

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA CLODFELTER AND WADE A.
CLODFELTER,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JEFFREY D. SOBEL, DISTRICT
JUDGE; AND THE JUSTICE COURT
OF LAS VEGAS TOWNSHIP IN AND
FOR THE COUNTY OF CLARK, AND
THE HONORABLE JAMES M.

BIXLER, JUSTICE OF THE PEACE,
Respondents,

and

SHARON NEWTON,

Real Party in Interest.

No. 38771

FILED

JUL 12 2002

[Signature]
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

Brenda and Wade Clodfelter petition for writ relief from a district court's affirmance of a justice's court's judgment and award of attorney fees. After a rear-end collision resulted in protracted litigation spanning seven years, the justice's court entered judgment in favor of real party in interest Sharon Newton for \$4,745.00. The justice's court subsequently awarded Newton attorney fees totaling \$89,052.00.

Petitioners argue that the justice's court proceeded in a small claims action, and therefore, failed to follow Nevada law regarding awards of attorney fees in small claims cases. Additionally, petitioners argue that the justice's court violated their constitutional right to a jury trial by sua sponte vacating their demand for a jury trial.

Small claims actions are intended to be informal proceedings to be completed in a speedy manner.¹ "Clearly, the policy is to allow persons to recover money due and owing without the expense of hiring an attorney, becoming involved in a lengthy discovery process, or being subjected to a prolonged trial."² In contrast, the instant matter has an extensively prolonged procedural history. Additionally, the Clodfelters understood that if they lost at trial, they would be subjected to an order awarding attorney fees. Knowing that awards of attorney fees are not permitted in small claims cases, it is unreasonable for the Clodfelters to now argue that the case was proceeding in small claims. Further, the filing of a notice of appeal to the district court from a small claims action must be done within five days from the entry of the judgment in the small claims court.³ All other filings of notices of appeal in civil cases from justice's court to the district court must be done within twenty days.⁴

The Clodfelters filed their notice of appeal to the district court two weeks after the justice's court entered its judgment, and stated in their appeal brief to the district court that "defendants only had twenty days to appeal the judgment." This evidences the Clodfelters' intent to appeal from a civil action in the justice's court rather than from the small

¹JCRCP 96 (providing that "[n]o formal pleadings other than the claim and notice shall be necessary, and the trials and dispositions of all such actions shall be informal, with the sole object of dispensing fair and speedy justice between the parties").

²Snyder v. York, 115 Nev. 327, 329, 988 P.2d 793, 794 (1999).

³JCRCP 98.

⁴JCRCP 72B.

claims court. Accordingly, the justice's court was not proceeding in a small claims action.

Article 1, Section 3 of the Nevada Constitution provides all parties the right to a jury trial. Parties may waive their right to a jury trial by failing to properly demand a jury trial, by written consent or by oral consent in open court, entered into the minutes.⁵ The record does not indicate in the justice's court's minutes any objection by the Clodfelters to a bench trial.⁶ Nor does the record indicate that the Clodfelters notified the court of their jury demand before it entered judgment against them, or that they filed a motion for a new trial after judgment. Accordingly, the district court's decision affirming the justice's court's procedure in holding a bench trial was not a abuse of discretion.

Following a judgment for \$4,745.00, the justice's court awarded attorney fees of \$89,052.00, an amount almost twenty times greater than the judgment. The amount of the award of attorney fees shocks our judicial conscience.⁷ It is difficult to define what it means for an attorney fee award to be obscene, other than to say, we know it when

⁵De Remer v. Anderson, 41 Nev. 287, 169 P. 737 (1918).

⁶White v. McGinnis, 903 F.2d 699, 700 (9th Cir. 1990) (holding that "knowing participation in a bench trial without objection constitutes waiver of a timely jury demand").

⁷Miller v. Schnitzer, 78 Nev. 301, 309, 371 P.2d 824, 829 (1962) (providing that an appellate court will disallow an award if its judicial conscience is shocked).

we see it.⁸ We conclude that this award is obscene. In explaining his rationale for a large attorney fee award, Justice of the Peace James M. Bixler used statements such as "[c]onsidering the nature of this file" and "considering how long it's taken this case to finally get to trial." It is clear that the attorney fee award was intended as a punishment to the Clodfelters for not settling the case. A party is under no duty or obligation to settle a case.⁹ A court therefore cannot punish a party with attorney fees for its failure to settle a case.

The justice's court based its award for attorney fees on detailed billing schedules submitted by Newton's attorneys. Other than stating that the billing schedules covered nearly six years of legal services, the justice's court gave no reason to support its award. NRS 69.030 requires that the award of attorney fees must be reasonable. When determining the reasonable value of an attorney's services, a court should consider:

"(1) the qualities of the advocate: his ability, training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation; (3) the work actually performed by the lawyer: the

⁸Jacobellis v. Ohio, 378 U.S. 184, 197 (1964)(J. Stewart, concurring) (stating his description of hard-core pornography as "I know it when I see it.")

⁹Malfabon v. Garcia, 111 Nev. 793, 796-97, 898 P.2d 107, 109 (1995) (noting the public policy in favor of the settlement of lawsuits, but not requiring settlement).

skill, time and attention given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."¹⁰

Additionally, we have stated that the factors listed in SCR 155(1) are important in determining the reasonableness of a fee.¹¹ These factors are:

"(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (c) The fee customarily charged in the locality for similar legal services; (d) The amount involved and the results obtained; (e) The time limitations imposed by the client or by the circumstances; (f) The nature and length of the professional relationship with the client; (g) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (h) Whether the fee is fixed or contingent."¹²

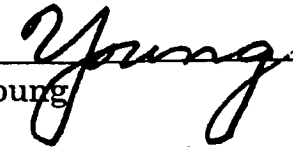
Neither these factors nor the Schouweiler factors were referred to in the justice's court's decision to award fees. In this failure of analysis, the justice's court abused its discretion. Accordingly, we ORDER

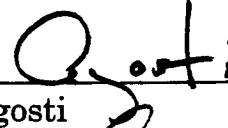
¹⁰Schouweiler v. Yancey Co., 101 Nev. 827, 833-34, 712 P.2d 786, 790 (1985) (quoting Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31 (1969)).


¹¹Harvey v. United Pacific Ins. Co., 109 Nev. 621, 624, 856 P.2d 240, 241 (1993).

¹²SCR 155(1)(a)-(h) (for an excellent summary of these factors, see Johnson v. Incline Village General Improvement District, 5 F. Supp.2d 1113, 1116 (1998)).

the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to remand the case to the justice's court for a determination of reasonable attorney fees.¹³


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Burton Bartlett & Glogovac
Laura Hunt & Associates
Needham & Needham
Clark County Clerk

¹³Newton filed a motion to quash the writ petition on the ground that the appeal to the district court constituted an adequate remedy. This court's review has been appropriately limited to whether the district court manifestly abused its discretion by affirming the justice's court's order. Accordingly, Newton's motion to quash is denied.