

NOTICE
Decision filed 06/23/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0594
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CENTURY DEVELOPMENT MANAGEMENT COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 08-AR-882
)	
DEREK ONSTOTT, d/b/a)	
Bi-State Outdoors,)	Honorable
)	Vincent J. Lopinot,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

RULE 23 ORDER

Held: Where Supreme Court Rule 219(b) (eff. July 1, 2002) specifically states that the court shall award attorney fees to the party who establishes the truth of a previously denied request to admit, unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, and there was no order reflecting the reasons for denial, the order must be vacated and the cause remanded to the trial court for a determination of attorney fees or an order setting forth Rule 219(b) reasons for the denial.

FACTS

On April 17, 2008, Century Development Management Company (Century Development) contracted with Bi-State Outdoors for the construction of a vinyl fence, the installation of dumpster gates, the installation of a chainlink fence, and the removal of a wooden fence. Century Development paid \$13,323.83 as a down payment for the work to be performed. The total amount of the contract was \$39,962.50. Derek Onstott executed the contract with Century Development allegedly as a representative of Bi-State Outdoors. Derek Onstott provided Century Development with a business card for Bi-State Outdoors,

Inc., that listed his name as a representative. Bi-State Outdoors removed the wooden fence and installed the chainlink fence but did not install the vinyl fence. After unsuccessfully attempting to get Bi-State Outdoors to finish the job, Century Development hired another contractor to complete the work. Thereafter, Century Development asked Bi-State Outdoors to return the down-payment money, but Bi-State Outdoors refused to do so.

On July 25, 2008, Century Development filed suit against Derek Onstott doing business as Bi-State Outdoors for a breach of contract, seeking the return of \$3,082.50, which represented the amount of the down payment remaining after the payment to Bi-State Outdoors for the partial work on the contract was subtracted, and the expenses associated with hiring an alternate contractor, for a total of damages of \$10,283.33. A letter contained within the court file and written by Derek Onstott states that he was merely a salesperson for Bi-State Outdoors.

On February 13, 2009, after receiving no responses to its discovery requests, Century Development filed its "Motion to Deem Facts Admitted and Documents Genuine." The requests for the admission of facts involved the business structure of Bi-State Outdoors. Century Development wanted admissions that Bi-State Outdoors was not an Illinois corporation or authorized to transact business in Illinois. The remainder of the requests for admission dealt with the contract, the amount of the deposit, the fact that the vinyl fence was never installed, and the fact that Bi-State Outdoors would not refund the remaining balance of the deposit. The confirmation of the genuineness of the contract was also sought. Derek Onstott never responded to the requests. Pursuant to Supreme Court Rule 216(c) (eff. May 30, 2008), Century Development asked the court to deem the requests admitted and the contract genuine.

On February 24, 2009, Derek Onstott retained a lawyer and filed his responses to the discovery requests—either denying them or objecting on the basis that the request presented

a question of law.

The court overruled the objections on March 12, 2009.

The case went to arbitration in April 2009, and the three arbitrators unanimously found in favor of Derek Onstott. Century Development exercised its right to reject that award. A trial was thereafter set for late July 2009.

The case was bench-tried, and a judgment was entered on August 25, 2009, in favor of Century Development in the amount of \$13,016.33. The judge reasoned that a corporation is required to operate under its corporate name, and the use of an assumed name does not inform the creditors of the existence of the real corporation. The judge concluded that Onstott was aware of the actual corporate structure and failed to disclose this information to Century Development. Because Onstott held out Bi-State Outdoors, Inc., as the corporation involved, when in fact the real name of the entity was A.A. Bi-State Outdoors, Inc., the court held that Onstott was personally responsible for the debt.

Thereafter, Century Management filed its motion seeking attorney fees pursuant to Supreme Court Rule 219 (eff. July 1, 2002). Century Management alleged that subsequent to the date that the trial court overruled Onstott's legal objections to its requests to admit, Onstott was forced to admit that Bi-State Outdoors, Inc., was not a valid corporation and not authorized to transact business in Illinois. The attorneys for Century Management outlined the attorney fees they charged relative to these requests to admit. The amount totaled \$3,376.03.

Onstott filed a response to the attorney fees request and also filed his posttrial motion. On October 1, 2009, the trial court denied the posttrial motion and also denied Century Management's petition for attorney fees. No reason was given for the denial of the attorney fees request, and no special findings were made in this order.

On October 29, 2009, Onstott appealed from the August 25, 2009, judgment and the

October 1, 2009, order. Thereafter, on November 19, 2009, Century Management cross-appealed from the trial court's denial of its request for attorney fees. Onstott's attorney sought leave to withdraw in this court, which we granted on March 9, 2010. On July 23, 2010, this court dismissed Onstott's appeal for a want of prosecution.

ISSUE, LAW, AND ANALYSIS

Generally, a court's award or denial of attorney fees will not be disturbed absent an abuse of discretion. *In re Marriage of Uehlein*, 265 Ill. App. 3d 1080, 1090, 638 N.E.2d 706, 715 (1994); *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1007, 559 N.E.2d 571, 572 (1990).

Supreme Court Rule 219(b) states as follows:

"If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made." Ill. S. Ct. R. 219(b) (eff. July 1, 2002).

In this case, the order was silent. In denying the request for attorney fees, the court must find either that there were good reasons for Onstott's earlier denial of discovery requests or that the admissions sought were of no substantial importance. See *In re Estate of Smith*, 201 Ill. App. 3d at 1008, 559 N.E.2d at 572-73. The court did not make this finding. The order must go further than a mere recitation of the language of the rule. "[I]n order to assist the review of its decision under Supreme Court Rule 219(b), the circuit court must make

specific findings rather than just recite the language of the rule and must see that these specific findings are made part of the record. In other words, the circuit court must find what the good reasons were, if any, for the denials, or why the admissions sought were of no substantial importance." *In re Estate of Smith*, 201 Ill. App. 3d at 1008, 559 N.E.2d at 573.

CONCLUSION

For the foregoing reasons, the October 1, 2009, judgment of the St. Clair County circuit court relative to attorney fees is vacated, and the cause is remanded for a consideration of the Supreme Court Rule 219(b) factors and the entry of a new order either granting attorney fees or denying the request with the supreme court-required findings.

Order vacated; cause remanded with directions.