IN THE SUPREME COURT OF THE STATE OF NEVADA

PRESTIGE OF BEVERLY HILLS, INC.; AMIR SHOKRIAN; AND BEVERLY RODEO DEVELOPMENT CO., INC., Appellants,
vs.
RICHARD WEBER, Respondent.

No. 55837

FILED

MAR 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a tort action and from a post-judgment award of attorney fees. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Facts and procedural history

Respondent Richard Weber filed a complaint in the district court asserting that the roots from trees on a neighboring property encroached upon his property. He claimed that this encroachment destroyed a boundary wall and damaged his pool plumbing, pool deck, and sprinkler system. At the time of Weber's complaint, the property on which the trees grew was owned by appellant Prestige of Beverly Hills (Prestige), a Nevada company owned by appellant Amir Shokrian. In November 2008, Weber filed a motion for a preliminary injunction requiring Prestige and Shokrian to remove the trees, and requested damages for the wall's destruction.

By stipulation of the parties, January 2, 2009, was established as the date for expert disclosures and February 2, 2009, as the final day to disclose rebuttal experts. Weber retained and timely disclosed several experts—a master arborist, a construction consultant, and a construction

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contractor—who had investigated the property and prepared supporting expert reports. Largely, their reports established that the wall collapsed because of tree roots on Prestige's property and that lasting repair of the wall could not be accomplished without removing the trees.

On January 28, 2009, just a few days before the deadline for disclosure of rebuttal experts, Prestige filed for bankruptcy and, under 11 U.S.C. § 362, litigation was stayed. That selfsame day, Prestige recorded a deed showing that it had transferred the forested property free of charge to Beverly Rodeo Development (Rodeo), which, like Prestige, was wholly owned by Shokrian. The recorded deed indicated the transfer had been made in November 2008. Weber then amended his complaint to include Rodeo as a defendant and alleged that Prestige and Rodeo were alter egos of Shokrian.[1] On March 17, 2009, the U.S. Bankruptcy Court lifted the stay, allowing Weber's suit to proceed.

Almost two months passed. At the beginning of May 2009, Weber moved for summary judgment. Then, on May 14, 2009, Shokrian asked the discovery commissioner for an extension of discovery and more time to disclose rebuttal experts—or, more accurately, to reopen the time to disclose rebuttal experts, since the motion came several months after the stipulated deadline for disclosing experts had passed. The discovery commissioner acceded to this request in its entirety but the district court, at Weber's urging, pruned the commissioner's order to deny Shokrian additional time to disclose rebuttal experts. Consequently, at the preliminary injunction hearing that followed, Weber provided testimony

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[1]This order will refer to the defendants collectively as Shokrian.

and reports from his experts but Shokrian put up no witnesses. Weber's experts established that the trees' roots caused damage to the wall and that to rebuild the wall would require removal of the trees.

The district court granted the injunction and instructed Shokrian to remove the trees. Thereafter, the district court took up the summary judgment motion. After the summary judgment hearing, the court entered an order concluding that "[n]o issues of material fact exist as to Defendants' liability on Weber's claims for trespass, nuisance, and negligence." But this did not resolve everything. Weber had not presented sufficient evidence to settle the amount and extent of damages. To address these issues, the district court scheduled and held a later "prove-up hearing" (which neither Shokrian nor his counsel attended, later claiming lack of notice). After this hearing, the district court concluded that Weber was entitled to summary judgment on damages, as well. The district court awarded compensatory damages of $28,286.69, assessed punitive damages of $100,000, and determined that Prestige and Rodeo were alter egos of Shokrian and each other, and entered judgment accordingly. After a subsequent hearing on attorney fees, the court awarded attorney fees of $73,096 based on NRS 18.010 and costs of $9,630.44, along with $2,510.15 in prejudgment interest.

Shokrian appeals from the district court's final judgment and raises several issues: (1) that the district court erred in failing to extend (or reopen) the discovery deadline; (2) that he was provided inadequate notice of the prove-up hearing; (3) that the district court erred in finding that Prestige and Rodeo were alter egos of Shokrian, and therefore he cannot be held responsible for trees on property those entities owned; (4) that the ratio of punitive to compensatory damages is unconstitutionally

high; (5) that the district court abused its discretion in awarding attorney fees under NRS 18.010; and (6) that there was not substantial evidence of fraud or malice to justify punitive damages.

