

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID WRAY,  
Appellant,

vs.

THE ESTATE OF HOYT SIBLEY  
AND/OR DAVID JOHNSON, TRUSTEE  
OF THE HOYT AND MARY SIBLEY  
1973 TRUST; SCOTT SIBLEY; AND  
LUZ MUNOZ,  
Respondents.

No. 38977

**FILED**

DEC 03 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a summary judgment in a breach of contract and fraud action, and from a post-judgment order awarding attorney fees and costs. The district court concluded that appellant's action against respondents was barred by the statutes of limitation and by laches.

This court reviews an order granting summary judgment de novo.<sup>1</sup> Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>2</sup> This court construes the pleadings in the light most favorable to the non-moving party.<sup>3</sup> To successfully oppose a summary judgment motion, however, the non-moving party must show specific facts, rather than general allegations and conclusions, presenting a genuine

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<sup>1</sup>See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

<sup>2</sup>NRCP 56(c).

<sup>3</sup>See La Mantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002).

issue of material fact for trial.<sup>4</sup> The non-moving party may not build a case on speculation and conjecture.<sup>5</sup> Having reviewed the trial court record, we conclude that the district court did not err in granting summary judgment for respondents.

The district court also awarded attorney fees in the amount of \$18,776.75 and costs in the amount of \$9,271.23 to respondents based upon appellant's refusal to accept respondents' offer of judgment. NRS 17.115 and NRCP 68 govern offers of judgment, and provide that the district court may award reasonable attorney fees incurred by the offeror from the time of the offer when the offeree rejects the offer and the judgment ultimately obtained by the offeree is less favorable than the offer. In awarding attorney fees pursuant to an offer of judgment, the district court must consider four factors stated in Beattie v. Thomas:<sup>6</sup>

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' 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.<sup>7</sup>

The district court's award of attorney fees pursuant to these Beattie factors is discretionary and will not be disturbed absent a clear abuse of

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<sup>4</sup>See id.


<sup>5</sup>Bulbman, 108 Nev. at 110, 825 P.2d at 591.


<sup>6</sup>99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).


<sup>7</sup>Id.

discretion.<sup>8</sup> Having reviewed the trial court record, we conclude that the district court did not abuse its discretion. Accordingly, we affirm the district court's judgment and order.<sup>9</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Kathy A. Hardcastle, District Judge  
Lionel Sawyer & Collins/Las Vegas  
David Wray  
Clark County Clerk

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<sup>8</sup>See LaForge v. State, University System, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).

<sup>9</sup>We have received and considered the proper person documents submitted by appellant. See NRAP 46(b). We conclude that no relief is warranted. Further, in light of our decision to affirm the district court's judgment and order, we vacate the temporary stay imposed by our June 20, 2002 order.