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### N. Nev. Homes v. GL Constr., 134 Nev. Adv. Op. 60 (Aug. 2, 2018)

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## CIVIL PROCEDURE: ATTORNEYS FEES AND COSTS

### **Summary**

The Court found that the district court's awarding of attorneys fees and costs was appropriate following bifurcated trials in which the parties settled as to damages on Northern Nevada Homes' claims in an amount that exceeds GL Construction's damages on its counterclaim because: 1) no statute or court rule requires the trial court to offset a damages judgment on one party's counterclaim by the amount recovered by another party in settling its claim to determine which side is the prevailing party, and 2) the most reasonable interpretation of NRS 18.010(2)(a) and 18.020(3) precludes the use of settlement recovery for this purpose.

### **Facts and Procedural History**

Northern Nevada Homes ("NNH") filed suit against GL Construction ("GL"), alleging trespass on its property by dumping dirt and other waste. GL subsequently filed countersuit for breach of contract resulting from unpaid construction invoices. The district court bifurcated the claims, adjudicating NNH's claims via jury trial and GL's claims by way of bench trial. On day three of the jury trial, the district court informed the parties it felt inclined to enter a judgment as a matter of law in favor of NNH. Thereafter, the parties settled NNH's claims for \$362,500. At the bench trial, the district court found in favor of GL for an award of \$7,811 in damages.

GL then moved for \$67,595 in attorneys fees and \$2,497.22 in costs. NNH claimed that GL was not the prevailing party and, thus, attorneys fees and costs were inappropriate. The district court disagreed, awarding GL \$10,000 in attorneys fees and \$390 in costs because: 1) GL was a prevailing party under NRS 18.010 and NRS 18.020 in its counterclaim, 2) the settlement amount is irrelevant when determining who is the prevailing party because the facts of the counterclaim were unrelated to those of NNH's claims, and 3) \$10,000 is a reasonable amount for attorneys fees and \$390 is reasonable for attorneys costs as NNH failed to dispute them. This appeal followed.

### **Discussion**

#### *Standard of review*

An award for attorneys fees and costs is reviewed for abuse of discretion, and an abuse of discretion can be found when the court acts with clear disregard for guiding legal principles.<sup>2</sup> With regards to statutory interpretation and ambiguity, the appeal should consider the interpretation that best clarifies the legislative intent behind the statute.<sup>3</sup>

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<sup>1</sup> By Jeff Chronister.

<sup>2</sup> *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88 (2016).

<sup>3</sup> *Albios v. Horizon Cmty.s., Inc.*, 122 Nev. 409, 417 (2006); *Smith v. Crown Fin. Servs. Of Am.*, 111 Nev. 277, 284 773 (1995).

*Attorneys fees and costs under NRS 18.010 and NRS 18.020*

NNH argues that GL is not the prevailing party under NRS 18.010(2)(a) and 18.020(3) because NNH received the net monetary recovery in this case when the parties' recoveries were offset under *Parodi v. Budetti*.<sup>4</sup>

NRS 18.010(2)(a), intending to legislate protection for small litigants in suits, allows a court to award attorneys fees and costs to the prevailing party if the prevailing party recovered less than \$20,000. Furthermore, under NRS 18.020(3), costs must be awarded to the prevailing party when a judgment is rendered in recovery where the plaintiff sought to recover more than \$2,500. However, when considering NRS 18.010, a party cannot be considered a prevailing party if the action has not proceeded to judgment.

In *Parodi*, the Nevada Supreme Court considered whether a district court should look at bifurcated claims separately and determine a prevailing party in each claim or if it should consider the total sum of damages award in both cases and deduce a prevailing part based on the overall outcome. There, the court determined that “the trial court must offset all awards of monetary value to determine which side is the prevailing party and whether or not the total net damages exceed the \$20,000 threshold” and then proceed with NRS 18.010(2)(a) to determine if the award of attorneys fees is warranted.<sup>5</sup>

Here, NNH failed to cite Nevada authority that would mandate the district court offset the settlement recovery on NNH’s claims from GL’s damages award to determine whether GL was the prevailing party. *Parodi* is not binding here as the instant case includes a settlement recovery instead of multiple judgments for monetary damages. Thus, concerning the purposes of NRS 18.010(2)(a) and 18.020(3), the district court did not err in its refusal to aggregate NNH’s settlement recovery and GL’s judgment for damages.

Other states have concluded that a party who prevails in settlement is the prevailing party, but Nevada remains unpersuaded by that principle. However, this court has stated that NRS

18.010(2)(a) was intended to afford litigants in small civil claims the opportunity to be made whole.<sup>6</sup> Aggregating distinct settlements on counterclaims between the same parties would effectively rescind the opportunity for defendants with comparatively small counterclaims to be made whole when asserting their counterclaim. In that sense, NRS 18.010(2)(a) and NRS 18.020(3) do not require the district court, in determining the "prevailing party," to compare a monetary settlement of one party's claim against a judgment for damages on another party's counterclaim as it would be counterproductive to the legislative intent of the statutes.

**Conclusion**

There is no Nevada statute or court rule that requires the trial court to offset a judgment for damages on an independent claim by one party with a settlement recovery on the other party's claim to determine which side is the prevailing party, and the most reasonable interpretation of NRS 18.010(2)(a) and 18.020(3) precludes the use of settlement recovery for this purpose.

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<sup>4</sup> 115 Nev. 236, 241 (1999).

<sup>5</sup> *Id.* at 241-42.

<sup>6</sup> *See Smith*, 111 Nev. at 286.