


IN THE SUPREME COURT OF THE STATE OF NEVADA

NHU THI TRAN, AN INDIVIDUAL,
Appellant,
vs.
NEVADA POWER COMPANY, A
NEVADA CORPORATION,
Respondent.

No. 47850

FILED

MAY 07 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court order granting a motion for judgment as a matter of law in a real property action and awarding costs and attorney fees. Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant Nhu Thi Tran purchased certain real property from the state at a public auction. Following this purchase, respondent Nevada Power Company (NPC) claimed an unrecorded easement across the property. Tran then brought an action to quiet title. During pre-trial proceedings, Tran conceded that NPC owned an easement across her property. As a result, the district court concluded that the only issue remaining for trial was the easement's scope. Following Tran's case-in-chief, NPC moved for judgment as a matter of law. The district court granted NPC's motion, concluding that NPC owned an 84-foot easement across the property in question. This appeal followed.

On appeal, Tran ignores her previous concession regarding the existence of an easement and instead argues that NPC does not own a possessory interest in her property. Tran also contends that the district court abused its discretion in awarding attorney fees to NPC under NRCP 68. We disagree in both respects and therefore affirm the judgment of the

district court. The parties are familiar with the facts and we do not recount them except as necessary to our disposition.

Easement

Tran argues that NPC does not own a possessory interest in her property. During proceedings before the district court, however, Tran's counsel stated that NPC "has some equitable property interest in the easement right in the property" and added that "prior to filing the lawsuit, [he] sent [NPC] a letter and said, look, you've got this easement . . . [i]t's excessive. Please do something about it." Based on Tran's concession, the district court determined that NPC owned an easement over the subject property but that an issue of fact remained "as to the width of the easement, the uses permitted to [Tran] in the easement area, and what, if any, liability and damages exist for [Tran's] remaining causes of action."

On appeal, Tran retreats from her concession and challenges the easement's existence. Having reviewed the record, however, we conclude that Tran's concession supports the district court's judgment, and that Tran waived her right to challenge the easement's existence.¹

¹See Merrill v. DeMott, 113 Nev. 1390, 1400, 951 P.2d 1040, 1046 (1997) (recognizing that concessions involving the intentional relinquishment of a known right constitute a waiver). This remains true despite the state's apparent failure to satisfy NRS 322.060.

Separately, Tran's primary argument in her opening brief is that the district court erred in finding a prescriptive easement in NPC's favor. She does not further this argument in her reply brief, however, presumably because the district court did not enter judgment on this basis and NPC

continued on next page . . .

Attorney Fees

Tran contends that the district court abused its discretion in awarding attorney fees to NPC because she obtained a favorable judgment at trial when the district court reduced NPC's easement to 84 feet (from 150 feet) after she rejected NPC's offer of judgment. Alternatively, Tran argues that even if she failed to obtain a favorable judgment at trial, it was reasonable for her to continue to litigate the scope of NPC's easement because the district court's pre-trial order granting partial summary judgment specifically stated that an issue of fact remained with respect to the width of the easement and NPC's liability on her cause of action for trespass. Finally, Tran asserts that the district's award of \$25,000 in attorney fees was unreasonable.

Having reviewed the record, we conclude that the district court did not abuse its discretion in awarding attorney fees.² NPC served an offer of judgment in the amount of \$30,000, which would have also allowed Tran "to use the easement area for any purpose which [did] not interfere with [NPC's] electrical practices and the National Electrical

... continued

has repeatedly conceded that it does not possess a prescriptive easement across Tran's property. Thus, Tran's argument on this issue fails.

²Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983); Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 251, 955 P.2d 661, 672 (1998); see also Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1049-51, 881 P.2d 638, 642-44 (1994) (recognizing that this court will affirm an award of attorney fees where the record reflects that the district court considered the Beattie factors, even if the court does not expressly discuss them).

Safety Code,” even after Tran conceded that an easement existed. Ultimately, Tran failed to obtain any monetary damages. Thus, the district court did not abuse its discretion in determining that NPC’s offer was reasonable and that Tran was unreasonable in proceeding to trial after conceding that an easement existed.

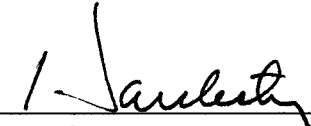
Additionally, the amount of fees awarded was reasonable. Despite NPC’s initial request for \$57,853.75 in fees, the district court awarded less than half of that amount. Indeed, the record demonstrates that the district court carefully examined NPC’s detailed calculations and determined that the requested fees included certain duplications, eventually reducing that request by more than \$30,000. Accordingly, we affirm the district court’s award of \$25,000 in attorney fees to NPC.³


³Separately, Tran argues that this court should reverse the award of attorney fees because NPC improperly filed its offer of judgment with the district court before trial. According to Tran, NRCP 68 only allows a party to file an offer of judgment with the court if the offer has been accepted or a post-trial request for attorney fees has been made. Although NRCP 68(e) states that evidence of a rejected offer “is not admissible except in a proceeding to determine costs and fees,” this language does not prevent a party from filing a rejected offer with the district court. Since nothing in the record suggests that the district court impermissibly considered the offer of judgment, we conclude that Tran’s argument lacks merit.

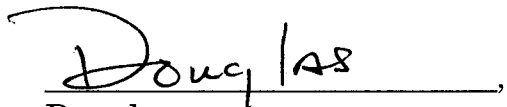
Conclusion

We conclude that Tran conceded the existence of an easement at trial and that the district court did not abuse its discretion in awarding attorney fees to NPC. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. David Wall, District Judge
Lester H. Berkson, Settlement Judge
Ashworth & Kerr
Law Offices of Michael G. Chapman
Eighth District Court Clerk