

NO. COA98-102-2

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 1999

GABRIELLA MURRAY HIEB and ROBERT NELSON HIEB, Plaintiffs, v.
WOODROW LOWERY, Defendant

Appeal by plaintiffs Gabriella Murray Hieb, Robert Nelson Hieb, and Charles G. Monnett, III, from orders filed 5 May 1997 and 29 October 1997 by Judge Dennis J. Winner in Mecklenburg County Superior Court. Originally heard in the Court of Appeals 24 September 1998.

Charles G. Monnett, III, for plaintiffs-appellants Gabriella Murray Hieb and Robert Nelson Hieb.

Poyner & Spruill, L.L.P., by Cecil W. Harrison, Jr., and Laura Broughton Russell, for plaintiff-appellant Charles G. Monnett, III.

Dean & Gibson, by Rodney Dean, for defendant-appellee St. Paul Fire and Marine Insurance Company.

JOHN, Judge.

On 9 August 1999, plaintiffs filed with this Court a “Petition for Rehearing by Charles G. Monnett, III,” referencing our decision herein filed 6 July 1999 and reported at ___ N.C. App. ___, ___ S.E.2d ___ (1999). Pursuant to N.C.R. App. P. 31, the petition is allowed without

entertainment of further argument or additional briefing.

Upon review, this Court's earlier opinion is modified as follows:

The final full sentence on page eighteen of the opinion, commencing "[w]e thus . . . ,"
___ N.C. App. at ___, ___ S.E.2d at ___, is deleted and the following sentence inserted in lieu thereof:

We thus specifically declined to address St. Paul's appeal concerning counsel fees in *Hieb II*, and as such, our opinion therein is of no effect regarding plaintiffs' appeal of the counsel fees portion of Judge Winner's order II.

All that portion of the opinion on page twenty-two beginning "[f]inally, on 28 July 1994," through the conclusion of that paragraph, including citations, ___ N.C. App. at ___, ___ S.E.2d at ___, is deleted and the following language inserted in lieu thereof:

Finally, on 28 July 1994, the filing date of Judge Sitton's order, Monnett disbursed the remaining funds, including a check payable to Monnett in the amount of \$18,344.66 designated as "reimbursement for expenses advanced."

Except as provided herein, the opinion originally filed 6 July 1999 is unmodified.

JUDGES McGEE and HORTON concur.

Affirmed in part, vacated in part, and remanded with instructions.