

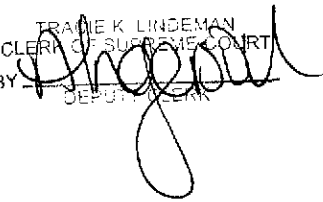
IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRIS GADBOIS, AN INDIVIDUAL
D/B/A SRT HELICOPTERS,
Appellants,
vs.
MARATHON RACING, INC., AN
ILLINOIS CORPORATION; AND
LAKOTA TRADING, INC., AN
ILLINOIS CORPORATION,
Respondents.

No. 60167

FILED

DEC 18 2013

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Respondents Marathon Racing, Inc., Lakota Training, Inc., and Mark Marshall, on behalf of the Fossett family and the Fossett companies, hired appellant Chris Gadbois, d.b.a. SRT Helicopters, to assist in the search and rescue of Steven Fossett. These parties entered into an oral agreement but failed to memorialize the terms in a written contract. However, Gadbois produced an unsigned, written contract, claiming it was the basis of their agreement.

In rendering his services, Gadbois subcontracted for aircraft and pilots. Respondents released subcontractor SoCal Helicopters and paid it directly for its services. Respondents then released all subcontractors hired by Gadbois who would not contract with them

directly. Shortly afterward, all of Gadbois' team left the search. Gadbois sent an invoice for services totaling \$264,241.20, which included aircraft rental, pilot fees, per diem charges, equipment rental, communication specialist fees, interest, and late fees. Respondents made payments totaling \$119,190.22.

Gadbois filed a complaint arguing that he was still owed a principal balance of \$109,669.00. Based on the admission of two of Peggy Fossett's credit card receipts, the district court concluded that Gadbois was not entitled to reimbursement of the \$29,852.50 paid directly to SoCal Helicopters. However, following a bench trial, the district court awarded Gadbois an additional \$25,509.00 for pilot fees, per diem charges, and communication and equipment services. The court also awarded Gadbois pre- and post-judgment interest at the statutory rate under NRS 17.130(2) and a late charge of one percent per month.

After the district court rendered its decision, Gadbois filed a motion (1) to amend the findings; (2) for reconsideration; (3) for clarification; (4) for additur or new trial on the issue of damages; and, (5) for decision on a pending motion to strike. The district court denied the first four motions and granted Gadbois' motion to strike. Gadbois now appeals, alleging that the district court erred by admitting Peggy Fossett's credit card receipts; in its calculation of damages; and, by finding that he failed to produce sufficient evidence of fraud.¹

¹Gadbois also asserts that the district court did not adequately outline its reasoning in awarding and denying him certain damages. Lacking a valid written contract, the district court appropriately explained each damage award in its decision based on work performed and invoices previously paid.

continued on next page . . .

I. *The district court properly admitted the credit card receipts into evidence.*

Gadbois argues that credit card receipts allegedly signed by Peggy Fossett payable to SoCal Helicopters were inappropriately admitted as evidence because they lacked the required foundation.

This court reviews a district court's evidentiary rulings for abuse of discretion and "will not interfere with the district court's exercise of its discretion absent a showing of palpable abuse." *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). The district court found that "[t]estimony at trial supported the conclusion that SoCal was paid directly." The record confirms this finding. Therefore, there was a proper evidentiary foundation for admitting the receipts, and the district court did not abuse its discretion.

II. *The district court's calculation of damages was not an abuse of discretion.*

Gadbois argues that the district court erred in awarding him only portions of Respondents' invoice and in substituting the statutory interest rate in NRS 17.130 for the rate in the unsigned contract. Based on this, Gadbois requests that this court remand the matter to the district court with instructions to enter additur of \$33,695.00 for SoCal Helicopter's fees and communication fees, and to use the contractual rate of interest.

... continued

“The trial court is afforded great discretion in deciding motions for additur. Such a decision will remain undisturbed absent an abuse of that discretion.” *Donaldson v. Anderson*, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993). This court has also held that “the district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of discretion.” *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997).

A. The district court did not abuse its discretion in applying the statutory interest rate.

Two relevant Nevada statutes provide interest rates where a contract does not include an express term on the matter. NRS 17.130(2); NRS 99.040. Under both statutes, the interest rate assigned is the prime rate at the largest bank in Nevada plus two percent on all money from the time it is due. *See id.* Here, there was no valid written contract, and therefore no written term expressly providing for an interest rate. Additionally, the district court did not find evidence of such a term in the oral agreement between Gadbois and Respondents. Accordingly, the district court did not abuse its discretion in awarding Gadbois interest based on the aforementioned statutory rates.

B. The district court’s award of damages was not an abuse of discretion.

In determining the proper measure of damages, established customs may be considered to evaluate the reasonable value of services. *Asphalt Products Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995). Here, the parties disputed numerous terms, including pilot fees, per diem charges, communications equipment fees, SoCal Helicopter fees, interest, and late charges. Because there was no written contract or other evidence of specific terms related to these

matters, the district court did not abuse its discretion in relying on search-and-rescue industry norms in determining Gadbois' award. Additionally, the district court did not abuse its discretion in declining to award Gadbois the SoCal Helicopter fees because the admitted credit card receipts demonstrated that Respondents had already paid that amount in full.

III. Respondents' actions were insufficient to support a claim of fraud.

Gadbois argues that the district court erred by determining that he failed to meet his burden to prove fraud. In support of his fraud claim, Gadbois asserts that Respondents committed intentional interference with contract and breached their covenant of good faith and fair dealing by negotiating with the subcontractors directly. Gadbois also claims that Respondents never intended to honor their agreement.

"It is a basic principle of appellate review that when substantial evidence supports the lower court's finding, . . . we will not disturb the result 'despite suspicions and doubts based upon conflicting evidence.'" *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 991, 879 P.2d 69, 73 (1994) (quoting *Allen v. Webb*, 87 Nev. 261, 266, 485 P.2d 677, 679 (1971)). Moreover, the fact that this court may come to a different conclusion upon its review of the record is insufficient to justify overruling a district court's judgment with respect to fraud claims. *Id.*

In fraud actions, a plaintiff has the burden of proving each element by clear and convincing evidence. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992). Fraud requires


1. A false representation made by the defendant;
2. Defendant's knowledge or belief that the representation is false (or insufficient basis for making the representation);

3. Defendant's intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation;
4. Plaintiff's justifiable reliance upon the misrepresentation; and
5. Damage to the plaintiff resulting from such reliance.

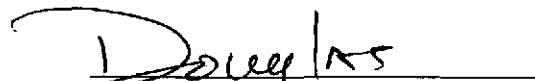
Id. at 111, 825 P.2d at 592.

Here, the district court found that Mark Marshall was leading a private search effort to locate Mr. Fossett and that the terms of the agreements in this pursuit were not well-documented. Furthermore, the district court found that Respondents paid all undisputed items, and their refusal to pay some of the items listed in the written proposal was due to a genuine dispute about the terms of their agreement. Although there is conflicting testimony by Gadbois, the record supports these findings. These findings alone negate several of the required elements of fraud and support the district court's conclusion that Gadbois failed to establish his fraud claim. Based on the foregoing, we


ORDER the judgment of the district court AFFIRMED.



Gibbons J.



Douglas J.



Saitta J.

cc: Hon. Linda Marie Bell, District Judge
Thomas J. Tanksley, Settlement Judge
Beverly J. Salhanick
Bremer Whyte Brown & O'Meara, LLP
Eighth District Court Clerk