

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT REEDER,
Appellant,
vs.
TRUDY PARKS,
Respondent.

No. 50683

FILED

AUG 03 2009

ORDER OF AFFIRMANCE

THAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

The dispute arises out of a remodeling project. At the time, the parties were engaged to be married and planned to live together in the remodeled home. Before the work was completed, the engagement was broken off. Thereafter, respondent Trudy Parks sued appellant Albert Reeder to recover a portion of the money Parks had advanced for him to do the remodel work.

The case went to arbitration. After crediting Reeder for certain expenses incurred during the remodel, the arbitrator ordered Reeder to pay Parks \$11,470.05. Dissatisfied, Reeder sought a bench trial de novo in district court pursuant to the Short Trial program. The short trial judge, after crediting Reeder with a somewhat different set of expenses, ordered Reeder to pay Parks \$12,126.15. Comparing the arbitration to the short trial result, Reeder did not improve his lot by the 20 percent required to avoid an award of attorney fees under the applicable rules. NSTR 27(a)(2)(A); 27(b)(2), (4); NAR 20(B)(2)(a). Thus, the short trial judge also ordered Reeder to pay Parks \$3,000.00 in attorney fees and \$1,085.68 in costs.

Reeder raises two contentions on appeal. First, Reeder argues the judge's findings lacked substantial evidence and were clearly erroneous. Second, Reeder argues that the award of attorney fees was inequitable.

Because Reeder's claims lack merit, we affirm. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

The short trial judge's findings were supported by substantial evidence, and thus were not clearly erroneous

Reeder's first contention relates to his having been given no credit for appliances and contractor fees for which he had no receipts. Reeder argues that because Parks did not dispute that he incurred those expenses, the judge's finding that he was not entitled to credit was clearly erroneous. We disagree.

The Nevada Rules of Civil Procedure apply in short trials. NSTR 1(c). In a bench trial, "the court shall find the facts specially and state separately its conclusions of law thereon." NRCP 52(a). "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial judge to judge the credibility of the witnesses." Id. Where the evidence is conflicting, the trial court judge is best suited to "evaluate the credibility of parties offering different versions of facts and such determination by the lower court will not be disturbed on appeal." Kleeman v. Zigtama, 95 Nev. 285, 287, 593 P.2d 468, 469 (1979). So long as the record is clear and will support the judgment, this court will imply findings of fact and conclusions of law. Luciano v. Diercks, 97 Nev. 637, 639, 637 P.2d 1219, 1220 (1981).

The short trial judge was presented with a complicated history of the parties' dealings with one another, with conflicting testimony, and incomplete records. In addition, it is indisputable that the parties did not think of themselves as entering a formal contractual relationship at the time they embarked on the remodeling work. With respect to the appliances and contractor expenses for which Reeder had no receipts, Parks testified at trial that Reeder incurred them of his own volition, and that these expenses were outside of the scope of the remodeling project the parties had agreed upon. Reeder vigorously disputed Parks' version of these events but, in the end, the short trial judge elected to believe Parks.

Findings regarding which of Reeder's proffered expenses to credit against his repayment obligation to Parks involved determinations of credibility and sufficiency that this court is unable to second guess on appeal. Kleeman, 95 Nev. at 287, 593 P.2d at 469. Based on the undisputed facts and the parties' conflicting testimony, the short trial judge could easily have concluded that Reeder had not established an agreement that appliance costs and contractor fees for which he had no receipts were reimbursable.¹

This court will imply findings of fact and conclusions of law to support a judgment the record supports. Luciano, 97 Nev. at 639, 637 P.2d at 1220. Here, the record contains substantial evidence to support the short trial judge's findings, both explicit and implicit, with respect to

¹The short trial judge also made findings with respect to whether cruise tickets purchased by Parks were reimbursable and whether Reeder must reimburse Parks for items placed in a storage unit which were later lost. Parks has not appealed the former finding and Reeder has not appealed the latter, so neither is before us here.

the remodeling expenses for which Reeder was and was not due reimbursement. While a contrary finding may have been equally supportable, the determination of which party to believe lay with the trial court. For this reason, we reject Reeder's first assignment of error.

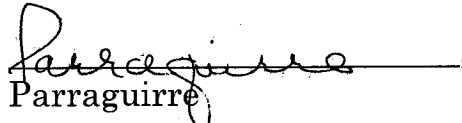
The relevant rules require Reeder to pay attorney fees and costs due to the outcome of the short trial proceeding

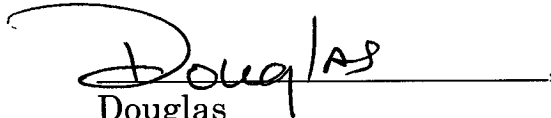
Reeder's second challenge on appeal is to the award of attorney fees as inequitable. Because the express terms of the applicable rules entitle Parks to fees, we reject this claim as well.

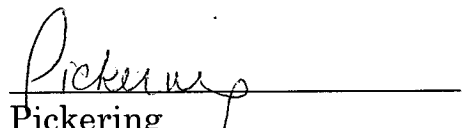
Pursuant to the Short Trial and Arbitration Rules, respectively, if a party seeking de novo review of an arbitration result does not achieve a judgment that exceeds the arbitration award by at least 20 percent, the opposing party is entitled to an award of attorney fees (not to exceed \$3,000.00), and costs. NSTR 27(a)(2)(A); 27(b)(2), (4); NAR 20(B)(2)(a). Here, the arbitrator awarded Parks a total of \$11,470.05. The short trial judge subsequently awarded Parks a total of \$12,126.15. Because Reeder did not improve his arbitration outcome by at least 20 percent in the de novo trial, the short trial judge awarded Parks attorney fees of \$3,000.00, and costs of \$1,085.68.

Reeder offers no argument suggesting that the express terms of the applicable rules do not apply here. Thus the short trial judge's award of attorney fees and costs was proper.

For the foregoing reasons, we ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Jackie Glass, District Judge
E. Paul Richitt, Jr., Short Trial Judge
Carolyn Worrell, Settlement Judge
Olson, Cannon, Gormley & Desruisseaux
Law Offices of Robert P. Spretnak
Eighth Judicial District Court Clerk