IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MOORE
Appellant,
vs.
JAY E. LONGSINE AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Respondents.

JAY E. LONGSINE,
Cross-Appellant,
vs.
CHARLES MOORE AND DONNA MOORE,
Cross-Respondents.

No. 42651

FILED

SEP 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING

This is an appeal and cross-appeal from a district court judgment entered on a jury verdict in a tort action and an appeal from a post-judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Jay Longsine's automobile collided into the rear of Charles and Donna Moore's automobile. The Moores' sued Longsine with claims that exceeded Longsine's insurance policy limits, so State Farm Mutual Automobile Insurance Company (State Farm) intervened as the Moores' uninsured motorist insurer.

During the litigation, the district court granted State Farm's motion in limine to exclude the mention of State Farm and of insurance

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from the trial under NRS 48.135. Nevertheless, one of the Moores' expert witnesses twice mentioned insurance. Longsine moved for a new trial on that basis, which the district court denied. When the district court was settling jury instructions, it allowed Longsine to introduce into evidence a redacted version of the arbitration award. At the close of trial, the jury found for the Moores and the district court rendered judgment in their favor. After trial, the district court awarded Donna attorney fees, costs, and pre-judgment interest. We assume the parties are familiar with the facts and do not recite them further, except as needed.

Charles appeals the district court's judgment, challenging the court's authority to consider, and subsequent decision to grant, the motion in limine, as well as its admission of the arbitration award into evidence. Longsine cross-appeals, challenging the district court's denial of his motion for a new trial based on the expert's mention of insurance, and he appeals the order awarding Donna attorney fees and costs. We affirm the district court's judgment, but vacate its award of attorney fees and costs to Donna. We remand this matter for the district court to state its reasons for awarding Donna attorney fees, whether partially or in full, and to apportion costs between Donna and Charles, awarding to Donna only those costs she incurred.

Excluding mention of insurance under NRS 48.135

Charles argues that State Farm's motion to exclude mention of itself and insurance was untimely decided, but, in any event, should not have been granted. We disagree. State Farm's motion was served via

facsimile under EDCR 7.26[1] on October 28, 2003, and an order shortening time was signed on October 29, 2003. EDCR 2.26 provides that "[a]n order which shortens the notice of a hearing to less than 10 days may not be served by mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day." But Charles has provided no information in the record regarding when the signed order was served. As the appellant, Charles has the burden to provide support in the record for his arguments.[2] Without support in the record, we must presume that the district court did not err in its disposition of the motion.[3] Therefore, we conclude that the district court did not err when it heard the motion on November 3, 2003.

Further, the district court did not abuse its discretion in granting the motion. While State Farm is a party to the litigation, whether Longsine or the Moores were insured was irrelevant to the jury's consideration of the Moores' claim for personal injury damages. We conclude that the district court took reasonable measures to prevent the jury from considering insurance during its deliberations.[4]

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[1]EDCR 7.26 allowed service by facsimile before its amendment on September 13, 2005. We refer to the former EDCR 7.26 in this order.

[2]Prabu v. Levine, 112 Nev. 1538, 1546, 930 P.2d 103, 111 (1996); Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).

[3]Prabu, 112 Nev. at 1546, 930 P.2d at 111.

[4]We have considered and rejected Charles' other arguments surrounding the timing and merits of State Farm's motion.

However, during trial, one of the Moores' expert witnesses, Dr. Stephen Holper, twice mentioned insurance. Longsine moved for a new trial. The district court denied the motion and gave jury instruction number 19 to remedy any prejudice to Longsine or State Farm.[5] We conclude that the district court did not abuse its discretion when it denied Longsine's motion for a new trial.

The arbitration award

The district court admitted the parties' arbitration decision under NRS 83.259, which mandates the introduction of a redacted arbitration award. The district court also gave the jury instruction mandated by NRS 83.259(2) as jury instruction number 14. Even though it was admitted toward the end of the trial, we conclude that the district court did not abuse its discretion in admitting the arbitration award into evidence.[6]

Attorney fees and costs

Donna requested attorney fees and costs. Without explanation, the district court awarded Donna approximately one-half of attorney fees she requested and awarded her the full amount of costs.

Attorney fees may be awarded at the district court's discretion to the prevailing party under NRS 18.010. However, it is an abuse of the

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[5]Krause Inc. v. Little, 117 Nev. 929, 937, 34 P.3d 566, 571 (2001).

[6]Charles argues that the arbitration award was not on Longsine's September 22, 2003 list of exhibits. Longsine argues that the arbitration award was on his October 30, 2003 list of exhibits, but did not provide that list. However, Longsine did provide a transcript of the colloquy with the district court regarding this exhibit that reveals it was on the October 30, 2003 list.

district court's discretion to award attorney fees, at an amount less than requested, without stating its reasons for doing so.[7] Consequently, we vacate the district court's award of attorney fees and remand this matter to the district court for it to consider the Brunzell v. Golden Gate National Bank[8] factors, and to state its reasons for any resulting award of attorney fees.

Regarding costs, the itemized lists submitted by the Moores' attorney contained attorney fees and costs for both Donna and Charles. Costs must be awarded to the prevailing party under NRS 18.020. However, Charles cannot recover costs because he did not receive a judgment more favorable than Longsine's offer of judgment.[9] As Charles is not entitled to costs, we conclude that the district court abused its discretion by including costs incurred by Charles in its award of costs to Donna. Therefore, we vacate the district court's award of costs to Donna and remand this matter to the district court for it to apportion costs between Donna and Charles and to award to Donna only those costs she incurred.[10]

Accordingly, we affirm the district court's judgment. We vacate the award of attorney fees and costs and remand that matter to the district court for further proceedings.

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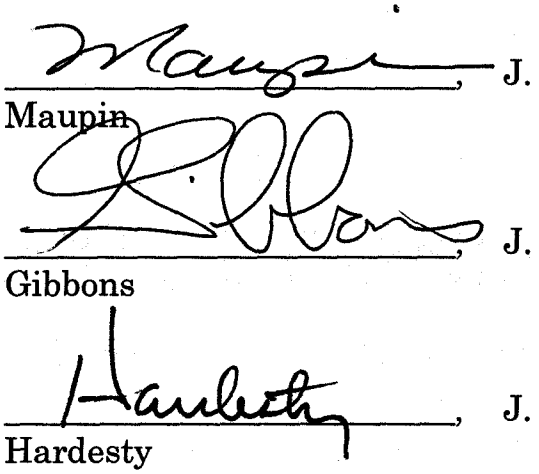
[7]Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998).

[8]85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969).

[9]NRCP 68(f).

[10]Longsine has not appealed, and we do not disturb, the district court's award of prejudgment interest.

It is so ORDERED.



Maupin, J.

Gibbons, J.

Hardesty, J.

cc: Hon. Valorie Vega, District Judge
Victor Lee Miller
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Ellsworth Moody & Bennion Chtd.
Clark County Clerk