

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPHAEL INBAR,
Appellant,
vs.
ROBERT SHOWALTER AND NINA
SHOWALTER,
Respondents.

No. 45839

FILED

FEB 13 2007

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

ORDER DISMISSING IN PART,
VACATING IN PART AND REMANDING

This is a proper person appeal from a district court judgment dismissing all claims after a bench trial and from a post-judgment order awarding attorney fees in a real estate action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Rephael Inbar placed the property he owned at 8650 W. La Madre Way in Las Vegas, Nevada, on the market in April 2002. While the home had a septic tank, it was described as being connected to the sewer system. Respondents Robert and Nina Showalter, believing the property was connected to the sewer system, contracted to purchase the property. In July 2002, they learned of the septic tank and other differences between the property's description and its actual state. The Showalters declined to accept any of Inbar's offered remedial measures and refused to close in August 2002. Inbar sued the Showalters for specific performance, breach of contract, and breach of the covenant of good faith and fair dealing. The Showalters counter-claimed for breach of contract, breach of the implied covenant of good faith and fair dealing, and implied and negligent misrepresentation. The district court, finding that neither Inbar nor the Showalters were liable on any claims or counter-claims, dismissed the claims and counter-claims with prejudice and

ordered that the escrow company return to the Showalters their \$5,000 earnest money. It subsequently awarded attorney fees to the Showalters. Inbar appeals.

Jurisdiction

Under NRAP 4(a)(1), a notice of appeal must be filed within thirty days after written notice of entry of the appealed order is served. If service is accomplished by mail, NRAP 26(c) provides for an additional three days for filing the notice of appeal.

Here, the district court rendered its judgment on May 23, 2005, and the notice of the judgment's entry was served by mail on May 26, 2005. The district court awarded \$38,000 in attorney fees to the Showalters on July 20, 2005. The notice of that order's entry was served by mail on July 26, 2005. Inbar appealed both orders on August 23, 2005.

As Inbar had only until June 28, 2005, to appeal from the district court's judgment, his August 23, 2005, appeal from the judgment is untimely. Accordingly, because an untimely notice of appeal fails to vest jurisdiction with this court,¹ we dismiss Inbar's appeal from the district court's judgment.

However, Inbar had until August 29, 2005, to appeal from the district court's order awarding the Showalters attorney fees; therefore, Inbar's August 23, 2005, appeal from that order is timely and we have jurisdiction to consider that appeal.


¹Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1381 (1987).

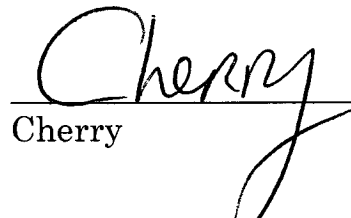
Attorney fees and costs

Under NRS 18.010, attorney fees may be awarded if provided for by contract or statute. Under NRS 18.020, costs are awarded as a matter of course in certain cases. However, regardless of what basis supports a district court order of attorney fees or costs, the district court must state the basis for the award in its order—failing to do so is an abuse of discretion.² In this case, the district court awarded attorney fees and costs without stating in its order any basis whatsoever. Accordingly, we vacate the district court's order awarding attorney fees and costs and remand this matter for further consideration.³

It is so ORDERED


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

²Integrity Ins. Co. v. Martin, 105 Nev. 16, 19, 769 P.2d 69, 70 (1989).

³On remand, depending on the basis used to award attorney fees and costs, additional considerations might include (1) whether there was a prevailing party and (2) whether the attorney fees were reasonable. First, under NRS 18.010(1), the contract in this case might serve as a basis on which to award attorney fees even though it has been rescinded. Mackintosh v. California Fed. Sav., 113 Nev. 393, 405-06, 935 P.2d 1154, 1162 (1997). The contract, NRS 18.010(2), and NRS 18.020 all require a prevailing party. Second, under both NRS 18.010 and the contract, any attorney fees award must be reasonable, which is determined by considering the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969).

cc: Hon. Valerie Adair, District Judge
Howard Roitman, Settlement Judge
Rephael Inbar
Nina Showalter
Robert Showalter
Eighth District Court Clerk