IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NII QUAYE,
Appellant,
vs.
LINSLI JENE LATESSA,
INDIVIDUALLY,
Respondent.

No. 78895-COA

FILED

JUN 12 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nii Quaye appeals from a post-judgment order invalidating the acceptance of an offer of judgment and awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.[1]

In February 2016, Linsli Jene Latessa rear-ended Nii Quaye while driving in Las Vegas. In September 2017, Quaye sued Latessa for negligence. In August 2018, the case proceeded to arbitration pursuant to the Nevada Arbitration Program, and Quaye was awarded $10,000 at the conclusion of the arbitration hearing. Quaye then filed a request for a trial de novo, and a jury trial was scheduled for February 22, 2019. On February 7, 2019, Latessa served an offer of judgment of $10,000 to Quaye for all damages including costs and attorney fees. Quaye did not accept the offer before trial. On February 22, 2019, the parties proceeded to a jury trial and the jury returned a verdict of $8,057.60 for all damages to Quaye. Later the

[1]On March 26, 2020, this court issued an order for the appellant to show cause why this appeal should not be dismissed for lack of jurisdiction, specifically because the record did not contain a judgment filed by the district court. *See* NSTR 3(d). On May 8, 2020, Quaye submitted the judgment filed by the district court, and therefore, we have jurisdiction to review Quaye's appeal.

same day, Quaye faxed Latessa an acceptance of the February 7 offer of judgment for $10,000.

Both parties filed post-trial motions, with Quaye seeking to enforce the offer of judgment, and Latessa seeking attorney fees and costs because Quaye did not obtain a judgment greater than the offer of judgment. The short trial judge determined that Quaye could not accept the offer of judgment after the jury verdict—as this requires an interpretation of NRCP 68 leading to an absurd result—and voided the acceptance and awarded attorney fees and costs to Latessa under Nevada's Arbitration Rules and Nevada's Short Trial Rules. The short trial judge cited to *Harris v. Olson*, 558 N.W.2d 408, 410 (Iowa 1997), which held that Iowa plaintiffs cannot accept a party's offer of judgment after the jury returns a verdict, even if the offer has not expired. The district court entered judgment for Latessa. *See* NSTR 3(d)(1).

Quaye appeals, arguing that Latessa's offer of judgment was timely accepted, and that allowing him to accept the offer after the jury had returned a verdict does not create an absurd result. We disagree.

Pursuant to NRCP 68, a party may recover attorney fees and costs if the other party rejects an offer of judgment and fails to obtain a more favorable outcome. Under NRCP 68(a) (2017), the defendant was required to serve the offer more than ten days before trial. In this case, Latessa served her offer of judgment on February 7, 2019.[2] Under NRCP 68(d)

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[2]The versions of NRCP 6 and NRCP 68 that were in effect at the time of the underlying proceedings govern this analysis. The Nevada Rules of Civil Procedure were amended effective March 1, 2019, and the 2019 amendments to NRCP 68 would address the issue in this appeal because the amended rule requires a plaintiff to accept the offer of judgment no later than seven days before trial. *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules

(2017), "[I]f within 10 days after the service of the offer, the offeree serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with the proof of service, [and] [t]he clerk shall enter judgment accordingly."[3] (Emphasis added.)

This court must ascertain whether Quaye's decision to proceed to trial served as a rejection of the offer of judgment, even though the plain

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of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Here, however, the offer of judgment was served and accepted in February 2019, and thus, the 2019 NRCP amendments do not apply to this proceeding, and we cite the rules in effect at the time of the proceedings below. *Id.* ("[T]his amendment to the [NRCP] shall be effective prospectively on March 1, 2019, as to all pending cases and cases initiated after that date."). Latessa only argues that this issue is moot under NRCP 68(d)(1)-(2) (2019), but does not cogently argue—nor provide authority to show—that this rule applied at the time the offer of judgment was accepted. Thus, we need not consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued or supported by relevant authority).

[3]Under NRCP 6(a), "[w]hen the period of time prescribed or allowed is less than 11 days, intermediate [weekend days] and non-judicial days shall be excluded in the computation . . . ." Thus, pursuant to NRCP 6(a) and 68(d), it appears Quaye had until February 22, 2019, to accept Latessa's offer of judgment, taking into account the intervening weekends and President's Day, and assuming that the offer was originally extended "more than" 10 days before the trial, a question that neither party argued or briefed. We note that the parties and the short trial judge did not consider the timeliness of Latessa's offer of judgment, and therefore, we decline to consider it. Thus, on February 22, 2019, Quaye served timely written acceptance of the offer of judgment as allowed by NRCP 68(d). *See also Nava v. Second Judicial Dist. Court*, 118 Nev. 396, 397, 46 P.3d 60, 61 (2002) ("[T]he offer of judgment is irrevocable during the ten-day period."). However, even if the acceptance was timely under NRCP 68(d), it was still ineffective for the reasons discussed in this order. *See also* EDCR 8.06(a).

meaning of Rule 68 stated that the offer could be accepted at any point within the ten-day period.

