IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRIS EIFEALDT AND SANDRA K. EIFEALDT,
Appellants,
vs.
JEAN HANNA CLARK REHABILITATION CENTER; STATE INDUSTRIAL INSURANCE SYSTEM (SIIS); AND A.H. ROBINS COMPANY, INC., A VIRGINIA CORPORATION, D/B/A QUINTON INSTRUMENTS,
Respondents.

A.H. ROBINS COMPANY, INC., A VIRGINIA CORPORATION, D/B/A QUINTON INSTRUMENTS,
Cross-Appellant,
vs.
CHRIS EIFEALDT; SANDRA K. EIFEALDT; JEAN HANNA CLARK REHABILITATION CENTER; AND STATE INDUSTRIAL INSURANCE SYSTEM (SIIS),
Cross-Respondents.

No. 34547

FILED

AUG 19 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross cross-appeal from a jury verdict and other district court orders. While appellant/cross-respondent, Chris Eifealdt, was running on a treadmill at Jean Hanna Clark Rehabilitation Center (JHC), the treadmill suddenly stopped and restarted, thereby injuring Chris. Chris and his wife, Sandra Eifealdt, sued JHC, State Industrial Insurance System (SIIS), and A.H. Robins Company, Inc., A Virginia Corporation, D/B/A Quinton Instruments (Quinton), the

manufacturer of the treadmill, for, among other things, negligence and strict products liability.

During discovery, the Eifealdts requested the production of the treadmill and any parts associated therewith. SIIS could not produce the treadmill's timing belt because it had been inadvertently discarded. The Eifealdts also requested that Quinton produce the design calculations it used to determine the type of timing belt to use in the treadmill. Quinton responded that it did not believe it possessed the design calculations and never produced them. As a sanction for the loss of the timing belt and the failure to produce the design calculations, the district court ruled, as to all defendants, that the timing belt was defective.

Before trial, the district court held that SIIS and JHC were immune from liability above $50,000 pursuant to NRS 41.035.[1] Additionally, prior to trial, Sandra offered to settle for $25,000 with each defendant, which each rejected. During trial, Chris proposed two jury instructions and a verdict form concerning his medical expenses. The district court did not give Chris's proposed jury instructions or the verdict form because SIIS had already paid Chris's medical expenses.

After trial, the district court refused to award Sandra attorney fees because it concluded her $25,000 offers of judgment to each defendant were more than her jury award. The district court awarded Chris $32,153.13 in attorney fees because it found that his jury award of $210,000 was greater than his offers of judgment. Also, after trial, the Eifealdts settled with JHC and SIIS for $50,000. The district court also

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[1]NRS 41.035 limits liability of a state agency and its employees to $50,000.

awarded prejudgment interest and did not deduct the $50,000 settlement before computing the interest. After the court adjudicated the parties' post-judgment motions, this appeal ensued.

Quinton maintains that the district court should have imposed a separate sanction on SIIS for discarding the treadmill's timing belt, and that the district court abused its discretion by finding that the timing belt was defective as to Quinton for its failure to produce the treadmill's design calculations. Quinton also contends that this court should review the district court's sanction under the heightened standard of review because it constitutes an ultimate sanction.

Generally, this court will not reverse a district court's imposition of sanctions absent an abuse of discretion.[2] However, this court has held that a heightened standard of review applies where, as a sanction, the district court dismisses an action with prejudice.[3] Here, the district court did not dismiss the action with prejudice; but even under a heightened standard of review, the district court did not abuse its discretion.

In this case, the Eifealdts did not have the timing belt to determine whether it was defective. Consequently, the Eifealdts desired the design calculations to determine whether Quinton chose the proper type of timing belt to use in the treadmill. Quinton failed to produce the

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[2]Stubli v. Big D International Trucks, 107 Nev. 309, 313, 810 P.2d 785, 787 (1991).

