

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

FILED

JAN 16 2003

JANETTE SLOAN
CLERK OF SUPREME COURT
By *J. Richards*
CHIEF DEPUTY CLERK

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 (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 Beattie 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

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).

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