

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID M. DUBLER AND FAYE  
DUBLER,  
Appellants,  
vs.  
SHARON T. MORET,  
Respondent.

No. 51187

**FILED**

NOV 03 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING

This is an appeal from a district court judgment in a contracts action. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In this appeal, we consider whether the district court erred in finding appellant Faye Dubler jointly and severally liable for the debts of the community. We also consider whether the district court erred in awarding respondent Sharon T. Moret attorney fees and costs. We conclude that the district court properly found Faye jointly and severally liable but erred in granting Moret attorney fees and costs.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Community debt

Moret orally agreed to loan \$225,000 to David M. Dubler to allow David to buy out his business partner. Moret distributed the funds in three separate installments: the first was made payable to David exclusively, the second was made payable to both David and Faye Dubler, and the third was distributed as a cash advance to the Dublers. Appellants David and Faye Dubler deposited each installment in their

joint account. Appellants contend that the district court erred in finding Faye jointly and severally liable for this debt owed to Moret.

On appeal, this court will not disturb a district court's findings of fact if they are supported by substantial evidence. Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). Substantial evidence is "that which "a reasonable mind might accept as adequate to support a conclusion."” Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938))).

Under Nevada law, community property is defined as all property, other than that stated in NRS 123.130 (which defines separate property), acquired after marriage by either husband or wife, or both. NRS 123.220. Here, the debt was incurred after marriage, and thus, is presumed to be a community debt. Id. In addition, Moret testified that she agreed to loan the money after conversations with both David and Faye, and the proceeds of the loan were deposited into the Dublers' joint checking account. Moret also testified that she attempted to attach the Dublers' home, as collateral, to secure the debt. Accordingly, there was substantial evidence that Moret extended the loan to both David and Faye. Thus, after review of the record, we conclude that the district court properly found that the loan benefited the community and was a community debt because there was substantial evidence that Faye assented to the loan. Faye was properly found to be jointly and severally liable for the debt of the community pursuant to NRS Chapter 123 et. al.<sup>1</sup>

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<sup>1</sup>As stated above, this case arises from a contracts action, but the liability of the funds at issue is partially controlled by NRS Chapter 123.

Faye and David further argue that if the loan is considered a community debt, Faye's separate property should not be available to satisfy the debt. However, it is unknown whether Faye has any separate property, and the parties failed to articulate this issue below, so the parties are, in essence, asking for an advisory decision as to Faye's several liability.<sup>2</sup> We decline to issue such an advisory decision.

#### Attorney fees

Next, the Dublers contend that the district court's award of attorney fees was in error. We agree.

Generally, a court cannot award attorney fees "absent a statute, rule, or contract authorizing such award." Thomas v. City of North Las Vegas, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). However, where the plaintiff has not recovered more than \$20,000 or where the opposing party's defense was "brought or maintained without reasonable ground or to harass the prevailing party," then attorney fees are available. See NRS 18.010(2)(b).

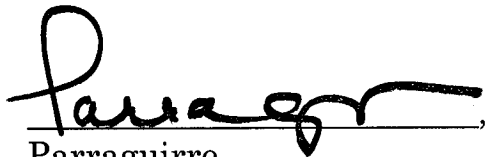
Our review of the record is devoid of any evidence that would suggest that the parties had any agreement or contract regarding attorney fees, or that either party asserted arguments to support such an award. Further, Moret's recovery greatly exceeded \$20,000, and thus, the award of attorney fees was not authorized under paragraph (a) of NRS 18.010(2).

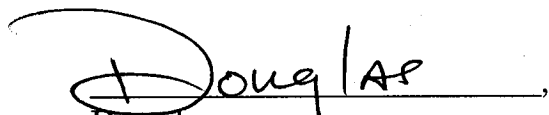
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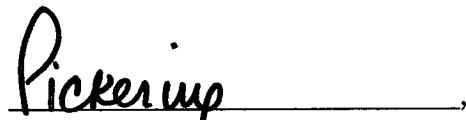
<sup>2</sup>See Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 777 n.16, 121 P.3d 599, 604 n.16 (2005) (concluding that when respondent failed to raise the issue in the district court, the issue was waived on appeal).

This court reviews a district court's decision regarding attorney fees for an abuse of discretion. Thomas, 122 Nev. at 90, 127 P.3d at 1063. "The failure of a district court to state a basis for the award of attorney fees is an arbitrary and capricious action and, thus, is an abuse of discretion." Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). Upon review of the record, the district court did not state a basis for granting the award of attorney fees to Moret. In light of the district court's failure to explain its basis for granting attorney fees, or consider the appropriate factors, we find it was an abuse of discretion and reverse the award of attorney fees and costs. We remand this issue to the district court for further proceedings consistent with this order. Accordingly, we

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.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Eva Garcia-Mendoza, Settlement Judge  
Graziadei & Cantor, Ltd.  
Leavitt Sully & Rivers  
Eighth District Court Clerk