IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES C. ANDERSON AND SUSAN M. ANDERSON,
Appellants,
vs.
JOHN R. WINTER, AND H. CATHERINE DUNEMAN-TAYLOR, F/K/A H. CATHERINE DUNEMAN AND F/K/A H. CATHERINE WINTER,
Respondents.

No. 40527

FILED

JAN 0 8 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment awarding attorney fees and costs following a contractual dispute. The underlying action involved recovery under a promissory note and various other claims arising from a separate agreement. On appeal, appellants James C. Anderson and Susan M. Anderson argue the following: (1) the district court abused its discretion in not awarding $33,516.56, or the full attorney fees amount on the promissory note and contract dispute, because the note claim was necessarily and inextricably intertwined with the contract litigation; and (2) the district court abused its discretion in not granting at least $16,758.28, or one-half of the above amount, because the claims overlapped.

FACTS

Respondents John R. Winter and H. Catherine Duneman-Taylor (jointly "the Winters")[1] operated a hunting and fishing service in Wyoming. The Andersons and the Winters discussed the idea of

[1]H. Catherine Duneman-Taylor is John R. Winter's former wife.

marketing a recreational package to investors and entered into the Wyoming Vacation Agreement ("Agreement"). Pursuant to the Agreement, the Andersons promised to find investors who would pledge venture capital to expand the Winters' fishing and hunting guide service. The Andersons also agreed to loan the Winters $15,000.00 for one year, interest free. In exchange, the Andersons received unlimited vacation and hunting opportunities at the Winters' property until the end of 2006.

Despite the parties' solicitation efforts, very few investors materialized. Because the Winters did not acquire the anticipated capital, they signed a temporary promissory note in exchange for a loan from the Andersons in the amount of $10,000.00. This loan was a modification of the prior $15,000.00 loan agreement.

Subsequently, the relationship between the parties deteriorated. In 1996, the Winters denied the Andersons access to the Winters' property, alleging that the Andersons failed to fulfill their Agreement obligations. The Andersons sought repayment of the note plus interest, compensation for lost vacation opportunities for the Agreement's balance, and reimbursement for horses and tack they had delivered to the Winters.[2] The Winters counterclaimed for breach of contract, set-off, and unjust enrichment.

Both parties submitted summary judgment motions. The district court denied the Andersons' motion and granted the Winters' motion, dismissed all the Andersons' claims, and awarded $5,000.00 to the Winters. The Andersons appealed the district court's summary judgment

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[2]The Andersons' horses and tack claim pertained only to John R. Winter.

ruling. We reversed and remanded the case for trial.[3] Prior to the reversal, the Andersons appealed the district court's order denying their NRCP 60(b) motion for relief from judgment We subsequently dismissed the Andersons' second appeal as moot.[4]

Following a two-day bench trial, the district court entered a judgment of $10,000.00 for the Andersons, based on the promissory note, and $2,300.00 on the horses claim.[5] The district court found the Agreement unenforceable on frustration of purpose grounds and held that no one prevailed on the remaining claims. The Andersons requested attorney fees and costs.

Because the terms of the promissory note specifically allowed for such fees and costs in actions on the note, the district court granted the Andersons $7,500.00 in attorney fees. Determining that no party succeeded on the Agreement claims,[6] the court refused to award compensation for attorney services in conjunction with these claims. This appeal followed.

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[3]Anderson v. Winter, Docket No. 32669 (Order of Reversal and Remand, November 14, 2000).

[4]The outcome of first appeal rendered the second appeal unnecessary. Anderson v. Winter, Docket No. 36438 (Order Dismissing Appeal, January 22, 2001).

[5]The court declined to award judgment with respect to the tack claim because there was no evidence as to the value of the tack.

[6]The court awarded $2,300.00 to the Andersons for the horses under an unjust enrichment theory.

DISCUSSION

Attorney fees award

The district court awarded $7,500.00 in attorney fees to the Andersons on the promissory note claim. The Andersons contend that the court should have also awarded attorney fees on the Agreement dispute because it was "inextricably intertwined" with the promissory note claim. The Andersons argue that this is an issue of first impression in Nevada and urge us to follow California's guidance. We disagree.

Bases for recovery

A district court may award attorney fees as a cost of litigation only when authorized by agreement, statute, or rule.[7] A district court's award of attorney fees will not be overturned on appeal absent a manifest abuse of discretion.[8] "Discretionary matters are 'uncontrolled by fixed rules of law.'"[9] A district court abuses its discretion only when it clearly disregards guiding legal principles.[10]

The district court strictly adhered to Nevada legal guidelines in making the attorney fees determination. The court properly granted

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[7]Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001) (citing Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)).

[8]Id. (citing Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994)).

[9]Int'l Fidelity Ins. v. State of Nevada, 114 Nev. 1061, 1062, 967 P.2d 804, 805 (1998) (quoting Goodman v. Goodman, 68 Nev. 484, 487, 236 P.2d 305, 307 (1951)).

