

IN THE SUPREME COURT OF THE STATE OF NEVADA

N. RAO YERRAMSETTI, M.D.,
Appellant,

vs.

RANDLE P. "DUKE" PHELPS,
INDIVIDUALLY; PHELPS FAMILY
DEVELOPMENT, INC., A NEVADA
CORPORATION; AND MORNINGSIDE
HOMES, INC., A NEVADA
CORPORATION,
Respondents.

No. 37147

FILED

NOV 21 2002

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

ORDER REVERSING AND REMANDING IN PART
AND AFFIRMING IN PART

This is an appeal from a district court order awarding respondent Randle P. "Duke" Phelps attorney fees. Appellant N. Rao Yerramsetti entered into agreements with Phelps creating limited liability corporations (LLCs), to construct housing developments in the Las Vegas area. The relationship between Yerramsetti and Phelps deteriorated, and Yerramsetti accused Phelps of dishonest conduct in the management of the LLCs' finances. Yerramsetti filed two complaints against Phelps, Phelps Family Development, Inc., and Morningside Homes, Inc., alleging, among other things, conversion, fraud and misrepresentation, and breach of the covenant of good faith and fair dealing. Phelps filed counterclaims against Yerramsetti and sought attorney fees pursuant to NRS 18.010.

After a five-day bench trial, the district court found that Yerramsetti adduced no evidence to support his allegations against Phelps and made untruthful statements in his complaints. The district court

awarded Phelps damages and approximately \$403,847.17 in attorney fees, plus costs on his claim for abuse of process.

Yerramsetti contends that the district court denied him due process because it stated that it had difficulty understanding his accent. The record belies any claim that the district court did not understand Yerramsetti. It does not appear that Yerramsetti was denied due process.

Yerramsetti argues the district court abused its discretion in awarding Phelps attorney fees pursuant to NRS 18.010. NRS 18.010(2)(b) states that the district court may award attorney fees to a prevailing party when it finds that the party brought the claim "without reasonable ground or to harass the prevailing party." "A plaintiff may be considered the prevailing party for attorney fee purposes if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing the suit."¹ The district court found in Phelps' favor on Yerramsetti's claims and awarded Phelps damages on his counterclaims, and therefore, Phelps was a prevailing party.

Additionally, the district court found that Yerramsetti's lawsuit was groundless and brought to harass Phelps. An accounting firm conducted an audit to look for "kickbacks" Phelps may have received. The accounting firm found no wrongdoing by Phelps. Nonetheless, Yerramsetti filed complaints, alleging, among other things, that Phelps

¹Women's Federal S & L Ass'n v. Nevada Nat. Bank, 623 F. Supp 469, 470 (D. Nev. 1985), quoted in Chowdhry v. NLVH, Inc., 109 Nev. 478, 485-86, 851 P.2d 459, 464 (1993).

was guilty of fraud and conversion, and that he breached the covenant of good faith and fair dealing. The district court stated that it heard no evidence that Phelps stole or converted any assets. The district court found that Yerramsetti was untruthful in numerous allegations in his pleadings. There was also evidence that Yerramsetti threatened to destroy Phelps. Because Phelps was the prevailing party and the district court found Yerramsetti's lawsuit was groundless and brought to harass Phelps, the district court did not abuse its discretion in awarding Phelps attorney fees.

Yerramsetti claims the district court abused its discretion by reviewing sealed billing invoices before awarding attorney fees. In Love v. Love,² this court held that a district court may not award attorney fees based upon sealed billing statements. Here, the district court considered sealed invoices in determining the award of attorney fees, and therefore, abused its discretion. Thus, we reverse and remand the award of attorney fees to the district court to permit Yerramsetti to review and dispute the sealed billing invoices.

Yerramsetti contends the district court abused its discretion by not permitting Hank Cook to testify as an expert witness. This court reviews a district court's decision to qualify a witness as an expert for "a showing of a clear abuse of discretion."³ NRCP 26(b)(5)(H)(ii) provides that a party may call a witness as an expert, even though they were not

²114 Nev. 572, 582, 959 P.2d 523, 529 (1998).

³Krause Inc. v. Little, 117 Nev. ___, ___, 34 P.3d 566, 569 (2001).

included on an expert witness list, if good faith exists and he "failed to determine to call such witness through mistake, inadvertence, surprise or excusable neglect." In this case, Cook was originally appointed by the district court to be the "eyes and ears" of Yerramsetti during Phelps's business activities. Thus, Cook's function in the case was largely that of a lay witness and his testimony as an expert would have been duplicative. Further, Yerramsetti did not list Cook as an expert witness in documents prepared for trial or file a pre-trial expert report designating Cook as an expert. Given that Yerramsetti called other expert witnesses and Cook was able to testify as a lay witness, the district court did not abuse its discretion by refusing to qualify Cook as an expert witness. Further, not allowing Cook's testimony as an expert was not prejudicial to Yerramsetti.⁴

Yerramsetti argues that the district court abused its discretion by permitting James Cox to testify as a lay witness despite Cox's remaining in the courtroom after the district court excluded lay witnesses therefrom. NRS 50.155 provides that upon request of a party, the district court shall exclude lay witnesses from a courtroom. Yerramsetti invoked NRS 50.155 on the first day of trial. The district court allowed Cox to remain in the courtroom with the understanding that he was an expert witness.⁵ However, Cox was not designated as an expert witness in the

⁴See NRCP 61.

⁵The district court also stated it would have denominated Cox as a person who was involved in assisting with the case. The district court further stated that it would have permitted Cox to stay in the courtroom
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pretrial memorandum. Yerramsetti did not object to Cox's remaining in the courtroom or object that Cox had not been designated as an expert in the pretrial memorandum until the final day of trial.

On the last day of trial, Phelps called Cox as a witness and Yerramsetti objected on the ground that Cox had not been designated as an expert in Phelps's pretrial memorandum. The district court permitted Cox to testify, but limited his testimony to the accounting work that he conducted for Phelps. Although there were instances where Cox gave testimony that was expert in nature, for the most part, his testimony was related to his accounting work for Phelps. Further, Yerramsetti waived any objection to Cox's remaining in the courtroom after the district court's exclusionary instruction because he did not object until the final day of trial. Thus, the district court did not abuse its discretion in permitting Cox to testify.

Yerramsetti claims that the district court abused its discretion in admitting into evidence a letter containing a settlement offer and a memorandum containing hearsay statements. We agree, but conclude, however, that any error was harmless.⁶ The letter that the district court admitted into evidence was merely corroboration of Phelps's testimony

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and if there were room at the counsel table, it would have allowed him to sit at the table to assist during the trial. Thus, the district court also permitted Cox to stay in the courtroom per NRS 50.155(2)(c), which allows a person to stay in the courtroom when his presence is shown by a party to be essential to the presentation of the cause.

⁶See NRCP 61.

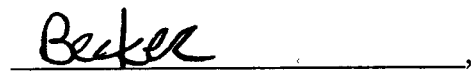
during trial. The memorandum contained threats allegedly made by Yerramsetti, and other witnesses testified as to these same threats at trial. Thus, the district court abused its discretion in admitting these two documents, but it was harmless error.

We conclude the district court abused its discretion by reviewing sealed billing invoices before awarding attorney fees, and thus, reverse and remand reconsideration of attorney fees. We affirm the remainder of the judgment of the district court.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Lemons Grundy & Eisenberg
Marc P. Cook & Associates, Ltd.
Lewis & Roca
Clark County Clerk