IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTENSEN LAW OFFICES, LLC,
Appellant,
vs.
ERIC CHRISTENSEN; AND ELMINA CHRISTENSEN,
Respondents.

ERIC CHRISTENSEN; AND ELMINA CHRISTENSEN,
Appellants/Cross-Respondents,
vs.
WINNER & SHERROD, LTD., F/K/A ATKIN WINNER & SHERROD, LTD., A LIMITED-LIABILITY COMPANY; AND BRUCE W. KELLEY, AN INDIVIDUAL,
Respondents/Cross-Appellants,
and
GEICO,
Respondent,
and
ERVEN T. NELSON,
Cross-Respondent.

No. 84517

FILED

JAN 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

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

This is an appeal from a district court final judgment in a contract matter, as well as a cross-appeal from an order awarding attorney fees. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

Facts and Procedural History

Eric and Elmina Christensen caused a car wreck. Their insurer, GEICO, initially told the Christensens to retain their own counsel to defend them. Consequently, the Christensens retained Christensen Law

Offices (CLO), whose principal is Eric's cousin. They entered a contingency fee agreement wherein CLO would be entitled to 40 percent of any damages CLO might recover on behalf of the Christensens in any potential litigation against GEICO.

Eventually, the car-wreck victims sued the Christensens, at which point GEICO retained Winner & Sherrod (W&S) to defend the Christensens. Thereafter, CLO, on behalf of the Christensens, filed a third-party complaint against GEICO seeking any damages the Christensens might incur due to GEICO's initial refusal to retain counsel to defend them. Then in August 2015, GEICO sent the Christensens a "Comfort Letter" indicating that GEICO would pay all the damages for which the Christensens may become liable, including the attorney fees they had paid to CLO. As pertinent here, the Comfort Letter promised that GEICO would pay damages in excess of the Christensens' policy limit as well as "reasonable attorney's fees and costs incurred to date by your personal attorney, Tom Christensen." After receiving the Comfort Letter, the Christensens voluntarily dismissed their third-party claims against GEICO.

Eventually, W&S settled the case with the victims for $850,000. Consistent with the Comfort Letter, the Christensens were not liable for any of this amount, but W&S did not inform the Christensens of the settlement beforehand. GEICO also paid CLO roughly $31,000 in attorney fees, which represented the amount CLO had incurred before the Comfort Letter was received. Nonetheless, CLO asked GEICO to pay roughly

$275,000 in attorney fees.[1] GEICO refused. Consequently, CLO sued the Christensens seeking the remainder of the unpaid fees. The Christensens answered the complaint by conceding that the amount of CLO's requested fees was accurate. Eric Christensen also executed a confession of judgment with CLO wherein he agreed that he owed CLO $600,000 in attorney fees.[2] The Christensens then asserted third-party claims against GEICO, as well as against W&S. As relevant here, the Christensens' third-party claims alleged generally that (1) GEICO and W&S needed to indemnify them for the attorney fees they owed CLO; and (2) W&S committed legal malpractice by not informing them of the settlement with the victims beforehand.

GEICO and W&S moved to dismiss the Christensens' third-party claims. They contended that upon receipt of the Comfort Letter, the Christensens had no need to continue retaining CLO because the Comfort Letter ensured that they would not be subject to any liability. Specifically, GEICO contended that it should be responsible for CLO's attorney fees only up to the date the Comfort Letter was received, which it had already paid to CLO. And W&S contended that it could not be liable for failing to inform the Christensens of the settlement because they were not damaged by such failure. The district court granted the motions on September 14, 2021, and ruled that GEICO was liable for only the attorney fees that the Christensens incurred before they received the Comfort Letter.

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[1]This reflects the $850,000 settlement, minus the Christensens' $100,000 policy limit, minus the $31,000 already paid, multiplied by 40 percent.

[2]It is unclear where this amount came from, or if it bears any logical relationship to CLO's previously claimed $275,000.

CLO then moved for summary judgment on its claim for fees against the Christensens, contending that because the Christensens did not dispute the amount of fees CLO was owed, judgment in that amount should be entered in CLO's favor. The district court denied CLO's motion, reasoning, among other things, that CLO was bound by the terms of the Comfort Letter and that CLO was only entitled to reasonable attorney fees preceding receipt of the Comfort Letter. The district court also expressed concern that CLO and the Christensens had colluded with one another to artificially inflate CLO's fees in an attempt to pass them along to GEICO and W&S.

Contemporaneous with CLO's summary judgment motion, W&S moved for attorney fees against the Christensens and their newly retained attorney on the ground that their third-party claims were brought without reasonable grounds. The district court granted that motion against the attorney under NRS 7.085. It found that the attorney should have known that the contingency fee agreement between CLO and the Christensens was unenforceable as a matter of public policy, such that the third-party claims against GEICO and W&S were groundless when they were brought. The district court awarded roughly $50,000 in fees against the Christensens' attorney but not against the Christensens.

Discussion

CLO challenges the denial of its summary judgment motion. The Christensens challenge the dismissal of their third-party claims against GEICO and W&S. W&S challenges the award of attorney fees against the Christensens' attorney. We address each of the three issues in turn.

