

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE HANSEN, AN INDIVIDUAL,
Appellant,

vs.

ROBERT J. ANGRES, TRUSTEE, L & C
LUSVARDI ANNUITY TRUST,
Respondent.

No. 39676

LEE HANSEN, AN INDIVIDUAL,
Appellant,

vs.

ROBERT J. ANGRES, TRUSTEE, L & C
LUSVARDI ANNUITY TRUST,
Respondent.

No. 40657

FILED

SEP 03 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a final judgment, a district court order denying a motion for a new trial and a district court order awarding attorney fees. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Lee Hansen appeals the district court's entry of final judgment, the order denying her motion for a new trial and the order awarding attorney fees to respondent Robert J. Angres as trustee of the L & C Lusvardi Annuity Trust.

Hansen owns lakefront property at Lake Tahoe, bordering the Trust's property. When the Trust prepared to construct a house, it discovered that Hansen's staircase, propane tank and sewage pump were encroaching upon its property. After unsuccessfully trying to resolve the matter, the Trust, through its trustee Robert J. Angres, brought a complaint for declaratory relief to quiet title and for removal of the propane tank, as it was dangerously close to where construction workers were blasting for the house foundation. The district court issued an ex

parte order to relocate the propane tank. Hansen, in propria persona, then answered the complaint, asserting that she had acquired the underlying land by adverse possession or prescriptive easement. The district court held a lis pendens hearing, at which time, by the parties' stipulation, the district court considered the merits of the underlying dispute. The district court concluded that Hansen could not show adverse possession, but gave her one month to file a counterclaim and gather evidence to prove her prescriptive easement claim. When Hansen failed to do so, the district court entered judgment against her. The district court also awarded attorney fees and costs to Angres. Hansen repeatedly failed to comply with district court orders, and the district court awarded Angres additional attorney fees incurred because of Hansen's bad faith conduct. When Hansen failed to timely comply with the district court's order requiring her to remove the encroachments, the district court allowed Angres to have the encroachments removed and awarded Angres and the Trust the costs of removal as damages. Finally, at a debtor's examination of Hansen, the district court lifted an emergency stay of execution on Hansen's real property located in Reno, Nevada, and again awarded attorney fees to Angres. Hansen appeals the final judgment, the district court's denial of her motion for a new trial and the order awarding more attorney fees.

First, Hansen's argument that the district court improperly expanded the scope of the lis pendens hearing to consider the merits of the underlying case must fail because Hansen stipulated to expand the scope of the hearing. Next, Hansen's argument that the district court abused its discretion by refusing to grant a new trial when Hansen was unable to complete a survey of the properties due to snow must also fail because the only competent evidence introduced indicated that there was not enough

snow during that time frame to preclude a survey. Hence, Hansen failed to show that she was the victim of unforeseeable accident or surprise warranting a new trial.¹

Hansen next argues that the evidence belied the district court's determination that Hansen had failed to prove her prescriptive easement or adverse possession claims. The record reveals no evidence that Hansen had paid taxes on the property on which her improvements encroached, and, therefore, the district court properly concluded that she failed to prove an adverse possession claim. The record further reveals that Hansen failed to prove, by clear and convincing evidence, that she obtained a prescriptive easement because Hansen presented no documentary evidence or corroborative testimony of when her encroachments were built and whether they were initially permissive.

Hansen's argument that the district court erred by refusing to consider certain covenants, conditions and restrictions also fails. In spite of the opportunities that the district court gave Hansen to produce competent evidence to support her claims, Hansen proffered this evidence for the first time at a debtor's examination, at which time the district court had already entered its final judgment against Hansen and had denied Hansen's motion for a new trial.

Hansen argues that the district court abused its discretion by denying her motion for a new trial under NRCP 59(a)(7) because the district court erred by awarding attorney fees and costs in a declaratory relief action. Where a statute, rule or contract authorizes the award of

¹NRCP 59(a)(3) provides that the district court may grant a new trial if "[a]ccident or surprise which ordinary prudence could not have guarded against" materially affects an aggrieved party's substantial rights.

attorney fees, we will not disturb the district court's decision to award attorney fees absent an abuse of discretion.² Here, NRS 18.010(2) authorized the award of attorney fees. The 2001 version of NRS 18.010(2)(b), in effect at the time the district court awarded attorney fees to Angres, provided that the district court could award attorney fees "[w]ithout 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."³

The district court warned Hansen several times that she could be liable for attorney fees and costs if she did not provide competent evidence to support her affirmative defenses and counterclaims. The record reveals that the district court was very patient with Hansen, who represented herself in *propria persona*, but that Hansen merely sought to delay the proceedings without providing evidentiary support for her claims. Had Hansen timely sought the assistance of counsel, she may have been able to avoid this result. However, given Hansen's conduct, the district court did not abuse its discretion by awarding attorney fees under NRS 18.010(2)(b), and therefore, did not abuse its discretion by denying Hansen's motion for a new trial on that ground. For similar reasons, we conclude that the district court did not abuse its discretion in awarding costs as damages.

Finally, Hansen argues that an attorney appearing in proper person may not recover attorney fees. While the district court

²U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

³1999 Nev. Stat., ch. 183, § 1, at 903.

characterized Angres as a proper person litigant, Angres was acting as the trustee for the Trust. Angres had no personal beneficial interest in the action against Hansen, but was merely fulfilling his duties as a fiduciary. The district court's characterization did not prevent the Trust from recovering attorney fees because Angres could charge the Trust reasonable fees for his services in protecting the Trust and its estate.⁴ Accordingly, we

ORDER the judgment of the district court, the order denying Hansen's motion for a new trial and the order awarding attorney fees AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Glade L. Hall
Robert J. Angres
Washoe District Court Clerk

⁴76 Am. Jur. 2d Trusts § 737 (1992); see also Sundquist v. Sundquist, 639 P.2d 181, 188 (Utah 1981).