

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRY HART,
Appellant,
vs.
INTEGRITY ELECTRIC, INC.,
Respondent.

No. 50335

FILED

APR 11 2008

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

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is a proper person appeal from a post-judgment order awarding attorney fees, costs, and prejudgment interest. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Having reviewed the record,¹ appellant's civil proper person appeal statement, and respondent's response, we conclude that the district court properly awarded costs and attorney fees and did not abuse its discretion in determining the amounts of these awards.²

¹Appellant filed a civil proper person transcript request form on November 6, 2007, requesting a transcript of the bench trial in this matter. The form was not properly served on the court reporter or other parties to the appeal. Regardless, we conclude that the trial transcript is not necessary to our review of this appeal, which is limited to the post-judgment order described above. Accordingly, the transcript need not be prepared or filed.

²See NRS 17.190; NRS 18.005; NRS 18.010(2)(a); Kahn 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))); Bobby Berosini, Ltd. v. PETA, 114

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The prejudgment interest award, however, is incorrect. We review a prejudgment interest award for error.³ Based on our review of the record, we perceive several miscalculations with respect to prejudgment interest.

First, the district court apparently relied on respondent's citation to NRS 17.130 in determining the interest to be awarded, but that statute applies only when an interest rate is not provided for by contract or other law. Here, other law provides the proper interest rate. Specifically, respondent filed an action to recover unpaid sums due on its contract with appellant, which appears not to have stated any interest rate to accrue on unpaid amounts owed. Accordingly, NRS 99.040(1)(a) applies and dictates the interest rate to be used. Two primary factors differentiate NRS 99.040(1) from NRS 17.130: Under NRS 99.040(1), the amount draws interest from the date due, not from the date that the summons and complaint were served, and the interest amount must be adjusted semiannually, on January 1 and July 1 of each year. Accordingly, prejudgment interest on the principal amount of the judgment must be recalculated with reference to the appropriate rate and its semiannual changes and based on the appropriate starting date.

Second, prejudgment interest on costs accrues from the date the costs were incurred, not from the date that the summons and

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Nev. 1348, 1352, 971 P.2d 383, 385 (1998) (noting that the determination of allowable costs is within the district court's sound discretion).

³Bongiovi v. Sullivan, 122 Nev. 556, 579, 138 P.3d 433, 449 (2006).

complaint were served, and if the prevailing party is unable to demonstrate when a cost was incurred, then prejudgment interest may not be awarded as to that cost.⁴ Here, none of the memoranda of costs filed by respondent includes dates for when the costs were incurred (although some of the attached supporting receipts included dates). Accordingly, prejudgment interest on these amounts was improper absent additional documentation. Moreover, the interest awarded, which appears to have been calculated from the date of service of the summons and complaint rather than from the date each cost was incurred, was therefore excessive. Thus, prejudgment interest on costs must be recalculated based on the date each cost was incurred, applying the proper interest rate under NRS 99.040(1).

Third, the district court awarded prejudgment interest on the attorney fees award, based on respondent's citation to our opinion in Albios v. Horizon Communities, Inc.⁵ But Albios permits prejudgment interest only on attorney fees awarded as damages, since such fees are properly part of the judgment.⁶ Situations in which attorney fees may be awarded as damages are rare, and they do not include a simple contract action such as the instant case. Here, the attorney fee award was proper under NRS 18.010(2)(a), which permits a fee award when the prevailing party recovers a money judgment of less than \$20,000, not as damages.

⁴Albios v. Horizon Communities, Inc., 122 Nev. 409, 420, 132 P.3d 1022, 1035 (2006).


⁵Id.

⁶Id. at 430, 132 P.3d at 1036.

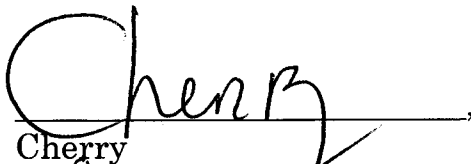
Accordingly, prejudgment interest on the attorney fee award was improper. On remand, no prejudgment interest may be awarded on the attorney fee award.

Accordingly, we affirm the district court's order, except for its award of prejudgment interest.⁷ We reverse that portion of the order and remand for a recalculation of prejudgment interest on the principal amount of the judgment and the costs awarded, but not the attorney fees award, based on the appropriate interest rate and starting date.

It is so ORDERED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

⁷Appellant also argues that the district court abused its discretion in refusing to hold respondent in contempt when it was unable to post a supersedeas bond for a stay pending appeal, as required by the district court's order granting a stay. We lack jurisdiction to consider this issue. First, no written order denying appellant's motion appears in the record; we cannot consider oral rulings except in limited circumstances. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 92 P.3d 1239 (2004). Second, even if a written order had been entered, a contempt order is not independently appealable. See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000). Accordingly, we have not considered appellant's argument.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Garry Hart
Nancy F. A. Gilbert
Eighth District Court Clerk