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Harrison v Ramparts, Inc., 137 Nev. Adv. Op. 65 (Oct. 28, 2021)

Anna Dreibelbis

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REQUIREMENT OF COMPETING JUDGMENTS FOR AN OFFSET TO APPLY

Opinion by Bulla, J.:

Summary

This is an appeal from a personal injury matter that resulted in a post-judgment district court order that awarded attorney fees and costs, and directed that the award payment come from settlement funds of the codefendant. The appeal was originally resolved in an unpublished order, but the appellant filed a motion to publish the order as an opinion, and the Nevada Court of Appeals granted the motion. The district court ordered that the award would come from settlement funds of codefendant Desert Medical Equipment and that they would be obligated to pay Harrison based on their settlement agreement. However, the court's offset guaranteed that Luxor would receive its attorney fees and costs before Harrison received settlement funds from Desert Medical. The Nevada Court of Appeals considered whether the district court erred in offsetting Harrison's settlement funds from a Desert Medical Equipment in order to first satisfy Luxor's judgment for attorney fees and costs. The Nevada Court of Appeals concluded that the district court erred, and they reverse and remanded. Additionally, Harrison challenged the fees award, which this Court affirmed.

I.

Harrison was driving a motorized scooter inside the Luxor Hotel and Casino. Members of her party moved tables to create a pathway so she could navigate through the restaurant. While this took place, one of the scooter's back tires rolled over the base of a table, and her scooter tipped over. This resulted in serious personal injuries for Harrison, including a fractured hip and stroke. Harrison filed a complaint against Ramparts, Inc. (Luxor) and Desert Medical (of whom she rented the scooter). Luxor offered Harrison \$1,000 which Harrison rejected, and the matter proceeded to trial. During trial, Harrison and Desert Medical agreed upon a high-low settlement agreement. Desert Medical agreed to pay Harrison \$150,000 even if the court entered judgement in its favor. At the end of the trial, the jury returned a verdict for Desert Medical and Luxor, and found that neither was negligent or liable.

After the judgment, Luxor moved for attorney fees and costs, pursuant to NRS Chapter 18 and NRCP 68 and the motion was granted in part, with a slight reduction in expert costs and attorney fees. The district court also offset Luxor's award of fees and costs from the settlement funds Desert Medical owed Harrison. Harrison filed a motion to reconsider due to the issue of offset never properly being before the court since Luxor failed to request offset. The district court denied this motion. Both Harrison and Luxor were attempting to collect the \$150,000 from Desert Medical, and Desert Medical filed a motion to interplead the funds. This motion was granted and the district court ordered the funds should be distributed to the Luxor first, and then Harrison and her attorneys. Harrison appealed, arguing that the district court erred in offsetting the settlement funds in favor of Luxor and abused its discretion in awarding attorney fees.

¹ By Anna Dreibelbis.

II.

The court's reliance on *Muije*, was improper. In *Muije*, the plaintiff prevailed at trial, but the jury award in plaintiff's favor was less than the defendant's offer of judgment.² Both parties had judgment against each other, so the district court determined it would offset the plaintiff's judgment from the amount she owed the defendant.³ The plaintiff's attorney appealed, and the Supreme Court affirmed since the attorney's lien was attached to the net judgment, which was zero.⁴ Here, the court declines to extend *Muije* to this case as the Desert Medical funds were part of a settlement agreement that did not include Luxor, and the district court did not reduce the settlement to judgment in favor of Harrison. Therefore, the district court erred in granting an offset where Luxor and Harrison did not have mutually owed judgements that could subject them to offset. The order is reversed as to the offset. As to the Desert Medical settlement funds, it is remanded in order to release the interpleaded funds to Harrison.

III.

Next, the appellate court addressed whether the district court abused its discretion in awarding Luxor its fees. Harrison uses NRCP 68 to argue there are inconsistencies between the district court's statements at the hearing and those contained in the order. Contrastingly, Luxor argues that the district court considered the *Beattie* factors and therefore did not abuse its discretion. There are four factors the court must weigh in determining whether to award attorney fees: (1) Whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.⁵ All factors should be considered appropriately. The Court considered these factors and decided that they weighed in favor of awarding attorney fees. Therefore, the district court did not abuse its discretion in using these factors to determine the amount of fees to award and this is affirmed.

IV.

A party cannot make a claim for attorney fees and costs against settlement funds from a third party that have not been reduced to a judgement, and therefore, the district court cannot offset these funds. The Nevada Court of Appeals affirmed the award for attorney fees and reversed the district court's order as to the offset. It is remanded for the release of the interpleaded funds.

Gibbons, C.J., concurring in part and dissenting in part:

Chief Justice Gibbons concludes that the district court's order is not legally sufficient. He argues that the attorney fees should be vacated, and the case should be remanded to the district court to engage in the correct process for these proceedings. There is not a valid basis to award attorney fees, and therefore the district court order should be vacated. However, Chief Justice Gibbons agrees with the majority as to the remaining issues and concurs with the aspect of the opinion that reverses and remands to correct the offset.

² *Muije v. A North Las Vegas Cab Company, Inc.*, 106 Nev. 664, 665 (1990), 799 P.2d 559, 559–60 (1990).

³ *Id.*

⁴ *Id.* at 666–67, 799 P.2d at 560.

⁵ *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983).

Chief Justice Gibbons reasoned that the district court failed to correctly apply the first three factors in the *Beattie* test.⁶ He argues that although the district court mentioned the factors in its order, it only summarily found that an award of attorney fees and costs were appropriate according to the factors. This fails to address the content of the first three elements. This is a fact-intensive inquiry and the court made no findings that the case was brought in bad faith, that the \$1,000 offer was reasonable and in good faith, or that it was grossly unreasonable for Harrison to reject the offer. Lacking these findings within the court order, it is impossible to understand how the court balanced these factors. Chief Justice Gibbons contends that the district court focused solely on the fourth factor, which should not have been addressed until the others were considered and balanced against each other.

He further notes that the first three factors in the *Beattie* test involve a qualitative analysis which makes it case-specific. For factor one, the court needed to show that there was good faith on the part of the plaintiff when the complaint was filed. It is irrelevant that the complaint was found to be unmeritorious as to Luxor—it just required good faith. In terms of the second factor, the district court failed to address the good-faith threshold questions, and further made no mention of the timing being reasonable. Assuming the court did find the timing reasonable, the amount offered would then need to be evaluated and found reasonable. These findings were incomplete. As to the third factor, it required an objective and subjective analysis of the plaintiff's reaction to the offer. Here, Luxor would have had to demonstrate that it was grossly unreasonable or in bad faith that Harrison did not accept the offer in the 10-day period. The district court failed to make a written finding or legal conclusion regarding this factor.

Although the district court found one factor that favored Luxor, they failed to use the other three factors to correctly analyze the case. Therefore, Chief Justice Gibbons concluded that the district court abused its discretion by lacking the proper consideration for the first, second, and third *Beattie* factors, and in their explanations with the connections between the factors. He would suggest a remand to apply each of the factors. He concurs in part and dissents in part, and would vacate the attorney fees award and remand to make findings as to all of the factors in *Beattie*.

⁶ *Id.*