

1 THE COURT: Doscher versus Holding. Good  
2 morning.

3 MR. [REDACTED] Good morning.

4 MR. DOSCHER: Good morning, Your Honor.

5 THE COURT: Mr. [REDACTED], this is Mr. Holding's  
6 motion. Go ahead, please.

7 MR. [REDACTED] Good morning, Your Honor. This  
8 is defendant's motion for award of fees based on  
9 prevailing party's status under [REDACTED] Well,  
10 the language in that statute does render discretion  
11 to the court to award fees. [REDACTED] case law  
12 makes clear that it is customary to award fees under  
13 circumstances such as this where a defendant is  
14 successful in dismissing a claim based upon lack of  
15 personal jurisdiction. The standard in that case is  
16 that the award of fees should reflect only that  
17 amount of lawyering that reasonably should have been  
18 necessary to prevail on the jurisdictional defense.

19 Well, that isn't exactly the most precise standard  
20 in this particular case. We would submit that there  
21 were no fees that were not reasonably necessary to  
22 obtain the final result the defendant obtained. The  
23 defendant did not prosecute the case in any way  
24 beyond filing the motion. However, defendant was  
25 forced to respond to a significant amount of motion

1 practice and discovery initiated by plaintiff. Where  
2 appropriate, defendant sought protection orders from  
3 the court concerning the scope of discovery.

4 Defendant, however, was forced to respond and appear  
5 in court no less than eight times over the course of  
6 this proceeding.

7 When I took over this case, defendant as a pro se  
8 litigant had filed a motion to this court to dismiss.  
9 I withdrew that motion in part because, while  
10 defendant as a pro se litigant did do an excellent  
11 job of presenting the issues to the court, the motion  
12 was significantly lacking in [REDACTED] State case  
13 law and just needed to be expanded to the court.

14 At the time we renoted the motion, there was a  
15 significant delay due to implementation of the new  
16 process this court was implementing. That wasn't --  
17 the delay was not sought for purposes of delay  
18 itself. It was just the motion was struck solely to  
19 present a more thorough motion to the court, and, as  
20 it turned out, there was a significant delay.  
21 Plaintiff took advantage of that opportunity to file  
22 motion after motion concerning sanctions.

23 And in this particular case, all of the billing  
24 before the court was related to matters that were  
25 reasonably necessary to obtain the end result. When

1 I saw the final bill in this matter, I told my staff  
2 that that couldn't be right, and I had them  
3 recalculate it. But in hindsight, in looking at all  
4 of the amount of time that defendant had to spend in  
5 responding to these motions -- and I think that the  
6 court will note that it took an unusual amount of  
7 time to formulate responses to plaintiff's motions,  
8 because just simply reading the motion to find what I  
9 was responding to took a significant amount of time.

10 Taking that into account with all of the amount of  
11 time that was spent in court, the fees are all of a  
12 sudden understandable when I went back through the  
13 billing; although, I was surprised when I saw the  
14 final number and thought it was high. But, in  
15 hindsight, there are reasons that it was that high.

16 Plaintiff has boasted online that his litigation  
17 was costing a significant amount of money and that  
18 was his goal. Plaintiff, I believe, succeeded in  
19 that goal, and, for all of the reasons, it is  
20 appropriate -- all the reasons stated in our  
21 pleadings, it's appropriate for the court to issue an  
22 award of fees. Thank you.

23 THE COURT: Mr. [REDACTED] I want you to just  
24 address briefly your hourly rate. And I reviewed the  
25 motion in your attached declaration, but is there

1 anything in there that is duplicative or otherwise  
2 wasn't necessary?

3 MR. [REDACTED] I don't believe there's any time  
4 that was duplicative. There was an extensive amount  
5 of review in this case of documents. It was a  
6 complicated set of facts in order to fully understand  
7 what the argument was involving jurisdiction. My  
8 hourly rate as stated in the declaration is \$250 an  
9 hour, which is an extremely, I believe, average rate  
10 for an attorney in this location practicing for over  
11 a decade.