CLO's appeal

CLO challenges the district court's March 29, 2022, order wherein it denied CLO's motion for summary judgment and granted the Christensens' motion for summary judgment. It contends that because the Christensens conceded that they owed CLO $600,000 in attorney fees, the district court was bound as a matter of law to enter a judgment in that amount in favor of CLO and against the Christensens. While we share the district court's concerns regarding collusion, the Christensens have conceded in district court and again on appeal in their February 21, 2023, Confession of Error that CLO is entitled to a $600,000 judgment against them. Accordingly, we reverse the district court's March 29, 2022, order insofar as it denied CLO's summary judgment motion. On remand, we direct the district court to enter judgment in favor of CLO and against the Christensens for $600,000 plus any applicable interest.[3]

That conclusion, however, has no bearing on the issues between the Christensens and GEICO, as well as between the Christensens and W&S. As CLO recognizes in its reply brief, which the Christensens have not opposed due to their Confession of Error, the Christensens' liability to CLO "does not mean the Lawyer Defendants [i.e., W&S] are liable, nor does it mean GEICO is liable [to the Christensens]. The Christensens still must pursue their appeal of the dismissal of their claims."

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[3]Given that we are granting all the relief to which CLO is legally entitled, we decline CLO's request to reassign this case to a different district court judge on remand. We likewise decline GEICO's request for sanctions under NRAP 38.

The Christensens' appeal

The Christensens challenge the district court's September 14, 2021, order granting GEICO's and W&S's separate motions to dismiss under NRCP 12(b)(5). The district court granted these motions on the ground that the Christensens suffered no damages beyond the $31,000 in attorney fees it incurred to CLO, which GEICO already paid. On appeal, the Christensens contend that dismissal under NRCP 12(b)(5) was improper because their complaint alleged that they suffered damages beyond this amount. Namely, the Christensens' complaint alleged that their contingency agreement with CLO provided that CLO would be entitled to 40 percent of any amount that the victims demanded from the Christensens, minus their $100,000 policy limit. Because the car-wreck victims demanded $1.4 million, the Christensens alleged that they automatically owed CLO $540,000 once the victims' demand was made and that GEICO was legally required to reimburse them that amount.[4] Thus, the Christensens argue on appeal that the district court erred in failing to accept as true the factual allegations in their complaint. *Cf. Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (recognizing that a court must accept as true the factual allegations in a complaint when deciding an NRCP 12(b)(5) motion).

We disagree. Setting aside the question of why GEICO would agree to such an arrangement (it did not), the Christensens' allegations are

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[4]The Christensens' complaint also alleged that they suffered damages in the form of emotional distress, but they do not address those allegations in their opening brief. Thus, we have not considered those allegations. *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.").

belied by both the unambiguous language in the contingency fee agreement and the Comfort Letter. Namely, the contingency fee agreement plainly states that CLO would be entitled to 40 percent of any amount recovered on behalf of the Christensens *against GEICO*, and it is undisputed that the Christensens did not recover anything against GEICO. Relatedly, the Comfort Letter plainly states that GEICO would pay the Christensens' "reasonable attorney's fees and costs *incurred to date* by your personal attorney, Tom Christensen." (Emphasis added). To the extent that the Christensens contend that the district court could not consider these documents in evaluating the NRCP 12(b)(5) motions, we again disagree. As we have explained, "[a] court may . . . consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (internal quotation marks omitted). And to the extent that the Christensens contend their complaint alleged other misdeeds by GEICO and W&S, we are not persuaded that the Christensens sufficiently alleged that they suffered damages from those alleged misdeeds. *See Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) ("[B]are assertions amounting to nothing more than a formulaic recitation of the elements of a . . . claim, for the purposes of ruling on a motion to dismiss, are not entitled to an assumption of truth." (internal alterations and quotation marks omitted)). Accordingly, we affirm the district court's dismissal of the Christensens' third-party claims.

W&S's cross-appeal

W&S challenges the district court's March 24, 2022, award of attorney fees against the Christensens' attorney. It contends that the

district court abused its discretion in not also holding the Christensens personally liable for those fees. *Cf. Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967, 194 P.3d 96, 106 (2008) ("This court reviews district court orders refusing to award attorney fees for an abuse of discretion."). The district court declined to hold the Christensens personally liable based on their attorney's representation that they were simply following his advice.

We are not persuaded that the district court abused its discretion in declining to sanction the Christensens. Even W&S's motion for attorney fees represented that it "will leave it to [the district] court's discretion as to the proper subject(s) of the requested attorney's fees as a sanction." We are persuaded, however, that the district court abused its discretion in not considering W&S's alternative request for attorney fees under NRCP 68. Although the district court's order notes that W&S made offers of judgment that the Christensens rejected, the district court did not evaluate whether an award under NRCP 68 might be appropriate. Accordingly, on remand, we direct the district court to evaluate the propriety of an attorney fee award against the Christensens under NRCP 68 and *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

W&S finally contends that the district court abused its discretion in using a $250 hourly rate to compute W&S's fees. Based on the information provided to the district court, we are not persuaded that the district court abused its discretion in this respect.

Conclusion

In sum, we reverse the district court's March 29, 2022, order insofar as it denied CLO's summary judgment motion. On remand, we direct the district court to enter judgment in favor of CLO and against the Christensens for $600,000 plus applicable interest. We also vacate the

district court's March 24, 2022, order insofar as it failed to evaluate W&S's request for attorney fees against the Christensens under NRCP 68. The challenged orders are affirmed in all other respects.

It is so ORDERED.

_____, C.J.
Herndon

_____, J.
Bell

_____, J.
Stiglich

cc: Hon. Jessica K. Peterson, District Judge
Stephen E. Haberfeld, Settlement Judge
Christensen Law Offices, LLC
Law Office of Erven T. Nelson
Benson Allred
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
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Eighth District Court Clerk