ADVANCE SHEET HEADNOTE
December 13, 2021

2021 CO 78

No. 20SC429, *LHM Corp. v. Martinez* – Attorney Fees – Final Judgments – Timeliness of Appeals.

The supreme court considers whether a judgment is final for purposes of appeal when the district court has determined that a plaintiff who prevails on a claim under the Colorado Consumer Protection Act, §§ 6-1-101 to -1214, C.R.S. (2021), is entitled to an award of attorney fees, but the court has not yet determined the amount of those fees. The supreme court reaffirms the bright-line rule adopted in *Baldwin v. Bright Mortgage Co.*, 757 P.2d 1072 (Colo. 1988), and holds that a judgment on the merits is final for purposes of appeal notwithstanding an unresolved issue of attorney fees. In so doing, the court overrules *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936 (Colo. 1993), and the cases that followed it to the extent those cases deviated from *Baldwin*'s bright-line rule. Applying the *Baldwin* rule here, the court affirms the judgment of the court of appeals dismissing the defendant's appeal in part as untimely, albeit under different reasoning.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 78

Supreme Court Case No. 20SC429
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA298

Petitioner:

L.H.M. Corporation, TCD, d/b/a Larry H. Miller Chrysler Dodge Jeep Ram 104th,

v.

Respondent:

Canuto John Martinez.

Judgment Affirmed
en banc
December 13, 2021

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JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 After his attempt to buy an SUV went sideways, Plaintiff Canuto John Martinez successfully sued the car dealership, Defendant Larry H. Miller Chrysler Dodge Jeep Ram 104th ("LHM"), for violating section 6-1-708(1)(a), C.R.S. (2021), of the Colorado Consumer Protection Act ("CCPA"). The issue before us is whether the judgment was final for purposes of appeal when the district court determined that Martinez, as the prevailing plaintiff, was entitled to an award of attorney fees under the CCPA, but the court had not yet determined the amount of those fees. Our case law has offered conflicting guidance. In *Baldwin v. Bright Mortgage Co.*, 757 P.2d 1072, 1074 (Colo. 1988), this court adopted a bright-line rule that a judgment on the merits is final and therefore appealable regardless of any unresolved issue of attorney fees. Five years later, however, in *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936, 940–42 (Colo. 1993), we suggested that the appealability of a judgment instead hinges on the fact-specific determination of whether the attorney fees at issue are best classified as costs or damages.

¶2 Today, we resolve the tension between *Baldwin* and *Ferrell* by reaffirming the bright-line rule established in *Baldwin*: A judgment on the merits is final for purposes of appeal notwithstanding an unresolved issue of attorney fees. To the extent our opinion in *Ferrell* deviated from *Baldwin*, its approach lacks justification and generates uncertainty, thus undermining the purpose of *Baldwin*'s bright-line rule. We conclude that both litigants and courts are best served by the bright-line

rule we adopted in *Baldwin*. We therefore overrule *Ferrell* and the cases that followed it to the extent those cases deviated from *Baldwin*'s rule concerning the finality of a judgment for purposes of appeal. Applying the *Baldwin* rule here, we affirm the judgment of the court of appeals dismissing LHM's appeal in part as untimely, albeit under different reasoning.

I. Facts and Procedural History

¶3 On November 12, 2016, Martinez sought to purchase a 2016 Dodge Durango from LHM. Martinez made a cash down payment of $700 and traded in a 2012 vehicle he had purchased with financing from Ally Financial. Martinez sought to finance the rest of the purchase through a new loan with Ally, part of the proceeds of which would be used to pay off the 2012 trade-in. Martinez authorized LHM to submit loan applications on his behalf to Ally.

¶4 Ally conditionally approved Martinez's loan subject to proof of income, proof of employment, and proof of the trade-in. Based on this conditional approval, LHM employees assured Martinez that his financing had been approved. Martinez signed several agreements with LHM, including an assignment that purported to transfer LHM's interest in the Durango to Martinez

and a Spot Delivery Agreement[1] that allowed Martinez to take the vehicle home. Martinez left the dealership believing he had purchased the Durango. Later that day, however, LHM received notice that Ally had declined Martinez's loan application. Neither Ally nor LHM sent this notice to Martinez.

