

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL HANEY,
Appellant/Cross-Respondent,
vs.
MARGARET JOAN MEAGHER,
Respondent/Cross-Appellant.

No. 40421

FILED

APR 21 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a final judgment in a contract action. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellant Daniel Haney and respondent Margaret Joan Meagher were involved in a personal relationship from 1993 to 2000. Haney, the plaintiff below, alleged that they cohabitated, held themselves out as being married, and agreed to hold all of their property in accordance with community property laws. Haney sought an equitable distribution of Meagher's separate assets under the theories of implied contract/breach of contract, constructive trust, quantum meruit and fraud and misrepresentation. Meagher counterclaimed, alleging that Haney signed promissory notes, which he failed to repay, breach of contract, and conversion.

The district court found that the exact nature of the relationship was unclear. The district court awarded Haney a partial interest in Meagher's Rabbitbrush property, to which Haney claimed to have contributed a significant amount of money. The district court found that Haney failed to meet his burden of proof with regard to other

properties owned by Meagher, thereby denying Haney's other claims. Haney appeals.¹

The district court's findings of fact will not be set aside unless they are clearly erroneous and not supported by substantial evidence.² "Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion."³ This court is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party.⁴ Questions of law are subject to de novo review.⁵

Implied contract

In Hay v. Hay, this court recognized that, in the absence of an express contract, courts should enforce an implied contract between nonmarital partners when their conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between them.⁶ In making this determination, this court has looked to specific indicators, such as whether the couple lived

¹Meagher filed notice of a cross-appeal on November 12, 2002. Upon Meagher's motion for a voluntary dismissal of her cross-appeal, this court dismissed the cross-appeal on March 9, 2004.

²Bopp v. Lino, 110 Nev. 1246, 1249, 885 P.2d 559, 561 (1994).

³Id.

⁴Smith v. Timm, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980).

⁵Associated Bldrs. v. So. Nev. Water Auth., 115 Nev. 151, 156, 979 P.2d 224, 227 (1999).

⁶100 Nev. 196, 199, 678 P.2d 672, 674 (1984) (citing Marvin v. Marvin, 557 P.2d 106 (Cal. 1976)).

together, held themselves out as being married, filed joint tax returns, held stock as community property and signed official documents as spouses.⁷

The district court determined that Haney failed to present sufficient evidence to establish the existence of an express or implied contract concerning Meagher's separate assets. In this, the district court determined that, due to the conflicting testimony, it was impossible to determine the extent to which Meagher and Haney cohabitated and held themselves out as a married couple. Also, Haney conceded the absence of an express agreement to hold their property as if it were community property. Finally, Meagher and Haney maintained separate banking accounts, held no property jointly and owned stock separately. We therefore conclude that substantial evidence supports the district court's finding that Meagher and Haney never entered into an express or implied contract concerning her separate property.

Quantum meruit

"The doctrine of quantum meruit generally applies to an action for restitution involving work and labor performed which is founded on an oral promise on the part of the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor in the absence of an agreed upon amount."⁸ "[A] nonmarital partner may recover in quantum meruit for the reasonable value of household services rendered less the

⁷See Western States Constr. v. Michoff, 108 Nev. 931, 938-39, 840 P.2d 1220, 1224-25 (1992).

⁸Sack v. Tomlin, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994).

reasonable value of support received if he can show that he rendered services with the expectation of monetary reward.”⁹

In this case, the district court determined that the doctrine of quantum meruit was inapplicable because there was insufficient evidence to support Haney’s entitlement to compensation for his services, household or otherwise. We conclude that the district court did not err by denying Haney’s claim under the doctrine of quantum meruit since Haney did not present any evidence at the trial that he performed any services for which he deserves compensation.

Damages to Haney’s personal property

Next, Haney argues that the district court erred by finding that he failed to make a claim that Meagher destroyed some of his personal belongings. Haney submits that the pleadings were constructively amended at trial to include this claim, and that he produced sufficient evidence to justify an award of damages. NRCP 15(b) provides,

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

Implied consent exists only where the parties squarely recognize the issue as one in the trial.¹⁰ “Implied consent usually is found where . . . evidence

⁹Id. at 209, 871 P.2d at 302 (quoting Marvin, 557 P.2d at 122-23).

