

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHELDON F. GOLDBERG AND  
BARBARA A. GOLDBERG,  
INDIVIDUALLY AND AS HUSBAND  
AND WIFE,  
Appellants,

vs.

LAND TITLE OF NEVADA, INC.; KEN  
JOHNSON; MICHAEL BOHN, ESQ.;  
AND JAMES REAM, ESQ.,  
Respondents.

No. 42752

FILED

FEB 07 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in an attorney malpractice and tort action and post-judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; David Wall, Judge.

When, as in this case, the district court considers materials outside of the pleadings in reviewing a motion to dismiss, it must treat the motion as one for summary judgment.<sup>1</sup> Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is

---

<sup>1</sup>Schneider v. Continental Assurance Co., 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994) (citing Thompson v. City of North Las Vegas, 108 Nev. 435, 438, 833 P.2d 1132, 1134 (1992)). In this case, the district court considered matters outside the pleadings, including federal tax return correspondence and appellant Sidney Goldberg's 90-day suspension from practicing law as a Colorado-licensed attorney.

entitled to a judgment as a matter of law.<sup>2</sup> Once the movant has properly supported the summary judgment motion, the non-moving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment.<sup>3</sup> This court reviews an order granting summary judgment de novo.<sup>4</sup>

After obtaining a favorable judgment in a quiet title action, appellants filed an action for negligence, intentional infliction of emotional distress, and conspiracy against respondents Land Title of Nevada, Inc., a Land Title employee, and attorneys for defendant buyers and defendant sellers in the quiet title action. In granting summary judgment, the district court concluded that, since appellants were not parties to the contract between the buyers and the title insurance company, the latter owed no duty to appellants; therefore, appellants' negligence claim against the title insurance company failed.<sup>5</sup> Additionally, the district court concluded that the attorneys' conduct in the quiet title action was

---

<sup>2</sup>Id. at 1272, 885 P.2d at 573.

<sup>3</sup>Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005); NRCP 56(e).

<sup>4</sup>Id. at 121 Nev. 729, 121 P.3d 1029.

<sup>5</sup>See Mark Properties v. National Title Co., 117 Nev. 941, 34 P.3d 587 (2001); Tweet v. Webster, 610 F. Supp. 104 (D. Nev. 1985) (noting that Nevada does not recognize an insurer's duty to negotiate settlements in good faith with third-parties).

protected by the litigation privilege<sup>6</sup> and that the title insurance company had a duty to defend the buyers throughout the course of that litigation.<sup>7</sup> Further, the district court determined that respondents' conduct during that litigation did not constitute extreme and outrageous conduct made with reckless disregard or intent to cause emotional distress.<sup>8</sup> Consequently, the district court determined that appellants' intentional infliction of emotional distress claim failed.

Additionally, the district court concluded that appellants had failed to properly plead their Nevada Racketeer Influenced and Corrupt Organization ("RICO") allegations or to prove any statutory crimes allegedly committed by respondents<sup>9</sup> and that there was no evidence that

---

<sup>6</sup>See Fink v. Oshins, 118 Nev. 428, 49 P.3d 640 (2002) (recognizing the privilege bars any civil litigation grounded on communication made during judicial proceedings); Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 657 P.2d 101 (1983) (same); Hempe v. Foote, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002).

<sup>7</sup>Home Sav. Ass'n v. Aetna Cas. & Surety, 109 Nev. 558, 565, 854 P.2d 851, 855 (1993) (stating that an insurer, contractually obligated to defend an insured, owes a continuing duty to defend throughout the course of litigation against the insured).

<sup>8</sup>See Kahn v. Morse & Mowbray, 121 Nev. 464, 117 P.3d 227 (2005) (holding that an intentional infliction of emotional distress claim in an attorney malpractice case could not succeed without a showing of outrageous or extreme conduct); Maduik v. Agency Rent-A-Car, 114 Nev. 1, 953 P.2d 24 (1998); see also Davis v. Currier, 704 A.2d 1207 (Me. 1997) (holding that the filing of a lawsuit and pursuit of litigation is insufficient to hold a party liable for intentional infliction of emotional distress); Bennett v. Jones, Waldo, Holbrook, 70 P.3d 17, 32-33 (Utah 2003) (same).

<sup>9</sup>See NRS 207.390.

respondents engaged in unlawful conduct, so that appellants' civil conspiracy/RICO claims failed.<sup>10</sup>

With regard to the attorney fee order, the district court, upon Land Title's NRCP 11 motion, awarded it \$5,000 in attorney fees, finding that appellants' complaint was not supported by law or fact.<sup>11</sup> Appellants then appealed from the summary judgment and the post-judgment order awarding attorney fees.

In the meantime, on January 21, 2006, this court entered an order reversing the district court's judgment in the quiet title action, District Court Case No. A415438.<sup>12</sup> Thus, appellants are no longer prevailing parties with respect to that action.

Having reviewed the record and documents in this case, and in light of this court's prior order reversing the quiet title judgment, we conclude that the district court did not err by granting summary judgment and awarding attorney fees under NRCP 11. Accordingly, we affirm the district court's summary judgment and attorney fee order.<sup>13</sup>

---

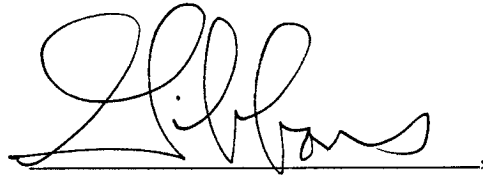
<sup>10</sup>See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (holding that, since there was no evidence of intent to harm, the district court correctly granted summary judgment on the civil conspiracy claim); Beck v. Prupis, 529 U.S. 494 (2000) (explaining that a civil conspiracy plaintiff cannot bring suit based on an act that is not wrongful).

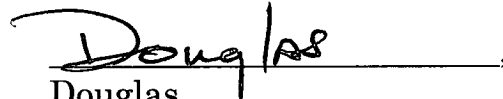
<sup>11</sup>See NRS 18.010(2)(b) and NRCP 11(c)(2).

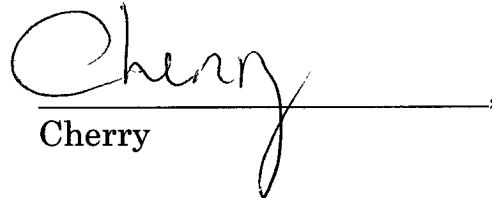
<sup>12</sup>Mayfield v. Goldberg, Docket Nos. 39887, 40164, and 40408 (Order of Reversal and Remand, January 31, 2006).

<sup>13</sup>Edwards v. Emperor's Garden Rest., 122 Nev. \_\_\_, \_\_\_, 130 P.3d 1280, 1288 (2006) (concluding that, in light of the district court's broad  
*continued on next page . . .*

It is so ORDERED.<sup>14</sup>

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

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. David Wall, District Judge  
Barbara A. Goldberg  
Sheldon F. Goldberg  
R. Clay Hendrix  
Law Offices of James J. Ream  
Law Offices of Michael F. Bohn, Ltd.  
Eighth District Court Clerk

---

*... continued*

discretion, an award of attorney fees as sanctions was not a manifest abuse of the district court's discretion).

<sup>14</sup>In light of this order, we further deny, as moot, appellants' "petition to reinstate attorney fee portion of the partial dismissal of appeal" filed on April 2, 2004, "petition to strike" filed July 12, 2006, "petition to preserve critical testimony" filed January 17, 2007, and "motions for commission to take out-of-state depositions" of Gerald Cooney and Beverly Cooney filed January 17, 2007.