¶5 From November 12 to 29, LHM negotiated unsuccessfully with Ally to obtain financing for Martinez. LHM did not inform Martinez of Ally's adverse financing decision.[2] Moreover, LHM sold Martinez's trade-in vehicle during this period and failed to apply the funds from that sale toward Martinez's existing loan with Ally on the trade-in.

¶6 When Martinez discovered that he was unable to make payments on Ally's website for the Durango, he returned to LHM's dealership on December 26. An LHM employee explained that staff turnover during the holidays had resulted in delays. LHM renewed Martinez's loan application with Ally, but Ally denied the application because payments on Martinez's loan for the trade-in vehicle were past

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[1] The Spot Delivery Agreement allowed Martinez to take possession of the vehicle without approved financing. By signing the agreement, Martinez promised that if financing was not approved or the sale did not close, he would return the vehicle and pay a variable amount for its use during the interim period.

[2] Ally sent Martinez notice of its decision to decline his loan application on December 3, but Martinez discarded the notice without reading it.

due. On January 7, 2017, LHM tried again to obtain approval for the loan but was unsuccessful.

¶7 On January 9, Martinez and his wife returned to the dealership and asked LHM to cancel the sale of the Durango and return his trade-in. Although LHM had sold the trade-in, LHM's financial manager told Martinez that the dealership still had the vehicle and continued to assure Martinez that financing would be obtained. The manager asked the couple to return the following day to review and sign new documents. Before leaving the dealership, however, Martinez's wife spoke separately with another LHM employee who informed her that the trade-in vehicle had been sold.

¶8 The following day, Martinez filed suit, alleging, among other claims, that LHM violated section 6-1-708(1)(a) of the CCPA by (1) misrepresenting that Ally had approved financing for Martinez's purchase of the Durango, and (2) selling Martinez's trade-in without approved financing for the purchase of the Durango.[3]

¶9 Roughly a year later, on March 20, 2018, following a bench trial, the district court ruled in favor of Martinez on his CCPA claim. Finding that LHM acted in

[3] In the weeks that followed, LHM paid to Ally the delinquent balance on Martinez's loan for the trade-in, refunded Martinez's $700 down payment, and returned his trade-in, which LHM had reacquired.

bad faith, the court awarded Martinez treble damages pursuant to section 6-1-113(2)(a)(III), C.R.S. (2021), of the CCPA, totaling $9,900. The court also concluded that, as the prevailing party, Martinez was entitled to recover costs and reasonable attorney fees under section 6-1-113(2)(b). It directed Martinez to file a bill of costs and request for attorney fees within twenty-one days pursuant to C.R.C.P. 21.

¶10 Martinez timely filed a motion for attorney fees on April 10. On June 1, LHM filed an objection and asked the court to stay execution of the judgment, asserting that, because attorney fees and costs are a component of damages under the CCPA, the district court's March 20 order was not final until the court determined the amount of attorney fees and costs. The district court denied the stay, concluding that (1) prevailing party attorney fees and costs awarded under the CCPA are considered costs, rather than a component of damages; (2) its March 20 order was therefore a final, appealable order; and (3) because the March 20 order was final, the time to appeal that ruling had expired, and a stay was thus unnecessary. On December 28, the court awarded Martinez $51,232.50 in attorney fees and $4,484.05 in costs.

¶11 On February 15, 2019, LHM appealed the December 28 order. LHM did not challenge the reasonableness of the fees awarded, but instead argued that the district court erred in determining that LHM violated the CCPA. Martinez moved

to dismiss in part for lack of jurisdiction, arguing that LHM did not file a timely notice of appeal from the merits judgment issued on March 20. A division of the court of appeals deferred ruling on the motion to dismiss and ordered the parties to brief the issue of whether the attorney fees and costs awarded were a component of damages on the CCPA claim or, instead, simply costs awarded to Martinez as the prevailing party.

