

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLEN WILLIAM EASTER,
Appellant,
vs.
DUANE BERGLUND, INDIVIDUALLY
AND AS A DIRECTOR OF
COMMUNITY OUTREACH
MINISTRIES,
Respondent.

No. 52159

FILED

APR 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingold*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is a proper person appeal from a district court judgment in an action regarding a non-profit corporation. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

BACKGROUND

The following facts relevant to our resolution of this appeal were found by the district court. Respondent Duane Berglund incorporated a non-profit entity entitled Community Outreach Ministries. Although Community Outreach originally had three directors, including Berglund, by April 16, 2004, two of the directors had resigned and Berglund remained as Community Outreach's sole director. On April 16, 2004, Berglund called a board meeting and announced that he was moving to Wisconsin and appointing appellant Glen Easter as president. Berglund then filed documents with Nevada's Secretary of State adding Easter as a director.

Shortly after moving to Wisconsin, Berglund became concerned by financial information Easter reported regarding Community Outreach's revenue. Berglund traveled to Las Vegas to investigate, and Easter was unable to explain the financial discrepancies. Berglund and Easter then decided that Easter should take a vacation, and during Easter's absence, Berglund discovered that financial documents such as

sales records were missing. Berglund filed a criminal complaint against Easter alleging embezzlement and theft. And while Easter was arrested, the criminal charges were ultimately dismissed for lack of probable cause.

In the interim, Berglund filed a civil complaint against Easter on behalf of Community Outreach in district court, and Easter filed a counterclaim. After holding a bench trial, the district court entered a judgment awarding Community Outreach \$30,825 in compensatory damages, removing Easter as a director, enjoining him from entering the Community Outreach premises or interfering with Community Outreach business, and dismissing Easter's counterclaim. Easter now appeals.

On appeal, Easter argues that the district court misapplied Nevada's non-profit corporation statutes, specifically NRS Chapter 82, that this court should order a criminal investigation of Berglund, and that we should set aside the compensatory award and restore Easter as a director of Community Outreach. Berglund, however, argues that Easter's NRS Chapter 82 arguments are irrelevant because the district court did not rely on that chapter and the facts clearly establish the propriety of the district court's resolution of this matter.

The district court's compensatory award

This court will not set aside the district court's factual findings if they are supported by substantial evidence and not clearly erroneous. Goodrich & Pennington v. J.R. Woolard, 120 Nev. 777, 782, 101 P.3d 792, 795 (2004). Based on our review of the record before us, we conclude that the district court's compensatory damages award is supported by substantial evidence and therefore affirm the compensatory damages award.

The district court's application of NRS Chapter 82

This court reviews de novo the district court's NRS Chapter 82 legal conclusions, such as its determination not to apply NRS Chapter 82 in directing the removal of Easter as a director of Community Outreach and entering the corresponding injunction. Las Vegas Downtown Redev. v. Crockett, 117 Nev. 816, 822, 34 P.3d 553, 557 (2001) (legal conclusions); Nevadans for Nevada v. Beers, 122 Nev. 930, 942 n.15, 142 P.3d 339, 347 n.15 (2006) (injunctions). Here, the district court determined that while Berglund did not follow the requirements of NRS Chapter 82 in removing Easter as a director, there was sufficient testimony from witnesses that Easter was a detriment to the corporation and therefore should be removed as a director and enjoined from the Community Outreach premises. While the parties have not directed us to any relevant authority addressing this issue, our own review leads us to conclude that, absent express legislative authority such as that found in NRS Chapter 82, the district court lacks the authority to simply remove directors from non-profit corporations. See Lynzanchuk v. Yakima Ranches Owners Ass'n, 866 P.2d 695, 698-99 (Wash. Ct. App. 1994); see also Webber v. Webber Oil Co., 495 A.2d 1215, 1221 (Me. 1985) (determining that, under Maine law, the exclusive judicial remedy for removal of a director from a for-profit corporation is as set forth by statute); Harkey v. Mobley, 552 S.W.2d 79, 81 (Mo. Ct. App. 1977) (concluding that, absent statutory authority or allegations of fraud, courts do not have authority to remove directors of private corporations or to enter an injunction restraining directors from performing their corporate duties); but see Brown v. North Ventura Road Development Company, 30 Cal. Rptr. 568, 571 (Ct. App. 1963) (stating that "[s]ince directors hold a position of trust, judicial power to remove them exists independent of statute"). To the extent that courts do not

follow this rule when fraudulent or dishonest conduct has been established by clear and convincing evidence, see, e.g., 19 C.J.S. Corporations § 541 (2009) (collecting cases); 2 William Meade Fletcher, Fletcher Cyclopaedia of the Law of Corporations § 358 (2009) (same), we note that the district court, in declining to award punitive damages, expressly concluded that fraud had not been established by clear and convincing evidence. Accordingly, we conclude that the district court erred as a matter of law in its removal of Easter as a director of Community Outreach, and thus, we reverse this portion of the judgment and the consequent permanent injunction.¹

CONCLUSION

Accordingly, for the reasons stated above, we reverse the portion of the district court's judgment removing Easter as a director and the related injunction, and we affirm the remainder of the district court's judgment.

It is so ORDERED.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹We note that this order does not preclude ^{Easter or} Berglund or ~~Community Outreach~~ ^{a director} Easter from seeking to remove Easter through the processes authorized by NRS Chapter 82, such as petitioning the district court under NRS 82.311 to appoint a provisional director.

²We reject Easter's argument that this court should order a criminal investigation of Berglund.

*amended per
June 10, 2010,
order - HC*

cc: Hon. James M. Bixler, District Judge
Glen William Easter
Kyle & Kyle
Eighth District Court Clerk