

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN ADAMS AND IRMA ADAMS,
Appellants,
vs.
DANIEL C. PENNEBAKER AND
NANCY PENNEBAKER,
Respondents.

No. 37652

FILED

MAY 06 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants, Allen and Irma Adams (the "Adamses"), appeal the district court's order awarding attorney fees and costs to respondents, Daniel and Nancy Pennebaker (the "Pennebakers"). The district court awarded attorney fees and costs to the Pennebakers after the jury returned a verdict in their favor in a personal injury action. The Adamses, who were the plaintiffs below, had previously rejected an offer of judgment from the Pennebakers. We conclude that the Adamses' arguments are without merit, and accordingly, we affirm the district court's order awarding attorney fees and costs to the Pennebakers.

This court will not overturn a district court's award of attorney fees pursuant to NRCPP 68 and NRS 17.115 absent an abuse of discretion.¹ Nonetheless, when exercising this discretion, the district court must consider the following factors, which we first articulated in Beattie v. Thomas:

- (1) whether the plaintiff's claim was brought in good faith;
- (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
- (3) whether the plaintiff's

¹Wynn v. Smith, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001).

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.²

The district court's failure to make explicit findings with regard to the above factors is not a per se abuse of discretion.³ "If the record clearly reflects that the district court properly considered the Beattie factors, we will defer to its discretion."⁴

While the Adamses assert that the district court abused its discretion because it did not make explicit findings as to the individual Beattie factors, the record clearly reflects that the district court considered the Beattie factors in light of the parties' extensive arguments over the application of the Beattie factors. Additionally, the minor inconsistencies between Nancy Pennebaker's testimony and the testimony of several other witnesses did not render the Pennebakers' offer of judgment invalid for purposes of awarding attorney fees. In contrast to the situation in Trustees, Carpenters v. Better Building Co.,⁵ there is no indication in the record, nor do the Adamses make any specific allegations, as to how these minor inconsistencies were critical to their decision to reject the Pennebakers' offer of judgment. The Pennebakers' offer of judgment was valid for purposes of awarding attorney fees. Accordingly, the district court did not abuse its discretion when it awarded attorney fees to the Pennebakers.

²99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

³Wynn, 117 Nev. at 13, 16 P.3d at 428.

⁴Id. at 13, 16 P.3d at 428-29.

⁵101 Nev. 742, 710 P.2d 1379 (1985).

Finally, we conclude that the district court did not abuse its discretion when it awarded costs to the Pennebakers because the Pennebakers were entitled to costs under NRS 18.020(3) and because the individual cost amounts were reasonable and actual. Under NRS 18.020, a prevailing party is entitled to costs as a matter of right when the plaintiff has sought over \$2,500.00 in damages; however, we will strictly construe statutes permitting the recovery of costs because they are in derogation of the common law.⁶ Under NRS 18.005, costs must be reasonable and actual, rather than a reasonable calculation or estimate.⁷ Nonetheless, “[t]he determination of allowable costs is within the sound discretion of the trial court.”⁸

While the Adamses challenge several individual cost amounts as being excessive and unreasonable, there is nothing in the record to support this contention apart from their bare allegations. We note that, with the exception of the slope analysis and the climate data, all of the costs claimed by the Pennebakers are expressly recoverable under NRS 18.005. Moreover, with regard to the slope analysis and the climate data, the fact that the case focused upon the accumulation of ice on a sloping outdoor driveway supports the district court’s conclusion that these costs were reasonable and necessary expenses. Therefore, the district court did not abuse its discretion when it awarded costs to the Pennebakers.

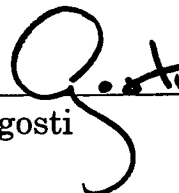
⁶Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

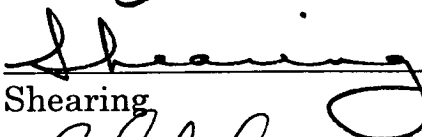
⁷Id. at 1352, 971 P.2d at 385-86.


⁸Id. at 1352, 971 P.2d at 385.

Based on the above discussion, we conclude that the district court did not abuse its discretion when it awarded attorney fees and costs to the Pennebakers.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Agosti


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Martin G. Crowley
Thorndal Armstrong Delk Balkenbush & Eisinger
Washoe District Court Clerk

⁹After careful consideration, we conclude that the Adamses' remaining arguments are without merit.