

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
TESTAMENTARY TRUST OF ALLAN
Y. WU, A/K/A ALLAN WU.

No. 47324

ELVIN WU, INDIVIDUALLY AND AS
TRUSTEE OF THE
TESTAMENTARY TRUST OF ALLAN
Y. WU, A/K/A ALLAN WU,

Appellant,

vs.

JENNIE LOWE; KAHN LOWE; AND
WILLIAM CHIN,
Respondents.

FILED

JUN 08 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding attorney fees and requiring a trustee to reimburse the trust. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant contends that the district court's determination that he should reimburse the trust in the amount of \$5,000 is not supported by substantial evidence, that respondents were not entitled to an award of costs because they did not prevail and because their memorandum of costs was improper, and that the district court erred in awarding respondents \$20,000 in attorney fees because no authority supports such an award in this case and because the award is excessive. We disagree, and so we affirm the district court's order.

First, NRS 163.115(1)(c) provides that a trustee who has committed a breach of trust may be ordered to redress the breach by the payment of money or otherwise. Here, the record supports the district court's finding that appellant breached his fiduciary duties to the trust and that, as a consequence, he owed the trust \$5,000.

Second, respondents prevailed in their efforts to force appellant (1) to properly account for his handling of the trust, (2) to sell trust property at a fair price rather than appellant's planned discounted price to insiders, and (3) to disgorge funds improperly received by appellant. Accordingly, we conclude that the district court properly determined that respondents were prevailing parties entitled to costs under NRS 18.020.¹ Also, we perceive no abuse of discretion in the cost items awarded by the district court.²

Finally, we conclude that an attorney fee award was permissible in this case,³ and that the district court did not abuse its discretion in either the fact or amount of the fee award.⁴

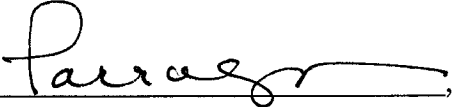
¹See Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989) (defining "prevailing party" as one who "succeeds on any significant issue in litigation which achieves some of the benefit . . . sought in bringing the suit" (internal quotation omitted)).

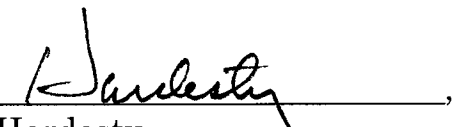
²See Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 565-66 (1993) (citing NRS 18.020(3)).


³See NRS 163.115(1)(c); Buder v. Sartore, 774 P.2d 1383 (Colo. 1989) (holding that despite absence of specific attorney fee provision in Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, and despite general "American rule" that attorney fees may not be awarded absent specific statutory authorization, attorney fee award is appropriate in breach of fiduciary duty action to make plaintiff whole, and adopting the
continued on next page . . .

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Steven R. Kosach, District Judge
Carolyn Worrell, Settlement Judge
William G. Rogers
Robison Belaustegui Sharp & Low
Washoe District Court Clerk

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reasoning of the Colorado Court of Appeals in Heller v. First Nat. Bank of Denver, N.A., 657 P.2d 992 (Colo. Ct. App. 1982), which announced the rule in a breach of trust case); Feinberg v. Adolph K. Feinberg Hotel Trust, 922 S.W.2d 21 (Mo. Ct. App. 1996) (affirming an award of attorney fees on equitable grounds in breach of trust action, including assessment against the trustee personally); Matter of Wills of Jacobs, 370 S.E.2d 860, 865 (N.C. Ct. App. 1988) (stating the general common law principles that “a trustee’s breach of trust subjects him to personal liability” and that payment of fees and costs incurred in bringing the action are a proper assessment of damages in a breach of trust action).

⁴Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994) (noting that a district court’s award of attorney’s fees will not be overturned on appeal absent a manifest abuse of discretion).