

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS ELECTRIC, INC.,

No. 37418

Appellant,


vs.

DANIEL MARTIN,

Respondent.

FILED

DEC 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a final judgment following a bench trial in an action for breach of an employment contract. The district court found that appellant Las Vegas Electric, Inc., (LVE) breached its contract with respondent Daniel Martin, and awarded damages in the sum of \$56,300. LVE's only argument in this appeal concerns the amount of damages awarded for Martin's lost income in 1998.

The record reveals that within two weeks after Martin was terminated, he obtained employment with Desert Construction in a position similar to that he held at LVE, with a salary of \$61,000 per year. Martin testified at trial that he left his job with Desert Construction in 1998 to start his own business. He was not terminated by Desert Construction, and admitted that he could have continued working there. His stated reason for leaving was that his "entrepreneurial spirit" moved him to be his own boss and "run [his own] company."

The district court awarded damages based on the difference in Martin's actual income for 1997 and 1998, based on Martin's federal income tax returns for those years, and what he would have earned had he remained with LVE. Under the employment contract, Martin was to be paid \$65,000 per year. In 1997, Martin earned \$61,800, and in 1998, he earned \$11,810. Accordingly, the difference in income was \$3,200 for 1997, and \$53,190 for 1998, for a total of \$56,390; the district court then rounded this sum to \$56,300 for the damages award.

The essence of LVE's contention in this appeal is that it "should not have to pay Martin for the 'entrepreneurial spirit' that overcame him in 1998." We agree. A plaintiff in a wrongful discharge case has a duty to mitigate his damages by accepting reasonable


alternative employment.¹ Here, the record demonstrates that Martin was employed by Desert Construction in a position almost identical to that he held at LVE. He voluntarily left that position in order to follow his dream of starting his own business. LVE is not responsible for this choice, or the resulting consequence of Martin's reduced income for 1998. The damages award should have been limited to the amount by which Martin's salary at LVE exceeded that he received from Desert Construction in 1997, and that he would have received had he continued as an employee of Desert Construction in 1998.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²

 J.
Shearing

 J.
Rose

 J.
Becker

¹See Dillard Department Stores v. Beckwith, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999).

²On August 3, 2001, respondent submitted a proper person motion to dismiss this appeal on the basis that appellant has failed to timely comply with court rules. Respondent also alleges that the notice of appeal was untimely. Although respondent was not granted leave to appear in proper person, we have considered respondent's motion.

First, our review of the record demonstrates that the notice of appeal was timely, as it was filed within thirty days of the date that written notice of the order's entry was served. See NRAP 4(a). In addition, we are not persuaded that appellant's occasional tardiness in complying with court rules is grounds for dismissal of this appeal. See NRAP 3(a) (providing that "[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal"). Accordingly, respondent's motion is denied.

Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. Mark R. Denton, District Judge
Lamond R. Mills & Associates LLC
Daniel A. Martin
Clark County Clerk