

IN THE SUPREME COURT OF THE STATE OF NEVADA

HORST SCHMIDT,
Appellant,
vs.
MARK BRANDENBURG &
ASSOCIATES, ATTORNEYS AT LAW, A
NEVADA CORPORATION,
Respondent.

No. 35482

FILED

MAY 09 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

Appellant Horst Schmidt appeals the district court's order awarding Mark Brandenburg & Associates (MB&A) attorney fees and costs under NRS 18.010(2)(b) and NRS 18.020(3). In response, MB&A contends that if we reverse the district court's award, then we should remand to allow the district court to consider MB&A's alternative theory for awarding attorney fees and costs—an award pursuant to MB&A's offer of judgment. We conclude that the district court abused its discretion in awarding MB&A attorney fees under NRS 18.010(2)(b), and thus, we reverse the district court's award of attorney fees. But, we remand this case to the district court for consideration of attorney fees based on MB&A's offer of judgment. We further conclude that the district court properly awarded MB&A costs under NRS 18.020(3), and we therefore affirm the district court's award of costs.

Schmidt first contends that the district court erred in awarding MB&A attorney fees under NRS 18.010(2)(b) because his malpractice action against MB&A was not brought without reasonable

grounds or to harass MB&A.¹ We agree. The record reveals that Schmidt's malpractice action against MB&A was not free from doubt, evidenced by the fact that the district court previously denied the parties' cross-motions for summary judgment.² Also, there was credible evidence in the record supporting Schmidt's proposition that MB&A committed malpractice, as is evident from the district court's subsequent oral ruling granting MB&A summary judgment.³ Thus, we conclude that the district court manifestly abused its discretion in awarding MB&A attorney fees under NRS 18.010(2)(b).⁴

Schmidt next contends that the district court erred in awarding MB&A costs. NRS 18.020(3) entitles a prevailing party to costs as a matter of right when the plaintiff sought to recover more than \$2,500. We conclude that the district court properly awarded MB&A costs because MB&A was the prevailing party, as the district court granted summary

¹See NRS 18.010(2) (authorizing an award of attorney fees when the court determines that the complaint "was brought without reasonable ground or to harass the prevailing party").

²See Key Bank v. Donnels, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990) (rejecting the argument that the complaint was brought without reasonable grounds and for the purpose to harass because the case was not free from doubt).

³See Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993) (noting that if allegations in the complaint are supported by any credible evidence then the claim is not groundless).


⁴See Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994) (noting that a district court's award of attorney fees will not be disturbed absent manifest abuse of discretion).

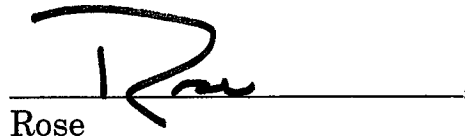
judgment in its favor, and Schmidt sought to recover damages in excess of \$10,000.

Finally, anticipating reversal, MB&A argues that we should remand this matter to the district court for consideration of awarding attorney fees based on MB&A's offer of judgment. We agree. When a party rejects an offer of judgment and fails to obtain a more favorable judgment, NRS 17.115 and NRCP 68 allow a court to award attorney fees incurred after the date of the offer of judgment. In Beattie v. Thomas,⁵ we enunciated several factors that the district court must carefully evaluate in exercising its discretion when awarding attorney fees under NRS 17.115 and NRCP 68. Thus, we remand this case to the district court for consideration of attorney fees under Beattie.

Accordingly we,

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART, AND WE REMAND this matter to the district court for proceedings consistent with this order.

 J.
Shearing

 J.
Rose

cc: Hon. Gene T. Porter, District Judge
Woods, Erickson, Whitaker & Miles, LLP
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk

⁵99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

BECKER, J., dissenting:

I respectfully disagree with the majority's conclusion that the district court erred in awarding MB&A attorney fees under NRS 18.020(3). I conclude that the record contains substantial evidence to support the district court's finding that Schmidt brought his malpractice action against MB&A without reasonable grounds and would affirm the award.

Becker _____, J.
Becker