IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRBY WELLS, ESQ., SPECIAL ADMINISTRATOR OF THE ESTATE OF DENNIS ROBERTS; S. MYRON KLARFELD, AS TRUSTEE OF THE CAPRICORN I, 1983 TRUST AND AS TRUSTEE OF THE CAPRICORN II, 1989 TRUST; AND CAPRICORN DEVELOPMENT, INC., Appellants, vs. DAVID F. CHARLES, M.D.; MARGARET B. CHARLES; ASHLEY PLACE CORPORATION A/K/A ASHLEY PLACE, INC, A COLORADO CORPORATION; AND NUVU, INC., A/K/A NU VU, INC., A NEVADA CORPORATION, Respondents.	No. 43036 FILED MAR 30 2009 TRACIE K. LINDEMAN CLERK OF SUPREME COURT BY [signature] DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a property partition matter. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.[1]

Appellants appeal the district court's award of damages, interest, and attorney fees to respondents. The district court based its damages award on a letter from an accountant submitted by respondents that they claimed detailed their damages related to the partition of the properties owned by the parties. The district court awarded attorney fees

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

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under NRS 18.010 and for work that provided a common benefit to the parties during the partition proceedings under NRS 39.480.

Initially, appellants challenge the use of the accountant's letter for determining damages because it was not introduced as evidence during trial. This argument lacks merit, as respondents filed the letter as part of a supplemental trial brief during the trial. The trial was a bench trial, which removes any chance of jury confusion as to the letter's import. Additionally, a review of the trial transcripts show that the district court viewed the participation of respondents in the trial as unnecessary, as the bulk of the partition action had settled prior to the trial[2] and the only remaining issues were the conclusion of selling properties and the determination of any damages. Furthermore, appellants did not raise any objection to or arguments against the use of the letter in district court, and therefore, they may not attempt to do so on appeal. Pope v. Motel 6, 121 Nev. 307, 319, 114 P.3d 277, 285 (2005).

Appellants next assert several arguments regarding the inaccurate determination of damages contained in the accountant's letter relied on by the district court. Appellants did not raise any of these arguments below and therefore we need not consider them on appeal. Id.

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[2]Both parties raised an issue regarding the validity of the settlement agreement. We conclude that these arguments lack merit. Regardless of whether the agreement met all the necessary requirements for validity, it was made valid and enforceable through ratification by the parties' conduct. Merrill v. DeMott, 113 Nev. 1390, 1396-97, 951 P.2d 1040, 1044 (1997).

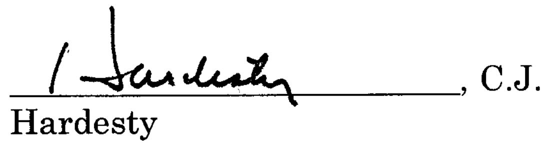
Appellants also argue on appeal that the award of damages and attorney fees was improper because most, if not all, of these amounts were included in the prior settlement agreement in the partition action. Part of the settlement reached between the parties included respondents receiving $39,300 in resolution of all "accounting issues" up to the date of settlement. The term "accounting issues" is ambiguous, and thus the intent of the parties as to what was covered by this agreement is a question of fact. Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 25, ___, 163 P.3d 405, 407 (2007). We will uphold a district court's determination on a question of fact if it is supported by substantial evidence. Appellants bear the burden of showing that the district court's determination is not supported by substantial evidence. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 607, 503 P.2d 9, 13 (1972), superseded in part on other grounds by statute as stated in Countrywide Home Loans v. Thitchener, 124 Nev. ___, 192 P.3d 243 (2008). We conclude that appellants have failed to meet this burden. Appellants failed to provide any evidence to establish that the district court erred in its inherent determination that the settlement agreement did not preclude the damages awarded. Therefore, we affirm the district court's determination and its award of damages and attorney fees.

Finally, appellants dispute the award of attorney fees under NRS 18.010 and for providing a common benefit to the parties under NRS 39.480. We review an award of attorney fees for an abuse of discretion. Mack-Manley v. Manley, 122 Nev. 849, 860, 138 P.3d 525, 533 (2006); Rasmussen v. Thomas, 98 Nev. 216, 221, 644 P.2d 1030, 1034 (1982). Having reviewed the arguments and relevant documents on appeal, we

conclude that the district court did not abuse its discretion. Rasmussen, 98 Nev. at 221, 644 P.2d at 1034.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, C.J.
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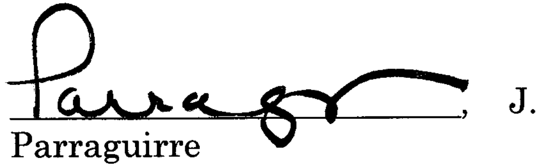

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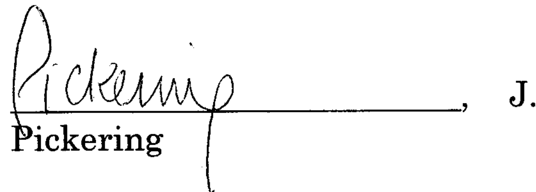

_______________, J.
Pickering

cc: Eighth Judicial District Court Dept. 11, District Judge
Lester H. Berkson, Settlement Judge
T. James Truman & Associates
Peter Clinco Esq.
Deaner, Deaner, Scann, Malan & Larsen
Boies, Schiller & Flexner, LLP
Eighth District Court Clerk