611 is read in the context of Paragraph (1), as a whole, its meaning is clear: “The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city *courts may punish a person adjudged guilty of a contempt of court* therein, *as follows*: . . . *The court may award attorney fees to the prevailing party* in a contempt of court proceeding provided for in this Section.” (Emphasis added.) When Subparagraph (1)(g) is read in light of, and effect is given to, the other provisions of Paragraph (1), so that no part is rendered meaningless or as mere surplusage (see **City of New Orleans**, 05-2548 at p. 20, 986 So.2d at 17), the first sentence of Paragraph (1) (“The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows”) gives the proper context for the sentence found in Subparagraph (1)(g) (“The court may award attorney fees to the prevailing party in a contempt of court proceeding provided for in this Section.”). Therefore, the attorney fees provision of Subparagraph (1)(g) is necessarily one of the *punishments* referenced by the first sentence of Paragraph (1), which a court is authorized to impose on *a person adjudged guilty of a contempt of court*.⁵

Our review of La. R.S. 13:4611(1) reveals no ambiguity; thereunder, courts

⁵ It is important to note that all of the other subparagraphs in Paragraph (1) of La. R.S. 13:4611, Subparagraphs (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f), all authorize some form of punishment that may be imposed on “a person adjudged guilty of a contempt of court.”

are only authorized to award attorney fees “to the prevailing party” to “punish a person adjudged guilty of a contempt of court.” Thus, the term “prevailing party,” in the context of whether La. R.S. 13:4611(1)(g) attorney fees may be assessed in relation to a motion for contempt, means a party who succeeds in establishing that contempt of court has occurred.⁶ This plain reading of La. R.S. 13:4611(1)(g) leads to no absurd consequences; the Legislature has chosen to authorize awards of attorney fees under this statute only to a party who successfully prosecutes a motion for contempt, not to a party who successfully defends against such a motion. Therefore, no further interpretation may be made in search of the intent of the Legislature, pursuant to La. C.C. art. 9. Courts are not free to rewrite laws to effect a purpose that is not otherwise expressed. **Kelly v. State Farm Fire & Casualty Company**, 14-1921, p. 20 (La. 5/5/15), 169 So.3d 328, 340; **Cacamo v. Liberty Mutual Fire Insurance Company**, 99-3479, p. 4 (La. 6/30/00), 764 So.2d 41, 44; **White v. Wal-Mart Stores, Inc.**, 97-0393, p. 4 (La. 9/9/97), 699 So.2d 1081, 1084. Even if we were to find ambiguity in the wording of La. R.S. 13:4611(1)(g), the legislative history of this provision makes it clear that the legislative intent was to authorize an award of attorney fees in a contempt proceeding only as an additional punishment that may be awarded against a person adjudged guilty of a contempt of court.

CONCLUSION

Having determined that La. R.S. 13:4611(1)(g) only authorizes courts to award attorney fees to a party who successfully prosecutes a rule for contempt of court,⁷ we conclude the district court erred in awarding attorney fees in favor of

⁶ The meaning ascribed to the phrase “prevailing party,” herein, is limited to its particular usage in La. R.S. 13:4611(1) and does not reflect on the meaning to be attributed to the phrase in other statutes or contexts.

⁷ Having decided the matter on this basis, we find it unnecessary to address the remaining assignment of error. Likewise, we find no merit in the argument made by Jackel/Mayborn, in support of the judgment awarding attorney fees in its favor, that La. C.C.P. art. 863 provided an

Jackel/Mayborn, and we reverse the judgments of the appellate court and the district court holding otherwise. Therefore, insofar as the July 25, 2018 district court judgment awarded attorney fees to the defendants, against Luv N' Care, Ltd., that portion of the judgment is vacated.

DECREE

JUDGMENT REVERSED IN PART; VACATED IN PART.

alternative basis upon which the district court could have made an award of attorney fees against LNC. See City of Baton Rouge/Parish of East Baton Rouge v. Myers, 13-2011, p. 9 n.5 (La. 5/7/14), 145 So.3d 320, 330 n.5 (providing that a party is entitled to make alternative arguments in support of a judgment in his favor). The argument presented to the appellate court, which cited La. C.C.P. art. 863, was presented in the alternative by LNC, in the event the appellate court were to affirm the trial court finding that La. R.S. 13:4611(1)(g) authorized an award of attorney fees to a defendant found not guilty of contempt of court. Neither lower court relied upon Article 863 in awarding attorney fees to Jackel/Mayborn, and we decline to do so here.