

IN THE SUPREME COURT OF THE STATE OF NEVADA

NAUREEN ISANI,  
Appellant,  
vs.  
ELIZABETH A. ROSEBROCK, A/K/A  
ELIZABETH S. ASHLEY,  
Respondent.

No. 46437

**FILED**

OCT 03 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a district court judgment entered after a bench trial in a contract action and an order denying a motion for a new trial. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

In this case, two attorneys, appellant Naureen Isani and respondent Elizabeth S. Ashley, entered into several oral agreements to share office space and develop their respective legal practices. However, after becoming co-tenants, their relationship deteriorated as disputes arose concerning their business-sharing arrangement and fees. Eventually, Ashley sued Isani for, among other things, equitable partition of the lease, and Isani counterclaimed for, among other things, breach of contract, breach of the covenant of good faith and fair dealing, breach of the covenant of cooperation, and breach of the covenant of quiet enjoyment.<sup>1</sup> Following a bench trial, the district court ratified a previous

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<sup>1</sup>Ashley also brought claims for breach of contract, breach of fiduciary duty, breach of the duty of good faith and fair dealing, and negligence. Isani's counterclaim also sought damages for intentional or

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ruling, which had granted Ashley's request for equitable partition of the lease, found for Isani on her breach-of-contract counterclaim against Ashley, and dismissed all other claims with prejudice.

Isani now appeals and argues that the district court (1) erred as a matter of law when it granted equitable partition of the lease without joining the landlord as a party, (2) erred when it failed to grant her breach of contract damages, (3) abused its discretion when it failed to grant her further damages for breach of the lease agreement, and (4) abused its discretion when it failed to award her attorney fees and costs. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

Equitable partition of the lease

Isani argues that the district court erred as a matter of law when it failed to join the landlord, American Exchange, Inc., to Ashley's action for equitable partition. Isani contends that the district court was obligated to join American Exchange sua sponte because American Exchange was a necessary party to the litigation. We disagree.

Whether a party is necessary and indispensable pursuant to NRCP 19(b) is a question of law that is reviewed de novo.<sup>2</sup> This court has determined that "a partition action is an equitable one in which the courts

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negligent misrepresentation, interference with business relations, trespass to chattels/conversion, and negligence.

<sup>2</sup>See Clark v. Lubritz, 113 Nev. 1089, 1093, 944 P.2d 861, 864 (1997).

will apply the broad principles of equity.”<sup>3</sup> Furthermore, an absent party is not necessary to an action when the absent party’s interests are not affected by the action and the parties to the action may be afforded complete relief.<sup>4</sup>

We determine that American Exchange was not a necessary party to the action. Under the lease, Isani is entitled to sue Ashley for any cause of action brought pursuant to the lease agreement by American Exchange against Isani. Accordingly, the suit between Isani and Ashley did not alter American Exchange’s interests under the lease. American Exchange retained its right to sue Isani and Ashley, and Isani had the right to sue Ashley for any breach of the lease agreement after the partition ruling. Thus, as American Exchange’s interests were not affected by the action, the district court was able to afford the parties complete relief without joining American Exchange. Although Isani might have had to sue Ashley to recover any money Isani was required to pay American Exchange for a breach of the lease agreement, this added burden on Isani is permissible in light of the district court’s ability to “apply the broad principles of equity” in a partition proceeding.<sup>5</sup> Accordingly, we determine that the district court did not abuse its discretion when it failed to join American Exchange to Ashley’s action for equitable partition.

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<sup>3</sup>Kent v. Kent, 108 Nev. 398, 402, 835 P.2d 8, 10 (1992).

<sup>4</sup>See Potts v. Vokits, 101 Nev. 90, 92, 692 P.2d 1304, 1306 (1985).

<sup>5</sup>Kent, 108 Nev. at 402, 835 P.2d at 10.

With regard to the district court's ultimate decision to partition the lease, a show cause hearing was held, at which time the district court instructed that Isani should be prepared to offer evidence that partition of the lease would be inequitable and unfair. During that hearing, the district court asked Isani, "if the court were to give exclusive possession to [Ashley] pendente [lite], so to speak, you'd have no problem with that, so long as, A, she paid the total rent and, B, reimbursed you your security deposit?" Isani responded, "correct," so long as the district court ordered Ashley to pay rent to relieve Isani of her obligation. Thereafter, the district court awarded the premises to Ashley, pendente lite, according to the terms that the district court offered to Isani during the hearing. The lease expired four months later, well before Ashley's suit concluded. Because Isani assented to the terms of the temporary partition proposed by the district court, we conclude that Isani waived any argument challenging the district court's partition.

