

RECENT DECISION ON SEEKING COSTS AFTER FILING OF A VOLUNTARY DISMISSAL

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In a brief but useful decision, Fries v. Rite Aid Corporation (April 23, 2009) 09 C.D.O.S. A120488, Division Three of the First Appellate District held “there is no legal requirement that a defendant file a proposed judgment” in addition to its memorandum of costs following plaintiff’s voluntary dismissal of the action.

Plaintiff Fries was a minor who sued Rite Aid and an employee on the grounds that the employee allegedly detained and sexually molested her “under the pretext” of investigating suspected shoplifting. Fries later filed a request for dismissal of the entire action. Both Rite Aid and its employee filed costs memoranda. Plaintiff made a motion to tax costs on the grounds that the memoranda were procedurally defective since defendants failed to also file proposed orders of judgment or dismissal with their costs bills; she also contended some of the items in the memoranda were not allowable costs.

The trial court rejected Fries’ claim that defendants’ failure to submit a proposed judgment order with their costs bills should bar recovery of the costs of litigation. The court noted that defendants had complied with the requirements of California Rule of Court 3.1700. While it did tax some of Rite Aid’s costs, it approved the rest of the claimed costs by both defendants. Thereafter, both defendants submitted a proposed judgment that reflected the action was voluntarily dismissed without prejudice, and that costs in the amounts of \$11,741.87 and \$4,372.55 had been awarded to Rite Aid and its employee, respectively. Plaintiff appealed.

In support of her appeal, plaintiff relied in part on the Rutter Group Treatise by Brown and Weil. She claimed that the trial court should have denied defendants claimed costs because they did not file a proposed judgment along with their costs memos. The appellate court disagreed, and is so doing, took exception with the commentary of Weil and Brown.

The court stated that Rule 3.1700 “governs the procedure for claiming costs....Defendants complied with Rule 3.1700 when they filed memoranda of costs within 15 days after the date the notice of entry of dismissal was served. The question is whether, as Fries maintains, defendants were also required to file a proposed judgment along with their memoranda of costs, even though rule 3.1700 does not provide they must do so. Neither the cases nor the practice guide Fries cites to support her position are persuasive.”

According to the court, there is nothing ambiguous about rule 3.1700 and how it should

apply to the situation faced by defendants—seeking reimbursement of allowable costs after a plaintiff voluntarily dismisses her case without the consent of defendants or an agreement with them to waive costs in exchange for a dismissal. Plaintiff quoted the treatise in question which stated “apparently, defendant’s memorandum of costs must be filed together with a proposed judgment of dismissal [Cite]. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) §§11:38 TO 11:38.1, pp. 11-22 to 11-23.)” However, the court stated: “Nothing in rule 3.1700 or its predecessor suggests a defendant must file a proposed judgment along with a memorandum of costs in order to recover its costs after a voluntary dismissal” and affirmed.