Discussion

A. Denial of time extension for expert disclosures was not an abuse of discretion

Shokrian argues that the district court abused its discretion by denying his request to reopen the discovery deadline for disclosure of rebuttal expert witnesses. Francis v. Wynn Las Vegas, 127 Nev. ___, ___, 262 P.3d 705, 712 (2011). Specifically, he argues that it is an abuse of discretion not to reopen a discovery deadline that expires while litigation is stayed by a party's bankruptcy proceeding. He also argues that litigation had been ongoing for only thirteen months before summary judgment was granted and he should have been given more time for discovery under NRCP 56(f). Neither argument carries. "Absent a clear abuse of discretion," In re Adoption of a Minor Child, 118 Nev. 962, 968-69, 60 P.3d 485, 489 (2002), this court will not reverse a district court's management of discovery, NRCP 16(b), and we find no abuse of discretion here.

Under 11 U.S.C. § 362(a), a bankruptcy petition "operates as a stay . . . [of the] continuation" of an action. 11 U.S.C. § 362(a) (2006). "Discovery is considered part of the 'continuation' of a proceeding and is, therefore, subject to the automatic stay." In re Manown, 213 B.R. 411, 412 (Bankr. N.D. Ga. 1997). Thus, discovery is ordinarily halted for a party who is in bankruptcy and, for the sake of Shokrian's argument, we will assume that bankruptcy also tolls discovery deadlines like the rebuttal expert disclosure deadline.

But once a bankruptcy stay has been lifted, discovery can resume "where it left off before the bankruptc[y] w[as] filed." In re Carriage House Condominiums L.P., 415 B.R. 133, 145 (Bankr. E.D. Pa. 2009); Plant v. Merrifield Town Center Ltd. P'ship, 711 F. Supp. 2d 576, 585 (E.D. Va. 2010) (denying relief to defendant who failed to meet discovery deadlines, that became effective again after stay was lifted). And once a party recovers from the bankruptcy stay, it must diligently pursue any post-stay relief. Velez v. Seymour Moslin Assocs., Inc., 719 N.Y.S.2d 11, 13 (App. Div. 2000); 8A C.J.S. Bankruptcy § 507 (2009) (when a bankruptcy court lifts the stay a party must be diligent because rationale behind lifting stay is efficient administration of justice); Rutter's, California Practice Guide to Bankruptcy §§ 8:1145 (2010).

In this case, Shokrian dallied for nearly two months after the bankruptcy stay was lifted before asking for more time to disclose rebuttal experts. See Velez, 719 N.Y.S.2d at 12 (party must diligently pursue discovery when bankruptcy stay is lifted). This was after the parties had previously extended the discovery deadline by stipulation. The court considered these circumstances and noted in its order denying more time that:

> The record is very clear that defendant was told on numerous occasions of the pending deadline and chose to ignore it and not provide his counsel with the appropriate information to retain an expert witness. The bankruptcy had nothing to do with defendant's failure to disclose an expert witness by the original deadline.

At a hearing a few days later, the district court orally explained its reasoning to Shokrian's counsel: Shokrian's first attorney had pressed him to retain experts to no avail and Shokrian, as an individual defendant, could have retained an expert despite Prestige's bankruptcy because the

stay did not apply to him. In re Richard B. Vance and Co., 289 B.R. 692, 696-97 (Bankr. C.D. Ill. 2003) ("overwhelming majority of courts have held that the lawsuit is only stayed as to the bankrupt party" and stay does not extend to debtor's officers except under "extremely unusual circumstances" and such relief "must be requested affirmatively by the debtor"); Rutter's, California Practice Guide to Bankruptcy § 8:350 (2010).

Given these facts, we cannot conclude that the district court abused its discretion by deciding not to reopen Shokrian's deadline for disclosure of rebuttal experts. See Commc'ns Maint., Inc., v. Motorola, Inc., 761 F.2d 1202, 1207 (7th Cir. 1985) (district court did not abuse discretion by denying a motion for continuance and starting trial one day after bankruptcy stay was lifted, even though party complained it was unable to conduct thorough discovery because of the bankruptcy stay).

