

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HAMMERSLEY AND BIANCA
HAMMERSLEY, INDIVIDUALLY AND
AS HUSBAND AND WIFE, AND AS
THE NATURAL PARENTS OF KARIN
HAMMERSLEY, A MINOR,
INDIVIDUALLY, AND KRISTOPHER
HAMMERSLEY, A MINOR,
INDIVIDUALLY,
Appellants,

vs.

STATION CASINOS, INC., A NEVADA
CORPORATION, D/B/A BOULDER
STATION HOTEL & CASINO; AND
KATHLEEN V. DODSON,
Respondents.

No. 36769

FILED

DEC 04 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribade*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a judgment entered on a jury verdict and from orders denying appellants' motion for a new trial and awarding attorney fees and costs to respondents under NRCP 68 and NRS 17.115.

A jury verdict will be overturned only if the verdict is not supported by substantial evidence.¹ Where conflicting evidence exists, a jury verdict supported by substantial evidence will not be disturbed unless

¹Paullin v. Sutton, 102 Nev. 421, 423, 724 P.2d 749, 750 (1986).

it is clear, based upon all the evidence, that the verdict is incorrect.² In considering appellants' claim that the evidence does not support the verdict, this court must assume that the jury believed all the evidence favorable to the prevailing party and drew all reasonable inferences from the evidence in that party's favor.³ During the trial, conflicting evidence was presented with regard to several key facts. Having reviewed the trial court record, we conclude that the verdict was supported by substantial evidence. Further, the verdict was not clearly incorrect based on the evidence presented at trial. Accordingly, the judgment of the district court should be affirmed.

At the conclusion of the trial, appellants moved for a new trial under NRCP 59 on the ground that the jury disregarded the court's instructions in reaching its verdict. The district court denied appellants' motion. A motion for a new trial should be granted when the jury could not have reached the verdict they reached had they properly applied the district court's instructions.⁴ Having reviewed the trial court record, we are unable to conclude that the jury, correctly applying the court's instructions, could not have reached the verdict at issue. The district court was thus correct in denying appellants' motion for a new trial.

²Cram v. Durston, 68 Nev. 503, 505, 237 P.2d 209, 210 (1951).

³Paullin, 102 Nev. at 423, 724 P.2d at 750.

⁴Weaver Brothers, Ltd. v. Misskelley, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982).

The district court awarded attorney fees in the amount of \$21,206 and costs in the amount of \$80,763.40 to respondents based upon appellants' refusal to accept respondents' offer of judgment. NRS 17.115 and NRCP 68 provide that the district court may award reasonable attorney fees incurred by the offeror from the time of the offer when the offeree rejects the offer and the judgment ultimately obtained by the offeree is less favorable than the offer. In awarding attorney fees based on an offer of judgment, the district court must consider the four factors stated in Beattie v. Thomas:⁵

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.⁶

The district court considered each of these factors in ruling on respondents' motion for attorney fees and costs, finding that appellants' claim was not brought in good faith and that in fact there was evidence of fraud on the part of appellants, that respondents' offer was made in good faith, that appellants' decision to reject the offer was grossly unreasonable and in bad faith, and that the fees sought by respondents were reasonable


⁵99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

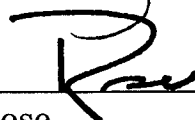
⁶Id.


and justified in amount. The district court's award of attorney fees under these Beattie factors is discretionary and will not be disturbed absent a clear abuse of discretion.⁷ Having reviewed the trial court record, we conclude that the district court did not abuse its discretion.

Accordingly, we affirm the district court's judgment, the order denying appellants' motion for a new trial, and the order granting respondents attorney fees and costs.

It is so ORDERED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Lee A. Gates, District Judge
Thomas J. Tanksley, Settlement Judge
Pyatt & Silvestri
Bianca Hammersley
Karin Hammersley
Kristopher Hammersley
Robert Hammersley
Clark County Clerk

⁷See LaForge v. State, University System, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).