Breach of contract

Isani argues that the district court's finding that Ashley did not breach the parties' billable hour agreement is not supported by substantial evidence. Isani asserts that because the agreement called for Ashley to provide Isani 100 hours of contract legal services every month and Ashley provided her with legal work only during the first two months, Ashley breached the agreement.

This court has consistently stated that findings of fact will not be disturbed so long as they are supported by substantial evidence.<sup>6</sup>

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<sup>6</sup>Bedore v. Familian, 122 Nev. 5, 9-10, 125 P.3d 1168, 1171 (2006).

“Substantial evidence is described as evidence that a reasonable person could accept as adequately supporting a conclusion.”<sup>7</sup> Additionally, “[a] district court’s determination that [a] contract was or was not breached will be affirmed unless clearly erroneous, but the district court’s interpretation of the meaning of contractual terms is subject to independent appellate review.”<sup>8</sup>

In this case, the district court found that “Isani failed to meet her burden of proof on the issue of whether or not she had a claim for unpaid contract legal work.” The district court determined that although Ashley agreed to provide Isani with 100 hours of billable contract legal work per month, at a rate of at least one half of Ashley’s insurance defense rate of \$125.00 per hour, Isani did not prove that Ashley billed clients for work that Isani actually performed without paying Isani for the work. Additionally, the district court determined that Isani did not prove that Ashley failed to provide her with 100 hours of billable contract work per month.

During trial, Isani admitted that she did not provide the district court with any completed work product or any memoranda referencing completed work product. Additionally, Ashley testified that during a March meeting, two months after the agreements were reached, Isani informed Ashley that she had not completed the work that Ashley had given her. Ashley also testified that during the March meeting, Isani

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<sup>7</sup>Flamingo Hilton v. Gilbert, 122 Nev. \_\_\_, \_\_\_, 148 P.3d 738, 740 (2006).

<sup>8</sup>Sheehan & Sheehan v. Nelson Malley and Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005).

stated that she no longer wanted to work for Ashley. Ashley testified that Isani "only actually worked one month and submitted one invoice in handwriting for which she was paid in full." Thus, we determine that the record contains substantial evidence to support the district court's conclusion that Isani failed to prove that Ashley did not provide Isani with 100 hours of billable contract work per month.

However, Ashley admitted during trial that she did not pay Isani the full rate of payment agreed upon by the parties. Because the district court found that a contract existed for 100 billable contract hours per month at a rate of half of Ashley's hourly rate, or \$62.50 per hour, the agreement requires a payment of \$62.50 per hour. During trial, Ashley admitted that she had paid Isani \$261.00 or \$30 per hour for 8.7 hours. Thus, by her own admission, Ashley failed to pay Isani the full \$62.50 per hour as required by the agreement. Accordingly, we determine that the district court abused its discretion when it failed to award Isani an additional \$32.50 per hour for the 8.7 hours' worth of legal services that Ashley admitted Isani performed for her, or \$282.75.

#### Breach of the lease agreement

The district court determined that Ashley breached the lease agreement and Isani suffered damages in the amounts of \$400 for her security deposit, \$54 for moving truck rental, \$140 for moving labor, and \$200 for a lock and lever. Additionally, the district court's findings of fact state that between February 16 and October 15, 2002, Ashley (1) allowed employees and vendors to use Isani's office, (2) personally used Isani's office, (3) removed items from Isani's office, (4) installed surveillance equipment in the leased premises, (5) moved Isani's furniture, (6) installed locks on the file room door without providing Isani with a key, and (7) installed locks on the phone cabinet that contained Isani's phone system.

Isani argues that she is entitled to damages for the \$800 monthly lease payments she made between June 3 and October 15, 2002, because Ashley's actions were inconsistent with the covenant of quiet enjoyment and prevented Isani from using the leased space as a law office. We disagree.

This court has determined that "the district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of discretion."<sup>9</sup> The record reflects that the district court's finding that Isani "continued to exercise some dominion and control" between June 3 and October 15, 2002, is supported by substantial evidence. During trial, Isani admitted that after Ashley rejected her offer to assume the lease, Isani decided to make use of her possessory interest in the space by operating her fiancé's business there. Isani even placed a lock on her office door to keep Ashley from using it.

Accordingly, we determine that the district court did not abuse its discretion when it failed to award Isani damages for Ashley's actions between February 16 and October 15, 2002, because Isani had at least some control over the premises during that time. In addition, we determine that Ashley did not breach the covenant of quiet enjoyment with Isani because the written lease agreement was only between the parties in this case and American Exchange. Because the written agreement was not between Ashley and Isani, they did not make any promises to each other under the written lease agreement.

