

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN PIERSON, INDIVIDUALLY,
Appellant,
vs.
ADAM SCHWARTZ,
Respondent.

No. 40825

FILED

DEC 04 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order entered on remand that awarded attorney fees. Appellant Dean Pierson and respondent Adam Schwartz were involved in an automobile accident. Schwartz sued Pierson, and ultimately a jury awarded Schwartz \$4,310.00. The district court entered judgment in this amount and subsequently granted Schwartz's motion for attorney fees and costs in full, totaling \$37,213.00.¹ Pierson appealed the judgment and the attorney fees award.² On appeal, this court affirmed the judgment, but reversed and remanded the attorney fees award because the district court failed to state a specific basis for the award, or support the award with findings. This court's order of remand directed the district court to consider the following four factors when awarding attorney fees: 1) the qualities of the lawyer; 2) the character of the work to be done; 3) the work actually performed by the

¹The district court awarded \$28,200.00 in attorney fees, \$7,906.84 in costs, and \$1,106.16 in interest.

²Docketed in this court as No. 35350.

lawyer; and 4) the result.³ In addition, this court instructed the district court to state the basis for any fee award ultimately granted.

On remand, the district court entered amended findings, concluding that \$28,200.00 was a reasonable attorney fees award, and awarded the same to Schwartz. Pierson appealed from the district court's order awarding attorney fees.

Pierson contends that the district court abused its discretion in awarding Schwartz \$28,200.00 in attorney fees. We disagree. The district court clearly complied with our instructions on remand. The district court discussed the four factors set out in the remand order, and concluded that the factors favored awarding Schwartz the full amount of attorney fees requested. The district court's amended findings indicate that: 1) Schwartz's attorney performed his job admirably; 2) although the case's facts were simple, Schwartz was forced to fully litigate his claim because Pierson's offer of judgment was minimal; 3) the case required numerous hours of pre-trial preparation, and involved a jury trial; and 4) Schwartz prevailed at trial. Thus, the district court's amended findings of fact on remand discussed all four relevant factors, and concluded that the full amount of attorney fees requested by Schwartz was reasonable. This conclusion was within the district court's discretion.⁴

³See Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998); Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991).

⁴See Lyon v. Walker Boudwin Constr. Co., 88 Nev. 646, 650-51, 503 P.2d 1219, 1221 (1972).

In addition, sanctions are warranted against Pierson for filing a frivolous appeal. NRAP 38 allows this court to award attorney fees, damages, costs, or any other such remedy as sanctions for filing a frivolous appeal.⁵

Pierson's appeal has no basis in law or fact. This appeal is from the district court's amended findings and attorney fees award on remand. However, other than a brief mention in the procedural history section of his opening brief, Pierson failed to discuss the district court's amended findings and attorney fees award, let alone argue that they were erroneous. He neglected to refer to this court's directive on remand, and his opening brief appears to relate to issues raised in the original appeal,


⁵See Imperial Palace v. Dawson, 102 Nev. 88, 715 P.2d 1318 (1986). NRAP 38 states:


- (a) Frivolous Appeals; Costs. If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the respondent.
- (b) Frivolous Appeals; Attorney Fees as Costs. In any civil matter, when an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below; or whenever the appellate processes of this court have otherwise been misused, this court may, on its own motion, require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future.


but not applicable on remand.⁶ As a result, Pierson failed to advance any credible argument for reversing the district court's order on remand.

Accordingly, the district court's attorney fees order is affirmed, and we sanction Pierson's counsel \$500.00 to help defray Schwartz's legal expenses. Pierson's counsel shall pay Schwartz \$500.00 and provide the clerk of this court with proof of the sanction's payment within thirty days from the date of this order. We caution Pierson's counsel that failure to comply with this order in a timely manner may result in the imposition of additional sanctions.

It is so ORDERED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

⁶For example, Pierson contends in his opening brief that "the [d]istrict [c]ourt offered no written support regarding its determination of the amount of attorney's fees awarded. The [c]ourt's minutes regarding the award of attorney's fees offered no indication that any careful consideration was undertaken in arriving at its award of attorney's fees." Pierson then cites to the appendix on appeal, and the corresponding document is the district court minutes regarding the original order awarding attorney fees. Clearly, this argument applies to the original appeal, but has no bearing on the district court's order on remand.

cc: Hon. Valorie Vega, District Judge
Lansford W. Levitt, Settlement Judge
Emerson & Manke, LLP
Simon Law Office
Clark County Clerk