

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEGAL COLLECTION SERVICES,
A/K/A DAVID J. WINTERTON &
ASSOCIATES, LTD.; AND DAVID J.
WINTERTON, AN INDIVIDUAL,

Appellants,

vs.

HANNAH IRSFELD, AN INDIVIDUAL,
Respondent/Cross-Appellant.

and

HENRY E. LICHTENBERGER, AN
INDIVIDUAL,

Respondent,

No. 62753

FILED

MAR 12 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART
AND REMANDING*

This is an appeal and cross-appeal from district court orders granting partial summary judgment and granting and denying attorney fees and costs in a legal malpractice and fraud action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellants challenge a district court order granting partial summary judgment in favor of respondents as to appellants' fraud and misrepresentation claims based on issue preclusion. Appellants argue that the district court erred in relying on an order from the Ninth Circuit Bankruptcy Appellate Panel because an appeal of that order was pending at the time the district court relied on it, and the order was ultimately

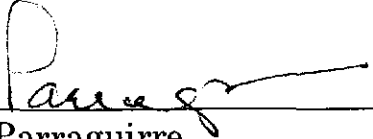
reversed in relevant part by the Ninth Circuit Court of Appeals. Because the ruling of the Bankruptcy Appellate Panel on which the district court relied in ruling that issue preclusion applied to bar appellants' fraud and misrepresentation claims was not final, and was on appeal at the time the district court relied on it, we conclude that the district court erred in granting partial summary judgment on those claims in favor of respondents. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (requiring that the initial ruling must have become final for the issue preclusion doctrine to apply). We therefore reverse the district court's order granting partial summary judgment on appellant's fraud and misrepresentation claims. We further reverse the district court's award of attorney fees to respondent/cross-appellant Hannah Irsfeld, which was based on the district court's erroneous partial summary judgment on the fraud and misrepresentation claims.

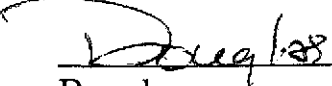
In her cross-appeal, Irsfeld challenges the district court's denial of her request for attorney fees and costs based on the dismissal of appellants' legal malpractice claim as premature. Having reviewed the parties' arguments and the relevant documents, we affirm the district court's denial of Irsfeld's request. As claims remain pending against Irsfeld in light of this court's disposition of appellants' appeal, the district court did not abuse its discretion in denying her request for fees and costs related to the legal malpractice claim under NRCP 68 and NRS 17.115, *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 562, 216 P.3d 788, 792 (2009), and Irsfeld has failed to argue or cite to any part of the record

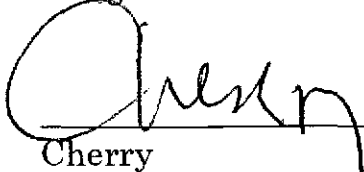
supporting an argument that she properly sought Rule 11 sanctions against appellants. NRCP 11(c).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Rob Bare, District Judge
Craig A. Hoppe, Settlement Judge
David J. Winterton & Associates, Ltd.
Lipson Neilson Cole Seltzer & Garin, P.C.
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk

¹Because appellants concede that the district court's order dismissing their legal malpractice claim is moot given that they intend to re-file that claim in light of the resolution of their appeal to the Ninth Circuit Court of Appeals, we do not reach that issue.