

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD T. COONEY AND BEVERLY
J. COONEY, INDIVIDUALLY AND AS
HUSBAND AND WIFE,

Appellants,

vs.

SHELDON F. GOLDBERG AND
BARBARA A. GOLDBERG,
INDIVIDUALLY AND AS HUSBAND
AND WIFE; AND SEAYNOAH
MAYFIELD AND HELEN J.
MAYFIELD, INDIVIDUALLY AND AS
HUSBAND AND WIFE,

Respondents.

No. 49071

FILED

JUL 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment, following remand from this court, in a real property dispute. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

This is the second appeal in this matter. In the first appeal, this court reversed the district court's judgment and remanded for mathematical calculations and entry of a judgment in accordance with this court's order, noting further that the district court could entertain attorney fees motions at that time.¹ Following remand, the district court calculated interest owed and entered judgment accordingly; it also awarded attorney fees to respondents Seaynoah and Helen J. Mayfield, to be paid by appellants Gerald T. and Beverly J. Cooney based on the attorney fees provision in their purchase agreement with the Mayfields.

¹Mayfield v. Goldberg, Docket Nos. 39887, 40164, and 40408 (Order of Reversal and Remand, January 31, 2006).

The Cooneys now challenge the district court's interest calculation and the attorney fees award.

This court's order in the first appeal established the law of the case in this matter.² "[T]he trial court has no discretion to interpret the reviewing court's order; rather, it is bound to specifically carry out the reviewing court's instructions."³ In this case, however, this court's original remand order did not specify an amount of interest; rather, it remanded to the district court for those calculations. The district court reasonably construed our order in rendering its decision. Accordingly, we affirm the district court's order in this respect.

The Cooneys contend that the district court erred in awarding attorney fees to the Mayfields under their purchase agreement. According to the Cooneys, fees were permissible under the agreement only if an action was brought to enforce the purchase agreement, and here, the Goldbergs did not initiate suit to enforce the agreement; to the contrary, the Goldbergs' original suit was brought to invalidate the agreement. The Mayfields maintain that the validity of the agreement was central to the case and that they consistently sought to enforce the agreement in this case. Moreover, they argue, they attempted to bring their own claims against the Cooneys but were denied leave to amend their answer to do so, and this court held in the first appeal that denial of leave to amend was an abuse of discretion but concluded that the issue was moot in light of its order quieting title to the property in the Mayfields.

²Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).

³Id. at 264, 71 P.3d at 1260.

The Cooneys cite two cases in support of their argument that the attorney fees award was improper, but we conclude that these cases are not persuasive. In First Commercial Title v. Holmes, the attorney fees clause at issue was quite narrow and permitted an attorney fees award only for actions to collect amounts due; this court held that the clause did not permit a fee award incurred in an action to enjoin a trustee's sale.⁴ In Campbell v. Nocilla, this court refused to construe a contractual attorney fees provision so broadly that it encompassed an indemnity action based on negligence and tortious conduct.⁵ Here, the Mayfields' defense of the Goldbergs' action was based on their purchase agreement with appellants. Moreover, the Mayfields attempted to assert claims under the agreement and this court previously held that they should have been permitted to do so. Under these circumstances, we conclude that an attorney fees award pursuant to the contract was permissible and that the district court did not abuse its discretion in awarding fees.⁶

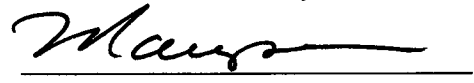
Having concluded that the district court properly applied the original remand order in this case and did not abuse its discretion in awarding attorney fees to the Mayfields, we

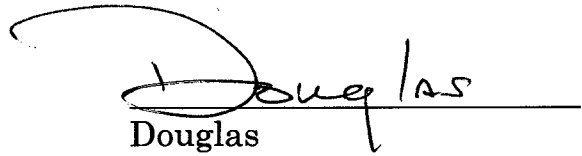
⁴92 Nev. 363, 550 P.2d 1271 (1976).

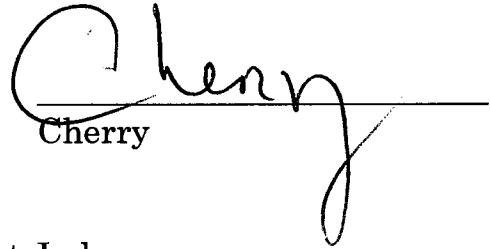
⁵101 Nev. 9, 692 P.2d 491 (1985).

⁶Kahn v. Morse & Mowbray, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (noting that "[t]he decision to award attorney fees is within the [district court's] sound discretion . . . and will not be overturned absent a 'manifest abuse of discretion'" (quoting County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982))).

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Valerie Adair, District Judge
Stephen E. Haberfeld, Settlement Judge
Wm. Patterson Cashill
Law Offices of James J. Ream
Lemons Grundy & Eisenberg
Callister & Reynolds
Jolley Urga Wirth Woodbury & Standish
Eighth District Court Clerk

⁷Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.