

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARLA K. KWIST A/K/A KARLA
KRISTIN KWIST,
Appellant,
vs.
MARIA ELISA CHANG, EXECUTRIX
OF THE ESTATE OF ROGER CHUEN-
PO MOK, DECEASED,
Respondent.

No. 53545

FILED

MAR 31 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Karla Kwist filed a creditor's claim against the estate of her ex-husband, Roger Mok, for child support arrears, future child support, unreimbursed medical expenses, and unreimbursed education expenses. After the executrix of the estate, respondent Maria Chang, denied Kwist's claim, Kwist filed a complaint in family court. The family court consolidated the complaint with the original divorce action between Kwist and Mok and later transferred the consolidated case to the civil division of the district court, which has general jurisdiction. After the case was transferred, Chang made an offer of judgment that Kwist allowed to expire. Chang successfully moved for summary judgment after Kwist failed to present evidence to support her claims. Chang then filed a motion for attorney fees and costs that Kwist failed to oppose. The district court granted Chang's motion for attorney fees and costs under NRS 17.115 and NRCP 68 and concurrently under NRS 18.010.

Kwist now appeals, arguing that: (1) the award of attorney fees and costs is void because the civil division of the district court did not have jurisdiction over this case, (2) the district court abused its discretion in awarding attorney fees and costs, and (3) the district court abused its discretion by awarding attorney fees and costs without hearing argument from Kwist.¹

For the reasons set forth below, we conclude that the district court had jurisdiction to decide the creditor's claim and, therefore, the order granting Chang attorney fees and costs is not void. We also conclude that the district court did not abuse its discretion by granting the motion for attorney fees and costs. Therefore, we affirm the district court's order. Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as necessary for our disposition.

The civil division of the district court had jurisdiction to award attorney fees and costs

Kwist contends that the civil division of the district court exceeded its jurisdiction in deciding this case because the family court had exclusive and original jurisdiction over it, and, therefore, the award of attorney fees and costs is void. We disagree.

A judgment is void if a court lacks jurisdiction. State Indus. Ins. System v. Sleeper, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984). In Landreth v. Malik, this court concluded that the language of NRS 3.223 is plain and clearly establishes that in the districts in which a family court

¹Chang contends that Kwist's appeal is frivolous and therefore requests sanctions from this court. We deny that request.

has been established, the family court has original and exclusive jurisdiction over cases concerning family matters. 125 Nev. ___, ___, 221 P.3d 1265, 1268 (2009). Because Article 6, Section 6(2) of the Nevada Constitution specifically delegated power to the Legislature to create family courts and prescribe their jurisdiction, the family court's jurisdiction is limited to proceedings specified in NRS 3.223. *Id.*

In this case, the family court found that it "may have jurisdiction over this matter pursuant to NRS 3.223 . . . but it is more appropriate for the matter to be heard by the Civil Division of the District Court." Kwist argues that because the case concerned issues dealing with child support and divorce, the family court had exclusive jurisdiction under NRS 3.223 and the civil division of the district court, which has general jurisdiction, lacked jurisdiction to decide the matter.

A claim against the estate of a decedent for a rejected creditor's claim does not fall within the parameters of NRS 3.332. While we acknowledge that this claim concerned issues relating to family law, it nevertheless was a rejected creditor's claim against an estate, which does not fall into the family court's jurisdiction. Thus, we conclude that the civil division of the district court, which has general jurisdiction, had jurisdiction to award attorney fees and costs and, consequently, the award of attorney fees and costs is not void.

The district court did not abuse its discretion in awarding Chang attorney fees and costs

In addition to her arguments regarding the jurisdiction of the district court to enter the order at issue, Kwist contends that the district court erred in awarding attorney fees and costs under NRS 17.115 and NRCP 68 and concurrently under NRS 18.010. Kwist also argues that the

district court abused its discretion by awarding attorney fees and costs without first hearing argument from her. We disagree.

Standard of review

This court will not overturn an award of attorney fees and costs absent an abuse of discretion. LaForge v. State, University System, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000). When determining if the district court abused its discretion, this court examines whether the decision was supported by substantial evidence and guided by applicable legal principles. Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979).

Under NRS 17.115 and NRCP 68, a party may recover attorney fees and costs if the other party rejects an offer of judgment and fails to obtain a more favorable outcome. Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), set out factors district courts must consider when determining whether to award attorney fees and costs under NRCP 68:

- (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.

"Where the district court properly considers these Beattie factors, the award of attorney's fees is discretionary and 'will not be disturbed absent a clear abuse.'" LaForge, 116 Nev. at 423, 997 P.2d at 136 (quoting Bidart v. American Title, 103 Nev. 175, 179, 734 P.2d 732, 735 (1987) (citing Trustees, Carpenters v. Better Building Co., 101 Nev. 742, 746, 710 P.2d 1379, 1382)).

The district court did not abuse its discretion in awarding attorney fees and costs under NRS 17.115 and NRCP 68

The district court awarded attorney fees and costs to Chang after granting her motion for summary judgment because Kwist rejected Chang's earlier offer of judgment and Chang succeeded on her summary judgment. In awarding Chang attorney fees and costs, the district court considered the skill of Chang's attorneys, the work performed by them, and the amount charged for that work. The district court also found that Kwist's claim "was brought without reasonable ground or to harass Chang." Importantly, Kwist offered no basis for the district court to conclude that Chang's offer of judgment was unreasonable in its amount or timing.