Shokrian also argues that litigation had been ongoing for only thirteen months and summary judgment is not appropriate when a party "seeks additional time to conduct discovery to compile facts to oppose the motion." Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). But Shokrian did not move for NRCP 56(f) relief, which allows a party who does not have evidence to rebut summary judgment to ask the district court for more time by affidavit. See Choy v. Ameristar Casinos, 127 Nev. ___, ___, 265 P.3d 698, 700 (2011) (a party seeking more time for discovery under NRCP 56(f) must submit an affidavit explaining discovery it wants and how more discovery would create an issue of fact). Therefore, the district court did not abuse its discretion in denying Shokrian's request for an extension of time.

B. Notice of subsequent hearing was adequate

Shokrian next argues that he was not timely notified of the "prove-up hearing" that resolved the damage amount and alter ego claim;

he contends that the method of providing him with notice was inadequate and, therefore, his constitutional due process rights were violated.[2] He also argues that the district court should have telephoned him when it realized he was absent.

The fundamental purpose of due process is to give "both parties 'a meaningful opportunity to present their case.'" J.D. Construction v. IBEX Int'l Group, 126 Nev. ___, ___, 240 P.3d 1033, 1040 (2010) (quoting Mathews v. Eldridge, 424 U.S. 319, 349 (1976)). Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

In Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), the Court noted that it "[had] repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." Id. at 490; see also Greene v. Lindsey, 456 U.S. 444, 455 (1982) ("[N]otice by mail may reasonably be relied upon

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[2]Shokrian also argues that the content of the notice was inadequate because it did not explicitly state that alter ego liability was part of the hearing. This argument lacks record support. Weber's summary judgment motion specifically raised alter ego liability and the notice of the hearing declared its purpose was to settle "any other factual issues raised in Richard Weber's motion for summary judgment." See Tamko Roofing Products v. Smith Engineering Co., 450 F.3d 822, 827 (8th Cir. 2006) (determination of alter ego is for fact finder under California law); LFC Mktg. Group, Inc. v. Loomis, 116 Nev. 896, 904, 8 P.3d 841, 846-47 (2000) (alter ego is a factual determination); accord Berlin v. Boedecker, 887 P.2d 1180, 1188 (Mont. 1994). Shokrian offered no contest to the facts underlying the alter ego determination.

to provide interested persons with actual notice of judicial proceedings."). Nevada law is in accord. Mitchell v. District Court, 82 Nev. 377, 381-82, 418 P.2d 994, 997 (1966). In this case, the record indicates that notice of the proceeding was mailed to Shokrian's last known address, which was filed with the court by his previous attorneys. See NRS 47.250(13) (presumption "[t]hat a letter duly directed and mailed was received in the regular course of the mail"); Durango Fire Protection v. Troncoso, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (service is complete upon mailing, citing NRCP 5(b)); see also 66 C.J.S. Notice § 15 n.1 (2007) (party has duty to keep court informed of any change in address). Shokrian also argues that the court should have called him when it learned that he was absent, but cites no authority for this proposition. Therefore, Shokrian fails to establish that notice was inadequate.

C. Prestige and Rodeo were alter egos of Shokrian

Shokrian argues that he cannot be personally liable because the district court failed to find all elements of alter ego.

> There are three general requirements for application of the alter ego doctrine: (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.

Polaris Industrial Corp. v. Kaplan, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).

Each of these elements must be established by a preponderance of the evidence. LFC Mktg. Group, Inc. v. Loomis, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000). Shokrian asserts that the court did

not find the third element, that "'adherence to the corporate fiction of a separate entity would . . . sanction [a] fraud or promote injustice.'" Id. at 846-47 (second alteration in original) (quoting Polaris, 103 Nev. at 601, 747 P.2d at 886).

Shokrian's argument is misplaced. The district court addressed these elements and concluded that the facts showed that "a finding of alter-ego is appropriate here to prevent fraud and injustice." On all of these elements, the record contains substantial, Polaris, 103 Nev. at 601, 747 P.2d at 886 (reviewing a trial court's determination of alter ego at summary judgment phase for substantial evidence), uncontroverted, Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (for summary judgment to be proper there must be "no genuine issue of material fact"), evidence that Prestige and Rodeo were alter egos of Shokrian.

First, Shokrian's testimony at the bankruptcy proceeding demonstrated he was the lone decision-maker for Prestige and Rodeo, and the deeds transferring property from Prestige to Rodeo indicated he was the sole owner of both. Second, the companies were inseparable from Shokrian. He transferred property and assets from one to the other without recordkeeping, used Prestige's money to pay personal debts, and neither entity abided by corporate formalities. Third, it is clear that "adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice." Polaris, 103 Nev. at 601, 747 P.2d at 886. For example, the transfer of the property more than two months before the bankruptcy filing, without notifying the court that Rodeo was the new owner, indicated that, as the district court put it,

"Shokrian abuses the corporate form to suit his own interests and avoid his creditors."

