


IN THE SUPREME COURT OF THE STATE OF NEVADA

HELGA DYRHAUGE, INDIVIDUALLY,
Appellant,
vs.
ROBERT RANDOLPH BLACK, JR., AN
INDIVIDUAL,
Respondent.

No. 87196

FILED

NOV 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

Appeal from an amended judgment upon jury verdict awarding fees and costs in a tort case. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Appellant Helga Dyrhaugue sued respondent Robert Randolph Black, Jr., after an automobile accident. Dyrhaugue rejected Black's NRCP 68 offer of judgment, and after a jury trial, failed to obtain a more favorable verdict. Black later moved for attorney fees and costs, which the district court granted in two separate orders. The district court later entered an amended judgment upon jury verdict awarding Black \$176,970.73 in attorney fees and costs. Dyrhaugue now appeals.

Dyrhaugue argues the district court improperly awarded Black attorney fees under NRCP 68, despite finding that Dyrhaugue's rejection of Black's offer was not grossly unreasonable or made in bad faith. Reviewing for an abuse of discretion, we disagree. *See Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015) ("We review a district court's decision regarding an award of attorney fees . . . for an abuse of discretion"). When an offeree rejects a settlement offer under NRCP 68 "and fails to obtain a more favorable judgment[,] the offeree must pay the offeror's post-offer costs and expenses, . . . applicable interest on

the judgment from the time of the offer to the time of entry of the judgment, and reasonable attorney fees . . . actually incurred from the time of the offer.” NRC P 68(f)(1)(B). In determining the attorney fees to award, the district court must weigh four factors:

- (1) whether the plaintiff's claim was brought in good faith;
- (2) whether the defendant's 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 v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

The parties do not dispute the first or fourth *Beattie* factors. As to the second factor, Black's offer of judgment of \$150,000 was served approximately two years into the proceedings, at which point sufficient discovery had taken place for Dyrhauge to know Black's theory of the case and the material evidence supporting Black's theory. At that point, both parties' depositions had occurred; Black had access to Dyrhauge's medical records; and Dyrhauge had access to Black's expert reports, which rebutted Dyrhauge's causation claims and damages. Given Dyrhauge's conflicting statements about when she experienced pain after the accident, her continued work as a stage performer for six months after the accident before experiencing "suddenly worse" pain, Black's expert witness' testimony rebutting causation, and Black's expert witness testimony about the mild impact Dyrhauge would have suffered in the accident, we conclude that substantial evidence supports the district court's finding that Black's offer was reasonable as to the timing and amount.

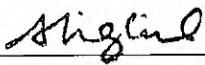
As to the third factor, Dyrhauge argues that factor weighed in her favor. To the extent that Dyrhauge argues that the district court used


an improper standard to analyze the third factor, we disagree. While the district court observed that Dyrhauge’s decision to reject the offer was arguably not grossly unreasonable considering the medical costs incurred, the court ultimately found that decision was unreasonable given the weakness of Dyrhauge’s claim. Because no single *Beattie* factor is determinative, *Clarke v. Serv. Employees Int’l Union*, 137 Nev. 460, 467, 495 P.3d 462, 469 (2021), the court’s conclusion that Dyrhauge’s decision was unreasonable, but arguably not grossly unreasonable, merely means the court may have found this factor supported neither party’s argument. A conclusion that a factor does not favor either party, on its own, is not a reversible error. The court considered this factor and the other factors, and we cannot say the district court abused its discretion in awarding Black attorney fees and costs after considering the *Beattie* factors. *See id.* (explaining that the district court “has broad discretion to grant the request so long as all appropriate factors are considered” (internal quotation marks omitted)); *see also Nevins v. Martyn*, 140 Nev., Adv. Op. 66, ___ P.3d ___ (2024) (concluding that the district court acted within its discretion in determining that respondent’s attorney fees were reasonable under the circumstances, despite several *Beattie* factors favoring appellants).

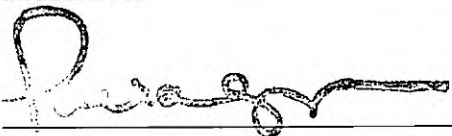
We nevertheless conclude the district court erred in awarding \$30,000 over the combined award of costs (\$70,818.73) and attorney fees (\$76,152.00). The district court did not provide a basis for the \$30,000, and Black concedes this amount was erroneously awarded as Black only seeks affirmance of the original award of costs and fees. *See Integrity Ins. Co. v. Martin*, 105 Nev. 16, 19, 769 P.2d 69, 70 (1989) (“The failure of the district court to state a basis for the award of attorney’s fees is an arbitrary and

capricious action.”). Thus, we reverse this portion of the amended judgment upon jury verdict. Accordingly, we

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


_____, J.
Stiglich


_____, J.
Herndon


_____, J.
Parraguirre

cc: Hon. Eric Johnson, District Judge
Persi J. Mishel, Settlement Judge
Greyson Bohden Cole
Pacific West Injury Law
Messner Reeves LLP
Eighth District Court Clerk