Kwist contends that the district court should not have awarded attorney fees and costs under these provisions because they are meant to encourage settlement and the court should not encourage settlement when the issue is one of law and not fact. She argues that the issue before the district court was whether to apply NRS 125.510(9)² or NRS 125B.130.³ We disagree.

This court has upheld an award of attorney fees and costs where a party prevailed on a motion for summary judgment, when the

²NRS 125.510(9)(a) states that "[e]xcept where a contract providing otherwise has been executed[,] . . . the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases . . . [u]pon the death of the person to whom the order was directed."

³NRS 125B.130 grants a judge discretion to award support payments against an estate after considering the age of the child, the surviving parent's ability to support the child, and the amount of property in the estate, among other considerations.

issue was one of law and not fact. See U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 464-65, 50 P.3d 170, 173-74 (2002).

The district court determined that Kwist failed to obtain a result more favorable than Chang's offer of judgment, that Kwist's claim was brought in bad faith because she failed to provide evidence to support her claims, and that the attorney's work warranted the fees requested. Because the district court appropriately considered the Beattie factors, we cannot conclude that it abused its discretion in awarding attorney fees and costs under NRS 17.115 and NRCP 68.

The district court did not abuse its discretion in awarding attorney fees and costs under NRS 18.010

Under NRS 18.010(2)(b), a court may award attorney fees "when the court finds that the claim . . . was brought or maintained without reasonable ground or to harass the prevailing party." In an effort to deter frivolous or vexatious claims and keep such claims from overburdening limited judicial resources, the Legislature required that courts liberally construe NRS 18.010 "in favor of awarding attorney's fees in all appropriate situations." Id.

The district court found that Kwist brought her claims without reasonable grounds or to harass Chang. Kwist argues that the district court abused its discretion in making this finding because she had reasonable grounds for bringing the claim. She argues that she had a reasonable ground to bring the claim because she believed she had a judgment for each unpaid portion of child support. See NRS 125B.140 (1)-(2). However, Kwist failed to provide evidence of missed child support payments.

Kwist also contends that NRS 125.510(9), which states that child support terminates upon the death of the parent obligated to pay

support, does not apply in this case because of the marital agreement between her and Roger. Before the Legislature enacted NRS 125.510(9), this court reasoned that if a father wished to provide continuous child support payments after his death, he could create a contract specifically permitting child support payments to be charged against his estate or he could name the child as the beneficiary of a life insurance policy. Bailey v. Bailey, 86 Nev. 483, 488-89, 471 P.2d 220, 223 (1970). However, in this case NRS 125.510(9) applies because the marital agreement between Kwist and Roger does not include any provisions concerning his estate's obligation to make child support payments after his death.

Moreover, in this case, there was substantial evidence of Kwist's bad faith. Kwist enlarged her creditor claim to more than \$50,000 after the case was transferred to the civil division of the district court, which had a mandatory arbitration program for cases under \$50,000. During the two years in which Kwist had the opportunity to provide evidence of a deficit in child support payments, she failed to do so, and she also failed to provide evidence supporting her claim for posthumous child support payments. Kwist attempted to gain reimbursement for her own expenses for participating in a Washington D.C. school trip, without providing evidence that Roger agreed to pay for her attendance as a chaperone. These facts support the district court's conclusion that Kwist blatantly disregarded the provisions of NRS 125.510(9), which provides for termination of child support upon the death of a parent paying child support. Finally, her use of inappropriate language in answering interrogatories creates an inference that she was acting in bad faith and attempting to harass Chang.

Therefore, we conclude that because the district court's decision was supported by substantial evidence and guided by applicable legal principles, it did not abuse its discretion in awarding attorney fees and costs under NRS 18.010.

The district court did not abuse its discretion in awarding attorney fees and costs without hearing argument from Kwist

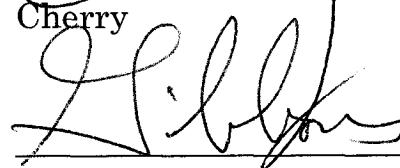
EDCR 2.20(c) provides that if a party fails to oppose a motion, the court may construe that "as an admission that the motion . . . is meritorious and a consent to granting the motion." See King v. Cartlidge, 121 Nev. 926, 927-28 124 P.3d 1161, 1162 (2005).

Kwist argues that while EDCR 2.20(c) allows a court to deem a failure to oppose a motion as consent to grant the motion, the court does not have to interpret it as consent to grant the motion because the rule uses the word "may" instead of "shall." Kwist also makes two policy arguments. First, she contends that when the district court is considering issues dealing with family matters, it should ensure that a decision is based on the merits and not purely based on a party's failure to oppose a motion. Second, she argues that the rule's inclusion of the words "meritorious" and "consent" require judicial inquiry to ensure that the nonopposing party consents and believes the motion is meritorious. We disagree with these contentions.

When a party fails to oppose a motion or present argument at the hearing on the motion, the district court is not obligated to pursue the nonopposing party in order to garner that party's opinion on the motion before deciding the outcome. Because the district court made its decision to grant the motion for attorney fees and costs based on local rules and based on a motion with substantial supporting documentation, we

conclude that the district court did not abuse its discretion in granting the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Cherry, J.

Gibbons, J.


Pickering, J.
Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge
Robert F. Saint-Aubin, Settlement Judge
David C. Polley
Ralph Denton
Goldsmith & Guymon, P.C.
Eighth District Court Clerk