Further, Shokrian presented no evidence to counter that which showed alter ego. Thus, there is no dispute of fact, and on this record, the district court had substantial evidence to grant summary judgment on Weber's alter ego assertion. Polaris, 103 Nev. at 601, 747 P.2d at 886 (reviewing a trial court's determination of alter ego at summary judgment phase for substantial evidence).[3]

D. Punitive damages were appropriate

Next, Shokrian argues that the district court's award of $100,000 in punitive damages, when compared to the compensatory award of $28,286.69, was error. The district court concluded that NRS 42.005's requirement that punitive damage awards be based on a clear and

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[3]Shokrian also argues that Rodeo should have had extended opportunity to disclose rebuttal experts because it was not a party when the deadline passed. Generally, a party that assumes an interest in litigation "takes the case as he finds it" and "[t]heir status in the litigation . . . tracks the positions of the original litigants." Brook & Weinberg v. Coreq, Inc., 53 F.3d 851, 852 (7th Cir. 1995) ("Any other approach would make a shambles of litigation; a party could sell its interest . . . and require the court to start the case from scratch."); 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1958 (3d ed. 2007). No one objected to the amended complaint's inclusion of Rodeo, see NRCP 15(a) (district court shall give leave to amend pleading "when justice so requires"); Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973), and as alter egos of Rodeo, Prestige and Shokrian adequately represented its interests. NEC Electronics Inc. v. Hurt, 256 Cal. Rptr. 441 (Ct. App. 1989) (corporate defendant "effectively represents the interests of the alter ego"). Therefore, Shokrian's argument is meritless.

convincing showing of "oppression, fraud or malice, express or implied" was met. Shokrian asserts that the record does support this conclusion.[4]

"This court will affirm a [punitive] damages award that is supported by substantial evidence." Wyeth v. Rowatt, 126 Nev. ___, ___, 244 P.3d 765, 782 (2010).

> "'Malice, express or implied,' means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(3). A defendant has a "[c]onscious disregard" of a person's rights and safety when he or she knows of "the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1).

Id. at ___, 244 P.3d at 783. "In other words, under NRS 42.001(1), to justify punitive damages, the defendant's conduct must have exceeded 'mere recklessness or gross negligence.'" Id. (quoting Countrywide Home Loans v. Thitchener, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008)).

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[4]Shokrian argues that punitive damages are available only when further damages could result, based in part on a discussion in BMW of North America, Inc. v. Gore, 517 U.S. 559, 581 (1996). This argument lacks merit. The Court in BMW discusses combined actual and potential damages as one way of looking at the ratio of compensatory damages to punitive damages, but only when potential damages exist. Id. at 581-82.

Shokrian also argues in passing that he was not put on notice of the punitive damage possibility at the second summary judgment hearing. However, the notice sent to Shokrian noted the hearing would address damages and "any other factual issues raised in Richard Weber's Motion For Summary Judgment." Weber's motion for summary judgment included a request for punitive damages under NRS 42.005.

Substantial support exists for the district court's finding of malice by clear and convincing evidence. For over ten years, Shokrian disregarded Weber's entreaties to rectify the problems caused by the trees. This exposed Weber to "harmful consequences." For example, the open wall, which could not be fixed without removal of the trees, subjected Weber to possible liability for violation of Clark County Code Chapter 22.20,[5] which requires barrier walls around properties with swimming pools. The collapse of the wall also created a safety hazard to Weber and his family. Weber's property is located in a high crime area, and on at least one occasion, trespassers entered the property. Shokrian baselessly demanded $20,000 from Weber to cut down the trees and refused to help when Weber attempted to rebuild the wall. Finally, rather than appeal or seek a stay pending appeal, Shokrian defied the court's order to remove the trees. On this record, we cannot say that the award of punitive damages following a regularly set hearing that Shokrian failed to attend was in error.

E. The ratio of punitive to actual damages was not excessive

Shokrian argues that a three-to-one ratio of punitive to compensatory damages is the ceiling under Wyeth, 126 Nev. at ___, 244 P.3d at 785, and that the $100,000 punitive damages judgment was grossly excessive in violation of the Fourteenth Amendment. See BMW, 517 U.S. at 563. He is mistaken.

