

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHODES DESIGN & DEVELOPMENT
CORPORATION, A NEVADA
CORPORATION, D/B/A RHODES
HOMES,
Appellant,
vs.
STATE INSULATION & DRYWALL, A
NEVADA CORPORATION,
Respondent.

No. 47619

FILED

AUG 17 2007

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

ORDER OF AFFIRMANCE

This is an appeal, following remand by this court, from a district court order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Last year, we issued an opinion arising from the same district court action involved in this appeal.¹ In that en banc opinion, we reversed the district court's order granting attorney fees and costs under NRS 17.115 and NRCP 68 to Rhodes Design & Development Corp., and we gave instructions for the district court to follow on remand in determining whether State Insulation & Drywall had obtained a more favorable result than Rhodes's offer of judgment. The record in the prior appeal indicated that, in its district court motion for attorney fees, Rhodes had itself included prejudgment interest on the judgment amount in arguing that State had failed to obtain a better result than Rhodes's offer of judgment. Part of our instructions to the district court was to include prejudgment

¹See State Drywall v. Rhodes Design & Dev., 122 Nev. 111, 127 P.3d 1082 (2006).

interest, not only on the judgment amount, which Rhodes had already included in its own calculations, but on the undisputed amounts that Rhodes paid prior to trial. Rhodes did not petition for rehearing.

On remand, the district court followed our instructions in calculating whether State obtained a more favorable result than Rhodes's offer of judgment, determined that State had obtained a more favorable result, and granted State attorney fees and costs under the mechanic's lien statutes. Rhodes appeals, arguing that our opinion last year was unconstitutional because it violated the separation of powers doctrine and that this court improperly interpreted NRS 17.115 to permit the inclusion of prejudgment interest in a comparison of a judgment and an offer of judgment.

We decline to consider Rhodes's arguments in this successive appeal. "The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same."² Rhodes does not contend that any facts in this matter are different from last year, but instead relies on this court's statement that "a court of last resort has limited discretion to revisit the wisdom of its legal conclusions when it determines that further discussion is warranted."³ We are not persuaded that any "further discussion is warranted" concerning Rhodes's arguments, when Rhodes failed to assert any objection to including prejudgment interest in the NRS 17.115 calculation until after this court's

²Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001) (quoting Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)).

³Id. at 885, 34 P.3d at 535-36.

opinion was issued, and particularly when Rhodes failed to seek rehearing of that opinion.

As Rhodes makes no arguments concerning the merits of the district court's award of attorney fees and costs to State, and as we decline to revisit our prior opinion at this time, we

ORDER the judgment of the district court AFFIRMED.⁴

Maupin, C.J.
Maupin

Hardesty, J.
Hardesty

Douglas, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Thomas J. Tanksley, Settlement Judge
Law Offices of Corby D. Arnold
Gibbs, Giden, Locher & Turner, LLP
Eighth District Court Clerk

⁴Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.