IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID B. GAM, INDIVIDUALLY AND AS TRUSTEE OF THE DAVID B. GAM LIVING TRUST U/A/D SEPTEMBER 5, 1992; AND THE DAVID B. GAM LIVING TRUST U/A/D SEPTEMBER 5, 1992,
Appellants,
vs.
BRANDON M. GERSON,
Respondent.

No. 61135

DAVID B. GAM, INDIVIDUALLY AND AS TRUSTEE OF THE DAVID B. GAM LIVING TRUST U/A/D SEPTEMBER 5, 1992; AND THE DAVID B. GAM LIVING TRUST U/A/D SEPTEMBER 5, 1992,
Appellants,
vs.
BRANDON M. GERSON,
Respondent.

No. 62106

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment in a contract action and a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellants gave respondent money for which the parties entered into a note. The note provided that respondent would make interest payments for a number of years and then a lump-sum repayment of the principal. The underlying case concerned whether the parties intended to enter into an enforceable note or whether the money was actually a gift and the note was only created for tax purposes with no real

intention between the parties to create an enforceable note. Following trial, the district court concluded that the note was a sham and unenforceable. On appeal, appellants argue that the district court improperly considered parol evidence and erred in ruling that the note was a sham contract.

Having reviewed the briefs and appendices on appeal, we perceive no error in the district court's judgment concluding that the note was unenforceable because the parties did not intend to create a binding contract. First, the district court did not abuse its discretion in considering parol evidence on the issue of whether the parties intended to create a binding contract when executing the note. *Nev. Power Co. v. 3 Kids, L.L.C.*, 129 Nev. ___, ___, 302 P.3d 1155, 1160 (2013) (reviewing a district court decision to admit or exclude evidence for an abuse of discretion); *see Schieve v. Warren*, 87 Nev. 42, 45, 482 P.2d 303, 305 (1971) (stating that parol evidence is permitted to show that the parties did not intend to create a binding contract at the time the document was executed); *Camyna, Inc. v. Hillestad Enters., Inc.*, 521 So. 2d 323, 323 (Fla. Dist. Ct. App. 1988) (noting that the parol evidence rule does not apply when the issue is whether a contract created a binding obligation); *Monroe v. Appelton*, 419 So. 2d 356, 357 (Fla. Dist. Ct. App. 1982) (stating that "[p]arol evidence is admissible to determine if a writing is intended to create a binding obligation").[1] Second, in light of the parol evidence, the

[1]The parties dispute whether Florida law governs the contract, but the rule concerning the admissibility of parol evidence to determine whether the parties entered into an enforceable contract applies under both Nevada and Florida laws.

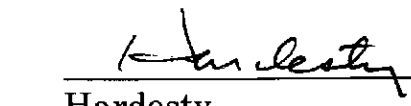
district court's factual determination that the parties did not intend to create a binding contract when executing the note was properly supported. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (stating that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"); *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008) (providing that "[s]ubstantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion" (internal quotation marks omitted)). As substantial evidence supports this conclusion, we will not disturb it on appeal. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

Appellants also challenge on appeal the district court's award of attorney fees and costs. Based on the district court's conclusion that the parties never intended to create an enforceable note, we conclude that the district court did not abuse its discretion in awarding attorney fees under NRS 18.010(2)(b) for appellants' attempt to enforce the note. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 673, 137 P.3d 1110, 1129 (2006). As to costs, appellants argue that respondent failed to provide proper documentation to support his request for costs, and the district court improperly awarded costs without this proper documentation. This court has previously held that the time limit established for filing a memorandum for costs is not jurisdictional because NRS 18.110(1) specifically allows for "such further time as the court or judge may grant" to file the costs memorandum. *Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992). In *Eberle*, this court stated that even if no extension of time was granted by the district court, the fact that it favorably awarded the costs requested demonstrated that it impliedly granted additional time, which was within its discretion to do

and such a decision would not be disturbed on appeal. *Id.* Thus, we reject appellants' argument that the documentation supporting costs was untimely. In regard to appellants' argument that the district court simply awarded costs without supporting documentation, the record demonstrates that the district court only awarded those costs with sufficient documentation and rejected the remaining costs sought by respondent. Thus, appellants' argument lacks merit.

For the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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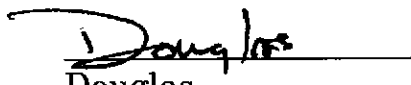

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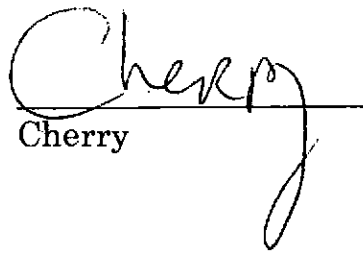

_____, J.
Cherry

cc: Hon. Ronald J. Israel, District Judge
Carolyn Worrell, Settlement Judge
Foley & Oakes, PC
The Harris Firm, PC
Eighth District Court Clerk