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<sup>9</sup>Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997).

Costs and attorney fees

Costs

Isani asserts that she was the prevailing party in this action and is therefore entitled to costs under NRS 18.020(3). Isani contends that because she received a judgment for \$794.00 against Ashley, she is entitled to costs as a matter of law.

Pursuant to NRS 18.020(3), “[c]osts must be allowed . . . to the prevailing party against any adverse party against whom judgment is rendered . . . [i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” Thus, NRS 18.020(3) mandates an award of costs to the prevailing party where more than \$2,500 in damages is sought in a case. This court has not conclusively determined what the term “prevailing party” means under NRS 18.020. However, this court has determined that a plaintiff is the prevailing party for attorney fees purposes if she “succeeds on any significant issue in litigation which achieves some of the benefit . . . sought in bringing the suit.”<sup>10</sup>

The district court correctly found that neither party prevailed in this case because neither party succeeded on any significant issue in the case. Although the district court applied the equitable remedy of partition to appease the parties and awarded Isani damages as a result of the partition, Isani opposed the partition and was unable to prove her breach

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<sup>10</sup>See Sack v. Tomlin, 110 Nev. 204, 214, 871 P.2d 298, 305 (1994) (quoting Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989)); see also Chowdhry v. NLVH, Inc., 109 Nev. 478, 486, 851 P.2d 459, 464 (1993).



of contract claims. Accordingly, we determine that the district court correctly determined that an award of costs under NRS 18.020(3) was inappropriate in this case.

Attorney fees under the lease agreement

Isani argues that, under section 31 of the lease agreement, she is entitled to attorney fees as a prevailing party in the action. Section 31.1 of the lease agreement states, in part, that

If either party . . . named herein bring[s] an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit . . . .

Isani asserts that because this suit is “clearly an action to enforce the terms of the agreement and declare rights under the agreement,” she is entitled to attorney fees as the prevailing party in this action. This court has determined that “a contract’s interpretation is a legal question subject to de novo review.”<sup>11</sup> However, “[t]he decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a ‘manifest abuse of discretion.’”<sup>12</sup>

Isani is not entitled to attorney fees under the lease agreement for two reasons. First, because the district court properly determined that “[t]here [were] no winners in this case,” Ashley is clearly

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<sup>11</sup>Diaz v. Ferne, 120 Nev. 70, 73, 84 P.3d 664, 666 (2004).

<sup>12</sup>Kahn v. Morse & Mowbray, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (quoting County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982)).

not “the losing party as fixed by the [district] court.” Second, because the lease agreement fixes rights and obligations between the lessor and the lessee, the lease agreement does not create obligations between the two parties who constitute the lessee under the agreement. Accordingly, we determine that the district court properly concluded that Isani is not entitled to an award of attorney fees under the lease agreement.

Attorney fees under NRS 18.010(2)

NRS 18.010(2)(b) permits an award of attorney fees when a claim is brought without reasonable grounds or to harass the prevailing party. The statute also directs the court to “liberally construe” the statute to award fees “in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.”

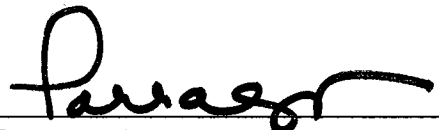
Isani asserts that “the facts in this action show that [Ashley] intended this action solely to harass [her] and [Ashley] did nothing to prove up her four causes of action against [her].” Isani asserts that, because all but one of Ashley’s claims were dismissed with prejudice, she is entitled to attorney fees. Additionally, Isani contends that because she offered Ashley the option of assuming the lease in its entirety, Ashley did not actually win with respect to the issue of equitable partition.

However, Isani did not materially prevail on her counterclaims and was awarded damages only in conjunction with the district court’s grant of Ashley’s claim seeking equitable partition. Additionally, the district court specifically stated that there were no winners in this case and that an acrimonious relationship existed where “[t]he parties clearly were unable to continue to share the space.” We


conclude that because the parties could not share the space and because Ashley prevailed in her request for equitable partition, her suit was brought with reasonable grounds and the district court did not abuse its discretion in declining to award attorney fees under NRS 18.010(2).

Accordingly, we affirm the majority of the district court's order, reversing only that portion of the order pertaining to breach of contract with respect to Isani's payment, and we remand this matter so that the district court may amend the judgment to award Isani an additional \$282.75 based on the 8.7 hours of contract legal work she provided for Ashley.

It is so ORDERED.

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

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

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

cc: Hon. Mark R. Denton, District Judge  
Howard Roitman, Settlement Judge  
David K. Rosequist  
Elizabeth S. Ashley  
Eighth District Court Clerk