

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ONE TROP LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
SAMARTH VERMA, AN INDIVIDUAL,
Respondent.

No. 68756

FILED

JUL 13 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Hendrich
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying attorney fees and costs in an action to expunge two mechanic's liens. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

After granting appellant's motion to expunge respondent's mechanic's liens, the district court denied appellant's motion for attorney fees and costs, and this appeal followed. Under NRS 108.2275(1), a party may move the district court to expunge a lien on the ground that the lien is frivolous and was made without reasonable cause or on the ground that it is excessive. NRS 108.2275 contemplates only three possible outcomes in a proceeding to expunge a lien. *See J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 372, 240 P.3d 1033, 1038 (2010) (providing that, in an action under NRS 108.2275, "the district court shall make one of three determinations"). First, if the court finds that "[t]he notice of lien is frivolous and was made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion." NRS 108.2275(6)(a). Second, if the court finds that "[t]he amount of the notice of lien is excessive, the court may make an order reducing the notice of lien to an amount deemed

appropriate by the court and awarding costs and reasonable attorney's fees to the applicant for bringing the motion." NRS 108.2275(6)(b). And third, if the court finds that "[t]he notice of lien is not frivolous and was made with reasonable cause or that the amount of the lien is not excessive, the court shall make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the motion." NRS 108.2275(6)(c).

The statute does not provide for any other possible outcomes, and in particular, nothing in the statute permits the court to release a lien that is not frivolous. *See generally* NRS 108.2275. Thus, although the court asserted when it denied attorney fees and costs that it had not found the liens to be frivolous, by expunging the liens under NRS 108.2275, the court necessarily concluded that the liens were frivolous and were made without reasonable cause.¹ *See* NRS 108.2275(6)(a). And having reached that conclusion, the court was required to award appellant attorney fees and costs for having to bring the motion to expunge the liens.² *See id.*


¹Respondent did not appeal the district court's decision to expunge the liens, and thus, the propriety of the district court's conclusion that the liens were frivolous is not before us on appeal.

²Respondent's reliance on *Crestline Investment Group, Inc. v. Lewis*, 119 Nev. 365, 75 P.3d 363 (2003), to support its position that attorney fees were properly denied is misplaced, as that case does not permit a district court to expunge a lien without finding that the lien was frivolous and made without reasonable cause. Moreover, to the extent *Crestline*, 119 Nev. at 368 n.1, 75 P.3d at 365 n.1, provided that the decision to award attorney fees and costs was discretionary, that conclusion was superseded by amendments to NRS 108.2275 making the award of attorney fees and costs mandatory upon a finding of frivolity. *See* 2003 Nev. Stat., ch. 427, § 32, at 2600-01.


(providing that, if the court finds the lien to be frivolous, "the court shall make an order . . . awarding costs and reasonable attorney's fees"); *State Emps. Ass'n v. Daines*, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) (explaining that "shall" is mandatory unless the statute demands a different construction to carry out the clear intent of the legislature").

As a result, we conclude the district court improperly denied appellant's motion for attorney fees and costs. See NRS 108.2275(6)(a) (making an award of attorney fees and costs mandatory when a lien is expunged under that statute). And we therefore reverse the order denying attorney fees and costs and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.



Gibbons C.J.



Tao J.



Silver J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Phillip Aurbach, Settlement Judge
Howard & Howard Attorneys PLLC
Marshall Law Group
Eighth District Court Clerk