


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESPAC; AND GREG CHRISTIAN,
Appellants,
vs.
GREGORY O. GARMONG,
Respondent.

No. 87411-COA

FILED

DEC 30 2024

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

ORDER OF AFFIRMANCE

Wespac and Greg Christian appeal from a post-judgment district court order granting in part and denying in part a motion for attorney fees and costs. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Wespac and Christian (appellants) obtained a favorable judgment against respondent Gregory O. Garmong following a binding arbitration and were awarded \$111,649.96 in attorney fees. After Garmong unsuccessfully appealed the arbitration award, *Garmong v. Wespac*, No. 80376-COA, 2020 WL 7053507 (Nev. Ct. App. Dec. 1, 2020) (Order of Affirmance), appellants sought and obtained an additional award of attorney fees for \$45,084.50, and this court affirmed that order on appeal, *Garmong v. Wespac*, No. 83356-COA, 2022 WL 2901141 (Nev. Ct. App. July 21, 2022) (Order of Affirmance).

Appellants thereafter sought to conduct post-judgment discovery in order to identify assets to satisfy the judgment. When Garmong failed to respond to the discovery requests, appellants filed a

motion to compel and sought attorney fees pursuant to NRCP 37(a)(5)(A) (providing that, if a motion for an order compelling disclosure or discovery is granted, the court must, after giving an opportunity to be heard, require the party whose conduct necessitated the motion to compel to pay the movant's reasonable expenses incurred in making the motion to compel, including attorney fees). Garmong opposed the motion. Ultimately, the district court granted the motion to compel and generally awarded appellants attorney fees.

As a result of the district court's order, appellants filed a motion seeking \$4,878.25 in attorney fees and costs. This amount included \$2,835 in attorney fees for the motion to compel, \$2,030 in fees for preparing the motion for fees as well as \$13.25 in costs that were ostensibly for preparing both the motion to compel and the motion for fees. Garmong opposed the motion and appellants filed a reply.

The district court subsequently entered a written order granting in part and denying in part appellants' motion for fees and costs. The court awarded appellants \$2,835 in attorney fees related to litigating the motion to compel under NRCP 37(a)(5)(A), after determining that an award of attorney fees was supported by substantial evidence and finding the fees incurred in litigating the motion were reasonable and actually incurred. But the district court did not allow appellants to recover the \$2,030 in attorney fees for expenses for preparing the motion for attorney fees and costs as a result of prevailing on the motion to compel, the \$13.25 in costs, or any other fees or costs incurred after the order granting the motion to compel was entered. This appeal followed. While the appeal was pending, appellants sought to recover the attorney fee award from

Garmong, which he paid in the amount of \$2,835 thereby complying with the district court's order.

On appeal, appellants assert that the district court abused its discretion and incorrectly applied NRCP 37(a)(5) when it declined to award them attorney fees and costs for filing their motion for attorney fees and costs after their motion to compel was granted. Garmong counters that NRCP 37 provides only for the fees and costs associated with bringing a motion to compel discovery and not for the expense of bringing a later motion for fees and costs.¹ We note that appellants rely solely on NRCP 37(a)(5)(A) to support their contention that such fees and costs must be awarded.

We review a district court's decision regarding whether to award attorney fees and costs awards for an abuse of discretion. *Gunderson, v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). NRCP 37(a)(5)(A) provides that if a motion to compel is granted, "the court

¹Garmong also argues that appellants are estopped from pursuing an appeal in this case because they acquiesced to the judgment by accepting payment for the attorney fees they were awarded. We are unpersuaded by this argument, and thus decline to resolve the appeal on this basis. See *Ford v. Ford*, 105 Nev. 672, 675 n.1, 782 P.2d 1304, 1307 n.1 (1989) (acknowledging that, while generally, "the acceptance of benefits from a judgment bars an appeal therefrom because a party may not follow two legally inconsistent courses of action," there is an exception "when a reversal of the judgment on appeal would not affect an appellant's right to the benefit already secured"). Because a reversal of the district court's decision not to award additional attorney fees and costs would not affect appellants' existing fee award for the motion to compel, we conclude that the exception outlined in *Ford* applies and does not operate to bar appellants' appeal.

must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney fees." However, NRCP 37 also provides that the district court "must not" order payment of expenses if "other circumstances make an award of expenses unjust." NRCP 37(a)(5)(A)(iii).

Here, appellants argue that the provision in NRCP 37 requiring payment of reasonable expenses incurred in making a motion to compel implicitly encompasses the fees and costs they incurred in bringing the motion for attorney fees and costs that they filed following their successful motion to compel. But while NRCP 37 provides that the party whose conduct necessitated the motion to compel must pay the reasonable expenses incurred in making the motion to compel, nothing in that rule specifically provides that appellants should also be awarded their expenses for preparing a motion seeking a specific amount of attorney fees and costs for having successfully prevailed on their motion to compel. Given the well-established rule that a district court may not award attorney fees and costs unless authorized by a statute, rule or contract, *see McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 673, 137 P.3d 1110, 1129 (2006), in the absence of any such authority, appellants' sole reliance on NRCP 37 is misplaced. NRCP 37(a)(5)(A) only permits the recovery of expenses related to the motion to compel and does not explicitly support an award of expenses for preparing a motion for attorney fees and costs following prevailing on a motion to compel, particularly where, as here, the district court found an award of \$2,835 fairly compensated appellants for having to bring their motion to compel. And under NRCP 37(a)(5)(A)(iii), the district court may

reject an award of fees and costs where such an award would be unjust. Thus, we cannot conclude that the district court abused its discretion or incorrectly applied NRCP 37(a)(5)(A) under these circumstances. See *Gunderson*, 130 Nev. at 80, 319 P.3d at 615. We, therefore,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Lynne K. Jones, Chief Judge
Gordon Rees Scully Mansukhani LLP/Reno
Carl M. Hebert
Washoe District Court Clerk