

IN THE SUPREME COURT OF THE STATE OF NEVADA

MERIDIAN POINT PROPERTIES, A  
FOREIGN CORPORATION,  
Appellant,

vs.

CANDACE PEZZUTI, INDIVIDUALLY,  
Respondent.

CANDACE PEZZUTI,  
Appellant,

vs.

BAILEY'S SWEEPER SERVICE; JOHN  
BAILEY; AND HINES STEAM  
CLEANING CO.,  
Respondents.

No. 35915

No. 35997

FILED

SEP 10 2002

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

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from an order awarding prejudgment interest in favor of respondent Candace Pezzuti and against appellant Meridian Point Properties (Meridian), and from two orders awarding attorney fees and costs in favor of respondents Bailey's Sweeper Service and John Bailey (Bailey) and respondent Hines Steam Cleaning Co. (Hines) against, here, appellant Pezzuti. On appeal, Meridian argues that the district court erred in awarding prejudgment interest because the jury's verdict failed to differentiate between past and future damages. We agree and reverse the award of prejudgment interest. On appeal, Pezzuti argues that the district court abused its discretion when it awarded Bailey and Hines attorney fees and costs because it failed to apply the Beattie

factors.<sup>1</sup> We agree and remand to the district court for a proper determination applying the Beattie factors.

The underlying litigation in these consolidated appeals arose from an incident in which Pezzuti slipped and fell while exiting her vehicle in a handicapped parking space in front of a Smith's grocery store in Las Vegas. The jury found Meridian 100% liable and returned a judgment in favor of Pezzuti in the amount of \$102,526.00. The jury verdict form, however, did not require the jury to break down the award into past and future damages. Upon motion by Pezzuti, the district court added \$38,851.00 in prejudgment interest to Pezzuti's damages award.

This court has held that where a jury verdict does not distinguish between past damages and future damages, prejudgment interest is improper,<sup>2</sup> unless future damages were not argued or introduced into evidence,<sup>3</sup> or it is clear in the jury instructions that only past damages were at issue.<sup>4</sup> Here, Pezzuti argued future damages at trial. She introduced evidence of her need for on-going, future medical treatment for her incurable condition. She also introduced evidence of the present value of her future wage loss from January 1995 through June 19, 2019, when she turns sixty-five. Although the jury instructions clearly indicate that future damages were at issue in the case, the jury's verdict

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<sup>1</sup>Beattie v. Thomas, 99 Nev. 579, 668 P.2d 268 (1983).

<sup>2</sup>See Stickler v. Quilici, 98 Nev. 595, 597, 655 P.2d 527, 528 (1982); see also NRS 17.130(2).

<sup>3</sup>See Farmers Home Mutual Insurance v. Fiscus, 102 Nev. 371, 375, 725 P.2d 234, 236 (1986).

<sup>4</sup>See State v. Eaton, 101 Nev. 705, 711, 710 P.2d 1370, 1374 (1985).

did not distinguish between past damages and future damages. Accordingly, the district court erred by awarding prejudgment interest.<sup>5</sup>

The district court also abused its discretion in awarding respondents Bailey and Hines attorney fees and costs without considering the four factors set forth in Beattie v. Thomas.<sup>6</sup> Prior to trial, Pezzuti rejected an \$8,000.00 offer of judgment by Bailey and a \$10,000.00 offer of judgment by Hines. At trial, both Bailey and Hines prevailed against Pezzuti and the district court awarded them attorney fees and costs. A district court may require a party who rejects an offer of judgment pursuant to NRCP 68 and NRS 17.115, and thereafter at trial receives a judgment that is less than the offer of judgment, to pay the offeror's attorney fees.<sup>7</sup> This court has held, however, that "[i]n exercising its discretion, the trial court must evaluate the [Beattie] factors."<sup>8</sup> The record on appeal does not indicate that the district court considered the Beattie factors in making its determinations. Therefore, we remand this portion of the consolidated appeal to the district court for a proper determination applying the Beattie factors.

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<sup>5</sup>We have considered Pezzuti's waiver argument based on Meridian's failure to object to the verdict form presented to the jury and conclude that it lacks merit.

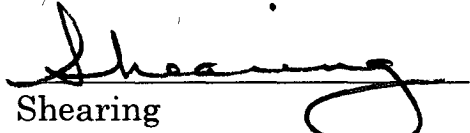
<sup>6</sup>99 Nev. at 588-89, 668 P.2d at 274. These factors are: (1) whether the claim was brought in good faith; (2) the reasonableness of the offer of judgment; (3) the reasonableness of the rejection of the offer of judgment; and (4) the reasonableness of fees and the amount. Id.

<sup>7</sup>See NRCP 68(f); NRS 17.115(4).


<sup>8</sup>Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 323, 890 P.2d 785, 789 (1995) (emphasis added).

Accordingly, we

ORDER the post-judgment orders of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Gene T. Porter, District Judge  
Barron Vivone Holland & Pruitt Chtd.  
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Clark County Clerk