This court reviews a district court's interpretation of court rules de novo. *Dornbach v. Tenth Judicial Dist. Court*, 130 Nev. 305, 310, 324 P.3d 369, 372 (2014). "Because the rules of statutory interpretation apply to Nevada's Rules of Civil Procedure, we interpret unambiguous statutes, including rules of civil procedure, by their plain meaning." *Logan v. Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141-42 (2015) (internal quotations and citations omitted). "When the statute is clearly worded . . . [t]he language of a statute should . . . be given its plain meaning, unless doing so violates the spirit of the act or produces absurd or unreasonable results." *Las Vegas Police Protective Ass'n Metro, Inc. v. Eighth Judicial Dist. Court*, 122 Nev. 230, 242, 130 P.3d 182, 191 (2006) (internal quotations and citations omitted); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 239 (2012) ("The doctrine of absurdity is meant to correct obviously unintended dispositions . . . ." (emphasis omitted)); *In re Sunterra Corp.*, 361 F.3d 257, 268 (4th Cir. 2004) ("In assessing whether a plain reading of a statute implicates the absurdity exception, however, the issue is not whether the result would be 'unreasonable,' or even 'quite unreasonable,' but whether the result would be absurd." (emphasis omitted)).

"[A] Rule 68(a) offeree is faced with the following choice: either accept the offer on its terms or proceed to trial and run the risk not only of obtaining a judgment less than the offer but also paying the defending party's post-offer costs." *Bosley v. Mineral Cty. Comm'n*, 650 F.3d 408, 414

(4th Cir. 2011);[4] *see also Larson v. A.T.S.I.*, 859 P.2d 273, 275 (Colo. App. 1993) ("[A] post-verdict acceptance would neither comport with the legislative intent to encourage settlements prior to trial nor would a just and reasonable result flow from such an interpretation [of Colorado's offer of judgment statute]."); *Harris*, 558 N.W.2d at 410; *Hanzelik v. Grottoli & Hudon Inv. of Am., Inc.*, 687 So. 2d 1363, 1366 (Fla. Dist. Ct. App. 1997) ("We agree that a party may not accept an offer of judgment after trial has commenced."); *Kay Louise Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 737 (Minn. 1996) ("[The defendant]'s offer terminated as a matter of law when trial commenced two days after service.").

Here, Quaye's argument—that he could wait until after the jury returned a less favorable verdict to accept the offer of judgment—requires an absurd interpretation of NRCP 68(d) (2017), which is beyond unreasonable. Absurdity would occur if Quaye were allowed to (1) receive an offer of judgment, and not expressly accept it, (2) proceed to trial, hoping to obtain a more favorable judgment, (3) obtain a less favorable jury verdict, and (4) reverse course and accept the offer of judgment. This result would be beyond unreasonable, as it would entirely defeat the policy of NRCP 68, which is to encourage settlement. *See Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981) ("The purpose of [Federal] Rule [of Civil Procedure] 68 is to encourage the settlement of litigation."); *see also Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) ("[T]he purpose of NRCP 68 is to encourage settlement . . . ."). As the foregoing state and federal authorities

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[4]"Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations omitted).

show, allowing a plaintiff to accept an offer of judgment after a jury verdict is announced does not comport with the intent of NRCP 68. Thus, this result is absurd because it is more than unreasonable and is clearly an unintended disposition. *See* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, at 239. Thus, Quaye's interpretation of NRCP 68(d) (2017) must be rejected.[5]

Further, existing Nevada authorities implicitly support this conclusion: for instance, one factor in determining whether fees and costs should be allowed under NRCP 68 is "whether the plaintiff's decision to reject the offer *and proceed to trial* was grossly unreasonable or in bad faith." *Beattie*, 99 Nev. at 588, 668 P.2d at 274 (emphasis added); *see also Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 24, 125 P.3d 1160, 1165-66 (2006) ("NRCP 68(f) provides for penalties if the offeree rejects the offer, proceeds to trial, and fails to obtain a more favorable judgment." (emphasis and internal quotations omitted)). Thus, Quaye rejected the offer of judgment by deciding to proceed to trial.

For these reasons, the short trial judge did not err in concluding that Latessa's offer of judgment was rejected by Quaye's decision to proceed to trial.[6]

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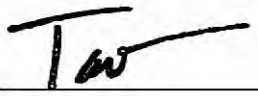
[5]We further note that the Nevada Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1.

[6]Quaye does not argue that the district court abused its discretion in awarding fees and costs to Latessa under Nevada's Rules Governing Alternative Dispute Resolution or Short Trial Rules. *See* NAR 20(B)(2)(a) ("Where the arbitration award is $20,000 or less, and the party requesting the trial de novo fails to obtain a judgment that exceeds the arbitration award by at least 20 percent of the award, the non-requesting party is entitled to its attorney's fees and costs . . . ."); *see also* NSTR 27(b)(4),

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
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cc: Hon. Kenneth C. Cory, District Judge
Law Office of Andrew M. Leavitt, Esq.
Law Offices of Jason M. Peck
Melvin J. Goldberg, Short Trial Judge
Eighth District Court Clerk

31(b)(2). Thus, Quaye has waived any argument as to the short trial judge's award of attorney fees and costs to Latessa. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.).