IN THE SUPREME COURT OF THE STATE OF NEVADA

GLADIATOR CORP.,
Appellant,
vs.
EUGENE HASELTON AND THELMA HASELTON,
Respondents.

No. 39821

FILED

SEP 0 2 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment denying a claim for expense reimbursement in a mining case. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellant Gladiator Corp., a majority interest holder in a mine, allegedly performed necessary work on the mine and sought contribution from respondents Eugene Haselton and Thelma Haselton (jointly the Haseltons), minority interest holders. Following arbitration, the district court granted the Haseltons' request for a trial de novo and dismissed Gladiator's claim.

On appeal, Gladiator argues the following: (1) the district court erred in granting the Haseltons' trial de novo request; (2) the district court misconstrued material evidence; (3) the district court erred in finding that Gladiator's activities did not constitute actual and necessary work on the mine; and (4) the district court failed to follow binding precedent and wrongfully ignored the mandates of NRS 108.222 and NRS 520.010 through NRS 520.070.[1]

[1]Although Gladiator purports to raise nine issues on appeal, the majority of these issues overlap.

04-16050

FACTS

Gladiator is a corporation holding a majority interest in various mines (collectively Capitol Camp). David Pierce is Gladiator's president, director, and a shareholder. David Pierce also owns Pierce Mining, a sole proprietorship. The Haseltons own a 14.75 percent interest in the Capitol Camp mine.

In November 1999, David Pierce, on behalf of Pierce Mining and allegedly at Gladiator's request, performed excavation work on Capitol Camp. Although Stanley W. Pierce, Gladiator's president at the time, testified that Gladiator's board of directors approved the excavation, he did not sign any permits for the work.[2] David Pierce admitted that he decided to excavate after consulting some friends and never presented the excavation decision to Gladiator's board.

David Pierce classified the work on the mine as "exploration and development" and stated that he utilized Pierce Mining's bulldozer to locate mineralized zones and vein structures. David Pierce performed the work himself and allegedly charged Gladiator $1,250.00 per day for using the bulldozer, an additional $100.00 per day for bulldozer fuel and maintenance, and $450.00 for transporting the bulldozer to the site. Despite the allegations that he had excavated several thousand tons of material, David Pierce failed to produce any invoices or other records indicating the value of his services. David Pierce relied on photographs to show the alleged work he performed; his only documented expense was the $450.00 transportation check. David Pierce testified that he kept no

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[2]Although Stanley W. Pierce is Gladiator's counsel in this matter, the district court permitted the Haseltons to call him as a witness because he was a party to the case.

written records regarding the project because he did not feel such records were necessary. He testified to an alleged billing, which consisted of a written statement to the Haseltons on Gladiator stationery. However, there was no invoice from Pierce Mining to Gladiator. To explain the lack of invoicing, David Pierce stated that Gladiator and Pierce Mining worked on a barter system and that is why he did not formally bill Gladiator. Despite the lack of documentation, Gladiator maintained that the value of Pierce's services was $11,935.00 and, thus, the Haseltons' proportional share of expenses was $1,760.40 (14.75 percent of $11,935.00).

On December 29, 1999, Gladiator served the Haseltons with a notice of intention to institute action if the Haseltons failed to pay their alleged portion of expenses. Upon the Haseltons' refusal to pay, Gladiator filed a complaint in district court, asking the court to recognize its lien in the amount of $1,760.40 and requesting that such lien "shall bind and run against such interest the Defendants may have in Capitol Camp mine." Gladiator also demanded $500.00 in attorney fees. The district court sent the case to arbitration, and Vicki Carlton, the Haseltons' then counsel of record, conducted discovery. Prior to the arbitration hearing, however, Carlton and the Haseltons signed a form substituting Carlton with Eugene Haselton in proper person. The Haseltons filed the substitution form with the district court and mailed it to Gladiator.

On May 30, 2001, the arbitration took place, and Eugene Haselton appeared in proper person. After the arbitrator returned an award in Gladiator's favor, the Haseltons requested a trial de novo. The district court set a bench trial for March 25, 2002. Concluding that David Pierce did not perform the work in the interests of developing the mine,

but aimed to elicit money from the Haseltons, the district court entered judgment denying Gladiator's claim. This appeal followed.

DISCUSSION

Trial de novo request

Gladiator argues that the district court should have stricken the Haseltons' trial de novo request and entered the arbitration award. We disagree.

Under Nevada Arbitration Rule (NAR) 22(A), the district court can strike a party's request for a trial de novo following arbitration if the party failed to prosecute or defend the case in good faith during arbitration. "For purposes of requesting a trial de novo, this court has equated 'good faith' with 'meaningful participation' in the arbitration proceedings."[3] We review the district court's decision to grant or strike a trial de novo request for abuse of discretion.[4]

Gladiator's assertion that the district court erroneously failed to strike the Haseltons' trial de novo request seemingly rests on three grounds: (1) Carlton failed to appear at the arbitration, and this failure amounted to bad faith; (2) the Haseltons unlawfully attempted to limit the district court's potential attorney fees and costs award to $3,000.00; and (3) the Haseltons, in their request, improperly failed to acknowledge that if the trial de novo failed to reduce the Haseltons' liability by at least twenty percent, the Haseltons had to pay Gladiator's attorney fees and costs. We find Gladiator's contentions inapposite.

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[3]Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 901 (2000).

[4]Id. at 391, 996 P.2d at 901.

