

IN THE SUPREME COURT OF THE STATE OF NEVADA

STANLEY HELLER, AND MICHEL H.  
KALCHEIM, AN INDIVIDUAL,  
Appellants,  
vs.  
DEIRDRE DELANEY GURNEY, AN  
INDIVIDUAL,  
Respondent.

No. 52293

**FILED**

**JAN 29 2010**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order awarding attorney fees in a real property action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Michel "Mitch" Kalcheim is the stepson of appellant Stanley Heller. Heller purchased a 12-acre parcel of land in Laughlin, Nevada (the Property). After allowing the Property to go into foreclosure, Heller placed the only bid on the Property at the foreclosure sale and he recorded title to the Property in Kalcheim's name. At the time of sale, Kalcheim and Deirdre Delaney Gurney were married, and the Property later became a subject of dispute during their dissolution of marriage proceedings. Thereafter, Heller and Kalcheim brought suit to quiet title to the Property based upon a constructive trust theory. After a four-day bench trial, the district court found in favor of Gurney. After the entry of judgment, Gurney filed a motion for attorney fees, which the district court granted. This appeal follows.

On appeal, Heller and Kalcheim argue that the district court abused its discretion in granting Gurney's motion for attorney fees because there was substantial credible evidence to support their claims at

trial and there was no evidence that the action was intended to harass Gurney. We disagree.

Standard of review

“The decision whether to award attorney’s fees is within the sound discretion of the [district] court.” Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (citing County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982)). We will not disturb a district court’s award of attorney’s fees on appeal absent a manifest abuse of discretion. Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994) (citing County of Clark, 98 Nev. at 492, 653 P.2d at 1220)).

The district court did not abuse its discretion in awarding attorney fees and costs to Gurney

NRS 18.010(2)(b) permits a district court to award attorney’s fees to a prevailing party “when the court finds that the claim . . . of the opposing party was brought or maintained without reasonable ground.” See also Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any credible evidence at trial.’” Allianz, 109 Nev. at 996, 860 P.2d at 724 (quoting Western United Realty, Inc. v. Isaacs, 679 P.2d 1063, 1069 (Colo. 1984)). “[I]f the record reveals that counsel of any party has brought, maintained, or defended an action in bad faith, the rationale for awarding attorney fees is even stronger . . . . Thus, the bad faith of respondents in bringing fraudulent claims makes the case for awarding attorney’s fees even stronger.” Id.

Moreover, NRS 18.010(2)(b) states that

[t]he court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent

of the Legislature that the court award attorney's fees . . . in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.


We recently held that “[d]etermining whether attorney fees should be awarded under NRS 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, ‘rather than a hypothetical set of facts favoring plaintiff’s averments.’” Baldonado v. Wynn Las Vegas, 124 Nev. \_\_\_, \_\_\_, 194 P.3d 96, 106-107 (2008) (quoting Bergman v. Boyce, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993)).

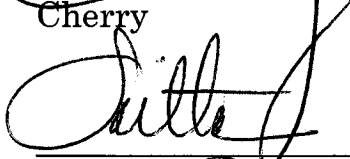
We conclude that the district court did not abuse its discretion in granting attorney fees and costs to Gurney based on the reasonable-ground language of NRS 18.010(2)(b). The district court weighed the evidence in this case and concluded that Heller and Kalcheim had fabricated their story and that the only evidence of their constructive trust theory was their testimony. Further, there was evidence presented that Kalcheim had changed his story as to the interest he held in the Property at least five times, and the first mention of the constructive trust theory came about either in preparation for this litigation or during the course of this litigation. Under these circumstances, we conclude that the district court did not abuse its discretion in awarding attorney fees to Gurney under NRS 18.010(2)(b) based on a liberal interpretation of that statute and the fact that, based on the evidence presented at trial, it appears that

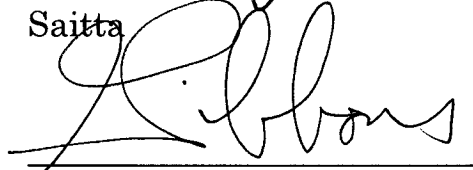
Heller and Kalcheim presented a hypothetical set of facts that favored their asserted theory.<sup>1</sup>

In light of the foregoing discussion, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Greenberg Glusker Fields Claman & Machtinger  
Michel H. Kalcheim  
Lionel Sawyer & Collins/Las Vegas  
John G. Benedict  
Brian R. Dziminski  
Eighth District Court Clerk

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<sup>1</sup>We also conclude that the district court abused its discretion in awarding attorney fees and costs to Gurney based on the harassment language of NRS 18.010(2)(b). However, even though the district court abused its discretion in awarding attorney fees on the basis of harassment, the award was still proper based on the fact that no reasonable ground existed for the bringing and maintaining of this claim, as set forth in this order. As such, we do not reverse the district court's award of attorney fees and costs to Gurney.