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Capriati Construction Corp., Inc. v. Yahyavi, 137 Nev. Adv. Op. 69 (Nov. 10, 2021)

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ADMISSIBILITY OF LIABILITY INSURANCE AND RECOVERY OF CONTINGENCY-BASED ATTORNEY FEES

Summary

The Nevada Supreme Court clarified two issues of tort law. First, evidence of a defendant’s liability insurance is admissible under NRS 48.135(2)² if the defendant first introduces evidence suggesting its inability to pay a judgement. Second, a plaintiff represented on a contingency-fee basis may recover the entirety of the contingency fee as post-offer attorney fees under NRCP 68.³

Facts and Procedural History

Bahram Yahyavi (“Yahyavi”) was injured while in his vehicle when he was struck by a forklift driven by an employee of Capriati Construction Corp. Inc. (“Capriati”). Yahyavi brought a negligence suit against Capriati. Between the suit being brought and the trial, Capriati went through bankruptcy proceedings. Capriati rejected a \$4 million offer of judgement prior to the negligence trial.⁴

During Yahyavi’s case, it was revealed to the jury that Capriati discarded the forklift operator’s file. Two of Capriati’s experts testified during Yahyavi’s case, stating that the damages were exaggerated. Capriati introduced testimony in their case relating to their bankruptcy to rebut the accusation of spoliation. Yahyavi objected and moved for sanctions based on intentional elicitation of inadmissible evidence suggesting an inability to pay. The district court sustained and (1) struck Capriati’s answer and excluded Capriati’s remaining witnesses, and (2) instructed the jury to consider Capriati’s liability insurance. The jury awarded Yahyavi a \$5.9 million verdict. After trial, the district court awarded Yahyavi \$2.3 million in attorney’s fees based on Capriati’s rejection of the offer of judgement.

Capriati appealed to the Nevada Supreme Court, arguing the district court erred in (1) imposing case-concluding sanctions, (2) instructing the jury to consider Capriati’s insurance as able to cover damages, and (3) awarding attorney fees incurred prior to a rejected offer of judgment.

Discussion

Sanctions

Capriati argued: (1) striking remaining witnesses were improper case-concluding sanctions and (2) sanctions were unduly harsh because it precluded presenting evidence the damages were exaggerated. This Court uses a somewhat heightened standard of review for case-concluding sanctions.⁵ Noncase-concluding sanctions, which still give the party to opportunity to defend the amount of damages, are upheld if substantial evidence supports the trial court decision.⁶

Capriati’s employee admitted fault, leading the district court to strike all liability witnesses as a nominal sanction. This Court held that this action was not case-concluding, because earlier witnesses were brought to testify on the matter of damages and damages were discussed in closing

¹ By Robert John “RJ” Lemus.

² NEV. REV. STAT. § 48.135(2) (1971).

³ NEV. R. CIV. P. 68 (2019).

⁴ *Id.*

⁵ MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc., 134 Nev. 235, 242, 416 P.3d 249, 256 (2018).

⁶ Valley Heath Sys., LLC v. Estate of Doe, 134 Nev. 634, 639, 427 P.3d 1021, 1027 (2018).

arguments. The Court further held that the district court's sanctions were supported by substantial evidence because Capriati attempted to admit inadmissible testimony.⁷ Furthermore, Capriati did not object to the spoliation claim and did not need to present inadmissible evidence to rebut.

Jury instruction

Capriati argued that the jury instruction informing them of defendant's liability insurance violated NRS 48.135. Jury instructions are reviewed de novo to determine if they accurately state Nevada law.⁸ The statute is interpreted for plain meaning,⁹ and because it introduces a non-exhaustive list,¹⁰ purposes not included in the statute may be permissive as well. Because it was Capriati that first introduced evidence about being unable to pay, this Court held the district court acted within its discretion by informing jury of Capriati's liability insurance.

Attorney fees

Capriati argues \$2.3 million in attorney fees were improperly awarded because (1) NRCPC 68 requires an analysis of which fees were incurred after rejection of the offer of judgement,¹¹ and (2) the lodestar method must be used when represented is on a contingency basis. The district court must apply the *Beattie* and *Brunzell* factors,¹² and this Court reviews de novo¹³ for abuse of discretion.¹⁴

This Court rejected the lodestar method and held that contingency fees do not mature until the client prevails, and are not limited to those earned post-offer. Because the district court properly applied the *Beattie* and *Brunzell* factors, no error was made.

Conclusion

This Court affirmed the district court judgement and order for attorney fees. Sanctions were not case-ending because defendant had other means to rebut damage claims. Liability insurance was within the judge's discretion because defendant improperly introduced evidence of ability to pay judgement. Attorney fees were properly awarded because the district court applied the proper factors and contingency fees do not vest until the delivery of a favorable judgement.

⁷ See NEV. RULES OF PRO. CONDUCT 3.4(e) (2006); *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

⁸ *MEI-GSR Holdings*, 134 Nev. at 237–38, 416 P.3d at 253.

⁹ See *Levin v. Frey*, 123 Nev. 399, 403, 168P.3d 712, 715 (2007).

¹⁰ See *Bigpond v. State*, 128 Nev. 108, 115 n.5, 270 P.3d 1244, 1248 n.5 (2012).

¹¹ NEV. R. CIV. P. 68(f)(1)(B) (2019).

¹² See *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983); *Brunzell v. Golden State Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

¹³ See *In re Estate & Living Tr. of Miller*, 125 Nev. 550, 553, 216 P.3d 239, 241 (2009).

¹⁴ *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).