

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ROSS AND MALYNDA ROSS,
HUSBAND AND WIFE,

No. 34711

Appellants,

FILED

vs.

ROBERT ORRISON AND JOYCE
I. ORRISON, HUSBAND AND WIFE,

OCT 12 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

Respondents.

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment finding for respondents on their claim of fraud in the inducement and awarding damages. Appellants David Ross and Malynda Ross, husband and wife, sold to respondents Robert Orrison and Joyce I. Orrison, husband and wife, stock representing a 1% interest in La Societe de Developpement des Iles, Sarl, a Tahitian corporation (hereinafter "SDI") in exchange for five payments totaling \$100,000.00. Respondents later sued appellants claiming that they were fraudulently induced to enter into the transaction as a result of material misrepresentations of fact, upon which they detrimentally relied.

Appellants have not sought leave of this court to file a brief outlining the errors they contend the trial court made which warrant a reversal of the judgment. See NRAP 46(b). Our independent review of the record on appeal reveals no reversible error by the district court.

The district court denied appellants' motion for a second continuance of the trial, which began on October 2, 1996, was first continued until December 1996, and finally resumed on July 7, 1999. A district court order denying a motion for continuance will not be disturbed absent an abuse of discretion and absent "the most potent reasons." Benson v. Benson, 66 Nev. 94, 99, 204 P.2d 316, 318-19 (1949); see also

Neven v. Neven, 38 Nev. 541, 546, 148 Pac. 354, 356 (1915) (stating that the trial court is in the best position to determine whether a motion for a continuance is sought in good faith).

Here, the district court specifically stated that appellants "had every opportunity in the world to present [their] case, and [they] drag [their] feet every time [they] [appeared before the] court." Given the record on appeal before this court, it was not an abuse of discretion for the district court to deny appellants' motion for continuance.

Respondents tried their case to the bench as a common law fraud cause of action. Our review of the complaint indicates that respondents alleged fraud in the inducement and sought compensatory and punitive damages, rather than the remedy of rescission of the contract and restitution. Given the absence of transcripts containing the testimony presented on October 2, 3 and 4, 1996, we have no basis upon which to review whether the district court may have erred in its determination that respondents were fraudulently induced into entering the contract with appellants. See Primm v. Lopes, 109 Nev. 502, 853 P.2d 103 (1993) (stating that without transcripts we have no basis to assess appellant's claim of error).

The judgment recites the following with respect to the award of damages:

1. Plaintiffs . . . shall recover and have judgment in their favor against Defendants . . . , jointly or severally, in the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). In addition to said amount, Plaintiffs shall receive interest at the statutory rate set forth in N.R.S. 17.130 and 99.040, from the following dates on the amounts received by Defendants:

<u>DATE</u>	<u>AMOUNT</u>
November 22, 1990	\$5,000.00
December 23, 1990	\$5,000.00
January 22, 1991	\$1,000.00
February 19, 1991	\$4,000.00
February 19, 1991	\$85,000.00

Enumerated paragraph 1 of the judgment as to damages incorrectly applies NRS 17.130. NRS 17.130(2) reads in pertinent part as follows:

When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest **from the time of service of the summons and complaint** until satisfied

(Emphasis added.) Respondents' complaint was filed on September 14, 1993. The defendants were not served with process until sometime thereafter. NRS 17.130(2), by its plain terms, does not support an award of prejudgment interest commencing on the dates the five respective payments were made, since the installments were paid at least 2 1/2 years before suit was filed.

Furthermore, we conclude that the award of prejudgment interest cannot properly be based upon NRS 99.040. NRS 99.040(1)(c) provides, in pertinent part: "When there is no express contract in writing fixing a different rate of interest, interest must be allowed . . . **upon all money from the time it becomes due**, in the following cases . . . [u]pon money received to the use and benefit of another and detained without his consent." (Emphasis added.) See, e.g., Carter v. Barbash, 82 Nev. 289, 292-93, 417 P.2d 154, 155-56 (1966) (affirming trial court determination that interest ran from the date the amount became liquidated and due, which was the date Carter pleaded guilty to embezzlement). In Cobb v. Osman, this court held that interest pursuant to NRS 99.040 on an unliquidated claim is recoverable from the date of entry of the judgment, not prior thereto. 83 Nev. 415, 422, 433 P.2d 259, 262-63 (1967).

However, although not cited to in the judgment, we conclude that NRS 90.660 supports the award of prejudgment interest from the dates upon which each of the five respective


payments were made by respondents. NRS 90.660(1) states in pertinent part:

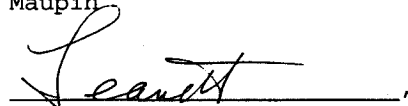
A person who offers or sells a security in violation of . . . Subsection 2 of NRS 90.570 . . . is liable to the person purchasing the security. . . . [T]he purchaser may recover the consideration paid for the security and interest at the legal rate of this state from the date of payment, costs and reasonable attorney's fees,

(Emphasis added.) Appellants' violation of NRS 90.570(2) is supported by the district court's findings of fact that appellants fraudulently induced respondents to enter into a stock transaction.

If a decision rendered by a district court is correct, it will not be disturbed on appeal even though the lower court relied upon the wrong reasons. See *Nelson v. Sierra Constr. Corp.*, 77 Nev. 334, 343, 364 P.2d 402, 406 (1961). In the case at bar, although the trial court's award of prejudgment interest is predicated upon the wrong reasons, the trial court's result is correct. Accordingly, the trial court's award of prejudgment interest at the legal rate of this state, from the date of each of the five respective payments, is affirmed.

Having reviewed the record on appeal, and concluding that there was no reversible error, we affirm the judgment of the district court.


Maupin J.


Leavitt J.


Becker J.

cc: Hon. Mario G. Recanzone, Senior Judge
James F. Sloan
David L. Ross
Malynda Ross
Churchill County Clerk