

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS SLAVICK,
Appellant,
vs.
CRISTINE A. ANTONE,
Respondent.

No. 66430

FILED

OCT 26 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

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

This is an appeal from several post-judgment orders in a civil action. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

This appeal arises out of a civil fraud lawsuit that began in 2006, concluded in 2010, and has since involved nearly six years of post-judgment motion practice.¹ Following a bench trial, the district court found Slavick, the appellant-defendant, liable for “constructive trust,” fraud, and unjust enrichment for fraudulently inducing his girlfriend—Antone, the respondent-plaintiff—to quitclaim her house to him. In its April 2010 trial Decision, the district court imposed an “equitable lien” on the property for one-half of its appraisal value, ordered the house appraised and sold, and ordered one-half of its “value” awarded to Antone. The Nevada Supreme Court (and later, the district court) recognized this April 2010 Decision as the final judgment, and determined that the dollar value of this final judgment was \$125,000 (half of a court-approved appraisal value of the house) in deciding whether to award fees, costs, and

¹We do not recount the facts except as necessary to our disposition.

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interest under NRCp 68. The district court did not expressly award NRS 17.130 interest on the judgment and later expressly rejected Antone's request for an application of that interest on the judgment.

Since 2010, the parties continue to litigate Antone's efforts to collect on the judgment against Slavick. The district court found that Slavick had been uncooperative and had delayed the sale of the house. For this and related reasons, the district court awarded Antone a series of post-judgment sanctions against Slavick, including awards of fees and costs, addressed in orders dated July 25, 2014; August 7, 2014; and March 17, 2015.

On appeal, Slavick raises several challenges to the district court's various awards of fees and costs. After carefully considering all of the arguments presented, we affirm the district court orders dated August 7, 2014 and March 17, 2015, and conclude that we need only address the July 25, 2014 order in detail as it must be reversed in part and remanded as follows, but is otherwise affirmed.

1. The district court's award of attorney fees

In its July 25, 2014 order, the district court awarded attorney fees in favor of Antone. This court generally reviews the district court's decision regarding attorney fees for an abuse of discretion. *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006) (public employment); *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (legal malpractice). However, in Nevada, attorney fees cannot be awarded in the absence of agreement, statute, or rule. *Consumers League of Nevada v. Southwest Gas Corp.*, 94 Nev. 153, 156, 576 P.2d 737, 739 (1978).

Here, the district court cited NRS 18.010(2)(b) as the basis for its award. This statute provides for an award of fees when the court finds that the movant's opponent brought or maintained claims or defenses "without reasonable ground or to harass the prevailing party." But the district court made no such findings in its July 2014 order: its findings of fact had nothing to do with Slavick bringing or maintaining claims or defenses. Rather, the reason given by the district court for the award was Slavick's "post trial acts and omissions" relating to his noncooperation with Antone's efforts to enforce the district court's orders. This is not a proper basis for a grant of attorney fees under NRS 18.010(2)(b). *See Foster v. Dingwall*, 126 Nev. 56, 72, 227 P.3d 1042, 1052–53 (2010) (holding, "NRS 18.010(2)(b) permits a district court to award attorney fees when a party's *claims* or *defenses* are brought without a reasonable ground or to harass the prevailing party." (emphasis added)). Therefore, the award of attorney fees under NRS 18.010(2)(b), unsupported by the findings of fact required by that statute—that Slavick brought or maintained *claims* or *defenses* without reasonable grounds or for harassment—constituted an abuse of the district court's discretion.² The award of fees is reversed.

²An award of fees for post-judgment conduct could conceivably be justified under NRS 22.100(3) upon a finding of contempt under NRS 22.010(3), as a judgment debtor's defiance of a court order or judgment may be the basis for a finding of contempt. But the district court did not make the required findings or follow the proper procedures for such a finding including, for example, issuing a show cause order and conducting a contempt hearing or trial. *See* NRS 22.030–090.

2. The district court's calculation of interest

Slavick also challenges the district court's calculation of interest in its July 25, 2014 order. In its July 25, 2014 order, the district court adjusted the final judgment from \$125,000 to \$129,950 to reflect the sale price of the house,³ and awarded "interest at the legal rate from the date of the offer of judgment to coincide with this original decision"—apparently awarding NRCF 68 interest on the final judgment, but citing no legal authority for this award.

Additionally, and rather inexplicably, the district court entered the following ruling regarding Antone's request for the court's recognition of her right to NRS 17.130(2) interest on the final judgment:

The court has a problem with an application of NRS 17.130(2) interest in that it was not provided in the original decision since it had not been requested; nor was it presented in the appeal by way of a cross appeal or post-trial motion to alter or amend the decision. That was more than 4 years ago and the court concludes that it is too late to change that result at this time and no notice was provided to indicate that there was going to be a demand for such relief.

