

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALERA R. BRAGG, A/K/A VALERA R.  
WOJCIECHOWSKI,

Appellant,

vs.

SUZANNE BURGESS, ESTATE OF  
HENRY WOJCIECHOWSKI; TOM  
WOJCIECHOWSKI; CAROL KANTOR;  
GERALDINE WATSON; AND

BARBARA LUCAS,

Respondents.

No. 39153

FILED

AUG 21 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment in an action to adjudicate claims against an estate, directing the sale of real property, and awarding attorney fees.<sup>1</sup> Appellant contends that the district court erred by offsetting her claim for management service fees against respondents' claim for unpaid rent on the property, and for not requiring the estate to pay its share of the property's debt since 1996.

We conclude that the district court did not err. One co-tenant occupying the entire premises may be liable to the other co-tenant for rent or use of the premises if there is an ouster by the co-tenant in possession.<sup>2</sup> Although the district court did not expressly find that there was an ouster, we conclude that the record contains substantial evidence of ouster.<sup>3</sup> The

---

<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>See Sack v. Tomlin, 110 Nev. 204, 216, 871 P.2d 298, 306 (1994).

<sup>3</sup>See Trident Construction v. West Electric, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989) ("[I]n the absence of express findings of fact by the district court, the supreme court will imply findings where the evidence clearly supports the judgment.").

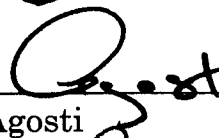
record reveals that appellant continued to occupy the property exclusively for four years after the divorce court had ordered it sold and the proceeds divided, and that appellant was uncooperative with respondents' attempts to sell the property.


Additionally, "where the co-tenant in possession seeks contribution from the co-tenant out of possession for funds expended for the betterment of the common estate, he must deduct, as an offset, the value of the use of the premises."<sup>4</sup> Thus, even if there was no ouster, once appellant sought reimbursement for her services and funds expended in betterment of the property, the estate was entitled to an offset for appellant's exclusive use of the property. We conclude that the district court's decision concerning appellant's claim for management services and property expenses and respondents' claim for rent was equitable under the circumstances.

Finally, we conclude that the district court's award of attorney fees was not an abuse of discretion. Accordingly, we affirm the district court's judgment.

It is so ORDERED.

 \_\_\_\_\_, J.  
Young

 \_\_\_\_\_, J.  
Agosti

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

---

<sup>4</sup>Lanigir v. Arden, 85 Nev. 79, 81, 450 P.2d 148, 149 (1969).

cc: Hon. Peter I. Breen, District Judge  
William G. Rogers  
Todd L. Torvinen  
Washoe District Court Clerk