


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCHAI B.T.,
Appellant,
vs.
ANTHONY S. NOONAN IRA LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 84835-COA

FILED

SEP 29 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Marchai B.T. (Marchai) appeals from a district court order awarding attorney fees and costs to respondent. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Respondent Anthony S. Noonan IRA LLC (Noonan) initiated an action to quiet title concerning real property for which it obtained title at a foreclosure sale. Marchai, the beneficiary of the first deed of trust, opposed the quiet title action and contended that the foreclosure sale was only intended to extinguish subpriority liens against the property. Noonan served Marchai with an offer of judgment in which it offered to pay Marchai \$20,000 in exchange for Marchai's agreement for an order quieting title in favor of Noonan. Marchai did not accept the offer of judgment, and this matter proceeded to a bench trial.

Following the bench trial, the district court concluded that a letter from the relevant homeowners' association (HOA) indicated its intent to only foreclose the subpriority portion of the liens. However, on appeal the Nevada Supreme Court concluded that the district court erred because Marchai did not rely upon the letter when it failed to protect its interest in

the property, and Marchai was not permitted to retroactively protect its interests so as to alter an otherwise valid foreclosure sale. *See Anthony S. Noonan IRA LLC v. Marchai B.T.*, No. 79291, 2021 WL 383703, *1 (Nev. Feb. 2, 2021) (Order of Reversal). The Nevada Supreme Court also concluded that the evidence presented concerning the foreclosure sale demonstrated that the HOA intended to conduct a superpriority sale and the entirety of the HOA's lien was relinquished through the foreclosure sale. *See id.* at *2.

The district court subsequently entered judgment in favor of Noonan. Noonan then moved for attorney fees and costs pursuant to NRCP 68 and NRS Chapter 18, and Marchai opposed the motion. The district court requested additional briefing regarding the reasonableness of the attorney fees and, after completion of the supplemental briefing, the court granted Noonan's motion in a written order addressing the factors under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). The district court accordingly awarded Noonan costs in the amount of \$4,587.03 and attorney fees in the amount of \$35,258.50. This appeal followed.

Marchai argues that the district court erred by awarding attorney fees to Noonan. Pursuant to NRCP 68, “[i]f the party to whom the offer is made rejects it and then fails to obtain a more favorable judgment at trial, the district court may order that party to pay the offeror reasonable attorney fees.” *Frazier v. Drake*, 131 Nev. 632, 641, 357 P.3d 365, 371 (Ct. App. 2015) (internal quotation marks omitted). In *Beattie*, the Nevada Supreme Court set out the four factors that must be considered when determining whether to award attorney fees and costs under NRCP 68:

- (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 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.

Beattie, 99 Nev. at 588-89, 668 P.2d at 274. "*Beattie* applies to plaintiffs and defendants," *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 554, 429 P.3d 664, 668 (Ct. App. 2018), but when the defendant is the offeree, the court should consider if the defendant's defense was brought in good faith under the first factor and also evaluate whether the defendant's rejection of the offer was grossly unreasonable or in bad faith under the third factor, see *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). In addition, none of the factors are outcome determinative, and thus, each should be given appropriate consideration. *Frazier*, 131 Nev. at 642, 357 P.3d at 372.

When a district court evaluates a request for attorney fees pursuant to NRCP 68 based on the previously identified factors, "its decision to grant or deny attorney fees will not be disturbed absent a clear abuse of discretion." *Id.* "Although explicit findings with respect to [the *Beattie*] factors are preferred, the district court's failure to make explicit findings is not a per se abuse of discretion." *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001).

Marchai contends that the district court abused its discretion by considering whether Noonan brought its claims in good faith. In its written order, the district court reviewed the *Beattie* factors and found (1) Noonan's claims were brought in good faith, (2) Noonan's offer of judgment was reasonable as to both the timing and amount given the state of the litigation proceedings when it was made, and (3) Marchai's refusal of the

offer was not made in bad faith or grossly unreasonable because Marchai's belief that it had a meritorious defense had been supported by the trial court's rulings. The district court noted that the factors were mixed as to which party they favored, but, on the whole, found that the circumstances in this matter warranted an award of attorney fees to Noonan. Finally, the district court concluded that the attorney fees sought by Noonan were reasonable and justified.

We conclude that the district court's written order incorrectly evaluates whether Noonan brought its claims in good faith instead of whether Marchai brought its defenses in good faith. *See Yamaha*, 114 Nev. at 252, 955 P.2d at 673 (noting that "it would seem meaningless to weigh whether [the plaintiff]'s claim was brought in good faith [where the plaintiff] was the prevailing party" and the offeror). Thus, one of the factors that the district court found to be in Noonan's favor was incorrectly applied when it reached its decision to award attorney fees to Noonan. Accordingly, we cannot state that the record clearly reflects that the district court properly considered the appropriate factors when it awarded attorney fees to Noonan, and thus, we cannot defer to its exercise of discretion. *Cf. Wynn*, 117 Nev. at 13, 16 P.3d at 428-29 ("If the record clearly reflects that the district court properly considered the *Beattie* factors, we will defer to its discretion.").

In addition, even without evaluating whether Marchai brought its defenses in good faith, the district court concluded that not all factors favored an award of attorney fees to Noonan. Accordingly, we cannot state that the district court's erroneous failure to evaluate whether Marchai brought its defenses in good faith was harmless. *Cf. NRCP 61* (providing that the court must disregard all errors that do not affect a party's


substantial rights); *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that “[a]n error is harmless when it does not affect a party’s substantial rights” and harmless error does not warrant reversal).

Therefore, we reverse the district court’s decision to award costs and attorney fees pursuant to NRCP 68, and we remand for the district court to consider the appropriate *Beattie* factors, including consideration of whether the Marchai’s defense was brought in good faith under the first factor. *See Yamaha*, 114 Nev. at 252, 955 P.2d at 673; *see also In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (“[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct [legal] standard . . . , we must reverse the district court’s decision and remand for further proceedings.”).

Marchai also argues that the district court erred by awarding attorney fees pursuant to NRS 18.010. The district court’s order cites to NRS 18.010, but it does not provide findings as to why the district court believed Marchai was entitled to attorney fees under that statute. Noonan did not recover a monetary judgment, and thus, attorney fees pursuant to NRS 18.010(2)(a) were not appropriate. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 285, 890 P.2d 769, 774 (1995). Moreover, NRS 18.010(2)(b) requires the district court to first find that “the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party,” and the district court did not make such a finding. Therefore, to the extent the district court awarded attorney fees pursuant to NRS 18.010(2), we conclude the district court abused its discretion.

Based on the foregoing, we reverse the district court's decision concerning the award of attorney fees and costs, and we remand for the district court to conduct further proceedings consistent with this order. Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Patrick N. Chapin, Settlement Judge
Hutchison & Steffen, LLC/Las Vegas
Andersen & Beede
Eighth District Court Clerk