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CIVIL: ATTORNEYS FEES AS SANCTIONS

Summary

The Nevada Supreme Court held that the district court must consider the factors from the Third Restatement when imposing sanctions in the form of attorney fees on parties.

Background

While at the Meadows Mall, X'Zavion Hawkins, Petitioner, was shot multiple times by another patron attending an event. He consulted attorney Paul Shpirt to bring a suit concerning the shooting. Shpirt initially agreed to represent him, but later declined. Hawkins then retained a different attorney at another firm. Shpirt changed firms and began working at Lewis Brisbois Bisgaard & Smith (LBBS), a firm retained by Meadows Mall, the defendant in Hawkins' case. LBBS screened Shpirt when they learned about the conflict; however, LBBS did not notify Hawkins of the conflict. Equally important, during discovery, Hawkins was omitting or providing false information as well as changing his version of the events, so Meadows sought discovery sanctions and moved to dismiss the complaint. The district court granted the discovery sanctions, but denied the motion to dismiss.

The district court disqualified LBBS for not notifying Hawkins of the conflict and for failing to obtain his informed consent.² Subsequently, Meadows Mall sought attorney fees to effectuate the order imposing discovery sanctions against Hawkins, and of those fees, \$29,201 was to go to LBBS. Despite Hawkins arguing that LBBS was not entitled to attorney fees because they were disqualified, the district court granted the attorney fees and ordered Hawkins to pay \$41,635 to Meadows Mall, which included \$19,846 for work done by LBBS. The district court stated that it was within their discretion to award attorney fees as sanctions.

Discussion

The Court considered whether the district court “abused its discretion in failing to consider LBBS’s disqualified status in awarding sanctions in the nature of attorney fees.”³ Under NRCPC 37, the district court may impose discovery sanctions, including reasonable expenses and attorney’s fees.⁴ However, the district court must also consider the factors outlined in the Restatement (Third) of the Law Governing Lawyers § 37 cmt. a (2000), which the district court expressly rejected. The factors to consider when determining a fee forfeiture include the (1) “the extent of the misconduct,” (2) ‘whether the breach involved knowing violation or conscious disloyalty to a client,’ (3) whether forfeiture is ‘proportionate to the seriousness of the offense,’ and (4) ‘the adequacy of other remedies.’” The court must consider these factors must be and weigh them against each other when determining attorney fees as sanctions, and LBBS’s

¹ By Rex Martinez.

² Pursuant to RPC 1.9 and RPC 1.10(e).

³ *Hawkins*, 133 Nev. Adv. Op. at 4.

⁴ NRCPC 37(c)(2).

disqualified status falls under these factors. Here, the district court rejected the Restatement's authority and did not consider these factors when determining the discovery sanctions.

Conclusion

Vacated and remanded. The Court held that a district court must analyze and apply the factors from the Restatement (Third) of the Law Governing Lawyers § 37 cmt. d (2000) when determining the reasonableness of an attorney fees award as a sanction.