

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARQUIS & AURBACH, A  
PROFESSIONAL CORPORATION;  
GERALDINE BARRETTO-KO; AND  
MARY KAYE LADOUCEUR,  
Appellants,  
vs.  
DAVID A. POIRY,  
Respondent.

No. 52319

**FILED**

**JUL 26 2010**

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying attorney fees.<sup>1</sup> Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Having reviewed the briefs and appendices, we conclude that the district court abused its discretion in refusing to award fees pursuant

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<sup>1</sup>Appellants also urge this court to “reverse” the district court’s “failure” to award them costs as the prevailing parties. Appellants correctly point out that they filed a memorandum of costs, the district court docket entries indicate that no motion to retax was filed, and clearly, as the prevailing party, they are entitled to costs. NRS 18.020(3). While there is nothing in the record to “reverse” in this regard, we remind the district court that, on remand, it must award appellants their allowable costs. Id.; see also NRS 18.005 (listing permissible costs).

to NRCP 11.<sup>2</sup> See Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993). First, in his opposition to appellants' motion to dismiss, respondent conceded that approximately one-third of his claims were barred by the statute of limitations. Even if the remaining claims were proper, the district court should have allocated the requested fees between the baseless claims and the proper claims and awarded appellants their fees attributable to the former. Id. at 676, 856 P.2d at 563-64.

Second, the record discloses no basis for the court's ruling other than its inference that the claims were filed in good faith and its opinion that both sides were "hot" as a result of the underlying transaction. But good faith is not the standard under NRCP 11, nor is the parties' emotional state. Rather, the two-part inquiry is whether the complaint was well-grounded in fact and warranted by existing law (or a good faith argument for changing the law) and whether counsel made a reasonable and competent inquiry. Id. at 676, 856 P.2d at 564. The record indicates that this is not the test that the district court applied, and consequently, the district court abused its discretion in denying

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<sup>2</sup>Appellants argue that they also sought fees pursuant to NRS 18.010(2)(b) by including such a request in their motion to dismiss. But appellants did not appeal from the district court's order granting the motion to dismiss, which neither granted nor denied the attorney fees request that had been included in that motion and which therefore implicitly denied the request. See Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000). Accordingly, we lack jurisdiction to consider appellants' arguments based on NRS 18.010(2)(b). See NRAP 3(a)(1) (requiring a timely filed notice of appeal to confer jurisdiction on this court).

appellants' motion without applying the proper standard. Id. at 677, 856 P.2d at 564. On remand, the district court must evaluate the motion under the proper standard and enter an order with appropriate findings. Accordingly, we

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

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Chief Judge, Eighth Judicial District  
Hon. Joseph T. Bonaventure, Senior Judge  
William F. Buchanan, Settlement Judge  
Marquis & Aurbach  
Bruce L. Gale  
Eighth District Court Clerk