

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANE DUBOIS AND JOSEPH DUBOIS,
Appellants.

vs.

ELSA SAMUELS, INDIVIDUALLY,
AND ELSA SAMUELS, AS GUARDIAN
AD LITEM OF THE MINOR CHILD,
SUMMER JOY SAMUELS,
INDIVIDUALLY,
Respondents.

No. 50685

FILED

DEC 03 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order in a short trial matter, awarding attorney fees to respondents and denying appellants' attorney fees request. Eighth Judicial District Court, Clark County; Patrick J. Murphy, Judge Pro Tempore.

Respondents were the plaintiffs in a personal injury action against appellants Dane Dubois and Joseph Dubois. Although Elsa Samuels, individually, was named as a respondent, appellants' brief asserts arguments solely with respect to the disposition of respondent Summer Joy Samuels' claims. Consequently, we do not consider the awards in Elsa's favor and we dismiss the appeal as to her individually.

The case was referred to the court-annexed arbitration program, which resulted in an award in Summer's favor of \$6500. The arbitrator also awarded Summer costs of \$334.02 and attorney fees of \$1250, based on an offer of judgment. The arbitrator's decision on

Summer's request for attorney fees was entered on October 23, 2006. On October 30, 2006, the Dubois served an offer of judgment in the amount of \$5200, "including in that sum all costs, attorney's fees and interest in full satisfaction of all claims against Defendants." Summer did not accept the offer, so it was deemed rejected. On November 6, 2006, Summer served an offer of judgment in the amount of \$6499; this offer was not accepted by the Dubois and was thus deemed rejected.

The Dubois requested a trial de novo, which was referred to the short trial program. Following a short trial, the jury awarded Summer \$4200 in damages. The Dubois moved for attorney fees based on the October 30, 2006, offer of judgment, arguing that Summer did not achieve a better result, even after adding pre-offer costs and interest. Summer moved for attorney fees based on the November 6, 2006, offer of judgment. Both sides also asserted arguments based on Nevada Arbitration Rule 20(B).

The short trial judge agreed with Summer's position and concluded that the October 30 offer's language, which expressly included all costs, interest, and attorney fees, meant that Summer's pre-offer costs, interest, and attorney fees must be added to the \$4200 damages award to determine whether she obtained a better result than the offer of judgment. When Summer's pre-offer costs of \$334.02, pre-offer interest of \$505.50, and attorney fees of \$1250 were added to the damages award, Summer's total award was more than the \$5200 offer. Accordingly, the short trial judge denied the Dubois' motion for attorney fees. The short trial judge then granted Summer's fee request in the amount of \$1500, without specifying a basis for the award. This appeal followed.

On appeal, the Dubois argue that the short trial judge impermissibly included the arbitrator's attorney fees award in calculating whether Summer achieved a better result than their offer of judgment. We disagree. As we acknowledged in McCrary v. Bianco,¹ under the current structure of NRS 17.115 and NRCP 68, the determination of whether to include amounts other than the principal amounts of the offer and the judgment depends upon the language of the offer itself and whether the offer includes sums other than the principal amount of the judgment. Here, the October 30 offer expressly included costs, interest, and attorney fees. Accordingly, the short trial judge appropriately considered Summer's pre-offer costs, interest, and attorney fees in determining whether she achieved a better result, and its denial of the Dubois' attorney fees motion was therefore correct.

On occasion, we have reversed attorney fees awards that failed to include findings supporting the award and failed to state the award's basis.² But when the record reflects the basis for the award and that the district court considered appropriate factors, we may affirm even if the written order should have been more thorough.³ Here, NAR 20(B) clearly supports an award of attorney fees, as the Dubois failed to lower their liability to Summer by at least 20 percent, and the short trial judge did

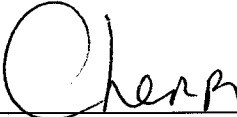
¹122 Nev. 102, 131 P.3d 573 (2006).

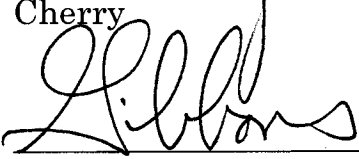
²See, e.g., Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 967 P.2d 444 (1998).


³See, e.g., Wynn v. Smith, 117 Nev. 6, 16 P.3d 424 (2001).

not abuse his discretion in determining that an amount of \$1500 was reasonable. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Patrick J. Murphy, Short Trial Judge
Carolyn Worrell, Settlement Judge
David L. Riddle & Associates
Ronald J. Israel
Eighth District Court Clerk