


IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN CHRISTOPHERSON,  
Appellant,  
vs.  
Q THE SPORTS CLUB; DAVID GRANT;  
Q CLUBS INC., A DELAWARE  
CORPORATION; AND SPORTS &  
FITNESS CLUBS OF AMERICA, INC.,  
AN OHIO CORPORATION,  
Respondents.

No. 41195

**FILED**

**MAR 18 2005**

WANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment and an order awarding attorney fees and costs in a contract dispute. Eighth Judicial District Court, Clark County; Stewart L. Bell, District Judge.

On August 8, 1994, appellant Ian Christopherson signed a membership agreement with "Q The Sports Club." On January 30, 2000, the Club cancelled his membership due to several altercations between Christopherson and the Club's members, guests, and employees, including screaming at members and employees in the pool area, engaging in verbal and physical altercations with both men and women, and acting in a bullying, harassing, and violent manner. The Club revoked Christopherson's membership "for creating a danger or health or safety hazard to himself or others."

Thereafter, Christopherson filed a complaint against the Club and David Grant, the Club's manager, for breach of contract and sought injunctive relief. Christopherson alleged that he had a lifetime membership that could only be revoked for cause and that he had not engaged in conduct sufficient to justify the Club's termination of his

membership. Christopherson also alleged that the Club did not operate the pool area consistent with Nevada health code regulations, and that the Club was unresponsive to his complaints related to the pool. Christopherson sought monetary damages and an injunction ordering the Club to restore his membership and requiring the Club to adhere to state health codes.

The district court granted partial summary judgment in favor of respondent, "Q The Sports Club" (the Club), and dismissed appellant Ian Christopherson's claim for injunctive relief. The district court found that the Club was justified in terminating Christopherson's membership and entered judgment in favor of the Club. The district court also awarded the Club attorney fees and costs. Christopherson appeals the district court's final judgment and order on several grounds.

We conclude that Christopherson's arguments on appeal are without merit and affirm the judgment and order of the district court, including its award of attorney fees and costs in favor of the Club.

On appeal, Christopherson asserts that the district court was without jurisdiction because the matter was never submitted, tried, or heard by the court, and, therefore, the court was without authority to decide the matter. We disagree. District Court Rule (DCR) 16 provides that:

No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.

In this instance, the record reflects that the parties agreed that the case would be submitted on the record and decided by the district court without

trial.<sup>1</sup> Consequently, the parties complied with DCR 16, and the district court had the inherent authority to decide the matter.<sup>2</sup> The case was submitted to the district court, and it was properly decided on the merits.

The district court did not abuse its discretion in denying Christopherson's motion to stay trial and/or grant sanctions for the Club's failure to comply with discovery requests regarding complaints by Mr. Boyer, a former member of the Club. Mr. Boyer's deposition was made part of the record before the district court, but even including that evidence, Christopherson failed to provide proof that the Club withheld or destroyed any evidence.

The district court also properly granted partial summary judgment and dismissed Christopherson's claim for injunctive relief. Summary judgment is appropriate when, after reviewing the record in a light most favorable to the non-moving party, there remain no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.<sup>3</sup> Injunctive relief is appropriate only when the complainant is entitled to relief, irreparable harm will occur if defendant's actions persist, and the remedy at law for money damages is inadequate.<sup>4</sup>

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<sup>1</sup>A review of the district court minutes from 1/06/2003 at 9:00 AM and the transcript of proceedings from 3/3/2003 demonstrates that the parties agreed to submit the case on the record.

<sup>2</sup>C.f. Szilagyi v. Testa, 99 Nev. 834, 673 P.2d 495 (1983) (noting that unless the parties assent to its terms a stipulation is invalid).

<sup>3</sup>Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

<sup>4</sup>NRS 33.010; Czipott v. Fleigh, 87 Nev. 496, 498-499, 489 P.2d 681, 683 (1971).

The record reflects that there was substantial evidence to support the district court's determinations in this case. The Club's membership agreement provides that the Club may suspend or revoke membership for any failure to obey the Club's rules and regulations. The agreement further provides that the Club may "revoke or deny the membership of any member or guest whose access to or use of our facilities, in [the Club's] judgment, creates a danger or health or safety hazard." The Club's membership rules specifically state that "members and guests are prohibited from using abusive language, conduct, or any misbehavior."

The district court was presented with ample evidence that Christopherson violated the Club's rules by cursing at employees and members, and acting in an inappropriate manner. In this case, the district court's grant of summary judgment on Christopherson's claim for injunctive relief was proper. Christopherson's primary complaint was for breach of contract. Any loss he could prove as a result of health code violations or as a result of the Club's termination of his membership for retaliatory purposes could be adequately compensated by monetary damages.

Furthermore, there is no risk of irreparable harm from the termination of a health club membership. Nor was there a showing of irreparable injury as a result of the Club's past health code violations. Christopherson was unable to show irreparable harm by a future health code violation because he was no longer a club member. For the same reason, Christopherson did not have a right to seek injunctive relief to prevent such future violations, for a future violation would not result in harm to a non-member of the Club. For these reasons, Christopherson

was not entitled to injunctive relief under either subsection one or two of NRS 33.010.

Finally, we affirm the district court's award of \$8,908.11 in attorney fees and costs in favor of the Club pursuant to NRS 17.115 and NRS 18.020(3). The affidavit and errata filed by the Club adequately verify the statement of fees and costs.<sup>5</sup> In addition, we conclude that the district court properly considered the appropriate Beattie factors<sup>6</sup> in determining that the Club's offer of judgment was brought in good faith and that the fees and costs were reasonable and supported by the affidavit and errata filed by the Club.<sup>7</sup>

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<sup>5</sup>See Eberle v. State ex rel. Redfield Trust, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992) (district court has discretion to award attorney fees and costs even when the motion is arguably defective); Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001) (concluding that granting a motion for attorney fees and costs can be based on the parties' pleadings, affidavits, and exhibits, and on rare occasions, a court may determine the appropriate amount of fees based upon "personal observation of the time the attorney spent in hearings and the quantity and quality of pleadings filed by the attorney").

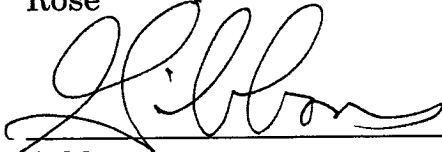
<sup>6</sup>Chavez v. Sievers, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002) (noting the factors a court must consider under Beattie v. Thomas, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983)):

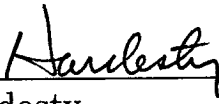
- (1) whether the plaintiff's claim was brought in good faith;
- (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
- (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
- (4) whether the fees sought by the offeror are reasonable and justified in amount.

<sup>7</sup>E.g., Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252 n.16, 955 P.2d 661, 663 n.16 (1998) (noting that no single factor under Beattie is *continued on next page . . .*

Accordingly we,  
ORDER the judgment and order of the district court  
AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Stewart L. Bell, District Judge  
Christopherson Law Offices  
Littler Mendelson/Las Vegas  
Clark County Clerk

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determinative and a district court has broad discretion to grant attorney fees and costs provided that all appropriate factors are considered); see also Wynn v. State, 117 Nev. 6, 13, 16 P.3d 424, 428-29 (2001) (affirming award of attorney fees even though the district court did not explicitly address each Beattie factor because the proper factors were considered).