

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN MARCINIAK,
Appellant,
vs.
SILVERLEE SHORES,
Respondent.

No. 50453

FILED

JUL 24 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding attorney fees. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

In determining whether to award attorney fees pursuant to NRCP 68, the district court is required to weigh specific factors enumerated in Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). On appeal, appellant Brian Marciniak maintains that the district court abused its discretion in awarding respondent Silverlee Shores attorney fees without considering the Beattie factors. We conclude that this argument is without merit. The record shows that the parties joined issue on the Beattie factors in the points and authorities in support of and opposition to the motion for attorney fees, that the district court stated that it read the points and authorities submitted by the parties, and that as discussed further below, substantial evidence supports the factors. This is sufficient. See Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995) (holding that the record showed that the district court considered the Beattie factors because the parties argued the

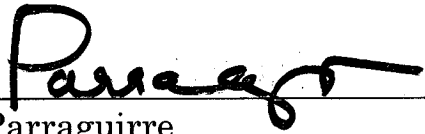
factors, the judge stated that he had evaluated the factors, and substantial evidence showed that the factors were met), superseded by statute on other ground as recognized by RTTC Communications v. Saratoga Flier, 121 Nev. 34, 110 P.3d 24 (2005).

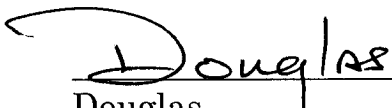
Marciniak contends that none of the Beattie factors were satisfied but the record shows otherwise. The Beattie factors include whether: (1) Marciniak's defense was brought in good faith; (2) Shores' offer was reasonable and in good faith; (3) Marciniak's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) the fees sought by Shores are reasonable and justified in amount. Beattie, 99 Nev. at 588-89, 668 P.2d at 274; see also Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). "Unless the trial court's exercise of discretion [in evaluating the Beattie factors] is arbitrary or capricious, this court will not disturb the lower court's ruling on appeal." Schouweiler v. Yancey Co., 101 Nev. 827, 833, 712 P.2d 786, 790 (1985).

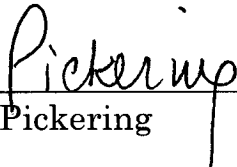
Here, Marciniak admitted liability for the accident on the first day of trial and was aware, when Shores' offer was made, that he would be liable to some degree for damages. Moreover, the Shores' settlement offer was reasonable, as there was considerable evidence of the extent of Shores' injuries, and the jury's award of \$144,718 for Shores' damages was substantially larger than the \$59,999.99 offer made by Shores. Therefore, the district court appropriately found that Marciniak was unreasonable in rejecting the offer. Additionally, Shores' attorney spent a substantial number of hours on the case, tried the case, and prevailed. Thus, the

district court judge exercised sound discretion by finding the requested amount of attorney fees, \$25,980, reasonable.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Timothy C. Williams, District Judge
Janet Trost, Settlement Judge
Ronald M. Pehr
Paul W. Van Derwerken
Eighth District Court Clerk

¹Inexplicably, as appellant, Marciniak advances arguments respecting the liability and role of his insurance company, Nevada General Insurance Company (NGIC). These arguments are not appropriate. NGIC is not a party to the case and whatever issues may exist respecting policy limits and its liability on this judgment or to its insured are not properly before the court on an appeal prosecuted in Marciniak's name from a judgment against Marciniak individually.