

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40261

FILED

APR 28 2004

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

ORDER OF AFFIRMANCE AND ORDER TO SHOW CAUSE

Appellant, Gladiator Corporation, appeals from a district court order denying its motion for attorney fees and motion to amend, as well as imposing sanctions against Gladiator pursuant to NRCP 11.¹ We conclude that the district court did not err and therefore we affirm. Additionally, Gladiator shall show cause why this court should not order Gladiator's appellate attorney, Stanley W. Pierce, to personally pay \$500.00 to the Nevada Supreme Court Library.

FACTUAL AND PROCEDURAL HISTORY

Gladiator, after prevailing in an action in justice court, evicted respondents, Eugene and Thelma Haselton, from their residence on the Capitol Camp mining claim property. The Haseltons, prior to eviction, purchased a 14.75% share in Capitol Camp, but the justice court refused to consider their partial ownership of the property in the eviction action. Thereafter, the Haseltons brought an action in district court to quiet title in Capitol Camp, and their case went to a bench trial on March 30, 2001.²

On May 3, 2001, before entry of judgment, Gladiator filed a motion seeking attorney fees in the amount of \$19,145.00 pursuant to

¹See NRAP 3A.

²The parties did not provide the court with a transcript of the trial.

NRS 18.010(2),³ and costs of \$394.40 pursuant to NRS 18.020.⁴ Gladiator contended that it was the prevailing party at the bench trial as the district

³NRS 18.010(2) states:

In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When he has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party.

⁴NRS 18.020 states:

Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.

2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.

3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.

4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.

5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine,

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court agreed Gladiator owned a 51% interest in Capitol Camp, and Gladiator did not assert that it owned the Haseltons' 14.75% interest in Capitol Camp, which the district court awarded to the Haseltons. Gladiator also sought attorney fees and costs pursuant to NRS 18.010(2)(b) "as a result of the [Haseltons'] frivolous amended complaint" because the Haseltons sought relief based on adverse possession, but later withdrew this claim. Gladiator contended that it "undertook extensive research at great expense" as a result of the Haseltons' adverse possession claim.

After a hearing on Gladiator's motion, the district court addressed Gladiator's attorney and stated:

I think this motion is premature and I don't think you are the prevailing party. You threw him off the land. You claim you don't owe him anything. At least that's what I think you said. I don't think you're the prevailing party. I think your behavior was unreasonable. You didn't try to resolve this at all.

You came to Court to put on a defense but I don't know what you were claiming. I don't think you were the prevailing party, so I'm going to deny the motion.

In an order dated July 9, 2001, the district court denied Gladiator's motion for fees and costs.

In a judgment dated August 9, 2001, and mailed by the district court's law clerk to the parties on August 10, 2001, the district court concluded that as tenants in common, Gladiator owned a 48% undivided share in Capitol Camp, Marcel and Phyllis Conti owned a

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including the costs accrued in the action if originally commenced in a justice's court.

37.25% undivided share, the Haseltons owned a 14.75% undivided share, and John Xenakis owned a 3% undivided share.

On November 6, 2001, the Haseltons filed a motion with the district court seeking to resolve issues of joint occupancy and access onto Capitol Camp. In duplicate orders dated and signed on January 29, 2002, and March 6, 2002,⁵ based upon the testimony adduced at a hearing held on November 29, 2001,⁶ and the papers and pleadings filed by the parties, the district court granted Ms. Haselton access to Capitol Camp to recover laboratory equipment left behind following the Haseltons' eviction.⁷ On March 13, 2002, the Haseltons served written notice of entry of the March 6 order on Gladiator.

On August 1, 2002, Gladiator filed and served on the Haseltons a notice of entry of the district court's August 9, 2001, judgment. Concurrently, Gladiator filed a motion entitled: "NRCP 59(e) Motion to Amend Judgment and Orders," in which Gladiator sought to amend the district court's August 9 judgment to include an award of attorney fees and costs pursuant to NRS 18.010(2)(a) and (2)(b), NRS 18.020 and NRCP 11. Gladiator also sought to amend the district court's January 29 and March 6, 2002 orders to deny the Haseltons the relief granted in those orders. The Haseltons opposed Gladiator's motion and

⁵It is unclear from the record why the district court signed and filed the duplicate orders.

⁶The court reporter did not provide this court with the transcript of the hearing held on November 29, 2001, on the Haseltons' motion to recover the laboratory equipment, and Gladiator did not provide the transcript in its appendix.

⁷Apparently, the Haseltons filed a motion to recover this property, but it is not included in Gladiator's appendix.

contended that Gladiator was not the prevailing party for purposes of NRS 18.010(2) and sought NRC 11 sanctions against Gladiator and its attorney for their frivolous attempt to amend the district court's orders and to obtain fees and costs.

The district court held a hearing on Gladiator's motion and, in an order dated September 6, 2002, denied Gladiator's motion. The court concluded that Gladiator was not the prevailing party and therefore could not recover fees under either NRS 18.010(2)(a) or (2)(b). As an alternate ground for denying the motion for fees, the court found pursuant to Key Bank v. Donnels,⁸ that because Gladiator did not recover a money judgment in the quiet title action, it could not recover attorney fees under NRS 18.010(2)(a). The court also denied Gladiator's attempt to have the court rehear matters pertaining to the January 29 and March 6, 2002 orders as Gladiator's motion was untimely by months. Finally, the court concluded that Gladiator filed its motion solely to harass the Haseltons, to needlessly prolong the case and to increase the Haseltons' costs. Therefore, the court sanctioned Gladiator and awarded \$2,500.00 to the Haseltons, pursuant to NRC 11. Gladiator appeals.

DISCUSSION

Gladiator's appeal seemingly concerns the district court's January 29, March 6, and September 6, 2002 orders. However, Gladiator does not present this court with coherent arguments regarding its grounds for appeal, how this court should review the district court's orders, or how the district court's alleged errors warrant relief. In fact, the factual and procedural history in this case could only be appreciated by this court following an exhaustive and independent examination of the record on

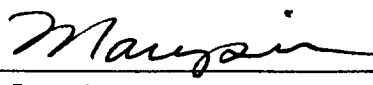
⁸106 Nev. 49, 787 P.2d 382 (1990).

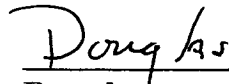
appeal and respondents' brief. We conclude that all of the district court's orders are consistent with Nevada law and cannot discern in any respect appellants' contentions of error. Accordingly, the orders below are affirmed.

Additionally, given that Gladiator's briefs on appeal provides no guidance to this court in examining its appeal, and this court has been required to exhaust its precious resources in discerning Gladiator's arguments, we have determined that this appeal is frivolous and conclude that a sanction may be appropriate. Accordingly, Gladiator shall, within twenty days from the date of this order, show cause why this court should not order Gladiator's appellate attorney, Stanley W. Pierce, to personally pay \$500.00 to the Nevada Supreme Court Library.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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