¶12 After briefing, the division agreed with Martinez and dismissed LHM's appeal in part as untimely. *Martinez v. LHM Corp.*, 2020 COA 53M, ¶¶ 22–23, 490 P.3d 708, 713. The division first observed that, under this court's decision in *Baldwin*, "[a] decision on the merits is a final judgment for appeal purposes despite any outstanding issue of attorney fees." *Martinez*, ¶ 12, 490 P.3d at 711 (quoting *Baldwin*, 757 P.2d at 1074). However, the division noted, this court's decision in *Ferrell* indicates that, "when attorney fees are 'damages' awarded 'as part of the substance of a lawsuit'—as opposed to 'costs' awarded to a prevailing party under a fee shifting provision—a trial court's order is not final until the court has determined the amount of the attorney fees award." *Id.* at ¶ 13, 490 P.3d at 711 (quoting *Ferrell*, 848 P.2d at 941–42). The division then reasoned that "[b]ecause the CCPA essentially shifts fees and costs to the violator, attorney fees under the CCPA are more akin to costs than to damages." *Id.* at ¶ 22, 490 P.3d at 713. Therefore, it concluded, the district court's March 20 order "was final and

triggered LHM's time to appeal even though the district court had not yet resolved the *amount* of the attorney fee award under section 6-1-113(2)(b)." *Id.* at ¶ 18, 490 P.3d at 712. Finally, the division acknowledged that LHM's appeal *was* timely as to the district court's December 28 award of attorney fees. *Id.* at ¶ 23, 490 P.3d at 713. However, because LHM did not challenge the reasonableness of that award, the division affirmed the district court's order awarding $51,232.50 in attorney fees. *Id.*

¶13 We granted LHM's petition for writ of certiorari.[4]

II. Analysis

¶14 This case highlights two basic principles governing the appealability of a judgment. First, an appellate court has jurisdiction to review only final judgments of a district court. § 13-4-102(1), C.R.S. (2021); C.A.R. 1(a)(1). "[A]s a general rule, a judgment is final and therefore appealable if it disposes of the entire litigation on its merits, leaving nothing for the court to do but execute the judgment." *Baldwin*,

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[4] We granted certiorari review to consider the following issue:

> Whether the court of appeals erred in dismissing L.H.M.'s appeal as having been filed more than 49 days after entry of final judgment, based on both its construction of section 6-1-113(2), C.R.S. (2020), and its understanding of this court's holdings in *Baldwin v. Bright Mortgage Co.*, 757 P.2d 1072 (Colo. 1988), and *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936 (Colo. 1993).

757 P.2d at 1073 (citing *Kempter v. Hurd*, 713 P.2d 1274, 1277 (Colo. 1986)). Second, an order or judgment establishing liability without determining damages is not final and therefore not appealable. *See Harding Glass Co. v. Jones*, 640 P.2d 1123, 1127 (Colo. 1982) (noting that "a partial summary judgment on liability where the question of damages is reserved does not fully resolve a single claim for relief").

¶15 In *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199 (1988), the U.S. Supreme Court considered "whether a decision on the merits is a 'final decision'" for purposes of appeal "when the recoverability or amount of attorney's fees for the litigation remains to be determined." The Court first recognized that, as a general matter, a claim for attorney fees is not part of the merits of an action because "[s]uch an award does not remedy the injury giving rise to the action, and indeed is often available to the party defending against the action." *Id.* at 200. That said, the Court acknowledged that some federal circuit courts had held that statutes creating liability for attorney fees can cause such fees to be part of the merits relief in a case. *Id.* at 201. Regardless, the Court concluded, the effect of an unresolved claim for attorney fees on the finality of a judgment for purposes of appeal "should not turn upon the characterization of those fees by the statute or decisional law that authorizes them." *Id.* Instead, the Court reasoned, what is most important is not conceptual consistency in treating fees as "merits" or "nonmerits" relief, "but rather preservation of operational consistency and

predictability" in deeming decisions final for purposes of appeal. *Id.* at 202. "The time of appealability, having jurisdictional consequences, should above all be clear." *Id.* Accordingly, "[c]ourts and litigants are best served by [a] bright-line rule . . . that a decision on the merits is a 'final decision' for purposes of [appeal] whether or not there remains for adjudication a request for attorney's fees attributable to the case." *Id.* at 202–03. Thus, the Court adopted a "uniform rule that an unresolved issue of attorney's fees for the litigation in question does not prevent judgment on the merits from being final." *Id.* at 202.

