

IN THE SUPREME COURT OF THE STATE OF NEVADA

GINA HAWLEY,  
Appellant,

vs.

A.H.M. RES. II LIMITED  
PARTNERSHIP, RESIDENCE INN BY  
MARRIOTT, INC., A DELAWARE  
CORPORATION,  
Respondents.

No. 48540

**FILED**

MAY 07 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order awarding costs. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Appellant Gina Hawley sued respondents A.H.M. Res. II Limited Partnership and Residence Inn by Marriott (collectively, Marriott) for negligence after she slipped and fell in a bathtub at a Marriott facility in Las Vegas. Four days after the jury returned a verdict in Marriott's favor, Marriott moved for costs. Hawley opposed the motion on the ground that Marriott failed to provide adequate supporting documentation. The district court granted Marriott's motion for leave to file an amended memorandum of costs, and Marriott submitted an amended memorandum of costs with considerable supporting documentation. Hawley argued that Marriott failed to timely submit the amended memorandum of costs and adequately justify its claimed expert witness fees. The district court ultimately granted costs for Marriott in the amount of \$20,198.26. Among the costs awarded was \$2,000 for each of Marriott's four expert witnesses.

On appeal, Hawley argues that the district court abused its discretion by awarding costs in favor of Marriott because (1) Marriott

failed to submit its motion for leave to file an amended memorandum of costs within five days of the entry of judgment; and (2) Marriott failed to provide supporting documentation to justify an award of expert fees beyond the statutory allowance. We reject both contentions.

This court reviews a district court's decision to award costs for an abuse of discretion.<sup>1</sup> A district court may only make an award of costs when authorized by a statute, rule, or contract.<sup>2</sup> This court strictly construes statutes that permit the recovery of costs "because they are in derogation of the common law."<sup>3</sup> Nevertheless, "[t]he district court retains discretion . . . in determining the reasonableness of the amounts and the items of cost to be awarded."<sup>4</sup>

The district court did not abuse its discretion by awarding Marriott costs based on its amended memorandum of costs

Hawley argues that the district court abused its discretion by awarding costs to Marriott because Marriott moved for leave to file an amended memorandum of costs more than five days after the entry of judgment, and therefore, its amended memorandum of costs was not properly before the district court. We disagree.

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<sup>1</sup>Borgerson v. Scanlon, 117 Nev. 216, 221, 19 P.3d 236, 239 (2001).

<sup>2</sup>U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

<sup>3</sup>Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

<sup>4</sup>Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994).

NRS 18.020(3) permits an award of costs as a matter of course to the prevailing party in an action for the recovery of money damages in excess of \$2,500. Under NRS 18.110(1), the prevailing party must file with the clerk a memorandum of costs within five days after the entry of the judgment, or within such further time as the court or judge may grant. The five-day period is not jurisdictional.<sup>5</sup> District courts retain the discretion to reach the merits of an untimely motion for fees and costs.<sup>6</sup>

The district court entered judgment in favor of Marriott on May 31, 2006. Marriott filed its original memorandum of costs on May 12, 2006, and moved for leave to file an amended memorandum of costs on May 23, 2006. Marriott's countermotion was therefore filed before the entry of judgment on the jury verdict. Although the parties apparently agreed that the date the jury returned its verdict, May 8, 2006, was the date from which the five-day time period ran, they were mistaken. Rather, the date the district court entered judgment upon the jury verdict was the date from which the statutory time period ran.<sup>7</sup> Hawley's contention that Marriott's motion for leave to file an amended memorandum of costs was untimely filed is thus without merit. Furthermore, Marriott's amended memorandum of costs contained extensive supporting documentation justifying each of its claimed costs,

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<sup>5</sup>Eberle v. State ex rel. Redfield Trust, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992).

<sup>6</sup>Id.

<sup>7</sup>NRS 18.110(1); NRCP 54(a).

and thus, the district court did not abuse its discretion by awarding Marriott costs based on the amended memorandum of costs.

The district court did not abuse its discretion by awarding Marriott expert fees in excess of the statutory allowance

Hawley argues that the district court abused its discretion by awarding \$2,000 for each of Marriott's four expert witnesses because Marriott did not present any evidence that excess fees were necessary under the circumstances. We disagree.

Under NRS 18.005(5), the district court is authorized to award \$1,500 per expert for up to five expert witnesses, "unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." We have previously upheld awards in excess of the statutory allowance where the record revealed that the expert testimony constituted the bulk of the prevailing party's case.<sup>8</sup>

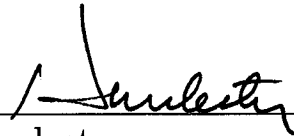
In this case, Marriott utilized experts with extensive qualifications, including a former NASA rocket scientist and two physicians. Because this evidence constituted the bulk of Marriott's defense, we cannot conclude that the district court abused its discretion by awarding Marriott expert fees in excess of the statutory allowance.

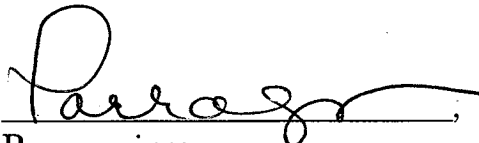
Accordingly, for the reasons stated above and in the absence of an abuse of discretion by the district court, we affirm the district court's order awarding costs.

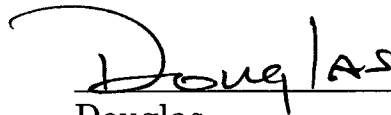
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<sup>8</sup>Gilman v. State, Bd. of Med. Exam'rs, 120 Nev. 263, 273, 89 P.3d 1000, 1006-07 (2004) (affirming an award of \$7,145 in expert fees where hearing transcript revealed that the expert's testimony constituted the bulk of the prevailing party's case).

It is so ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge  
William F. Buchanan, Settlement Judge  
McDonald Carano Wilson LLP/Las Vegas  
McDonald Carano Wilson LLP/Reno  
Brady, Vorwerck, Ryder & Caspino  
Eighth District Court Clerk