First, Gladiator's assertion that Carlton's failure to appear at the arbitration hearing amounted to bad faith lacks merit because the attorney substitution form that Carlton and Eugene Haselton executed prior to the hearing gave Carlton a legitimate reason not to appear. The Haseltons meaningfully participated in the arbitration proceeding because Carlton performed discovery prior to the substitution and the Haseltons filed a pre-hearing brief indicating what evidence they intended to present. Furthermore, Eugene Haselton attended the arbitration, attempted to offer a photograph into evidence, and tried to draw the arbitrator's attention to various statutes and regulations. We conclude that the district court did not abuse its discretion by failing to strike the Haseltons' request for a trial de novo. There was no evidence that the Haseltons acted in bad faith during arbitration.

Gladiator's second contention, that the Haseltons unlawfully attempted to limit the district court's potential attorney fees and costs award to $3,000.00, is technically accurate but nevertheless unavailing. NAR 20(B)(1) permits the party who prevailed at the trial de novo to recover all fees, costs, and interest "pursuant to statute or N.R.C.P. 68." In addition, NAR 20(B)(2)(a) provides that where the arbitration award is less than $20,000.00 and the party requesting the trial de novo fails to increase its arbitration award by twenty percent or more, or reduce its liability by twenty percent or more, the non-requesting party can recover attorney fees and costs associated with the proceeding, not to exceed $10,000.00. While the Haseltons' trial de novo request did improperly state that the attorney fees and costs award could not exceed $3,000.00 unless the court found extraordinary circumstances justifying a higher award, this error was harmless. Because the district court found that

David Pierce did not perform actual compensable work on the mine, the district court dismissed Gladiator's claim and ordered each party to bear its own costs and fees. The district court did not award attorney fees to Gladiator; and consequently, the improper $3,000.00 limitation played no part in the district court's decision.

We now turn to Gladiator's final contention that the Haseltons' request improperly failed to acknowledge that if the trial de novo failed to reduce the Haseltons' liability by at least twenty percent, the Haseltons had to pay Gladiator's attorney fees and costs. This argument is also untenable because NAR 20 does not require a party to include such an acknowledgment in its submission to the district court. Absent such requirement, Gladiator's argument lacks merit.

Actual and necessary work

Gladiator alleges that the district court erred in finding that David Pierce did not perform actual and necessary work to develop the mine. We disagree.

On appeal, we will not disturb the district court's findings if these findings are not clearly erroneous and substantial evidence supports them.[5] "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'"[6] Gladiator claims that the district court's findings are erroneous because David Pierce testified that he was sampling and testing the mine, which would constitute

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[5]Campbell v. Maestro, 116 Nev. 380, 383, 996 P.2d 412, 414 (2000).

[6]Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (citations and internal quotation marks omitted)).

compensable work. David Pierce also allegedly "confirmed" the existence of gold in the mine, but refused to do any further exploration until the Haseltons paid their share of expenses. We find Gladiator's arguments unpersuasive.

While David Pierce did testify to the above, Gladiator presented no evidence that Gladiator's board ever considered or approved the project. David Pierce even admitted that he did not present the excavation decision to the board. He allegedly performed mine "exploration and development" and "charged" Gladiator $1,250.00 per day for using the bulldozer, an additional $100.00 per day for bulldozer fuel and maintenance, and $450.00 for transporting the bulldozer to the site. Yet, Gladiator never wrote a check for David Pierce's work. Neither Gladiator nor David Pierce produced any invoices or other records indicating the value of David Pierce's services. David Pierce relied on photographs to show the alleged work he performed, but his only documented expense was the $450.00 transportation check. Although David Pierce testified that Gladiator and Pierce Mining worked on a barter system and that is why he sent no formal bill to Gladiator, the district court could have reasonably disbelieved David Pierce's testimony. We will not weigh conflicting evidence and must draw all inferences in favor of the prevailing party.[7]

Statutory guidelines and legal precedent

Gladiator argues that the district court erred in ignoring the dictates of NRS 108.222 and NRS 520.010 through NRS 520.070 and in

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[7]Smith v. Timm, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980).

failing to follow Lamb v. Lucky Boy Mining Co.[8] We conclude that Gladiator's arguments lack merit. NRS 108.222 and Lucky Boy pertain to mechanic's liens and laborers' rights to secure just compensation for services they performed. Gladiator did not render services which would entitle it to claim a lien under NRS 108.222.

NRS 520.010 through NRS 520.070 provide that when three or more persons acting as joint tenants, tenants in common, or coparceners own a majority interest in a mine and form a corporation for the purposes of developing the mine, these persons may seek a proportional contribution from minority interest holders, including other joint tenants, tenants in common, or coparceners, for the expenses the majority interest holders incur in the actual and necessary development of the mine. Under NRS 520.060, the proportion of expenses due from the minority interest holders constitutes a lien in favor of the majority interest holders upon the minority holders' interest in the mine.

NRS 520.010 through NRS 520.070 discuss the majority interest holders' right to contribution for expenses they incurred while performing actual and necessary development of the mine. As we previously concluded, there is substantial evidence to support the district court's finding that the activities David Pierce allegedly performed did not constitute "actual and necessary development" of the mine. In light of this conclusion, the Haseltons had no obligation to contribute expenses. We

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[8]37 Nev. 9, 138 P. 902 (1914).

have considered Gladiator's other arguments, and we find them unpersuasive.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Stanley W. Pierce
Flangas Law Office
Rachel H. Nicholson
Clark County Clerk