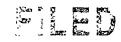
IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD J. MCMILLAN, Appellant,

VS.

COUNTRYWIDE HOME LOANS, INC., AS SERVICER FOR BANKERS TRUST COMPANY OF CALIFORNIA, N.A., A CALIFORNIA CORPORATION, Respondent. No. 37270



JAN 1 6 2003



ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order granting respondent's motion for attorney fees and costs. NRS 17.115(4) and NRCP 68(f) authorize an award of attorney fees and costs to a party making an offer of judgment if the offeree failed to obtain a more favorable judgment. Before making such an award, however, the district court must evaluate the Beattie factors: (1) whether the defendant's claim or defense was asserted in good faith; (2) whether the offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the 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.

If the district court fails to enter express findings regarding the <u>Beattie</u> factors, the award may nevertheless be upheld if the record demonstrates that the factors were considered.² Such a consideration may be implied from the record, for instance, where the parties extensively

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¹See Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983); see also Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

²Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995).

argued the factors, the judge stated that he or she considered those arguments, and there was substantial evidence to support the award under NRS 17.115 and NRCP 68.3

But here, the extent of the district court's <u>Beattie</u> analysis is unclear. The district court did not mention the <u>Beattie</u> factors in its written order. And the minutes from the hearing on respondent's motion do not indicate that the district court considered the <u>Beattie</u> factors. The only mention of the Beattie factors appears in respondent's motion.

Recently, in <u>Wynn v. Smith</u>, we repeated our preference for explicit findings regarding the <u>Beattie</u> factors, and commented that a district court's failure to make explicit findings will not be an abuse of discretion only if "the record clearly reflects that the district court properly considered the <u>Beattie</u> factors." There is no such reflection in the present record.

Accordingly, we reverse the district court's order awarding respondent fees and costs, and we remand this case for further proceedings consistent with this order.

It is so ORDERED.

Rose

J. Maupin

Gibbons

J.

J.

3<u>Id.</u>

⁴117 Nev. 6, 16 P.3d 424 (2001).

⁵<u>Id.</u> at 13, 16 P.3d at 428-29; <u>see also Schwartz v. Estate of Greenspun</u>, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994) (cautioning the trial bench to provide written support under <u>Beattie</u> for fee awards made pursuant to offers of judgment).

OUPREME COURT OF NEVADA

(O) 1947A

cc: Hon. Michael L. Douglas, District Judge Alverson Taylor Mortensen Nelson & Sanders Graham & Wilde Todd J. McMillan Clark County Clerk

OUPREME COURT OF NEVADA