

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA CHINESE
WEEKLY, AN UNKNOWN ENTITY;
ANTHONY LU, AN INDIVIDUAL; AND
JUDY CHAN MOMAN, AN
INDIVIDUAL,

Appellants,

vs.

CHINESE AMERICAN CHAMBER OF
COMMERCE OF NEVADA, A NEVADA
CORPORATION; TRAVIS LU, AN
INDIVIDUAL; AND TRAVIS LU &
ASSOCIATES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondents.

No. 54554

FILED

NOV 19 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 post-judgment order denying a motion for attorney fees and costs in a tort action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Respondents Chinese American Chamber of Commerce of Nevada, Travis Lu, and Travis Lu & Associates, LLC (collectively, CACC), all sued the appellants Southern Nevada Chinese Weekly and its employees (collectively, Chinese Weekly) for publishing allegedly defamatory articles. The jury returned a verdict wholly in favor of Chinese Weekly. However, the district court denied the paper's request for attorney fees and costs.

Chinese Weekly argues that the district court abused its discretion by failing to award attorney fees and costs pursuant to NRS 18.010 and 18.020, given its successful defense of its First Amendment rights. Because the district court summarily denied Chinese Weekly's

request for fees and costs without appropriate analysis, we agree that it abused its discretion in denying the request and therefore reverse the district court's decision and remand for further proceedings.

NRS 18.010(2)(b) required the district court to consider the dismissed claims in deciding fees

Chinese Weekly contends the district court abused its discretion by failing to find that CACC filed suit only to harass Chinese Weekly. NRS 18.010(2)(b) allows the district court to award attorney fees when the court determines that a party brought or maintained a claim or defense without reasonable ground or to harass the prevailing party. The district court has discretion over awards of attorney fees, which this court will not disturb absent abuse. Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). In Bergmann, the district court did not consider multiple groundless claims brought by the plaintiff when considering an award of attorney fees, and this court held that was an abuse of discretion. Id. at 676, 856 P.2d at 564. As in Bergmann, CACC forced Chinese Weekly to defend itself against multiple defamation claims until a few days before trial began. Id. at 675, 856 P.2d at 563. NRS 18.010(2)(b) emphasizes that the district court should inquire into the actual circumstances of the case to determine whether a party "brought or maintained [a case] without reasonable ground or to harass the prevailing party."

CACC forced Chinese Weekly to defend itself during an arduous discovery process against numerous allegedly defamatory statements. This suggests that CACC may have filed frivolous claims, hoping that one would stick. In enacting NRS 18.010, the Legislature condemned this type of abusive tactic. It is unclear from the record whether or not the dismissed claims were groundless. However, the

district court failed to follow NRS 18.010, and thus abused its discretion, in not considering the dismissed claims at all.

The district court failed to analyze whether there was adequate documentation of costs

Chinese Weekly also contends that the district court erred in not awarding costs to it as the prevailing party. We review a district court's award of costs for abuse of discretion. Village Builders 96 v. U.S. Laboratories, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). Under Nevada law, the prevailing party is entitled to recover costs incurred in litigation. NRS 18.020. Those costs must be "actual and reasonable, 'rather than a reasonable estimate or calculation of such costs . . .'" Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (quoting Gibellini v. Klindt, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994)).

NRS 18.110(1) provides that to recover costs, the prevailing party must provide "a memorandum of the items of the costs in the action or proceeding . . ." The prevailing party must provide sufficient documentation that the costs were reasonable. Village Builders 96, 121 Nev. at 277-78, 112 P.3d at 1093 ("[D]ocumentation is precisely what is required under Nevada law to ensure that the costs awarded are only those costs actually incurred."); Berosini, 114 Nev. at 1352-53, 971 P.2d at 386 (reversing the district court's costs award because the prevailing party failed to provide any itemization with respect to some of its alleged costs).

Here, Chinese Weekly provided a memorandum detailing its costs incurred in the case. The district court failed to conduct any analysis of the adequacy of the memorandum and, instead, summarily denied Chinese Weekly's request for costs. In not conducting the review of the

costs documentation as provided in NRS 18.110, the district court abused its discretion.

We therefore reverse the district court's denial of attorney fees and costs and remand this matter to the district court to make specific findings as to the dismissed claims and costs documentation.¹

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Carolyn Worrell, Settlement Judge
Adams Law Group
Marquis & Aurbach
Eighth District Court Clerk

¹Given our decision to reverse and remand the district court's denial of attorney fees and costs, we do not address Chinese Weekly's argument that a successful defense of First Amendment rights at trial should be granted attorney fees and costs as a matter of public policy.