

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS R. STOREY,  
Appellant,  
vs.  
JOHN P. KELLEHER,  
Respondent.

No. 51324

**FILED**

DEC 04 2009

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is a proper person appeal from a district court judgment entered after a bench trial in a real property contract action. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Respondent John P. Kelleher instituted a district court action against proper person appellant Thomas R. Storey, seeking, among other forms of relief, specific performance of the parties' lease-option-to-purchase contract and attorney fees as special damages. After a bench trial, the court awarded Kelleher both forms of relief. This appeal followed.

In considering this appeal, this court reviews the district court's legal determinations, including contract interpretation, de novo. May v. Anderson, 121 Nev. 668, 119 P.3d 1254 (2005); SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993). But we give deference to the court's factual findings, so long as they are not clearly wrong and are supported by substantial evidence. See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004). Moreover, witness credibility determinations are within the district court's fact-finding purview, and this court thus will not substitute its or

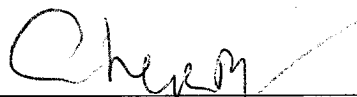
appellant's view of witness testimony for that of the district court. Fox v. First Western Sav. & Loan, 86 Nev. 469, 470 P.2d 424 (1970).

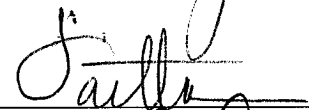
Having reviewed the record, Storey's appeal statement, and Kelleher's response in light of those principles, we conclude that substantial evidence supports the district court's conclusion that Storey breached the parties' contract, see Zhang v. Dist. Ct., 120 Nev. 1037, 1040-41, 103 P.3d 20, 22-23 (2004), abrogated on other grounds by Buzz Stew. LLC v. City of N. Las Vegas, 124 Nev. \_\_\_, 181 P.3d 670 (2008), and that Kelleher was thus entitled to specific performance. See Carcione v. Clark, 96 Nev. 808, 811, 618 P.2d 346, 348 (1980); American Fence, Inc. v. Wham, 95 Nev. 788, 791, 603 P.2d 274, 276 (1979). We therefore affirm that portion of the district court's judgment.

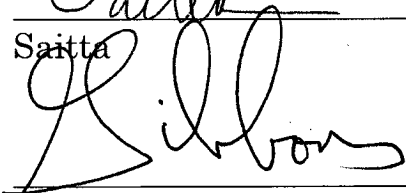
With respect to the district court's award of attorney fees, however, "attorney fees are only available as special damages in slander of title actions," not merely to clarify title to property as Kelleher was essentially attempting to do. Horgan v. Felton, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007). Thus, as Kelleher did not institute a cause of action for slander of title, the district court did not determine that Storey slandered title to real property, and no other grounds for an award of attorney fees exists, the district court abused its discretion in awarding him attorney fees as special damages. Id. at 583, 170 P.3d at 986 (providing that a prevailing party generally may not recover attorney fees absent a statute, rule, or contract provision supporting such an award).

Accordingly, we reverse the district court's award of attorney fees to Kelleher.<sup>1</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Valorie Vega, District Judge  
Thomas R. Storey  
Mary F. Chapman  
Eighth District Court Clerk

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<sup>1</sup>The district court's award of costs to Kelleher was not an abuse of its discretion, see NRS 18.020(1), and we thus leave it intact.