[10]Flamingo Realty v. Midwest Development, 110 Nev. 984, 991, 879 P.2d 69, 74 (1994) (citing Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979)).

attorney fees on the promissory note claim only because language in the note authorized the award for such claims. The note did not provide for attorney fees recovery on the Agreement and thus cannot serve as the basis for such recovery.

Where a document is clear and unambiguous, the court must construe it from the written language therein[11] and enforce the contract as the parties wrote it.[12] The provisions of the note are unequivocal; they apply only to actions on the note. The Andersons' complaint was not solely an action on the note because it contained seven separate breach of contract and unjust enrichment claims. Because the Andersons cannot recover for the Agreement claims under the note and the Agreement itself does not provide for attorney fees, the Andersons cannot receive additional fees under a "contract" theory.

The Andersons cannot recover under a rule or statute because no applicable rule exists and they did not prevail at trial. Pursuant to NRS 18.010, "the court may make an allowance of attorney's fees to a prevailing party."[13] The district court expressly found that neither party prevailed on the contractual claims because the Agreement was unenforceable on frustration of purpose grounds.

The Andersons' contention that the district court should have awarded $16,758.28, or one-half of the requested $33,516.56, is also

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[11]Love v. Love, 114 Nev. 572, 580, 959 P.2d 523, 529 (1998) (citing Southern Trust v. K & B Door Co., 104 Nev. 564, 568, 763 P.2d 353, 355 (1988)).

[12]Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

[13]NRS 18.010(2) (emphasis added).

inapposite for the above reasons. The Andersons have failed to show that the district court disregarded a contract provision, rule, or statute entitling them to additional attorney fees in this case. Consequently, we will not disturb the district court's ruling.

California law

Although the promissory note mandates that Nevada law applies in actions on the note, the Andersons contend that the attorney fees issue is one of first impression and urge this court to follow California's guidance. The Andersons' claims lack merit for two reasons: (1) the explicit terms of the promissory note require Nevada law application, and relevant Nevada law exists; and (2) the California cases the Andersons advance are distinguishable.

First, the district court explicitly stated that "the fee award is being made pursuant to the express language in the note." The relevant note provision unequivocally mandated Nevada law application in actions on the note. The Andersons' attempt to advance California law is misplaced. The Andersons do not raise an issue of first impression merely because they cannot recover under existing law.

Second, the California cases the Andersons advance are distinguishable. California allows attorney fees recovery where a compensable and non-compensable claim are "inextricably intertwined."[14]

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[14]Abdallah v. United Savings Bank, 51 Cal. Rptr. 2d 286 (Ct. App. 1996) (attorney fees need not be apportioned when incurred for representation on an issue common to a compensable and noncompensable claim); Finalco, Inc. v. Roosevelt, 3 Cal. Rptr. 2d 865 (Ct. App. 1991) (a plaintiff who prevailed on an action to enforce a note containing a fee clause could also receive fees for time spent on securities fraud); Wagner v. Benson, 161 Cal. Rptr. 516 (Ct. App. 1980) (holder of a note providing for

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A party can recover for both claims when success on the compensable claim requires litigating the non-compensable claim.[15]

To support their attorney fees request, the Andersons cite to Finalco, Inc. v. Roosevelt,[16] Wagner v. Benson,[17] and Abdallah v. United Savings Bank.[18] Finalco and Wagner do not support the Andersons' claim. In both cases the courts permitted attorney fees recovery on the non-compensable claims because success on the non-compensable claims was a prerequisite to recovery on the compensable claims. Unlike Finalco and Wagner, the Andersons did not need to prevail on the Agreement claims to recover on the note. In fact, the judge entered judgment for the Andersons on the note even after he found the Agreement unenforceable.

Abdallah does not advance the Andersons' arguments because the Andersons have failed to show a common issue between the note and the Agreement litigation. Unlike Abdallah, where the debtor attempted to preclude the lender's action on the note, the Winters do not try to invalidate the Andersons' note claim. Nowhere do the Winters' pleadings deny the promissory note debt; the Winters merely claim that the amounts the Andersons owe them under the Agreement exceed the amounts the

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. . . *continued*
payment of fees incurred to collect the balance due is entitled to fees incurred in defending against interrelated fraud allegations).

[15]Abdallah, 51 Cal. Rptr. 2d at 293 (citing Reynolds Metals Co. v. Alperson, 158 Cal.Rptr. 1, 4 (Ct. App. 1979); Finalco, 3 Cal. Rptr. 2d at 868-69; Wagner, 161 Cal. Rptr. at 522.

[16]3 Cal. Rptr. 2d 865.

[17]161 Cal. Rptr. 516.

[18]51 Cal. Rptr. 2d 286.

Winters owe to the Andersons under the note. The underlying facts in the Agreement explain why the parties signed the note, but that is where the relation stops. Mere difficulty in cost allocation is insufficient for blanket recovery on both claims. We conclude that the district court exercised proper discretion in refusing to award additional attorney fees to the Andersons. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Shearing

_____, J.
Becker

_____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Bradley Paul Elley
H. Catherine Duneman-Taylor
Walther Key Maupin Oats Cox & LeGoy
Washoe District Court Clerk