¶16 The Supreme Court reaffirmed *Budinich*'s bright-line rule in *Ray Haluch Gravel Co. v. Central Pension Fund of International Union of Operating Engineers & Participating Employers*, 571 U.S. 177, 185 (2014), explaining that its decision in *Budinich* "made it clear that the uniform rule there announced did not depend on whether the statutory or decisional law authorizing a particular fee claim treated the fees as part of the merits." In other words, even where a statute indicates that the attorney fees authorized are to be part of the merits judgment, the issue of such fees is still collateral for finality purposes of an appeal. Because the interests in operational consistency and predictability were what drove the bright-line rule adopted in *Budinich*, the Court remained disinclined to adopt a rule requiring the "merits or nonmerits status of each attorney's fee provision to be clearly

established before the time to appeal can be clearly known." *Id.* (quoting *Budinich*, 486 U.S. at 202).

¶17 Less than two months after the Supreme Court issued its decision in *Budinich*, we relied on that case to adopt a similar approach in Colorado. In *Baldwin*, a case directly addressing the finality of a decision for purposes of appeal, we held "that a final judgment on the merits is appealable regardless of any unresolved issue of attorney fees." 757 P.2d at 1074. Importantly, we tracked the reasoning of *Budinich*, holding that this bright-line rule "is necessary and appropriate" because it "will permit litigants to comply with the relevant appellate rules without a case-by-case analysis of the relationship of attorney fees to the relief sought and will avoid uncertainty." *Id.*

¶18 Five years later, we touched on this topic in *Ferrell*, albeit in a different context. There, we considered whether the county court lacked jurisdiction to enter a judgment because the attorney fees accrued in the case caused the total amount awarded to exceed the $5,000 county court jurisdictional limit then in effect. *Ferrell*, 848 P.2d at 939. In affirming the county court's judgment, we focused on whether the court had jurisdiction at the time the suit commenced, reasoning that when a "county court ha[s] jurisdiction when the complaint was filed . . . , the court does not lose jurisdiction simply because the case is litigated and attorney fees are incurred." *Id.* at 940.

¶19 Whether the judgment was final and therefore appealable was not at issue in that case. Nevertheless, we offered a "separate, independent ground for upholding the county court's judgment," reasoning that "the county court properly found the attorney fees to be costs which may be awarded over and above the county court's $5,000 jurisdictional limit." *Id.* As part of that discussion, we recognized that "attorney fees are a hybrid of costs and damages" and that the classification of such an award can have significant consequences. *Id.* at 941. As an example, citing *Baldwin*—though directly contrary to its bright-line rule—we observed that "if attorney fees are [classified as] 'damages,' then the merits of a lawsuit are not appealable until the amount of fees has been set. . . . On the other hand, if attorney fees are classified as 'costs,' then an appeal on the merits can proceed independent of the fees issue." *Id.* Moreover, we noted that if attorney fees are considered damages, then such fees "must be determined by the trier of fact and proven during the damages phase, and can be multiplied under statutes that permit doubling and trebling of damages." *Id.* By contrast, we explained, if attorney fees are classified as "costs," then the court may determine "issues of entitlement and amount . . . after the merits are decided," and "an appeal on the merits can proceed independent of the fees issue." *Id.* (citing *Baldwin*, 757 P.2d at 1074).

¶20 We then concluded that the determination of whether attorney fees are costs or damages "is, by its very nature, a fact- and context-sensitive one, which rests within the sound discretion of the trial court." *Id.* The exercise of such discretion, we explained, "should be guided by the nature of the requested attorney fees." *Id.* If such fees are "part of the substance of a lawsuit"—that is, if the fees sought are "'the legitimate consequences of the tort or breach of contract sued upon,' such as in an insurance bad faith case"—then such fees are clearly damages. *Id.* (citation omitted) (quoting *Bunnett v. Smallwood*, 793 P.2d 157, 160 (Colo. 1990)).

