

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENO CONSTRUCTION, INC., A
NEVADA CORPORATION,
Appellant,

vs.

R & R GROUP ENTERPRISES, INC.,
D/B/A PRICELESS CONSTRUCTION, A
NEVADA CORPORATION,
Respondent.

No. 41887

FILED

NOV 09 2004

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a final amended judgment granting attorney fees and costs. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

This case arises out of a subcontractor dispute. Priceless Construction sued Reno Construction, Inc. for breach of contract and unjust enrichment, and Reno Construction counterclaimed for breach of contract. During settlement negotiations, Priceless Construction offered to allow judgment to be entered in its favor for \$23,500, which Reno Construction rejected. Reno Construction countered by offering to allow judgment to be entered against it for \$2,500, which Priceless Construction rejected. After a bench trial, the district court determined that Priceless Construction was entitled to \$25,000 for Reno Construction's unjust enrichment, and that Reno Construction was entitled to \$25,000 in damages for breach of contract. Subsequently, each party moved for attorney fees and costs under NRS 17.115 and NRCP 68. The district court granted each party's motion, resulting, after offsets, in an attorney fees award of \$12,494.33 in favor of Priceless Construction. Reno

Construction now appeals, arguing that Priceless Construction, the offeree, rejected Reno Construction's offer and ultimately failed to obtain a more favorable judgment. The district court awarded Reno Construction \$25,000 in damages, and Priceless Construction's \$25,000 damage award was offset against the \$25,000 awarded to Reno Construction. Therefore, Priceless Construction's net judgment was \$0, less than Reno Construction's \$2,500 offer.

Reno Construction contends that, because Priceless Construction's net damages award was less than Reno Construction's offer of judgment, the approach adopted in Parodi v. Budetti¹ applies. Under Parodi, the net judgment in a consolidated lawsuit determines the prevailing party for awarding costs under NRS 18.010 and NRS 18.020.² Reno Construction posits that this formula should apply to a situation involving NRS 17.115 and NRCP 68 and when the defendant counterclaims against the plaintiff.

The district court may not award attorney fees absent a statute or rule authorizing it to do so.³ However, when the district court is authorized to award attorney fees and costs, this court will not disturb such an award absent an abuse of discretion.⁴ Although this court reviews the award of attorney fees and costs for an abuse of discretion, the issue in

¹115 Nev. 236, 984 P.2d 172 (1999).

²Id. at 241-42, 984 P.2d at 175.

³Id. at 240, 984 P.2d at 174.

⁴Id.

this case also involves a question of statutory construction, subject to de novo review.⁵

In Parodi, this court determined that, with respect to consolidated actions, all damage awards must be offset to determine which side is the “prevailing party” and therefore able to seek fees and costs under NRS 18.010 and NRS 18.020.⁶ We agree with Reno Construction that the Parodi net damages approach should apply with respect to offers of judgment under NRS 17.115 and NRCP 68.

In this case, it appears that the offers of judgment were meant to settle all claims. Therefore, the district court should have used the net judgment to determine whether NRS 17.115 and NRCP 68 should apply. This analysis bars Priceless Construction from obtaining attorney fees and costs because its net judgment of \$0 was less favorable than Reno Construction’s offer to allow judgment to be entered against it for \$2,500. The district court may, however, in its discretion, award Reno Construction attorney fees and costs because Priceless Construction rejected Reno Construction’s offer and failed to obtain a more favorable judgment.⁷

Accordingly, we

⁵Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 641, 81 P.3d 532, 534 (2003).

⁶Parodi, 115 Nev. at 241-42, 984 P.2d at 175.

⁷Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Paul J. Malikowski
R & R Group Enterprises, Inc.
Washoe District Court Clerk