

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELICA RIOS; AND REBECA
VELASCO,
Appellants,
vs.
PROGRESSIVE NORTHERN
INSURANCE COMPANY,
Respondent.

No. 68631

FILED

MAY 09 2016

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a final judgment entered by the district court following a short trial. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.¹

Appellants were involved in a motor vehicle collision with a negligent third party; appellants resolved their claim with the third party and initiated a first-party claim with their own insurance, respondent Progressive, for underinsured motorist coverage. The matter proceeded to arbitration where appellant Angelica Rios was awarded \$7,500 and appellant Rebeca Velasco was awarded \$6,500. Respondent filed a Request for Trial De Novo and the matter proceeded to a bench trial through the Short Trial Program. The short trial judge (hereinafter "trial judge") rendered a verdict in favor of appellants Rios and Velasco, and against respondent, awarding appellants \$2,000 and \$1,000, respectively.

¹Although Judge Smith signed the judgment making it final pursuant to Nevada Short Trial Rule 3(d)(4), short trial judge John Graves, Jr. presided over the short trial and issued the order on appeal in this case.

However, the trial judge then declared respondent the prevailing party, awarding it attorney's fees and costs. In his subsequent Decision on Request for Fees, Costs, and Legal Interest, the trial judge stated respondent was found to be the prevailing party for attorney's fees and costs, quoting Nevada Arbitration Rule 20(B)(2)(a), awarding Progressive \$3,000 in attorney's fees and \$2,442.97 in costs.

Appellants filed a Motion for Reconsideration of the trial judge's award of attorney's fees and costs arguing they were the prevailing party, not respondent; therefore the fees and costs award to respondent should be vacated and should instead be awarded to appellants. The trial judge denied the Motion stating respondent was the prevailing party and entitled to attorney's fees and costs. Ultimately, the trial judge sent his final judgment to the district court judge, who signed the order making it final pursuant to Nevada Short Trial Rule 3(d)(4). The final judgment only indicated respondent was entitled to fees and costs pursuant to NAR 20. This appeal followed.²

It appears the trial judge determined respondent was the prevailing party based on NAR 20(B)(2), because respondent reduced its liability to appellants under the arbitration award by more than 20 percent. On appeal, appellants argue the trial judge erred in finding respondent was the prevailing party and awarding it attorney's fees and costs. Appellants also argue the trial judge erred in denying appellants' application for attorney's fees. We agree.

We review the district court's decision on awarding attorney's fees and costs for an abuse of discretion. *Las Vegas Metropolitan Police*

²We do not recount the facts except as necessary to our disposition.



Dep't v. Blackjack Bonding, 131 Nev. ___, ___, 343 P.3d 608, 614 (2015) reh'g denied (May 29, 2015), reconsideration en banc denied (July 6, 2015). An abuse of discretion can occur "when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *Id.* (citing *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993)).

The plain language of NAR 20(B)(2)(a) indicates this rule is not applicable in this case. The rule states that when the party requesting the trial de novo (respondent here) fails to obtain a judgment that reduces its liability by at least 20 percent, the non-requesting party (appellants here) is entitled to attorney's fees and costs. However, in this case, respondent requested the trial de novo and obtained a judgment that reduced its liability by more than 20 percent. Therefore, this rule is not implicated. The trial judge's observation that *Scott v. Zhou*, 120 Nev. 571, 98 P.3d 313 (2004) does not apply was misplaced, as the Nevada Supreme Court reached the same conclusion in *Scott*. The Nevada Supreme Court concluded that NAR 20(B)(2) was inapplicable because the party requesting the trial de novo did obtain a judgment over 20 percent less than what the arbitrator awarded. *Id.*

Additionally, NAR 20(B)(1) states the prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interests. The term "prevailing party" includes "plaintiffs, counterclaimants and defendants." *Smith v. Crown Financial Services of America*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995). A "prevailing party" is one that succeeds on "any significant issue in litigation which achieves some of the benefit it sought in bringing the suit. To be a prevailing party, a party need not

succeed on every issue." *Blackjack Bonding*, 131 Nev. at ___, 343 P.3d at 615 (citing *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).

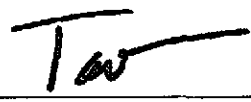
Here, appellants sought to recover damages from their underinsured motorist policy, the trial judge awarded appellants damages, and judgment was entered in their favor. Appellants prevailed on the significant issue in this litigation, the breach of contract claim, and achieved some of the benefit they sought in bringing this action. Although respondent reduced its liability at the short trial, appellants are nevertheless the prevailing party. *See Scott*, 120 Nev. at 573-74, 98 P.3d at 314-15 (while the district court recognized Scott reduced his liability at trial, Zhou was nevertheless the prevailing party). *See also Sack v. Tomlin*, 110 Nev. 204, 215, 871 P.2d 298, 305 (1994) (determining plaintiff was the prevailing party when she sought 99% of the proceeds from the sale of a home, defendant sought 50% of the proceeds, and the district court awarded an 82%/18% split of the proceeds in favor of plaintiff).

Accordingly, the trial judge abused his discretion in determining respondent was the prevailing party and in awarding respondent attorney's fees and costs.

We therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Persi J. Mishel, Settlement Judge
Kenneth L. Hall
Dennett Winspear, LLP
Eighth District Court Clerk

³On remand, the district court shall vacate the award of attorney's fees and costs to respondent, and determine the amount of reasonable attorney's fees and costs to be awarded to appellants as the prevailing party pursuant to NAR 20(B) and NSTR 27(b).