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[5]Clark County Code Chapter 22.20 was repealed and replaced with the current version of the chapter on September 7, 2010. The subject matter is substantially unchanged.

Three principles guide the amount of a punitive damages award:

> "(1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the punitive damages award to the actual harm inflicted on the plaintiff, and (3) how the punitive damages award compares to other civil or criminal penalties that could be imposed for comparable misconduct."

Wyeth, 126 Nev. at ___, 244 P.3d at 784 (quoting Bongiovi v. Sullivan, 122 Nev. 556, 582, 138 P.3d 433, 452 (2006) (internal quotations and citations omitted)); see BMW, 517 U.S. at 575, 580, 583 (discussing the same three considerations). Whether a punitive damages award violates a defendant's constitutional rights is subject to de novo review. Bongiovi, 122 Nev. at 582-83, 138 P.3d at 451-52.

Shokrian's behavior was sufficiently reprehensible. He disregarded the law and the court's authority by flouting the district court's order to remove the trees. BMW, 517 U.S. at 576-77 (knowingly disobeying the law supports the use of "strong medicine . . . to cure the defendant's disrespect for the law"). Furthermore, Shokrian ignored Weber's pleas to remove the trees so Weber could fix the wall. In doing so, Shokrian exposed Weber to trespassers, created unsafe conditions for Weber's family, and subjected Weber to possible liability for violation of Clark County Code Chapter 22.20. Furthermore, Shokrian reprehensibly tried to shake Weber down for $20,000 to remove the trees, and Weber was unable to enjoy his property. See Wyeth, 126 Nev. at ___, 244 P.3d at 784-85.

As to the second prong, neither Wyeth nor BMW supports Shokrian's argument that the punitive damages were grossly excessive. Here, the ratio of punitive damages to compensatory damages is between

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3:1 and 4:1. The Supreme Court noted in BMW that a ratio of more than 4:1 may be "'close to the line,'" but "did not 'cross the line into the area of constitutional impropriety.'" BMW, 517 U.S. at 581 (quoting Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1, 23-24 (1991)). Contrary to Shokrian's argument, in Wyeth, this court noted that a punitive damages award that is "less than three times the compensatory awards" is "well within the accepted ratios." Wyeth, 126 Nev. at ___, 244 P.3d at 785 (emphasis added) (citing NRS 42.005). Thus, far from establishing that a ratio over 3:1 is excessive, as Shokrian argues, Wyeth establishes that a punitive to compensatory ratio under 3:1 is "well within the accepted ratios."

In this case, considering that Shokrian's repeated and continuous misconduct exposed Weber to potential county penalties and safety concerns for his family, a ratio of punitive to compensatory damages of slightly more than 3:1, though greater than the ratio in Wyeth, is not excessive. This award is within the bounds of NRS 42.005, as well. An award of punitive damages under that statute may not exceed "[t]hree hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than $100,000." NRS 42.005(1)(b). Here, the award of $100,000, when the compensatory damages were less than $100,000, is just one-third of the amount NRS 42.005(1)(b) allows in low-compensatory-damage cases like this one. Therefore, the $100,000 fine for punitive damages was not grossly excessive and the district court did not abuse its discretion. Bongiovi, 122 Nev. at 582, 138 P.3d at 451.

F. Weber was not required to show Shokrian's ability to pay

Finally, Shokrian argues that Weber was required to provide evidence of Shokrian's ability to pay the punitive damages levied. He points to this court's holding in Wohlers v. Bartgis, 114 Nev. 1249, 969

P.2d 949 (1998), in which this court stated that the "'financial position of the defendant'" can be a factor in determining whether punitive damages were excessive. Id. at 1267, 969 P.2d at 962 (quoting Guaranty Nat'l Ins. Co. v. Potter, 112 Nev. 199, 208, 912 P.2d 267, 273 (1996)); id. at 1268, 969 P.2d at 962 (holding that a punitive damages award exceeding 21 percent of defendant's net worth was excessive).

