

Case Summary:

Usually, both sides in a lawsuit have to pay their own attorney fees. Section 1021.5 of the Code of Civil Procedure, however, allows the court to order the losing party to pay the winning party's fees if (1) the lawsuit resulted in the enforcement of an important right affecting the public interest, (2) a significant benefit was conferred on the general public or a large class of persons, and (3) the burden the winning party would bear if it had to pay its own fees makes the award appropriate.

In a 2008 case, the California Supreme Court decided that section 1021.5 was not meant to apply to a party who did nothing against the public interest, but merely defended her private rights in a case that happened to end up becoming the subject of an important appellate opinion. In that case, known as *Joshua S.*, there was a custody dispute between same-sex partners who had adopted a child. One of the partners claimed the adoption was invalid under California law. There was no question that this was an important question, and the court's decision that the adoption was valid conferred a significant benefit on a large class of people, because there had already been thousands of such adoptions in the state. The Supreme Court decided, however, that section 1021.5 was meant to apply only when the losing party had done something harmful to the public interest.

The present case tests the limits of the *Joshua S.* decision. The defendant in a personal injury lawsuit arranged for a deposition of one of the plaintiffs' expert witnesses. At a deposition, the witness must answer questions under oath, and the transcript of the questions and answers is a valuable tool for the attorneys. The transcript is prepared by a reporter, who is hired by the party who arranges for (or "notices") the deposition. Defendant in this case wanted the transcript prepared quickly, and was willing to pay an extra fee for expediting the process. The reporter asked plaintiffs if they too wanted an expedited transcript. Plaintiffs said yes, but when they got the bill they objected to the extra fee for expediting the transcript. They asked the trial court to reduce the fee, but the court refused, saying it did not have the authority to do that.

On appeal, however (the *Serrano I* appeal), the reviewing court decided that the trial court *did* have the authority to limit the fee to a reasonable amount. Thereafter the trial court found that the extra fee for expediting the transcript was unreasonable. Plaintiffs then asked that the reporter be required to pay their attorney fees, under section 1021.5. Both the trial court and the Court of Appeal decided that section 1021.5 did not apply, because the reporter, like the losing parent in *Joshua S.*, had merely been defending its private rights. The Supreme Court will determine whether the *Joshua S.* rule governs in this case.