¶21 Our decision in *Ferrell* has caused divisions of the court of appeals to conduct case-by-case analyses to classify awards of attorney fees as costs or damages, often with implications for the finality of the judgment for purposes of appeal. For example, in *Double Oak Construction, L.L.C. v. Cornerstone Development International, L.L.C.*, 97 P.3d 140, 150 (Colo. App. 2003), a division of the court of appeals concluded that it was within the trial court's discretion to classify an award of attorney fees as actual damages based on "the theory that, but for [the] defendants' obdurate conduct, [the] plaintiff would not have incurred attorney fees in pursuing its judgment." There, the division emphasized that if fees are classified as "damages," then the merits of the suit are not appealable until the amount of fees has been determined; conversely, if fees are classified as "costs,"

then an appeal on the merits can proceed independent of the fees issue. *Id.* at 149–50.

¶22 More recently, in *Hall v. American Standard Insurance Co.*, 2012 COA 201, ¶ 1, 292 P.3d 1196, 1198, a division of the court of appeals dismissed without prejudice an appeal for lack of jurisdiction and held that "when a plaintiff files a claim against an insurer under section 10-3-1116(1), C.R.S. [(2012)], . . . attorney fees and costs are a component of damages and must be determined before a final judgment can be entered." In so doing, the division relied on the plain language of the statute, which authorized a first-party claimant to bring an action "to recover reasonable attorney fees and court costs and two times the covered benefit." *Id.* at ¶ 18, 292 P.3d at 1200 (quoting § 10-3-1116(1)).

¶23 Today, we reaffirm the bright-line rule adopted in *Baldwin* and hold that a judgment on the merits is final and appealable notwithstanding an unresolved issue of attorney fees. Such a rule ensures "operational consistency and predictability" by "permit[ting] litigants to comply with the relevant appellate rules without a case-by-case analysis of the relationship of attorney fees to the relief sought." *Baldwin*, 757 P.2d at 1074.

¶24 In so doing, we necessarily overrule *Ferrell* and the cases that followed it to the extent they deviated from *Baldwin*. We therefore must consider stare decisis. That judge-made doctrine "requires that we follow pre-existing rules of law,"

People v. Porter, 2015 CO 34, ¶ 23, 348 P.3d 922, 927, to ensure "uniformity, certainty, and stability of the law," *id.* (quoting *People v. LaRosa*, 2013 CO 2, ¶ 28, 293 P.3d 567, 574). Stare decisis does not, however, prevent us from reevaluating a preexisting rule of law "[w]here we are convinced that the [rule] was originally erroneous or is no longer sound given changed conditions, and more good than harm will come from departing from it." *Id.* We conclude that those conditions are satisfied here.

¶25 First, we find it significant that the costs-versus-damages analysis in *Ferrell* was unnecessary to the resolution of that case and was offered only as a "separate, independent ground" for upholding the county court's jurisdiction. *See Ferrell*, 848 P.2d at 940. Indeed, because it was unnecessary to address this separate basis for the court's ruling (and because they found the costs-versus-damages analysis unpersuasive in any event), Justices Lohr and Kirshbaum declined to join in that part of the majority's opinion. *See id.* at 942 (Lohr, J., specially concurring). In short, the costs-versus-damages analysis in *Ferrell* was discussed only as an alternate rationale and in a case in which the finality of the judgment for purposes of appeal was not before us.

¶26 Second, as indicated above, *Ferrell* itself failed to follow principles of stare decisis to the extent that it adopted an approach to determining the finality of a judgment that we expressly rejected in *Baldwin*. True, the *Baldwin* analysis does

not apply in rare situations where attorney fees are not sought "for the litigation in question," *Budinich*, 486 U.S. at 202, but rather where the entitlement to and amount of such fees constitute an element of the claim itself. In such cases, the attorney fees necessarily must be established to obtain a judgment on the merits of the claim. For example, Colorado recognizes the wrong-of-another doctrine, which allows a plaintiff to recover from a defendant the attorney fees incurred as a result of separate litigation against a third party. *See Rocky Mountain Festivals, Inc. v. Parsons Corp.*, 242 P.3d 1067, 1071 (Colo. 2010) ("Colorado—like many states—has long-recognized that litigation expenses and attorneys' fees incurred by a party in one case may, in certain circumstances, be an appropriate measure of damages against a third party in a subsequent action. . . . Th[is] doctrine does not establish a stand-alone cause of action . . . . Rather, the doctrine is but an acknowledgement that the litigation costs incurred by a party in separate litigation may sometimes be an appropriate measure of compensatory damages against another party." (footnote omitted) (citation omitted)); *see also Delluomo v. Cedarblade*, 2014 COA 43, ¶ 28 n.5, 328 P.3d 291, 297 n.5; *Stevens v. Moore & Co. Realtor*, 874 P.2d 495, 496 (Colo. App. 1994) ("'[W]hen the natural and probable consequence of a wrongful act has been to involve plaintiff in litigation with others,' the attorney fees incurred in that litigation are considered to be damages