[3]See id.; Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

design calculations. We cannot say that the district court abused its discretion by finding that the timing belt was defective as to Quinton.[4]

Next, Quinton claims that the district court's approval of the Eifealdts' settlement with JHC and SIIS was based on its erroneous conclusion that JHC and SIIS were immune from liability in excess of $50,000. Specifically, Quinton argues that JHC is a private agency in which SIIS invested, and not a state agency pursuant to NRS 41.035. Therefore, Quinton argues that this court should reverse the district court's determination that the settlement was in good faith and permit Quinton to proceed against JHC and SIIS.

NRS 41.031 provides that Nevada "waives its immunity from liability and . . . consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons." NRS 41.035(1) states that an award of damages "under NRS 41.031 or against a present or former officer or employee of the state or any political subdivision, [or] immune contractor . . . may not exceed . . . $50,000." This court has previously held that SIIS was a state agency.[5]

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[4]See Young, 106 Nev. at 92, 787 P.2d at 779 (noting that the district court has inherent equitable powers to impose "sanctions for discovery and other litigation abuses not specifically proscribed by statute"); see also Stubli, 107 Nev. at 313-14, 810 P.2d at 787-88 (affirming district court's dismissal of plaintiff's action for discarding evidence). Quinton also argues that the district court should have held an evidentiary hearing. Additionally, Quinton argues that it is entitled to a new trial because the jury was not permitted to decide if the defendants or Chris were liable for certain aspects of Chris's injury. However, these arguments are without merit.

[5]Northern Nev. Ass'n Injured Workers v. SIIS, 107 Nev. 108, 112-13, 807 P.2d 728, 731 (1991); see also Falline v. GNLV Corp., 107 Nev. 1004, 1009, 823 P.2d 888, 891 (1991).

Thus, an award of damages against SIIS or its employees may not exceed $50,000.[6]

Further, substantial evidence supports the district court's determination that JHC was also a state agency. Mary Lynn Newman, associate general counsel for SIIS, provided an affidavit attesting that JHC was a department of SIIS. She attested that SIIS established JHC pursuant to former NRS 616.180, which was renumbered NRS 616B.173, and then repealed. NRS 616.180(1) provided that SIIS "may . . . invest not to exceed 10 percent of the total assets of the state insurance fund in rehabilitation buildings and facilities." Also, SIIS's annual reports demonstrate that JHC was a department of SIIS. SIIS paid the salaries of all JHC employees. The State of Nevada Budget Office identifies JHC as "Agency No. (B) 998-IC86 SIIS Rehabilitation Center." JHC deposited all of its receipts into a checking account designated as "State of Nevada, State Industrial Insurance System." For the foregoing reasons, the district court did not err by finding that JHC was a state agency and limiting any damages assessed against it to $50,000.[7] Further, the district

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[6]See Northern Nev. Ass'n Injured Workers, 107 Nev. at 112-13, 807 P.2d at 731; NRS 41.035.

[7]Quinton sets forth other arguments as to why JHC and SIIS are not immune from liability above $50,000. For example, Quinton maintains that JHC was engaged in a proprietary function and, therefore, may be subject to liability above $50,000. Quinton also claims that setting recovery limits for a governmental agency's proprietary functions violates the United States and Nevada Constitutions. Finally, Quinton contends that SIIS should face liability in excess of $50,000 for its spoliation of evidence. These arguments are without merit.

court did not err by finding that the Eifealdts' settlement with JHC and SIIS was in good faith.[8]

Sandra argues that the district court should have awarded her attorney fees. When a party makes a pretrial offer of judgment that is rejected and the outcome of the case is less favorable to the offeree than the offer of judgment, NRCP 68 and NRS 17.115 authorize the district court to award the offeror attorney fees. After the jury returns a more favorable verdict than the offer of judgment, in determining whether to award attorney fees, the district court must evaluate the factors enunciated in Beattie v. Thomas.[9]

Here, Sandra made three separate offers of judgment of $25,000 to each defendant. Each defendant rejected her offer. The jury

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[8]Quinton maintains, and we agree, that there should have been two separate $50,000 caps, one for Chris's cause of action and one for Sandra's cause of action. See County of Clark v. Upchurch, 114 Nev. 749, 759, 961 P.2d 754, 761 (1998) (recognizing that "in construing NRS 41.035, [this court] has consistently allowed plaintiffs to recover damages on a per person per claim basis.") However, we disagree with Quinton's contention that because Chris and Sandra could have each recovered $50,000 from both SIIS and JHC, the settlement was not in good faith.

