

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LANGERMANN,  
Appellant,  
vs.  
RONALD EDWARD SHAW, II,  
Respondent.

No. 43209

**FILED**

AUG 11 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a judgment pursuant to a jury verdict in a personal injury action and an order assessing costs. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Robert Langermann filed an action against Ronald Edward Shaw, II and two claims adjusters with Shaw's insurance company after Shaw and Langermann were involved in an automobile accident. The sole issue was the amount of damages, as liability was conceded. The district court granted partial summary judgment and dismissed the two claims adjusters. The case against Shaw was then tried to a jury, and the jury returned a defense verdict. After judgment on the verdict, the district court assessed costs against Langermann because before trial, Shaw had made an offer of judgment that exceeded the jury verdict. Langermann appeals the judgment on the verdict and the assessment of costs. He also challenges the partial summary judgment dismissing the insurance adjusters.<sup>1</sup>

---

<sup>1</sup>See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (noting that interlocutory orders may be challenged in the context of an appeal from the final judgment).

The district court appropriately dismissed Langermann's action against the insurance adjusters. It appears that the sole reason he filed the action against them is that the company refused to pay him the amount of damages to which he felt he was entitled as a result of his accident with Shaw. For the purposes of the motion for partial summary judgment, there was no dispute as to the facts. This court has made clear that a final judgment against the insured is a precondition to an action against a defendant's insurance company for failure to pay.<sup>2</sup> The insurance company employees are in the same position as the company itself and can only be liable for their actions regarding a claim after there has been a judgment against the insured.<sup>3</sup>

The jury heard appropriate evidence in Langermann's case against Shaw, and the jury determined that Shaw had no further liability. The jury is the final fact finder regarding liability and the district court's judgment, based on the jury's verdict, is supported by substantial evidence.<sup>4</sup>

After the judgment on the verdict, Shaw moved for an assessment of attorney fees, costs and post-judgment interest against

---

<sup>2</sup>Roberts v. Farmers Insurance Co., 91 Nev. 199, 200, 533 P.2d 158, 159 (1975).

<sup>3</sup>See Youngs v. Security Mutual Ins. Co., 775 N.Y.S.2d 800 (Ct. App. 2004) (recognizing that an insurance company employee claim adjuster does not owe an insured an independent duty that could be a basis for a tort claim).

<sup>4</sup>See Jeep Corporation v. Murray, 101 Nev. 640, 645, 708 P.2d 297, 300 (1985) (noting that the credibility of evidence is for the jury to decide); Lorenz v. Beltio, 114 Nev. 795, 804, 963 P.2d 488, 494 (1998) (stating that factual findings will not be disturbed on appeal if they are supported by substantial evidence).

Langermann. Shaw presented evidence of two offers of judgment made to Langermann, one for \$8,801.00 and one for \$9,501.00. Under NRS 17.115(4), if the party to whom the offer of judgment is made fails to obtain a more favorable judgment, the district court must order him to pay the party who made the offer that party's taxable costs incurred from the date of filing the complaint, and may order a reasonable sum to cover costs of the services of expert witnesses who are not regular employees of any party actually incurred and reasonably necessary in the preparation of the case for trial by the prevailing party, and reasonable attorney's fees incurred by the party making the offer from the time of the offer.

Rule 68(f)(2) of the Nevada Rules of Civil Procedure also provides that :

If the offeree rejects an offer and fails to obtain a more favorable judgment . . . the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment . . . and reasonable attorneys' fees, if any be allowed, actually incurred by the offeror from the time of the offer.

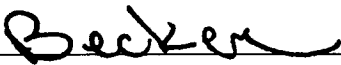
The district court found that Langermann's claim was brought in good faith, that Shaw's offer of judgment was reasonable and in good faith as to timing and amount, and the decision to reject the offer was not grossly unreasonable or in bad faith.<sup>5</sup> In view of the defense verdict in favor of the defendant and the reasonable offers of judgment to Langermann, under NRS 17.115 and NRCP 68, the district court had no choice but to assess costs against Langermann. The district court ordered judgment for costs against Langermann in the amount of \$3,446.73. The district court, in its

---

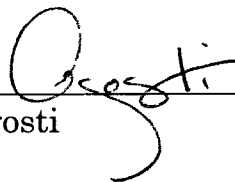
<sup>5</sup>See Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (establishing factors that a district court must consider when awarding fees and costs in response to a rejected offer of judgment).

discretion, refused to award attorney's fees. Under NRS 17.130(2), the judgment draws interest at the statutory rate until the judgment is satisfied. Therefore, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, Sr. J.  
Shearing

  
\_\_\_\_\_, Sr. J.  
Agosti

cc: Hon. Mark R. Denton, District Judge  
Robert Langermann  
Mandelbaum Gentile  
Clark County Clerk

---

<sup>6</sup>Although appellant was not granted leave to proceed in proper person under NRAP 46(b), we have received and considered his documents. We deny appellant's May 5 and 20, 2005 requests for transcripts.