IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL D.S. EDWARDS, Appellant, vs. NATIONAL CREDIT ADJUSTERS, LLC A/K/A NCA, A/D/B/A 4 SUM, INC.; MARK L. HUSTON; AND BRAD HOCHSTEIN, Respondents.	No. 59081
PAUL D.S. EDWARDS, Appellant, vs. NATIONAL CREDIT ADJUSTERS, LLC A/K/A NCA, A/D/B/A 4 SUM, INC.; MARK L. HUSTON; AND BRAD HOCHSTEIN, Respondents.	No. 59406

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

These are proper person appeals from a district court summary judgment and a post-judgment order awarding costs in a consumer protection action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant alleged in his complaint that respondent National Credit Adjusters, LLC (NCA) made a series of phone calls to his wireless phone from auto dialers using prerecorded messages to collect on a credit card debt owed by appellant and which NCA purchased. Appellant alleged that the phone calls violated the Telephone Consumer Protection Act (TCPA). The district court granted summary judgment in favor of respondents, finding that appellant gave express consent to be contacted at the telephone number at issue. The district court thereafter awarded

respondents litigation costs, but denied their request for attorney fees. This appeal followed.

Docket No. 59081

In Docket No. 59081, appellant challenges the district court's summary judgment in favor of respondents. Appellant argues that the district court improperly found that he had provided express consent to be contacted at the telephone number at issue because he never expressly provided consent to be contacted on a wireless number. This court reviews summary judgments de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. Id.

It is undisputed by the parties that appellant provided the telephone number at issue, which at that time was his landline, on his credit card application and consented to be contacted at that number. At a later date, appellant ported the number at issue from a landline to a wireless number. Appellant does not dispute that he never provided notice to his credit card company that he had ported the telephone number to a wireless number; however, appellant argues that because the telephone number was a landline when he gave consent to be contacted, and he never gave consent to be contacted at a wireless number, that NCA's calls violate the TCPA. Under 47 U.S.C. § 227 (2010), a creditor or debt collector has the burden of showing that it had the consumer's prior express consent to place autodialed or pre-recorded calls to the consumer's wireless telephone. In re ACA International, 23 F.C.C.R. 559, 565 (2008).

Express consent is "[c]onsent that is clearly and unmistakably stated." Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 955 (9th Cir. 2009) (internal quotations omitted).

Based on the record and arguments before us, we conclude that no genuine issues of material fact remain as to whether appellant gave express consent to be called on the telephone number at issue. Wood, 121 Nev. at 731, 121 P.3d at 1030-31. Appellant admits that he gave consent to be contacted at the telephone number at issue, and "[a]lthough the TCPA generally prohibits autodialed calls to wireless phones, it also provides an exception for . . . calls . . . made with the prior express consent of the called party." ACA International, 23 F.C.C.R. at 564. Accordingly, we conclude that the district court properly granted summary judgment in favor of respondents, and we affirm the district court's judgment.[1]

Docket No. 59406

In Docket No. 59406, appellant challenges the district court's order awarding respondents' litigation costs. Specifically, appellant argues that respondents should not have been awarded their costs related to a previous appeal to this court, Docket No. 51531, in which appellant partially prevailed, see Edwards v. Nat. Credit Adjusters, Docket No. 51531 (Order Affirming in Part, Reversing in Part, and Remanding,

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[1]Appellant also argues that the summary judgment should be reversed because 30 days had not passed from the time appellant was notified of the availability of his deposition transcript for review and correction when respondents filed their motion for summary judgment. Appellant does not point to any portion of his deposition testimony, however, that should have been corrected, and he admits to the facts on which the district court relied in granting summary judgment. Appellant's argument, therefore, lacks merit.

September 28, 2010), and in which this court issued an order concluding that appellate costs were not properly taxed against any party. See Edwards v. Nat. Credit Adjusters, Docket No. 51531 (Order Denying Motion, October 25, 2010). A district court's decision to award costs is reviewed for an abuse of discretion. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). The record shows that the district court included costs related to appellant's previous appeal to this court in the costs awarded to respondents. As appellant partially prevailed on that appeal, and this court issued an order concluding that costs would not be taxed against any party, the district court abused its discretion in awarding respondents their costs related to that appeal. Accordingly, we reverse that portion of the costs award and remand this matter to the district court to amend the costs awarded to respondents to remove those costs related to appellant's first appeal to this court in Docket No. 51531. We affirm the remainder of the district court's order awarding respondents' their litigation costs.

It is so ORDERED.[2]

Douglas, J.

Gibbons, J.

Parraguirre, J.

[2]We conclude that all other arguments made by appellant lack merit, and therefore, do not warrant reversal.

cc: Hon. Linda Marie Bell, District Judge
Paul D.S. Edwards
Flangas McMillan Law Group, Inc.
Eighth District Court Clerk