

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIFT CERTIFICATION CO. INC., A
NEVADA CORPORATION,
Appellant,

vs.

WAYNE THOMAS, AN INDIVIDUAL
AND AMERICAN EQUIPMENT, INC., A
CORPORATION,
Respondents.

No. 53035

LIFT CERTIFICATION CO. INC., A
NEVADA CORPORATION,
Appellant,


vs.

WAYNE THOMAS, AN INDIVIDUAL
AND AMERICAN EQUIPMENT, INC., A
CORPORATION,
Respondent.

No. 53820

FILED

FEB 03 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment and a post-judgment order awarding attorney fees and costs in an employment action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

Respondent Wayne Thomas resigned from appellant Lift Certification Co. Inc. and joined one of its competitors, respondent American Equipment, Inc. Thomas brought several of Lift's employees and a large portion of Lift's customers to American Equipment. Lift filed suit against Thomas and American Equipment, alleging that Thomas breached his fiduciary obligation to Lift and that American Equipment aided and abetted Thomas in doing so. The district court determined that

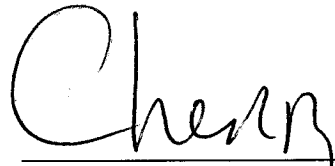
Thomas did not have a fiduciary obligation to Lift but, instead, owed a duty of loyalty to the company. The district court ultimately found that Thomas did not breach this duty and that American Equipment did not aid and abet Thomas. In a post-judgment order, the district court awarded American Equipment attorney fees and costs. Lift now appeals the district court's judgment and its post-judgment order. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

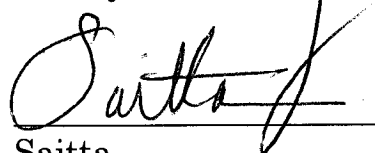
Mixed questions of law and fact are reviewed under different standards. D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). We defer to a district court's findings of fact unless they are clearly erroneous and not based on substantial evidence. Id. But we review issues of law de novo. Id. We review a district court's decision to award attorney fees for an abuse of discretion. Miller v. Jones, 114 Nev. 1291, 1300, 970 P.2d 571, 577 (1998).


We conclude that the district court did not clearly err in finding that Thomas did not breach his duty of loyalty to Lift and that there was substantial evidence supporting its determination. The district court also properly found that American Equipment did not aid and abet Thomas in breaching this duty. Likewise, we conclude that the district court did not abuse its discretion in granting American Equipment a

partial award of attorney fees under NRS 18.010.¹ Accordingly, we conclude that Lift's contentions are without merit, and we therefore

ORDER the judgment of the district court and its post-judgment order AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹Respondents Thomas and American Equipment argue that the district court abused its discretion in failing to award attorney fees under NRCP 68 and NRS 17.115. They assert that the award of attorney fees should be reversed and the full fees they requested be awarded. Thomas and American Equipment, however, have not appealed from any of the district court's orders, let alone its post-judgment order awarding attorney fees. Consequently, their contention is improperly before us. See Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995) (“[A] district court [order] awarding attorney fees and costs is a special order made after final judgment” and is thus appealable pursuant to NRAP 3A(b)(8)); Ford v. Showboat Operating Co., 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (“[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal.”).

cc: Hon. Allan R. Earl, District Judge
Lansford W. Levitt, Settlement Judge
Norman H. Kirshman
Holland & Hart LLP/Las Vegas
Eighth District Court Clerk