IN THE SUPREME COURT OF THE STATE OF NEVADA

ONE BEACON INSURANCE COMPANY, A DELAWARE FOREIGN LIMITED LIABILITY COMPANY,
Appellant/Cross-Respondent,
vs.
POLLY BARRETT,
Respondent/Cross-Appellant.

No. 46917

FILED

JUN 30 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross-appeal from a district court judgment on a jury verdict in a contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On appeal, appellant/cross-respondent One Beacon Insurance Company argues that the district court erred by failing to instruct the jury that clients may terminate their attorneys at will and that there is insufficient evidence to support the jury verdict.

We conclude that the district court did not err when it refused to submit the termination instruction and that substantial evidence supports the jury verdict.

On cross-appeal, respondent/cross-appellant Polly Barrett argues that the district court erred by dismissing her punitive damages claim and denying her post-judgment interest on the district court's pre-judgment interest award.

We conclude that the district court erred when it dismissed Barret's punitive damages claim, as the district court employed the wrong legal standard when it considered whether to submit the claim to the jury. We further conclude that the district court erred by denying Barret's post-

judgment interest on her pre-judgment interest award. Accordingly, we reverse and remand for further proceedings regarding Barrett's punitive damages and post-judgment interest claims.

The parties are familiar with the facts, and we do not recount them here except as pertinent to our disposition.

Jury instructions

In Bass-Davis v. Davis, we held that "[t]he district court has broad discretion to settle jury instructions, and its decision to give or decline a proposed instruction is reviewed for an abuse of that discretion." 122 Nev. 442, 447, 134 P.3d 103, 106 (2006). However, we also recognized that "'a party is entitled to have the jury instructed on all of [its] case theories that are supported by the evidence.'" Id. (quoting Atkinson v. MGM Grand Hotel, Inc., 120 Nev. 639, 642, 98 P.3d 678, 680 (2004)).

In this case, One Beacon sought a jury instruction stating that clients may terminate their attorneys at any time, with or without cause. One Beacon argues that the district court erred by failing to provide such an instruction. We disagree.

The evidence in this case and the theories presented support a finding of liability based on One Beacon's failure to adequately and timely inform Barrett of its decision not to provide her with One Beacon case files. Thus, liability here is not based on the termination of the attorney-client relationship but instead on failure to provide proper notification of that termination. Accordingly, the district court did not abuse its discretion in refusing the jury instruction.

Jury verdict

This court reviews jury verdicts for substantial evidence. Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3d 43, 46 (2000). "Substantial evidence is that which 'a reasonable mind might accept as adequate to

support a conclusion.'" Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

Here, we conclude that substantial evidence supports the jury verdict. Barrett offered her own testimony in addition to that of several supporting witnesses to bolster the claims that One Beacon made a definite promise upon which Barrett detrimentally relied and that Randy Bowers had apparent authority to assign One Beacon cases. We additionally conclude that the testimonial evidence presented was sufficient to support claims of intentional misrepresentation and fraudulent concealment.

We also conclude that there is substantial evidence to support the damage award. Both parties agreed that damages should be measured by lost profits and further stipulated to Barrett's expert's loss analysis report being admitted into evidence. That report estimated the measure of damages that Barrett incurred based on various assumptions, including the number of case files, working hours, revenues, salaries, operating costs, and profit. Based on the report, Barrett's expert opined that lost profits ranged from $950,477 to $1,355,397. One Beacon's expert criticized the report, however, testifying that the report was flawed with respect to the mitigation calculations and the assumptions. Thus, One Beacon's expert determined lost profits to be between $0 and $177,499. Because the report was admitted into evidence for the jury's review, and the jury heard both experts' detailed testimony and opinions, we conclude that the jury's total verdict of $511,000 is supported by substantial evidence. Both the report and testimony provide a basis by which the jury could calculate damages. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20,

20 (1981) (stating "where . . . there is substantial evidence to support the jury's verdict, it will not be disturbed on appeal).

Punitive damages

Barrett argues that the district court applied the wrong legal standard when deciding whether to submit her punitive damages claim to the jury. We agree.

Whether a district court applied the correct standard of law is a legal question subject to de novo review. Milton v. State, Dep't of Prisons, 119 Nev. 163, 164, 68 P.3d 895, 895 (2003).

Here, the district court granted One Beacon's motion to dismiss Barrett's punitive damages claim, stating that One Beacon's conduct was not "extreme or outrageous conduct" rising to the level of a punitive damages claim. The "extreme or outrageous conduct" standard, however, is the common law standard to evaluate claims of intentional infliction of emotional distress. See, e.g., Kahn v. Morse & Mowbray, 121 Nev. 464, 478, 117 P.3d 227, 237 (2005).

The proper standard by which to evaluate a punitive damages claim is found in NRS 42.005(1). Under that section, punitive damages are appropriate when there is "clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied." Id. We conclude that the district court erred by failing to employ this standard. Moreover, we conclude that the facts of this case warrant further review and judicial findings under Nittinger v. Holman, 119 Nev. 192, 69 P.3d 688 (2003).

In Nittinger, we held that:

> "[p]unitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if, (a) the principal or managerial agent authorized the doing and the

> manner of the act, or (b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or (d) the principal or a managerial agent of the principal ratified or approved the act."

Id. at 195, P.3d at 691 (quoting Restatement (Second) of Torts § 909 (1979)). Thus, before punitive damages can be awarded in this case, it must be determined whether the relationship between Randy Bower and One Beacon is such that One Beacon can be held liable for punitive damages stemming from Randy Bower's actions.

Accordingly, we reverse the district court's ruling dismissing Barrett's punitive damages claim and remand to the district court to review Barrett's punitive damages claim using the correct legal standard and in light of Nittinger.

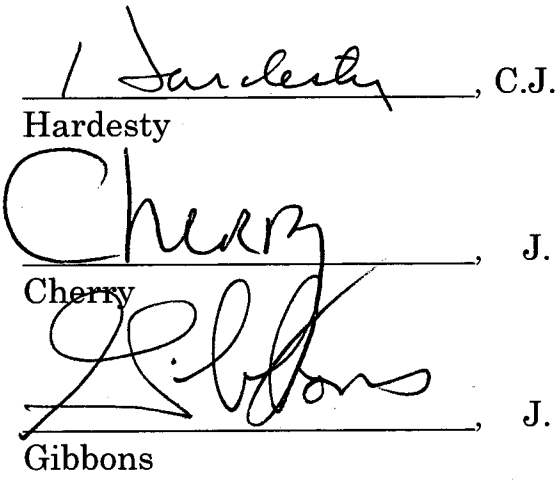
Post-judgment interest

Barrett claims that she is entitled to post-judgment interest on her pre-judgment interest award. We agree. We review challenges to interest awards for abuse of discretion. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 671, 137 P.3d 1110, 1127 (2006).

In Uniroyal Goodrich Tire v. Mercer, we held that the interplay between NRS 17.130 and NRS 18.120 requires that post-judgment interest accrue on pre-judgment interest. 111 Nev. 318, 325, 890 P.2d 785, 790 (1995), superseded by statute as stated in RTTC Communications v. Saratoga Flier, 121 Nev. 34, 110 P.3d 24 (2005) (with respect to unapportioned offers of judgment). Therefore, we conclude that the district court abused its discretion in this case by preventing the accrual of post-judgment interest on pre-judgment interest. Consequently,

we reverse the district court ruling on the judgment interest and remand for recalculation of interest under Uniroyal. 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.



_____, C.J.
Hardesty

_____, J.
Cherry

_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Stephen E. Haberfeld, Settlement Judge
Lewis & Roca, LLP/Las Vegas
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk