

IN THE SUPREME COURT OF THE STATE OF NEVADA

INTEGRITY ELECTRIC, INC.,  
Appellant,  
vs.  
GARRY HART, AND HARTCO  
CONSTRUCTION, INC.,  
Respondents.

No. 46231

FILED

JUN 07 2007

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

ORDER OF REMAND

This is an appeal from a district court order awarding attorney fees after a bench trial in a contract action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

In August 2004, respondent Garry Hart served an offer of judgment in the amount of \$3,000 on appellant Integrity Electric. Integrity rejected the offer of judgment and proceeded to trial. After a one-day bench trial, the district court awarded Integrity \$2,800 plus costs, attorney fees, and prejudgment interest.

Hart then filed a timely motion seeking attorney fees on the grounds that Integrity rejected a reasonable offer of judgment and subsequently failed to obtain a more favorable judgment at trial. The district court granted Hart's motion and amended its judgment, voiding the initial award of fees and costs to Integrity and issuing an order granting Hart attorney fees in the amount of \$5,000. This appeal followed.

### Standard of review

This court generally reviews a district court's decision regarding attorney fees for an abuse of discretion.<sup>1</sup> However, it is well established that the district court may not award attorney fees absent authority under a statute, rule, or contract.<sup>2</sup> Statutory interpretation presents a question of law, subject to de novo review.<sup>3</sup>

### Discussion

Under NRCP 68 and NRS 17.115, if a party rejects an offer of judgment and subsequently fails to obtain a more favorable judgment at trial, the district court may order the offeree to pay “[r]easonable attorney’s fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment.”<sup>4</sup>

NRS 17.115(5) establishes the procedure for determining whether a party who rejected an offer of judgment failed to obtain a more favorable judgment. In relevant part, NRS 17.115(5) states:

(a) If the offer provided that the court would award costs, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs.

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<sup>1</sup>Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993).

<sup>2</sup>State, Dep't of Human Resources v. Fowler, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993).

<sup>3</sup>Banks v. Sunrise Hospital, 120 Nev. 822, 846, 102 P.3d 52, 68 (2004).

<sup>4</sup>NRS 17.115(4)(d)(3).

(b) If the offer precluded a separate award of costs, the court must compare the amount of the offer with the sum of:

- (1) The principal amount of the judgment; and
- (2) The amount of taxable costs that the claimant who obtained the judgment incurred before the date of service of the offer.

In this case, Hart's offer of judgment unequivocally stated that the \$3,000.00 was to be a lump sum payout and was not to include any additional costs. Therefore, NRS 17.115(5)(b) applies, and the amount of the offer of judgment is to be compared to the sum of the principal amount of the judgment and the amount of pre-offer taxable costs incurred by Integrity.

Integrity filed a memorandum of costs shortly after trial. At a hearing on July 22, 2005, the district court concluded that this initial memorandum was too vague and unsupported to justify an award of costs.<sup>5</sup> The district court then granted Integrity's request to supplement the memorandum of costs and directed counsel to file the amended memorandum by August 1, 2005.

The district court docket entries indicate that on August 1, 2005, Integrity filed an "Amended Memorandum of Costs and Disbursements." Hart's counsel did not file a motion to retax costs.

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<sup>5</sup>The minutes of the July 22, 2005, hearing note that the district court stated that certain of the claimed costs "exceed[ ] the statutory amount, depositions were not detailed and contained no dates." As a result, the district court was "unable to make the determination that [Integrity] beat the offer of judgment."

This amended memorandum detailed over \$2,700.00 in costs Integrity incurred prior to service of the offer of judgment.<sup>6</sup> However, in violation of NRAP 30(c)(1), the copy of the purported amended memorandum of costs included in the appendix does not bear the district court's file-stamp.<sup>7</sup> Accordingly, it is not clear what document the district court considered in determining that Integrity failed to obtain a more favorable judgment.

If the amended memorandum of costs included in appellant's appendix is accurate, it appears that the district court should have, at a minimum, awarded Integrity's claimed costs for the district court clerk's fee for filing the lawsuit and the cost of effecting service of process.<sup>8</sup> The sum of these costs exceeds the \$200 difference between Integrity's recovery at trial and the offer of judgment and would therefore preclude any award of attorney fees to Hart.<sup>9</sup>

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<sup>6</sup>This amended memorandum includes supporting documentation, including cancelled checks, receipts, and invoices itemizing the costs incurred by Integrity prior to the service of Hart's offer of judgment.

<sup>7</sup>NRAP 30(c)(1) states "[a]ll documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below." (emphasis added)

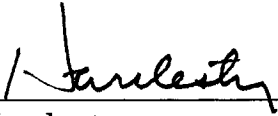
<sup>8</sup>NRS 18.020(2) requires the district court to award taxable costs to the prevailing party in any action "for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500." The definition of "costs" includes, among other things, clerks' fees and fees incurred for service of process. See NRS 18.005(1); NRS 18.005(7).

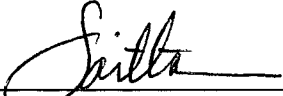
<sup>9</sup>See NRS 17.115(5)(b).

Because it is not clear from the record that the district court had the opportunity to review the amended memorandum contained in the appendix, we can not determine whether the district court abused its discretion in awarding attorney fees. But we also decline to affirm the order awarding fees to Hart, when information before this court indicates that Integrity may well have obtained a more favorable result than Hart's offer of judgment.

Accordingly, we remand this matter for a determination of Integrity's taxable costs based upon a properly filed version of the amended memorandum of costs and any consequent reconsideration of the fee award to Hart. It is so ORDERED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Stephen E. Haberfeld, Settlement Judge  
Nancy F. Avanzino-Gilbert  
Cuthbert E.A. Mack  
Eighth District Court Clerk