

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DENNIS ROSE, AN
INDIVIDUAL,
Appellant,
vs.
SHAWN JAMIESON, AN INDIVIDUAL,
Respondent.

No. 37184

FILED

MAY 09 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order granting attorney fees and costs.

Respondent Shawn Jamieson sued appellant Dennis Rose for damages arising from an automobile accident, in which Rose admitted liability. Prior to the commencement of mandatory arbitration, Rose rejected Jamieson's \$7,500.00 offer of judgment, including costs and attorney fees.

Rose did not appear or present evidence at the arbitration hearing. Instead, he chose to contest Jamieson's damages solely upon argument and cross-examination of Jamieson's witnesses. The arbitrator awarded Jamieson \$20,835.00 plus attorney fees and costs. The arbitrator's findings inferred that Rose should have known that cross-examination and arguments would be insufficient to contest Jamieson's evidence so Rose should have presented some evidence if he reasonably expected to achieve a lower award.

After timely requesting a trial de novo, Rose informed Jamieson that he intended to utilize biomechanical engineering services and a medical doctor to prove that the force of the low impact collision could not have caused Jamieson's injuries. Rose then made two offers of

judgment for \$1,089.17 and \$1,598.17 including costs, attorney fees and prejudgment interest. Jamieson rejected both offers.

A jury awarded Jamieson \$8,750.00 at trial on March 30, 2000. Jamieson then filed an application for attorney fees and costs. Jamieson cited NRS 18.010(2)(a)¹ and NRCP 68(f)² in support of his application. Rose filed a motion to retax costs.

The district court awarded Jamieson \$38,880.00 in attorney fees under NRS 18.010(2)(a), finding that Rose's handling of the case "caused both parties' fees and costs to escalate to absurd proportions."

¹NRS 18.010(2)(a) provides: "In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party: (a) When he has not recovered more than \$20,000."

²NRCP 68(f) states:

Penalties for Rejection of Offer. If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

In granting Jamieson \$13,868.48 in costs under NRCP 68(f)(2),³ the district court found that Rose's rejection of Jamieson's offer of judgment was "grossly unreasonable and in bad faith."

Rose now appeals the district court's award of fees and costs. Because we conclude that the district court properly considered all relevant factors in awarding Jamieson his attorney fees and allowable costs, we affirm the order of the district court.

Rose argued below that, pursuant to Nevada Arbitration Rule 20(A),⁴ Jamieson was not entitled to attorney fees or costs under NRS

³The district court reduced the total award of costs by \$1,230.00, representing nontaxable and other unrecoverable expert fees.

⁴NAR 20(A), then in effect, provided:

The arbitration commissioner shall seal any arbitration award if a trial de novo is requested. The jury, if a jury is demanded, will not be informed of the arbitration proceedings, the award, or about any other aspect of the arbitration proceedings. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a bench trial. Except as otherwise provided in this subsection, if the amount of the award in the trial de novo does not either exceed the arbitration award made to the party requesting the trial de novo, or reduce the liability imposed on that party by the arbitration award, the party requesting the trial de novo must pay to the adverse parties all recoverable costs and actual attorney's fees associated with the prosecution or defense of the trial de novo. Awards of attorney's fees may not exceed the total amount of \$3,000 unless the court finds extraordinary circumstances justifying a higher award.

18.010(2) because he recovered substantially less than the arbitration award at trial. The district court properly rejected this argument. NAR 20(A) permits the recovery of up to \$3,000.00 in attorney fees from a party who requests a trial de novo and then fails to obtain a verdict more favorable than the arbitration award. NAR 20(A) does not restrict a district court's discretion to award fees under NRS 18.010(2).

Rose does not make the same argument on appeal. Now Rose asserts that it is unreasonable to award attorney fees, especially in such a large amount, against a party who successfully challenges the arbitration award. Rose contended below that to do so would have a chilling effect on a party's decision to assert their constitutional right to a jury trial. Rose infers this makes the award unreasonable. We disagree.

NRS 18.010, NRCP 68 and NAR 20(A) each contain provisions designed to encourage reasonable settlement of cases. A party may have valid reasons for rejecting an arbitration award, but this does not relieve them of their responsibility to independently evaluate offers of judgment or to respond to reasonable attempts to resolve a case for an amount substantially different than the arbitration award.

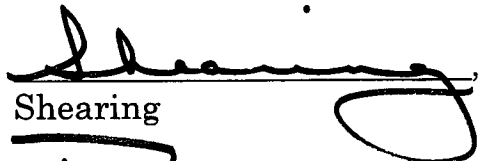
We conclude that the district court appropriately considered and weighed several relevant factors in awarding Jamieson attorney fees and costs, including the following: (1) Rose's rejection of Jamieson's \$7,500.00 offer of judgment; (2) Rose's failure to present biomechanical evidence critical to the arbitrator's determination of damages; (3) Rose's subsequent reliance upon such biomechanical evidence to support his contention that the arbitration amount was excessive; and, (4) Rose's consistently low, unreasonable settlement offers. In addition, the district court reviewed evidence indicating that Jamieson attempted to settle the case for substantially less than the arbitration award or to resolve the

dispute by means less costly than a jury trial after Rose requested the trial de novo.

The district court's detailed order reveals careful consideration of all factors in awarding Jamieson his costs and fees. The district court specifically analyzed the reasonableness of the fee award and the factors outlined in Beattie v. Thomas.⁵ The district court also considered the factors set forth in Schouweiler v. Yancey Co.⁶ for discretionary fees pursuant to NRS 18.010(2)(a). The district court did not abuse its discretion in awarding fees and costs to Jamieson.

We have considered Rose's remaining arguments, and conclude that they are without merit. We therefore affirm the order of the district court. Having considered the parties' arguments, we


ORDER the district court's award of costs and fees
AFFIRMED.⁷



Shearing J.



Rose J.



Becker J.

cc: Hon. James W. Hardesty, District Judge
Lyles & Hawley
Nik V. Walters
Washoe District Court Clerk

⁵99 Nev. 579, 668 P.2d 268 (1983).

⁶101 Nev. 827, 833-34, 712 P.2d 786,790 (1985) (citing Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)).

⁷We have considered and deny Jamieson's request for sanctions.