¹⁰Gibbons v. Martin, 91 Nev. 269, 270, 534 P.2d 915, 916 (1975).

is introduced without objection.”¹¹ This court conducts a de novo review based on the pleadings and the evidence presented to determine whether the respondent was given reasonable notice of the theory.¹²

We conclude that the destruction of Haney’s personal property was sufficiently raised and addressed in the district court to be considered on appeal. Both sides introduced evidence regarding the destruction of personal property and neither objected to the relevance of the evidence.

The district court, despite finding that Haney failed to make a claim for his damaged property, reached the merits of the claim. Haney argues that even though the testimony constitutes a “he said/she said” situation, he introduced sufficient evidence that Meagher was responsible for the damage. However, the district court found that Haney’s evidence was conflicting, not credible, and that he failed to show Meagher’s responsibility by a preponderance of the evidence. We conclude that the district court’s findings are supported by substantial evidence and are not clearly erroneous.

Attorney fees and costs

Although contending that the district court committed reversible error when it awarded Meagher her attorney fees and costs, Haney did not challenge the legal basis of this award before the district court. Haney contends that he is not precluded from making the

¹¹Id. (quoting 3 Moore’s Federal Practice § 15.13(2), 992-97 (1974)); see also Schwartz v. Schwartz, 95 Nev. 202, 205, 591 P.2d 1137, 1139-40 (1979).

¹²See, e.g., Elliot v. Resnick, 114 Nev. 25, 30, 952 P.2d 961, 964-65 (1998); Sprouse v. Wentz, 105 Nev. 597, 602-03, 781 P.2d 1136, 1139 (1989).

argument because it raises an issue that may be raised for the first time on appeal. This court will not consider an attack to the basis for an attorney fee award when the issue was not raised below.¹³ Therefore, this issue was not preserved for appeal and we need not reach the merits of Haney's claim.

Stipulation concerning release of funds

Haney also contends that the district court erred by adopting the parties' stipulation regarding the release of the funds to satisfy attorney liens filed against Haney. Failure to raise an objection in the district court generally precludes appellate consideration.¹⁴ Haney did not object in the district court. A stipulation means that the parties agreed on the issues, and the record does not indicate that Haney opposed the contents of the stipulation or the district court treating the release of the funds under the stipulation as an offset against the judgment. We conclude that appellate review of this contention is precluded.


Finally, Haney contends that the judgment must be modified to include his costs since he is a prevailing party pursuant to NRS 18.020.

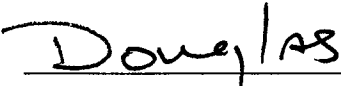
¹³See, e.g., Arley v. Liberty Mut. Fire Ins., 80 Nev. 5, 15, 388 P.2d 576, 581 (1964). Haney cites three cases in support of the proposition that the basis for an attorney fee award is jurisdictional and may be raised for the first time on appeal. We conclude that Dixon v. District Court, 44 Nev. 98, 101, 190 P. 352, 353 (1920); Consumers League v. Southwest Gas, 94 Nev. 153, 156, 576 P.2d 737, 739 (1978); and Board of Gallery of History v. Datecs Corp., 116 Nev. 286, 288-89, 994 P.2d 1149, 1152 (2000) do not stand for this proposition.

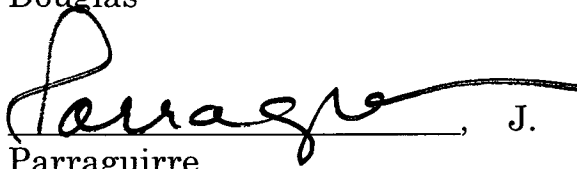
¹⁴See Emmons v. State, 107 Nev. 53, 61, 807 P.2d 718, 723 (1991), modification on other grounds recognized by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

However, Haney failed to file a memorandum of costs as required by NRS 18.110. Therefore, this argument was not preserved for appeal. Accordingly, we¹⁵

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. David R. Gamble, District Judge
Richard F. Cornell
Lemons Grundy & Eisenberg
Douglas County Clerk

¹⁵We have considered Haney's other assignments of error and conclude that they are without merit.