


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CECILIO BAUTISTA, INDIVIDUALLY;
AND ROCIO SAAVEDRA,
INDIVIDUALLY,
Appellants/Cross-Respondents,
vs.
CHAD STEFONICH; AND L&S AIR
CONDITIONING AND HEATING,
Respondents/Cross-Appellants.

No. 76079-COA

FILED

NOV 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Cecilio Bautista and Rocio Saavedra appeal and Chad Stefonich and L&S Air Conditioning and Heating cross-appeal from a district court post-judgment order denying a motion for attorney fees. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Bautista and Saavedra brought suit against Stefonich and L&S after they were in an accident with Stefonich that occurred while he was in the course of his employment with L&S. Bautista and Saavedra made offers of judgment to Stefonich and L&S pursuant to NRS 17.115 and NRCP 68 in the amount of \$30,000 and \$38,000, respectively, inclusive of fees, costs and prejudgment interest. The offers were not accepted and after a trial on the matter, a jury awarded Bautista \$28,728.07 and Saavedra \$34,752.80. They subsequently moved for an award of attorney fees based upon their offers of judgment, which Stefonich and L&S opposed. The district court

19-48205

denied the motion after comparing the verdict amounts, without any additions for pre-offer prejudgment interest or costs, to the offer of judgment amounts and finding that Bautista and Saavedra did not obtain more favorable judgments than their offers of judgment. This appeal and cross-appeal followed.

Although decisions regarding an award of attorney fees are generally within the district court's discretion, "when a party's eligibility for a fee award is a matter of statutory interpretation" or the interpretation of court rules, we review the district court's decision de novo. *In re Estate & Living Tr. of Miller*, 125 Nev. 550, 552-53, 216 P.3d 239, 241 (2009); see *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 715, 290 P.3d 265, 267 (2012) (reviewing legal conclusions regarding court rules de novo).

When, as here, the offers of judgment include prejudgment interest and costs, the pre-offer prejudgment interest and costs are added to the verdict before comparing it to the offers of judgment when determining whether the offerees failed to obtain a more favorable result. See *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 426, 132 P.3d 1022, 1033 (2006); see also NRS 17.115(5);¹ *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 115 n.4, 118, 127 P.3d 1082, 1085 n.4, 1087 (2006); *McCrary v. Bianco*, 122 Nev. 102, 104, 131 P.3d 573, 574 (2006) (holding that "district courts must, where applicable and where the offer does not preclude such a comparison, include pre-offer prejudgment interest along with the principal

¹Although NRS 17.115 was repealed effective October 1, 2015, the offers of judgment were served prior to that time.

judgment amount when comparing the judgment obtained and an offer of judgment in post-trial proceedings for relief under the rule and statute”) (emphasis added). In the instant case, while the district court acknowledged this line of authority, it nonetheless failed to follow it by failing to add the pre-offer prejudgment interest or costs to the verdicts before comparing them to the offers of judgment. Due to the district court’s failure to follow the controlling precedent on this issue in determining whether attorney fees should be awarded, we necessarily reverse the district court’s decision and remand this matter for further proceedings on Bautista’s and Saavedra’s motion for attorney fees.² On remand, if the district court determines, after properly applying the authority outlined above, that Stefonich and L&S failed to obtain a more favorable result than the offers of judgment, it must determine the propriety of awarding attorney fees to Bautista and Saavedra under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).³ See *MEI-GSR Holdings, LLC v.*

²To the extent Stefonich and L&S ask this court to overturn supreme court precedent regarding the addition of pre-offer prejudgment interest to a verdict in comparing the verdict to an offer of judgment, their request must be denied as this court is bound by those decisions. See *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis “applies *a fortiori* to enjoin lower courts to follow the decision of a higher court”).

³In considering Stefonich’s and L&S’ arguments regarding the application of the *Beattie* factors, raised as part of their cross-appeal, we note that it is not entirely clear that a cross-appeal was the appropriate

Peppermill Casinos, Inc., 134 Nev. 235, 245, 416 P.3d 249, 258 (2018) (stating that, under the rules regarding offers of judgment, the district court must first consider the *Beattie* factors in determining whether to award attorney fees and if it decides fees are warranted, it must then consider the *Brunzell* factors).

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Rob Bare, District Judge
Cram Valdez Brigman & Nelson
Law Office of David Sampson
Browne Green, LLC
Keating Law Group
Eighth District Court Clerk

vehicle for presenting these arguments; however, any such arguments would nonetheless be properly before this court in response to Bautista and Saavedra's appeal. See *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755 877 P.2d 546, 548 (1994).