IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAN SELLS, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR STEPHANIE SELLS, A MINOR; AND JOSEPHINE SMITH AS GUARDIAN AD LITEM FOR DEREK SMITH,
Appellants,
vs.
RON JACOBSEN AND ANTHONY ARMSTRONG,
Respondents.

No. 46985

FILED

SEP 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

In March 2002, appellant Joan Sells' vehicle, in which she, her daughter appellant Stephanie Sells, and her nephew appellant Derek Smith were sitting, was struck from behind by respondent Ron Jacobsen's permissive driver, respondent Anthony Armstrong. Appellants were diagnosed with and treated for injuries, and they filed suit against respondents in district court as a result.

As appellants' complaint had a probable jury award of less than $40,000, the case was assigned to the court-annexed arbitration program.[1] Thereafter, respondents served an offer of judgment in the

[1]NAR 3(A) (2002).

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amount of $2,500 per appellant, for a total of $7,500. Appellants rejected the offer and proceeded to arbitration. The arbitrator found in favor of appellants and awarded $4,865.25 to Joan, $4,820.15 to Stephanie, and $6,363.00 to Derek for past medical expenses, pain, and suffering. Additionally, the arbitrator awarded appellants $2,124.88 in costs and prejudgment interest, for a total award of $18,173.28. Thereafter, although appellants were willing to accept the award, respondents requested a trial de novo.

The district court granted respondents' unopposed request and the case entered the short trial program.[2] Judgment was entered on the verdict in favor of Joan Sells for $187.25, Stephanie Sells for $242.15, and Derek Smith for $150.00. Respondents then moved under NRS 17.115 and NRCP 68, for attorney fees and costs, on the grounds that appellants had rejected a reasonable offer of judgment and subsequently failed to obtain a more favorable judgment at trial. Appellants filed an opposition, arguing that under the factors set forth in Beattie v. Thomas,[3] the award of attorney fees and costs was not appropriate in this case. The district court, however, granted respondents' motion and awarded them $5,000 in attorney fees and $1,253.16 in costs. This appeal followed.

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[2]NSTR 4(a)(1) (requiring participation in the short trial program of all cases that are subject to the mandatory court-annexed arbitration program in which a party has filed a request for a trial de novo).

[3]99 Nev. 579, 668 P.2d 268 (1983).

On appeal, appellants argue that the district court abused its discretion when it awarded respondents attorney fees and costs because it failed to consider the Beattie factors before making its award.[4] We agree and remand this matter to the district court for a proper determination applying the Beattie factors.

NRS 17.115(4) and NRCP 68(f) authorize an award of attorney fees and costs to a party making an offer of judgment if the offeree rejects an offer and fails to obtain a more favorable judgment. Before making such an award, however, the district court must first evaluate the four Beattie factors: (1) whether the plaintiffs' claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiffs' decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.[5]

If the district court fails to enter express findings regarding the Beattie factors, the award may nevertheless be upheld if the record

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[4]Appellants argue that it is inappropriate to award respondents attorney fees and costs related to trial because it was respondents who rejected the arbitration award and requested a trial de novo, thereby incurring those additional expenses after arbitration. That argument, however, is more appropriately addressed by the district court, on remand, in its consideration of the Beattie factors.

[5]See id. at 588-89, 668 P.2d at 274; see also Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 251, 955 P.2d 661, 672 (1998).

demonstrates that the factors were considered.[6] Such a consideration may be gleaned from the record, for instance, when the parties extensively argued the factors, the judge stated that he or she considered those arguments, and there was substantial evidence to support the award under NRS 17.115 and NRCP 68.[7]

Here, the record does not suggest that the district court considered the Beattie factors in making its determination to award respondents fees and costs. While appellants raised each of the Beattie factors in their opposition to respondents' application for fees and costs, neither respondents nor the district court addressed their arguments. The district court ruled on respondents' application for fees and costs without a hearing, and no findings relative to the Beattie factors appear in the court's minutes. Nor did the district court mention the Beattie factors in its written order. Consequently, the record provides no evidence that the district court considered the Beattie factors in its decision to award attorney fees and costs.

In Wynn v. Smith,[8] we repeated our preference for explicit findings regarding the Beattie factors, and we commented that a district

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[6]Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995), superceded on other grounds by statute and rule, as recognized in RTTC Communications v. Saratoga Flier, 121 Nev. 34, 110 P.3d 24 (2005).

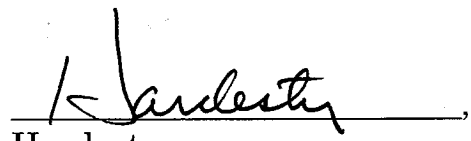
[7]Id.

[8]117 Nev. 6, 16 P.3d 424 (2001).

court's failure to make explicit findings will be an abuse of discretion unless "the record clearly reflects that the district court properly considered the Beattie factors."[9]

As there is no such reflection in the record here, we reverse the district court's order awarding respondents attorney fees and costs, and we remand this case for further proceedings consistent with this order.

It is so ORDERED.



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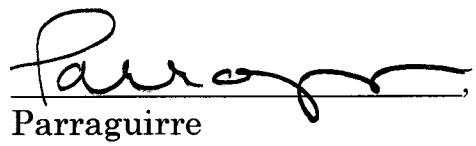

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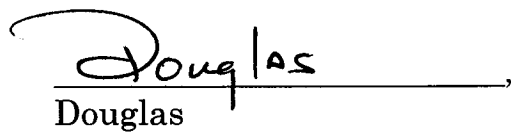
Parraguirre



_____, J.
Douglas

cc: Hon. Kenneth C. Cory, District Judge
Eugene Osko, Settlement Judge
Victor Lee Miller
Prince & Keating, LLP
Eighth District Court Clerk

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[9]Wynn v. Smith, 117 Nev. at 13, 16 P.3d at 428-29; see also Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994) (cautioning the trial bench to provide written support under Beattie for fee awards made pursuant to offers of judgment).