12 THE COURT: Thank you. Mr. Doscher, go ahead,  
13 please.

14 MR. DOSCHER: Counsel is asking for fees under  
15 the fee statute [REDACTED], which includes the word  
16 "personally" with "served." That is, the statute  
17 requires that the defendant be personally served.  
18 Not just any old service will suffice. I show in my  
19 opposition about 20 different times in e-mails to me  
20 and to other parties the defendant denied being  
21 personally served. In fact, he says on page three of  
22 my opposition where I quote one of his e-mails, he's  
23 talking to somebody else, and he says, "And I have  
24 agreed to let them mail it to me." He's talking  
25 about the process server, and, obviously, service by

1 mail is not personal.

2 And rules of statutory construction require that  
3 no word in the statute be rendered meaningless. I  
4 believe the word "personally" would be rendered  
5 meaningless if the court said, well, just any old  
6 type of service can qualify. It says "personally;"  
7 therefore, if it's not personal service, then there  
8 can be no fees under the statute.

9 The other problem is, the court wouldn't have  
10 known the defendant was lying unless I brought it to  
11 the court's attention. In the motion -- in the  
12 defendant's motion, he says he was served with a  
13 summons on August 5th. I show in my opposition he's  
14 lying --

15 THE COURT: Mr. Doscher -- excuse me,  
16 Mr. Doscher. You don't need to yell.

17 MR. DOSCHER: I didn't realize I was yelling.

18 THE COURT: You are. Can you just keep it  
19 down just a little bit, please?

20 MR. DOSCHER: Okay. The defendant was lying.  
21 He said he was served August 5th. His e-mails make  
22 very clear not only in what I quoted from him, but  
23 even in his declaration in support of reply brief, he  
24 was not served on August 5th. He's got a motive to  
25 lie here. He's saying the process server came by his

1 house later, a few weeks later, and gave him the  
2 summons. This is in contradiction to the affidavit  
3 of service, which I filed with the court, which was  
4 filled out by the third-party process server which  
5 says, yes, they did give him a summons on August 5th.

6 So he's got a motive to lie, and he's put a  
7 contradiction of fact resting on his credibility into  
8 this case. And I'm not a lawyer, but I thought you  
9 needed to conduct an evidentiary hearing before you  
10 flip a coin and decide which one of the parties is  
11 telling the truth. But he's the one that put the  
12 contradiction in there, so if you decide he was  
13 personally served, you are making a judgment about  
14 his credibility, and I didn't think you could do that  
15 without an evidentiary hearing.

16 I argued equitable estoppel. I didn't start  
17 saving any money to potentially pay his fees under  
18 that statute, because he made a representation to me  
19 in the e-mails that I quote. He did not receive a  
20 summons, and in e-mails that I recovered from other  
21 third parties, he said -- and again, on my motion  
22 page three, he said he's going to let the process  
23 server mail the summons to them. I had a good-faith  
24 belief that means he's not going to invoke the fee  
25 statute if he gets this case dismissed. Under

1 equitable estoppel, that's a statement that's  
2 inconsistent with his original position.

3 I argued collateral estoppel on the July 8th  
4 order. There's a severe problem here with the  
5 defendant's credibility. He is the one that put the  
6 language in the dismissal order that says, "This case  
7 is dismissed with prejudice without cost to either  
8 party." I made the grammatical argument he is the  
9 author of that language. What he meant by it is  
10 really important, and there's no context to indicate  
11 he meant something cost as opposed to fees. He said  
12 "cost" singular, and he doesn't take issue with that  
13 in his reply brief. He just says the court was  
14 making a decision at that time.

15 And I don't understand his position.  
16 Collateral -- all the elements here for collateral  
17 estoppel are fulfilled. You made a judgment on the  
18 merits. The issues were identical. I'm obviously  
19 the same -- we're obviously the same parties, and it  
20 would not work an injustice for him for you to hold  
21 true the July 8th order without cost to either party.  
22 And I show in my opposition there's a statute in  
23 [REDACTED] n that says without cost to either party  
24 means fees, too. It doesn't just mean costs. So  
25 when he used that language, that's why I made the

1 following argument, invited error. If he used  
2 language that included fees and he didn't want that  
3 language to include fees, that's his error, and  
4 that's called invited error. And he cannot go back  
5 now and say we were just kidding or we meant  
6 something else.

7 Furthermore, he obviously doesn't show any  
8 fulfillment of the criteria under [REDACTED]. One of the  
9 criteria is how likely is it that he's going to  
10 collect the fee if he gets it. I point out in my  
11 opposition what everybody in this case knows, I'm *in*  
12 *forma pauperis*. He would not collect the fee. If  
13 you gave him a million dollars, he wouldn't collect a  
14 dime. I don't have it. [REDACTED] ability to  
15 collect the fee is a reason to adjust downward if  
16 it's not very likely that he would collect the fee.

17 So my main problems then are invited error,  
18 collateral estoppel, equitable estoppel and the  
19 contradiction that the defendant has put into this  
20 case. The process server said, yes, it was  
21 August 5th when he got the summons. Mr. Holding  
22 says, no, it wasn't. We don't really know whether he  
23 was, in fact, served or if the process server messed  
24 up. We don't know which one to believe, and I don't  
25 think you can adjudge his credibility one way or the



1 other without an evidentiary hearing. That's all.

2 THE COURT: Thank you. Mr. [REDACTED]

3 MR. ~~SUSHER~~ Your Honor, regarding the issue  
4 of service, the August 5th date that is stated in our  
5 original motion was my drafting based upon what I  
6 believed the court record reflected. When  
7 Mr. Doscher raised that issue in his response, I  
8 consulted with my client and clarified that issue  
9 with my client, discovered that indeed the summons  
10 had come later than August 5th. But both were  
11 delivered by personal service by a process server,  
12 and service was effectuated by receipt of both of  
13 those documents. My client was personally served in  
14 Florida, meeting that prong of the statute.

15 The previous order that was issued reflected a  
16 dismissal at that time without cost to either party.  
17 The issue of fees were not before the court. There  
18 was no collateral estoppel. It did not prevent my  
19 client from timely raising the issue of fees where  
20 authorized to do so under statutory authority.

21 And, finally, Mr. Doscher's financial status  
22 should have no bearing on this award. Mr. Doscher  
23 has repeatedly chosen to initiate litigation in this  
24 and other forums. Mr. Doscher needs to understand  
25 that there are very real costs to those he brings

1 into court. Thank you.

2 THE COURT: Thank you.

3 MR. DOSCHER: Your Honor, may I --

4 THE COURT: No. Okay. This was set today by  
5 the defendant -- are you leaving, Mr. Doscher?

6 MR. DOSCHER: Yeah.

7 THE COURT: All right. The court is going to  
8 continue with its ruling in any event. This was set  
9 by Mr. Holding for a request for award of attorney  
10 fees pursuant to [REDACTED] which addresses personal  
11 service out of state. The defendant is asking for an  
12 award of attorney's fees, frankly in a very  
13 significant amount, based on his successful request  
14 of dismissal in this case. The court has previously  
15 dismissed this case with prejudice. I have spent an  
16 inordinate amount of time addressing various motions  
17 in this case. By my count, there were over 15  
18 motions filed since last fall, a number of hearings.  
19 The case included motions filed by Mr. Doscher for  
20 sanctions, for CR 11 sanctions, motions for  
21 reconsideration, motions to file an overlength brief,  
22 spoliation motions, motion for discovery, sanctions,  
23 motions to compel and more. Mr. [REDACTED] indicated  
24 there were eight hearings. There were many more  
25 noted. I counted over 15 that had been noted since

1 the case was filed less than a year ago.

2 The statute [REDACTED] allows in this circumstance  
3 for an award of fees to a defendant who's personally  
4 served outside of the state who prevails. The  
5 defendant may receive costs of defending the action  
6 in a reasonable amount to be fixed by the court as  
7 attorney's fees. I stated at the beginning that the  
8 fees requested are significant, and I did review the  
9 fee affidavit.

10 It's my finding that the rate of fees at \$250 an  
11 hour is a very reasonable rate for an attorney in  
12 this community. It's frankly significantly lower  
13 than another case I'm going to be hearing later in  
14 the morning, so I believe that the rate is quite  
15 reasonable. In addition, given the extraordinarily  
16 large number of motions that were filed in this case,  
17 I'm finding that the amount requested is reasonable.

18 I'm not persuaded with the arguments of  
19 Mr. Doscher regarding equitable estoppel, collateral  
20 estoppel, invited error, or otherwise. It's my  
21 finding that Mr. Doscher has abused the court process  
22 to go after somebody from out of state, hale them  
23 into court in this state. It required, frankly, that  
24 person to hire an attorney to address the issues.  
25 And under all of the facts as I found them

