

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL D.S. EDWARDS,
Appellant,

vs.

NATIONAL CREDIT ADJUSTERS, LLC,
A/K/A NCA, A/D/B/A 4 SUM, INC.; MARK
L. HUSTON; AND BRAD HOCHSTEIN,
Respondents.

No. 51531

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

This is a proper person appeal from a district court summary judgment in a consumer protection action and a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Summary judgment

Although the dates are in dispute, both parties agree that respondent National Credit Adjusters, LLC (NCA) left pre-recorded messages on appellant Paul D.S. Edwards' cellular telephone at least four times in October 2007. Under 47 U.S.C. § 227, referred herein as the Telephone Consumer Protection Act (TCPA), a creditor or debt collector has the burden of showing that it had the consumer's prior express consent to place autodialed or pre-recorded calls to the consumer's wireless telephone. In re ACA International, 23 F.C.C.R. 559, 565 (2008). Express consent is "[c]onsent that is clearly and unmistakably stated." Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 951 (9th Cir. 2009) (internal quotations omitted).

Based on our review of the documents before us, and having considered the parties arguments, we conclude that the district court erred in granting summary judgment to NCA on Edwards' TCPA claim. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)

(noting that this court reviews a district court's grant of summary judgment de novo). Specifically, based on the record and arguments before us, we conclude that NCA has failed to meet its burden of demonstrating that Edwards clearly and unmistakably consented to allowing NCA to place autodialed or pre-recorded calls to his wireless telephone. ACA International, 23 F.C.C.R. 559; Satterfield, 569 F.3d at 955. As a result, genuine issues of material fact remain as to whether Edwards had given his express consent, and thus, the district court erred in granting summary judgment in NCA's favor on Edwards' TCPA claim. Wood, 121 Nev. at 731, 121 P.3d at 1030-31. Accordingly, we reverse the portion of the district court's summary judgment as to Edwards' TCPA claim. The district court's summary judgment is affirmed in all other respects.¹

Attorney fees


After entry of its order granting summary judgment, the district court awarded attorney fees and costs to respondents under NRS 18.010(2)(b), concluding that Edwards' complaint was brought without reasonable grounds and to harass respondents. A district court's decision to award attorney fees will not be overturned absent a manifest abuse of discretion, Kahn v. Morse & Mowbray, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005), and an award of costs is reviewed for an abuse of discretion. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1357, 971 P.2d 383, 388 (1998).


In light of our decision to reverse in part the district court's grant of summary judgment in favor of respondents, we conclude that any

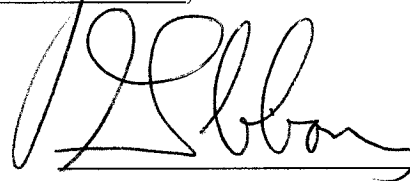
¹Having considered Edwards' arguments regarding his remaining claims and regarding the grant of summary judgment in favor of respondents Mark L. Huston and Brad Hochstein, to the extent that such arguments are properly before us, we conclude that they lack merit.

award of attorney fees and costs under NRC 18.010(2)(b) is premature, and thus, the award must be reversed. Kahn, 121 Nev. at 479-80, 117 P.3d at 238 (reversing an entire fee award made under NRS 18.010(2)(b) when a summary judgment was reversed in part and affirmed in part on appeal). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Paul D.S. Edwards
Flangas McMillan Law Group, Inc.
Eighth District Court Clerk

²As Edwards filed amended notices of appeal on July 31, 2008, August 18, 2008, and September 14, 2008, from various post-judgment orders that are not appealable, we hereby dismiss those appeals. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that where no statutory authority to appeal is granted, no appeal may be taken); Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) (concluding that to be appealable under NRAP 3A(b)(2), a special order after final judgment must affect the rights of the parties growing out of the final judgment).