But our holding in Bartgis does not require the plaintiff to show defendant's ability to afford the punitive damages award. Cf. Wyeth, 126 Nev. at ___, 244 P.3d at 784 (defendant's ability to pay is not listed as a "guidepost" in reviewing an award of punitive damages). Bartgis considers ability to pay only as a factor when the defendant raises the issue with supporting documentation, which Shokrian failed to do. NRS 42.005(4) addresses the timing of introduction of "[e]vidence of the financial condition of the defendant" separately from the movant's obligation to present elements supporting the claim, NRS 42.005(1), and from the limitations on the amount of the award, NRS 42.005(1)(a), (b).

This comports with the majority view that "'financial position of the defendant'" is a consideration that must first be flagged by the defendant by carrying his burden of proving hardship. Bartgis, 114 Nev. at 1267, 969 P.2d at 962 (quoting Guaranty Nat'l Ins. Co., 112 Nev. at 208, 912 P.2d at 273); Kemezy v. Peters, 79 F.3d 33, 33-34 (7th Cir. 1996) (adopting the majority rule, "which places no burden of production on the plaintiff" to show defendant's ability to pay); Smith v. Lightning Bolt Prod., 861 F.2d 363, 373 (2d Cir. 1988) ("[I]t is the defendant's burden to show that his financial circumstances warrant a limitation of the award.").

G. Attorney fees were appropriate

Shokrian argues that the district court's award of $73,096 in attorney fees and $9,630.44 in costs was inappropriate because the district

court's decision not to extend the expert disclosure deadline defeated his ability to support his claims. He also argues that his counterclaims were reasonable when pleaded and that NRS 18.010 applies only where the claim is initially frivolous, not when it becomes so later. Barozzi v. Benna, 112 Nev. 635, 637, 918 P.2d 301, 302 (1996) (holding that "frivolousness of a claim is determined at the time the claim is filed"). These arguments lack merit.

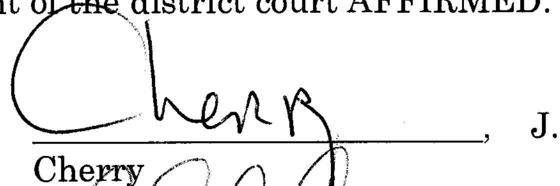
NRS 18.010(2)(b) gives the district court discretion to award attorney fees when a claim or defense "was brought or maintained without reasonable ground or to harass the prevailing party." (Emphasis added.) Courts must liberally construe this provision in favor of awarding attorney fees "in all appropriate situations." Id. We review a district court's award of attorney fees under NRS 18.010 for an abuse of discretion, Key Bank v. Donnels, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990), and conclude that this situation merited an award of attorney fees.

Many of Shokrian's claims and positions were unreasonable from the outset and were unaffected by the court's decision not to grant extra time. For example, Shokrian's answer to Weber's claim averred that there were no trees in Shokrian's yard and that the boundary wall never collapsed—two claims the district court found to be "blatantly false," and frivolous. Shokrian affirmatively pursued several groundless claims, too. His claims for trespass, negligence, and nuisance went wholly unsupported by evidence that the boundary wall crumbled onto his property, a claim that would not have required an expert for support. See Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 996, 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.'" (quoting Western United

Realty, Inc. v. Isaacs, 679 P.2d 1063, 1069 (Colo. 1984)). The absence of a rebuttal expert did not impact the district court's findings that Shokrian's claims were groundless. The district court therefore did not abuse its discretion.

Finally, Shokrian's argument that frivolousness is determined at the time the pleading is filed, and his answer and defenses were reasonable when filed, also lacks merit. As Weber points out, NRS 18.010 was amended in 2003, after Barozzi, to include as justification for attorney fees "maintain[ing]" a claim without reasonable ground. 2003 Nev. Stat., ch. 508, § 153, at 3478. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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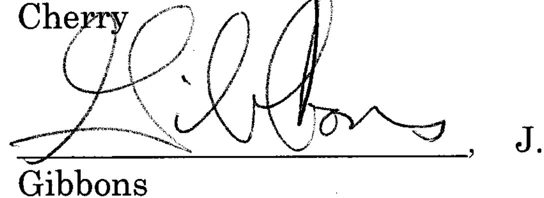

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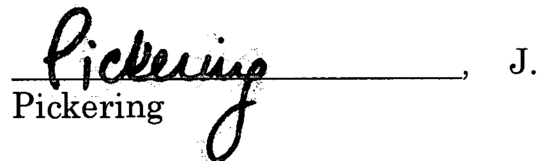

_______________________, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Janet Trost, Settlement Judge
Law Office of Daniel Marks
Montez Nazareth Law
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk