

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSLYN M. ZIMMERMAN,  
Appellant/Cross-Respondent,  
vs.  
DONALD R. SCHRICKER,  
Respondent/Cross-Appellant.

No. 41186

FILED

MAR 04 2004

ORDER OF AFFIRMANCE

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

This is an appeal and proper person cross-appeal from a final order in a partnership accounting requiring the reimbursement of misappropriated partnership funds and the payment of attorney fees and costs.

Appellant Roslyn Zimmerman and respondent Donald Schricker formed a partnership, agreeing to share expenses and profits from the partnership's real property. In 1998, Zimmerman filed suit against Schricker seeking a judicial dissolution and an accounting. Following a bench trial, the district court granted a judicial dissolution and an accounting. Schricker appealed, and this court affirmed.

Subsequently, the district court appointed the discovery commissioner as a special master to conduct the accounting. The discovery commissioner conducted a three-day accounting hearing. After the hearing, the special master entered his findings and recommendation, concluding that judgment should be entered for Zimmerman in the total amount of \$9,008.33. The district court entered a final order adopting the special master's findings and recommendation in its entirety and awarding attorney fees to Zimmerman. Both parties appealed.

Zimmerman first argues that the district court erred: (1) by concluding that the partnership did not exist until the parties executed a

written partnership agreement, and (2) by not requiring respondent to account for a \$987.44 check written from partnership funds. We disagree.

“Findings of fact of the district court will not be set aside unless clearly erroneous.”<sup>1</sup> A district court’s findings will not be disturbed on appeal unless they are clearly erroneous and are not based on substantial evidence.<sup>2</sup> “Substantial evidence is that which ‘a reasonable mind might accept as adequate to support a conclusion.’”<sup>3</sup>

In this case, the district court adopted the special master’s findings of fact, including that: (1) the partnership came into existence when the parties executed the written partnership agreement, and (2) the \$987.44 check was a legitimate partnership expense. We conclude that substantial evidence supports the district court’s findings.

Next, Zimmerman argues that the district court erred by denying her one-half of Schricker’s commission, which Schricker earned as the real estate broker selling a partnership-owned property. We disagree.

In this case, Schricker, a real estate agent, sold the partnership-owned property to himself, earning a three percent commission as the selling broker. Pursuant to the terms of the partnership agreement, Schricker, as the selling broker, was entitled to his “usual real estate commission on the sale price of the property sold,”

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<sup>1</sup>Hermann Trust v. Varco-Pruden Buildings, 106 Nev. 564, 566, 796 P.2d 590, 591-92 (1990).

<sup>2</sup>See NRCP 52(a); Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994).

<sup>3</sup>Bally’s Employees’ Credit Union v. Wallen, 105 Nev. 553, 556 n.1, 779 P.2d 956, 957 n.1 (1989) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

and the commission was “paid out of the proceeds of escrow . . . not out of the equity of the [p]artnership.”

We conclude that Schricker’s commission was paid from escrow proceeds, not the partnership’s equity. Because Zimmerman was not entitled to any portion of Schricker’s commission, the district court did not err by refusing to award Zimmerman one-half of Schricker’s commission.

Turning to the cross-appeal, Schricker first argues that the district court erred by denying the issues raised in his motion for reconsideration of the special master’s findings and recommendation.<sup>4</sup> We conclude that substantial evidence supports the district court’s findings.

Finally, Schricker argues the district court abused its discretion by awarding Zimmerman attorney fees and costs for the accounting. Attorney fees are governed by agreement.<sup>5</sup> Here, the partnership agreement provides that a prevailing party is entitled to reasonable attorney fees and costs.

We conclude the district court did not err by awarding the prevailing party, Zimmerman, attorney fees and costs for the accounting. Accordingly, we<sup>6</sup>

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<sup>4</sup>Because we granted cross-appellant leave to proceed in proper person under NRAP 46(b), we have received and considered cross-appellant’s proper person documents.

<sup>5</sup>See NRS 18.010.

<sup>6</sup>Based on our lack of jurisdiction, we decline to review cross-appellant’s untimely appeal from an October 28, 2002 order granting Zimmerman additional attorney fees.

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Margaret S. Evans  
Donald R. Schricker  
Washoe District Court Clerk

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<sup>7</sup>While cross-appellant is attempting to appeal from multiple orders, we conclude that our jurisdiction is limited to the March 3, 2003, order, which encompasses the February 24, 2003, order.