[9]99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). The Beattie factors include:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Id.

returned a verdict of $35,000, unapportioned as between defendants, and the district court found the defendants jointly and severally liable. Since the defendants were jointly and severally liable for the $35,000 jury verdict, any one of the defendants could have been required to pay the whole $35,000.[10] Therefore, the $35,000 jury verdict was less favorable to the defendants than the individual $25,000 offers of judgment made to each of the defendants.[11] Consequently, under NRCP 68 and NRS 17.115, the district court had discretion to award attorney fees and should have applied the Beattie factors to determine whether to grant them and, if granted, the amount.

Quinton argues that the district court erred by granting Chris $32,153.13 in attorney fees. The district court stated that "[n]either party has suggested that [appellant] Chris Eifealdt failed to better his offers of judgment against any defendants (which this Court notes he did when he was awarded $210,000)." The record does not support the district court's finding. The record reflects that Chris offered to settle with Quinton twice, once for $750,000 and once for $250,000. The jury returned a verdict in favor of Chris for $210,000. Since Chris's offers of judgment were more than the jury awarded him, the district court abused its discretion by awarding Chris attorney fees.

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[10]See Buck v. Greyhound Lines, 105 Nev. 756, 763, 783 P.2d 437, 442 (1989) (providing that joint and severally liable tortfeasors could be individually responsible for the whole amount of damages).

[11]Schouweiler v. Yancey Co., 101 Nev. 827, 834, 712 P.2d 786, 791 (1985) (noting that the amount of a money judgment for which a party is jointly and severally liable is determinative as to whether the party's prior offer of judgment under NRCP 68 was more or less favorable than the judgment).

Chris argues that the district court should have given his proposed jury instructions on medical expenses and by not doing so the district court violated the collateral source rule. He also contends that the district court should have given jury instructions pursuant to NRS 616C.215(10). SIIS paid Chris's medical expenses in its capacity as tortfeasor and, therefore, neither NRS 616C.215(10), nor the collateral source rule, apply in this case.[12] Consequently, Chris's arguments are without merit.

Lastly, Quinton argues that the district court erred by computing prejudgment interest before deducting the Eifealdts' settlement with JHC and SIIS. In Ramadanis v. Stupak,[13] this court held that the proper method of computing prejudgment interest is to do so after deducting settlements. Therefore, the district court erred by failing to deduct the Eifealdts' settlement with JHC and SIIS before calculating prejudgment interest.

Having considered the parties' arguments and having carefully reviewed the record on appeal, we conclude that the remainder of their arguments are without merit. Accordingly, we

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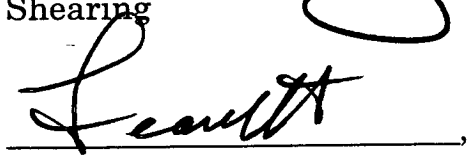
[12]See Villarini-Garcia v. Hospital Del Maestro, 112 F.3d 5, 6-8 (1st Cir. 1997) (holding that the collateral source rule does not apply where one of the co-defendants is the source of the payment); Grynbal v. Grynbal, 302 N.Y.S.2d 912 (N.Y. App. Div. 1969); see also Restatement (Second) of Torts § 920A cmt. a (1979) (noting that payments by co-tortfeasors reduces the other tortfeasors' liability to the plaintiff); Restatement (Second) of Torts § 885(3) cmt. e (1979) (stating that "[p]ayments made by one of the tortfeasors on account of the tort either before or after judgment, diminish the claim of an injured person against all others responsible for the same harm").

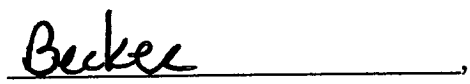
[13]107 Nev. 22, 24, 805 P.2d 65, 66 (1991).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Shearing



_____, J.
Leavitt



_____, J.
Becker

cc: Hon. Jennifer Togliatti, District Judge
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