

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE HASELTON AND THELMA
HASELTON,
Appellants,
vs.
GLADIATOR CORPORATION, A
NEVADA CORPORATION; DAVID
PIERCE; AND STANLEY W. PIERCE,
Respondents.

No. 51356

FILED

JUN 04 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

FACTS

In April 2002, appellants Eugene and Thelma Haselton, an 85-year-old couple, filed a complaint against respondents Gladiator Corporation, David Pierce, and Stanley Pierce (hereafter Gladiator) with whom the Haseltons have a long and acrimonious relationship as tenants in common of several patented mining claims known collectively as the Capitol Camp Mine. The action arose from the destruction and disposal of the Haseltons' home and outbuildings, as well as their personal property, after being evicted from their residence by Gladiator. The Haseltons sued for waste, destruction of property, theft and conversion, negligence, and elder abuse. Gladiator counterclaimed for abuse of process.

Following a bench trial, the district court entered its findings of fact, conclusions of law, and decision on December 31, 2007. The court found against the Haseltons on their claims and against Gladiator on its counterclaim. The court went on to find that Gladiator was the prevailing party and would therefore be awarded reasonable attorney fees and costs. Thereafter, Gladiator filed a motion for attorney fees and costs pursuant

to NRS 18.010(2)(a). The Haseltons, who at this time were not represented by counsel, did not file an opposition to Gladiator's motion. On February 21, 2008, the district court entered judgment against each of the parties on their respective claims and awarded Gladiator \$62,240.60 in attorney fees and \$3,324.60 in costs. Immediately thereafter, Gladiator initiated proceedings to execute on the fees and costs judgment, resulting in the forced sale of the Haseltons' interest in the Capitol Camp Mine, which was purchased by Stanley Pierce and then assigned to Gladiator. This appeal followed.

DISCUSSION

The Haseltons argue on appeal that the district court abused its discretion in awarding attorney fees and costs to Gladiator. Specifically, the Haseltons argue that the district court erred in determining that Gladiator was a prevailing party for purposes of awarding both attorney fees and costs, and that the attorney fees award under NRS 18.010(2)(a) was improper as Gladiator did not obtain a prerequisite money judgment. Additionally, the Haseltons contend that they did not waive their right to raise the issue regarding the award of attorney fees and costs on appeal although they failed to file an opposition to Gladiator's motion. The Haseltons note that at the time Gladiator filed its motion, the district court had already entered its written decision that Gladiator was entitled to attorney fees. The Haseltons also contend that this court should allow them to raise this issue under the plain error doctrine.

Much of Gladiator's brief is poorly drafted and therefore largely incomprehensible, but it appears to be arguing that the district court's award of attorney fees is proper under NRS 18.010(2)(b), which was not the basis asserted in district court and on which the district court

awarded fees. Gladiator does not offer argument as to why the district court was correct in naming Gladiator as a prevailing party, other than to reiterate the district court's pronouncement thereof and to claim that in light of the Haseltons' decision not to include a trial transcript, this court must affirm the district court's order granting attorney fees. Gladiator also argues that because the Haseltons did not file an opposition to its motion for attorney fees and costs, they have waived this issue on appeal.¹

Having reviewed the parties' arguments and the record on appeal, we initially determine that the issue of the award of attorney fees and costs in this case is properly before this court under the plain error doctrine. We conclude that the district court erred in determining that Gladiator was a prevailing party for purposes of NRS 18.010(2)(a) and NRS 18.020. Additionally, because Gladiator did not recover a money judgment, an award of attorney fees under NRS 18.010(2)(a) is improper.² Accordingly, the district court abused its discretion in awarding Gladiator attorney fees and costs.

¹We reject Gladiator's arguments regarding a joint appendix and the Haseltons' decision not to include the trial transcript as without merit. The record in this appeal is sufficient for our review.

²Interestingly, the arguments being made by Gladiator regarding the propriety of its award of attorney fees and costs in this appeal were previously denied by this court in Gladiator's prior appeal, Docket No. 40261. Specifically, in our April 28, 2004, order, we held that the district court had not erred in denying Gladiator's motion for attorney fees and costs, as Gladiator was not a prevailing party and had not recovered a money judgment for purposes of NRS 18.010(2)(a). We also affirmed the district court's \$2,500 sanction based on its finding "that Gladiator filed its motion solely to harass the Haseltons, to needlessly prolong the case and to increase the Haseltons' costs."

Plain error doctrine

This court's ability to consider relevant issues sua sponte in order to prevent plain error is well established. Albios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006). "Such is the case where a statute which is clearly controlling was not applied by the trial court." Bradley v. Romeo, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986). The district court's failure to apply the prerequisites of NRS 18.010(2)(a) before awarding attorney fees properly brings this issue before us.

Standard of review

Absent an abuse of discretion, we will not disturb a district court's award of attorney fees and costs. U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). But an abuse of discretion is shown when the district court applies an incorrect legal standard. Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

Prevailing party

Both NRS 18.010(2)(a) and NRS 18.020 require that a party be a prevailing party in order to be awarded attorney fees and costs. We have construed the term "prevailing party" to encompass plaintiffs, counterclaimants, and defendants. Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). In cases involving multiple lawsuits, such as this one, we have directed the district court to offset all awards of monetary damages to determine which side is the prevailing party. Parodi v. Budetti, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Here, although there were no monetary damages awarded, the verdicts of each party's lawsuit could be similarly compared in order to determine the prevailing party. The district court found against the Haseltons on all

their claims and against Gladiator on its claim. Therefore, neither party achieved the benefit each sought in bringing their respective lawsuits and both parties successfully defended against the claims brought against it. Under this analysis, there is no prevailing party. Accordingly, the district court abused its discretion in determining that Gladiator was a prevailing party for purposes of NRS 18.010(2)(a) and 18.020.

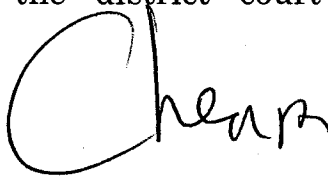
Prerequisite money judgment


This court has long held that a money judgment is a prerequisite to any award of attorney fees under NRS 18.010(2)(a). Singer v. Chase Manhattan Bank, 111 Nev. 289, 294, 890 P.2d 1305, 1308 (1995). Gladiator did not obtain a money judgment and, therefore, the district court could not properly award Gladiator attorney fees pursuant to NRS 18.010(2)(a).

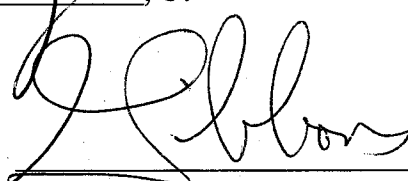
CONCLUSION

For the above reasons, we conclude that the district court abused its discretion in awarding attorney fees and costs to Gladiator. Accordingly, we

REVERSE the district court's order awarding Gladiator attorney fees and costs.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Timothy C. Williams, District Judge
Sterling Law, LLC
Stanley W. Pierce
Eighth District Court Clerk