

IN THE SUPREME COURT OF THE STATE OF NEVADA

LON HALLS, INDIVIDUALLY,
Appellant,
vs.
ANNIE PHILLIPS, INDIVIDUALLY;
AND LIL'S INC., THROUGH ANNIE
PHILLIPS IN HER OFFICIAL
CAPACITY AS PRESIDENT OF LIL'S
INC.,
Respondents.

No. 51414

LON HALLS, INDIVIDUALLY,
Appellant,
vs.
ANNIE PHILLIPS, INDIVIDUALLY;
AND LIL'S INC., THROUGH ANNIE
PHILLIPS IN HER OFFICIAL
CAPACITY AS PRESIDENT OF LIL'S
INC.,
Respondents.

No. 51862

FILED

SEP 28 2010

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

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

These are consolidated appeals from a district court judgment and supplemental judgment in a contract action (Docket No. 51414), and from an order awarding attorney fees (Docket No. 51862).¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

¹Although Phillips filed a petition for relief under Chapter 13 of the bankruptcy code in the United States Bankruptcy Court for the District of Nevada, Case No. BK-S-09-15389-LBR, the bankruptcy court entered an order on September 4, 2009, modifying the automatic stay to allow these appeals to proceed to final determination. The order directed the parties to seek further modification of the automatic stay before any further proceedings.

Having reviewed the opening brief and appendix,² we conclude that the district court's damages award must be modified.³ The district court awarded respondents \$95,658.67 in compensatory damages, but failed to offset a \$107,200 payment that appellant made on property that the parties purchased together to build a casino. Thus, the district court must modify the damages award to account for the \$107,200 that appellant paid on the property.

Further, although the district court determined that punitive damages were appropriate based on malicious conduct, it erred by awarding respondents \$191,316 in punitive damages without holding a hearing and making findings regarding how the amount was assessed. See NRS 42.005(3) (providing that if punitive damages are to be assessed, "a subsequent proceeding must be conducted before the same trier of fact to determine the amount of such damages to be assessed" and that "[t]he trier of fact shall make a finding of the amount to be assessed according to the provisions of this section"). Accordingly, the district court must redetermine punitive damages after holding a hearing and enter an order with the appropriate findings.

Finally, the district court awarded respondents attorney fees under NRS 18.010(2)(b), which allows for a fee award when a party brings

²On May 11, 2010, these matters were submitted for decision on the opening brief and appendix after proper person respondent Annie Phillips failed to file an answering brief and respondent Lil's, Inc., was precluded from participating in these appeals because it failed to obtain new counsel.

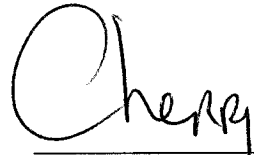
³Appellant challenges the judgments' compensatory and punitive damages awards but makes no arguments regarding the district court's findings with regard to liability.

or maintains an action without reasonable ground or to harass the prevailing party. Here, appellant was successful in his counterclaim for breach of contract, as reflected in the supplemental judgment allowing appellant an offset against the judgment for loans that respondent Annie Phillips did not repay to appellant, thus disposing of his counterclaim. While he did not succeed on his other counterclaims, he presented some evidence and testimony to factually and legally support them and nothing in the district court's findings or in the record indicates that appellant maintained his counterclaims in this action for harassment purposes. See Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1095, 901 P.2d 684, 687 (1995) (stating that to support an award under NRS 18.010(2)(b), "there must be evidence in the record supporting the proposition that the complaint was brought without reasonable grounds or to harass the other party" (quoting Chowdhry v. NLVH, Inc., 109 Nev. 478, 486, 851 P.2d 459, 464 (1993))). Thus, the district court abused its discretion by awarding fees to respondents under NRS 18.010(2)(b), and it must vacate the attorney fees award on remand.⁴

⁴Having considered the issue raised by appellant regarding the district court's refusal to consider evidence about a loan that respondents obtained on the property after a compelled partial settlement, under which appellant received \$125,000 and respondents were awarded title to the property, we conclude that appellant's contentions lack merit. NRS 48.015; see M.C. Multi-Family Dev. v. Crestdale Assocs., 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (noting that this court reviews the district court's decision to admit or exclude evidence for an abuse of discretion). We likewise reject appellant's alternative argument that the compelled partial settlement should be reversed for lack of essential terms. See May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (explaining what is required for a valid settlement agreement).

Accordingly, we


ORDER the judgment of the district court AFFIRMED IN PART, as to liability, AND REVERSED IN PART, as to the offset for the amount appellant paid on the property, punitive damages, and attorney fees, AND REMAND this matter to the district court for further proceedings consistent with this order.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Jerry J. Kaufman, Settlement Judge
David J. Winterton & Associates, Ltd.
Annie Phillips
Eighth District Court Clerk