

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RUSSELL SEWALD,

No. 38459

Appellant,

vs.

OPPORTUNITY VILLAGE ARC, INC.,

Respondent.

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an award of costs to respondent in the amount of \$7,117.46.¹ An award of costs to the prevailing party is mandatory when the amount of money damages sought is greater than \$2,500.² As an award of costs is in derogation of the common law, the statute must be strictly construed.³ But the determination of which expenses are allowed, and of the reasonableness of the amounts requested, is within the discretion of the district court.⁴ Having reviewed the record in this case, we find no abuse of discretion.

First, while an erratum to appellant's complaint indicates that appellant intended to demand a jury trial, the actual demand was filed by

¹Appellant also attempted to appeal from an order granting summary judgment. His appeal from this order was dismissed for lack of jurisdiction by order dated October 1, 2001, because the notice of appeal was untimely. We deny appellant's request for rehearing of the order dismissing this portion of the appeal. See NRAP 4(a)(1) (providing that the notice of appeal must be timely filed with the district court). That appellant mailed the notice of appeal within the thirty-day period does not confer jurisdiction on this court when it was not timely filed with the district court.

²NRS 18.020(3); Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994); Bergman v. Boyce, 109 Nev. 670, 678-79, 856 P.2d 560, 565 (1993).

³Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); Bergman, 109 Nev. at 679, 856 P.2d at 566.

⁴Berosini, 114 Nev. at 1352, 971 P.2d at 385; Schwartz, 110 Nev. at 1050, 881 P.2d at 643; Bergman, 109 Nev. at 679, 856 P.2d at 565-66.

respondent. Accordingly, the award for the jury demand filing fee was proper.⁵

Second, respondent is entitled to costs for one copy of each deposition.⁶ The statute does not require that every deposition be used at trial (or in this case, to support the summary judgment motion).⁷ Also, the record reflects that appellant himself noticed all of the depositions, except for his own; thus, any assertion by appellant that these depositions were unnecessary is disingenuous at best. Finally, appellant was afforded ample opportunity to review and sign his deposition; the court reporter was not required to send the transcript to California for his convenience, and the cost is not objectionable on this basis.⁸

Fees for service of process are allowable under NRS 18.005(7), and the record reflects that respondent incurred these fees in serving subpoenas for record requests. We perceive no abuse of discretion by the district court in awarding this item of cost.

NRS 18.005(12) specifically allows an award of costs for photocopies. In light of the voluminous record in this case, we conclude that the district court did not abuse its discretion in determining that an award of \$1,551.49 for photocopies was reasonable.

Finally, the costs of messenger services and investigative services may be allowed when the district court is satisfied that they are reasonable and necessary under NRS 18.005(16).⁹ While respondent's memorandum of costs could have been more thorough in its description of these services, we are not persuaded that the district court abused its discretion in allowing them as items of costs to be awarded.

⁵See NRS 18.005(1) (providing that clerks' fees are an allowable cost).

⁶See NRS 18.005(2).

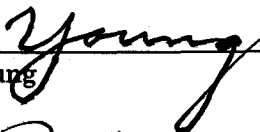
⁷See Jones v. Viking Freight System, 101 Nev. 275, 277, 701 P.2d 745, 747 (1985).


⁸See NRCP 30(e).


⁹See Berosini, 114 Nev. at 1352-53, 971 P.2d at 386; Bergman, 109 Nev. at 681-82, 856 P.2d at 567-68.

We conclude that the district court did not abuse its discretion in determining that the costs requested by respondent were allowable and reasonable. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Pyatt & Silvestri
John Russell Sewald
Clark County Clerk

¹⁰Although appellant was not granted leave under NRAP 46(b) to appear in proper person, we have considered the proper person documents received from him.