

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-212

AUGUST TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 1,
	}	Orange Circuit
v.	}	
	}	
Wayne D. Ramsay	}	DOCKET NO. 08-9-02 Oeta
	}	
	}	Trial Judge: Michael C. Pratt
	}	

In the above-entitled cause, the Clerk will enter:

Defendant Wayne D. Ramsay appeals from a district court order denying his motion for a refund of the entry fee he paid to appeal a traffic ticket. We reverse and remand.

In December 2001, Ramsay, a New Hampshire resident, was cited for driving without liability insurance in contravention of 23 V.S.A. ' 800. He contested the citation in the judicial bureau arguing that the Commerce Clause of the United States Constitution prohibited the State of Vermont from enforcing ' 800 against a non-resident. The judicial bureau hearing officer found Ramsay guilty and imposed a fine of \$130.50 for the offense. Ramsay appealed to the district court and paid the required \$75.00 entry fee. See 32 V.S.A. ' 1431(d) (setting forth fees for appeals to district court). On February 3, 2003, the Orange County Deputy State= s Attorney moved for dismissal of the charges against Ramsay, which the court granted.

After the dismissal, Ramsay sought the return of the \$75 entry fee he paid to pursue his appeal in the district court. Ramsay asked the district court to A refund@ the fee, and noted in his motion that A it is customary in civil litigation for court costs to be paid by the losing party.@ The district court denied the request without opinion. Ramsay then appealed directly to this Court.

Before we discuss the merits of Ramsay= s appeal, we must address the question of our jurisdiction to hear his claim. A party to an appeal in district court from the judicial bureau has no automatic right of appeal to this Court. 4 V.S.A. ' 1107(c)). The appellant must obtain permission to appeal following the procedures in V.R.A.P. 6(b). On May 6, 2003, the State moved to dismiss Ramsay= s appeal here, arguing that Ramsay failed to comply with V.R.A.P. 6(b) by not seeking and obtaining permission to appeal from the district court in the first instance. Justice Skoglund denied the State= s motion on May 22, 2003. Although Ramsay did not comply with the requirements of V.R.A.P. 6(b), we suspend the rule= s requirements, see V.R.A.P. 2, and accept his appeal.

Ramsay claims that he is entitled to a return of his entry fee in the district court because he prevailed below. He argues that 32 V.S.A. ' 1471 and federal due process requirements compel the court to tax the prevailing party= s costs against the opposing party. For the same reasons, Ramsay also seeks the return of the \$150 entry fee he paid to pursue his appeal in this Court. In response to Ramsay= s claims, the Orange County State= s Attorney filed a letter in this Court stating that the State would not file an opposing brief because it agreed with Ramsay= s analysis.

Section 1471 of Title 32 provides:

There shall be taxed in the bill of costs to the recovering party in the supreme, superior, family, district, or environmental courts or the judicial bureau a fee equal to the entry fees, the cost of

service fees incurred and the total amount of the certificate of witness fees paid.

See also V.R.C.P. 54(d)(1) (authorizing district court to impose costs of prevailing party on opposing party, including State as permitted by law). Thus, ' 1471 authorizes the district court to order the opposing party in the district court proceeding to award costs, including the \$75 entry fee, to the prevailing party. Considering the explicit statutory basis grounding Ramsay= s claim, and the State= s concession that his claim was viable in the court below, we reverse and remand the matter to the district court for consideration of Ramsay= s claim in light of the State= s concession.

We will consider Ramsay=s request to tax costs against the State for his appeal in this Court upon a proper motion filed in accordance with V.R.A.P. 39(c)).

Reversed and remanded for further proceedings consistent with this order.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice