

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN R. BULLIS, INDIVIDUALLY;
AND BULLIS AND COMPANY, CPAS,
LTD., A NEVADA PROFESSIONAL
CORPORATION,
Appellants,
vs.
EVAN L. ALLRED,
Respondent.

No. 43142

FILED

FEB 16 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from two district court orders in a fraud action that denied attorney fees and limited appellants' recovery to the amount of an injunction bond. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

John Bullis provided accounting services to Evan Allred. Bullis sued Allred for unpaid bills, which the parties settled. Before final payment of the settlement, Allred sued Bullis for fraud in the settlement of the first lawsuit and for tortious interference with prospective economic advantage. The district court preliminarily enjoined Bullis from receiving the final settlement payment pending the outcome of the litigation and required Allred to post a \$25,000 bond. The parties are familiar with the remaining facts, and we do not recite them further, except as needed.

After a jury verdict for Bullis on all counts, the district court released the settlement funds to Bullis, limited further recovery to the amount of the injunction bond, and denied his request for attorney fees. We conclude that the district court erroneously limited recovery of costs for the tortious interference claim to the amount of the injunction bond.

We reverse and remand this portion of the case for an apportionment of the costs. We affirm the judgment of the district court in all other respects.

Recovery of costs beyond the amount of the injunction bond

The district court issued a preliminary injunction, enjoining Bullis from receiving the settlement funds. After trial, the injunction was dissolved. Under NRCP 65(c), Bullis can recover “costs and damages” against the injunction bond, but Tracy v. Capozzi limits the amount of damages, costs, and attorney fees that Bullis can recover to the amount of the injunction bond.¹

However, the damages, costs, and attorney fees that a party can recover against an injunction bond are those that are the “natural and proximate consequence of the issuance and enforcement of the [injunction], and no more.”² The opposing corollary is that damages, costs, and attorney fees that are not the natural and probable consequence of the issuance of the bond are not recoverable against the bond, are not limited by the bond, and may be recovered if provided for elsewhere.³

In the present case, the district court was clear that the preliminary injunction was only issued because of its concerns regarding

¹98 Nev. 120, 124-25, 642 P.2d 591, 594-95 (1982). The limitation on costs and attorney fees includes costs and attorney fees expended in litigation for the preliminary injunction as well as for the trial on the merits. Bullis’s argument that limiting recovery of costs conflicts with NRS 18.020 is without merit.

²American Bonding Co. v. Roggen Enters., 109 Nev. 588, 591, 854 P.2d 868, 870 (1993) (quoting Brown v. Jones, 5 Nev. 374, 377 (1870)).

³See id.

fraud on the court. The district court correctly limited Bullis's recovery of his damages, costs, and attorney fees flowing from Allred's claim of fraud on the court to the amount of the injunction bond. However, the claim of fraud on the court does not arise from the same facts as Allred's claim of tortious interference with contract. Bullis and Allred were required to conduct discovery on this claim entirely unrelated to fraud on the court. Therefore, the costs arising from the tortious interference claim are not the "natural and proximate consequence of the issuance ... of the [injunction]." ⁴

We conclude that the costs arising from the tortious interference claim are not limited by the injunction bond.⁵ On remand, the district court may award Bullis his costs arising from the tortious interference claim if it determines that authority exists for such an award. The district court should use its discretion in apportioning costs.⁶ Bullis's recovery of interest and costs arising from the fraud on the court claim are limited by the injunction bond.

⁴Id.

⁵While Bullis's recovery of attorney fees on the tortious interference claim would not be limited either, Bullis does not have any attorney fees to recover as we conclude below that the district court did not abuse its discretion in denying Bullis attorney fees.

⁶See Sandy Valley Assocs. v. Sky Ranch Estate, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

Recovery of attorney fees

The district court also denied Bullis recovery of his attorney fees. This court does not disturb a district court decision granting or denying attorney fees absent an abuse of discretion.⁷

NRS 17.115 and NRCP 68 allow recovery of attorney fees at the district court's discretion if the opposing party rejected an offer of judgment and did not obtain a more favorable judgment. In the present case, Bullis extended Allred an offer of judgment, which Allred refused. The district court then considered the Beattie factors⁸ in exercising its discretion and concluded that "under the circumstances, Bullis' offer was extremely unreasonable in timing and amount" because Allred "had a strong case against Bullis' [sic] that, but for the vicissitudes of trial by jury, should have resulted in a judgment in his favor." Based on our review of the facts, we conclude that the district court's decision to deny attorney fees was not an abuse of its discretion.

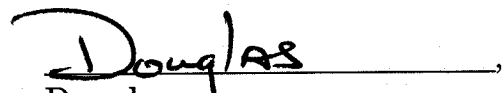
Bullis next argues that the district court erred in not granting him attorney fees based on the language of the engagement contracts, the promissory note, and the deed of trust. The various contracts between the parties do provide for attorney fees in certain situations. However, the action by Allred against Bullis is not an action instituted to collect this note, an action or proceeding purporting to affect the security of the deed

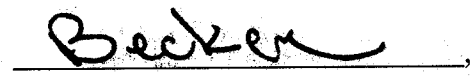
⁷Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995); Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

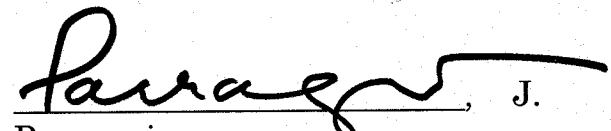
⁸Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

of trust, or an action to collect any outstanding bills.⁹ Bullis's counterclaims are not enough to trigger these provisions. Therefore, we conclude that the district court did not abuse its discretion by refusing to grant Bullis attorney fees. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Douglas

 J.
Becker

 J.
Parraguirre

cc: Hon. Michael P. Gibbons, District Judge
C. Nicholas Pereos, Ltd.
Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd.
Lemons Grundy & Eisenberg
Douglas County Clerk

⁹See Campbell v. Nocilla, 101 Nev. 9, 12, 692 P.2d 491, 493 (1985); First Commercial Title v. Holmes, 92 Nev. 363, 366, 550 P.2d 1271, 1272 (1976).