But the district court's next sentence, without explanation and in apparent contradiction with the rest of the paragraph, reads: "Interest will

³The district court and the Nevada Supreme Court (in its February 2, 2012 Order of Affirmance) previously concluded that the district court's April 2010 Decision entered a monetary judgment in the amount of \$125,000 (half of the then-appraised value of the house). But the house was subsequently sold for more than the appraised value, and after consultation with the parties during an open hearing, all parties agreed to adjust the judgment to reflect the actual sale price, which resulted in the judgment being adjusted upward to \$129,950. Accordingly, without objection by the parties, the district court's July 25, 2014 order expressly "adjusted" the amount of the judgment upwards to \$129,950.

be calculated from April 26, 2009 until paid.” The court did not explain the significance of the April 26, 2009 date or cite the authority from which the court derived its window of time in which interest accrues.

The basis for the district court’s calculation is unclear, but two possibilities exist: NRS 17.130, and NRCP 68. Under NRS 17.130, interest accrues from the date of service of process until the judgment is satisfied. But the district court’s order appears to expressly reject—and even explains why it rejects—an award of interest under NRS 17.130. Moreover, Antone served Slavick with the complaint and summons on November 13, 2006. Therefore, the award from April 26, 2009 until paid was most likely not an award for NRS 17.130 interest⁴.

Alternatively, the district court could have awarded interest pursuant to NRCP 68; the district court had previously awarded NRCP 68 interest on the judgment in 2010, and the Nevada Supreme Court affirmed. But under NRCP 68(f)(2), if an offeree rejects an offer and fails to obtain a more favorable judgment, the offeree shall pay “applicable

⁴On the other hand, if the district court actually intended to rule on whether Antone is entitled to NRS 17.130 interest, its order was unclear, and, if so, the district court should note that any interest to which Antone is entitled under NRS 17.130 would draw on the judgment “from the time of service of the summons and complaint until satisfied.” Also, the district court apparently erred in finding that NRS 17.130 interest “had not been requested [by Antone]; nor was it presented in the appeal by way of cross appeal or a post-trial motion to alter or amend the decision.” The record on appeal clearly shows that Antone specifically requested NRS 17.130 interest in her July 8, 2010 post-trial motion for attorney fees, costs, and interest. And the district court even expressly acknowledged that request on page 2 of its October 8, 2010 order granting attorney’s fees, costs and interest, stating, “Plaintiff moves for attorney’s fees, costs, and interest pursuant to Nev. Rev. Stat. . . . 17.130 . . .,” but inexplicably failed to address Antone’s request further.

interest on the judgment *from the time of the offer to the time of entry of the judgment*" (emphasis added). Thus, NRCP 68(f)(2) interest does not run indefinitely—i.e. "until paid"—but accrues only between this definite window of time. Here, the district court found that Antone offered to accept judgment in her favor on January 26, 2009. The district court and the Nevada Supreme Court have held that the entry of final judgment in this case occurred on April 6, 2010 and the notice of entry of judgment on July 29, 2010. The record on appeal reveals nothing about the significance of the April 26, 2009 date. The record on appeal does not show any docket activity on that day, nor is there any other reference to April 26, 2009 elsewhere in the record. Therefore, NRCP 68 does not support this award of interest.


That said, the district court's updated July 25, 2014 award of interest on the judgment "from the date of the offer of judgment to coincide with the original decision" apparently does award NRCP 68 interest. But the calculation of interest from April 26, 2009 until paid does not appear to have a clear basis in the record, and Antone has not provided a cogent defense or explanation of the basis of the "April 26, 2009 until paid" calculation to guide this court.

Therefore, the July 25, 2014 order must be reversed in part and remanded with instructions to enter an order clarifying that interest on the judgment in this case will be measured at the legal rate and accrued between January 26, 2009 (the date of offer of judgment) and April 6, 2010 (the date of entry of judgment).

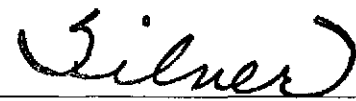
CONCLUSION

For the foregoing reasons, we

ORDER the August 7, 2014 and March 17, 2015 judgments of the district court AFFIRMED, and the July 25, 2014 judgment of the district court REVERSED IN PART AND REMANDED to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
Carolyn Worrell, Settlement Judge
Rusby Clark, PLLC
Gunderson Law Firm
Washoe District Court Clerk