

FILED: November 16, 2022

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THOMAS DEMARTINO,  
Petitioner-Appellant,

v.

ROGER ALDERIN and NANCY ALDERIN,  
Respondents-Respondents.

Marion County Circuit Court  
21SK02987, 21SK02988

A177669 (Control)  
A177670

Matthew L Tracey, Judge pro tempore.

Submitted on October 06, 2022.

Before Shorr, Presiding Judge, and Mooney, Judge, and Pagán, Judge.

Attorney for Appellant: Thomas D. DeMartino *pro se*.

Attorney for Respondent: Daniel S. Reynolds.

**AFFIRMED WITHOUT OPINION**

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

No costs allowed.  
 Costs allowed, payable by Appellant.

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App. 1a

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THOMAS DEMARTINO,  
Petitioner-Appellant,

v.

ROGER ALDERIN and NANCY ALDERIN,  
Respondents-Respondents.

Marion County Circuit Court Nos. 21SK02987, 21SK02988

Court of Appeals Nos. A177669 (Control), A177670

**ORDER ALLOWING COSTS AND DISBURSEMENTS**

Respondents filed a statement of costs and disbursements in the amount of \$935. Appellant objects on the ground that an award of costs is premature because appellant filed a petition for reconsideration of the court's decision, and the court has not yet decided the petition.<sup>1</sup> Appellant also objects to an award of the prevailing party fee.

It is the court's practice to rule on contested cost bills (and contested petitions for attorney fees) notwithstanding the pendency of a petition for reconsideration or a petition for Supreme Court review.

Respondents' claim recovery of two first appearance fees of \$391; \$53 for a motion fee, and \$100 prevailing party fee. With respect to respondents' request for the \$53 motion fee, that fee is not recoverable under ORS 20.310(2) and is, therefore, disallowed. See *Yuan Chou v. Farmers Ins. Exchange*, 260 Or App 564, 567, 320 P3d 608 (2014). Further, under ORS 20.190(6)(b), a prevailing party fee may not be awarded to a "respondent in proceedings under ORS 30.866 \*\*\* unless the court finds that the petitioner initiated the proceedings with malicious intent." In light of that provision, the court did not allow a prevailing party fee in this appeal.

Respondents are awarded costs and disbursements in the amount of \$782.



THERESA M. KIDD  
APPELLATE COMMISSIONER  
1/11/2023 10:56 AM

c: Thomas David Demartino  
Hunter B Emerick

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<sup>1</sup> On December 19, 2022, the court denied the petition for reconsideration.

**ORDER ALLOWING COSTS AND DISBURSEMENTS**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT OF THE STATE OF OREGON

THOMAS DEMARTINO,  
Petitioner-Appellant,  
Petitioner on Review,

v.

ROGER ALDERIN and NANCY ALDERIN,  
Respondents-Respondents,  
Respondents on Review.

Court of Appeals  
A177669 (Control), A177670

S070014

**ORDER DENYING PETITION FOR RECONSIDERATION**

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

  
MEAGAN A. FLYNN  
CHIEF JUSTICE, SUPREME COURT  
6/15/2023 11:46 AM

c: Hunter B Emerick  
Daniel S Reynolds  
Thomas David Demartino

tnb

**ORDER DENYING PETITION FOR RECONSIDERATION**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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App. 4a

IN THE SUPREME COURT OF THE STATE OF OREGON

THOMAS DEMARTINO,  
Petitioner-Appellant,  
Petitioner on Review,

v.

ROGER ALDERIN and NANCY ALDERIN,  
Respondents-Respondents,  
Respondents on Review.

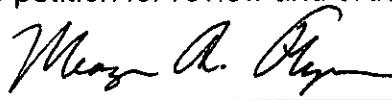
Court of Appeals  
A177669 (Control), A177670

S070014

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

  
MEAGAN A. FLYNN  
CHIEF JUSTICE, SUPREME COURT  
4/20/2023 9:13 AM

c: Hunter B Emerick  
Daniel S Reynolds  
Thomas David Demartino

tnb

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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APP. 5a