proximately caused by the wrongful conduct, and may be recovered by the plaintiff in a 'separate action' against the wrongdoer."); *Bunnett*, 793 P.2d at 161.

¶27 In articulating its costs-versus-damages analysis, *Ferrell* relied on a line of cases involving this doctrine. But the wrong-of-another doctrine played no role in that case. The attorney fees at issue in *Ferrell* were not incurred by the plaintiff to litigate a separate action against a third party; instead, the contract at issue provided for an award of attorney fees to the prevailing party in the event of litigation between the plaintiff and defendant arising out of the contract. *See Ferrell*, 848 P.2d at 938. Thus, nothing in *Ferrell* justified its deviation from *Baldwin*. By reaffirming the *Baldwin* rule today, we overrule *Ferrell* only insofar as that decision itself failed to adhere to *Baldwin*.

¶28 To the extent *Ferrell* deviated unnecessarily from the *Baldwin* rule, its approach to determining the finality of a judgment has created confusion, has proven difficult to apply in practice, and lacks justification. *Ferrell*'s directive requiring trial courts to engage in a "fact- and context-sensitive" analysis of whether the attorney fees at issue are costs or damages to determine the finality of a judgment for purposes of appeal, *see Ferrell*, 848 P.2d at 941, negates the very purpose of *Baldwin*'s bright-line rule: to "avoid uncertainty" and to "permit litigants to comply with the relevant appellate rules without a case-by-case analysis of the relationship of attorney fees to the relief sought." *Baldwin*, 757 P.2d

at 1074. As the Supreme Court emphasized in *Budinich*, "[t]he time of appealability, having jurisdictional consequences, should above all be clear." 486 U.S. at 202. In short, for operational consistency and predictability, we believe that litigants and courts alike are best served by the bright-line rule in *Baldwin*. We therefore overrule *Ferrell* and the cases that followed it insofar as they deviated from *Baldwin*'s bright-line rule and now reaffirm that a judgment on the merits is final and appealable notwithstanding an unresolved issue of attorney fees.

¶29 Applying *Baldwin* to this case, we conclude that the district court's March 20 order was a final judgment for purposes of appeal. Under C.A.R. 4(a), LHM was required to file its notice of appeal within forty-nine days. But LHM did not file its appeal until February 15—nearly one year after the district court's March 20 order. Accordingly, LHM's appeal of the merits of Martinez's CCPA claim was untimely, and the division appropriately dismissed that aspect of LHM's appeal for lack of jurisdiction.[5]

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[5] We take no issue with the division's analysis that, based on the language and structure of section 6-1-113(2), the prevailing party attorney fees at issue here are more akin to costs, not damages. *Martinez*, ¶¶ 17–22, 490 P.3d at 712–13. Thus, even under *Ferrell*'s costs-versus-damages analysis, LHM's appeal was untimely. Consequently, the division was without jurisdiction to consider LHM's challenge to the district court's judgment on the merits under *Baldwin* or *Ferrell*.

III. Conclusion

¶30 In sum, we hold that a judgment on the merits is final and appealable notwithstanding an unresolved issue of attorney fees. Therefore, the district court's March 20 order was a final judgment for purposes of appeal. Because LHM did not appeal the district court's order within forty-nine days, LHM's appeal of that ruling was untimely, and the court of appeals correctly dismissed in part the appeal for lack of jurisdiction. Accordingly, we affirm that aspect of the judgment of the court of appeals on other grounds. We affirm the remainder of the court of appeals' judgment upholding the district court's award of attorney fees and awarding reasonable appellate fees to Martinez and remand the case for determination of such fees.[6]

[6] We deny Martinez's conclusory request for additional costs and fees associated with the appeal in this court.