

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF  
STEVEN L. BACLET.

No. 76479-COA

JEFFREY BACLET,  
Appellant,

vs.

ROSALIE BACLET,  
Respondent.

No. 77483-COA

IN THE MATTER OF THE ESTATE OF  
STEVEN L. BACLET.

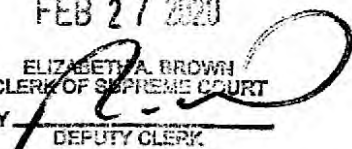
JEFFREY BACLET,  
Appellant,

vs.

ROSALIE BACLET,  
Respondent.

**FILED**

FEB 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART AND REVERSING IN PART*

In these consolidated appeals, Jeffrey Baclet appeals from a district court order concerning the distribution of certain properties to Rosalie Baclet as her sole and separate property (Docket No. 76479-COA) and a district court order awarding Rosalie attorney fees (Docket No. 77483-COA). Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Steven L. Baclet owned several properties with his sister Rosalie.<sup>1</sup> When Steven passed away in 2001, several of those properties were subject to probate. In his will, Steven designated that Rosalie was to receive 40 percent of his estate and his son, Jeffrey, the other 60 percent. Prior to the final distribution and pursuant to NRS 151.005, Jeffrey and

<sup>1</sup>We do not recount the facts except as necessary for our disposition.

Rosalie agreed to distribute the estate differently than the will intended. This written agreement contained language that Rosalie was to hold three properties in trust for Jeffrey until she died or chose to terminate the trust and deed the properties to him. However, in 2003, the district court's order distributing the properties in probate did not state that Rosalie was holding any properties in trust; nor did it mention the word trust. The only property distributed to Rosalie in that order was expressly designated as her sole and separate property.

Eight years later, in 2011, Jeffrey filed a petition in the district court alleging that Rosalie had failed to provide an accounting of rents she was receiving for the properties allegedly held in trust under the written agreement. Moreover, he asserted that she had let the properties fall into disrepair. Jeffrey requested the district court to confirm there was a trust and to remove Rosalie as trustee and either appoint a new trustee or terminate the trust. The district court denied his request; it concluded that Jeffrey was equitably estopped from asserting there was a trust because he had waited too long before attempting to correct any mistake in the 2003 order or enforce duties under the alleged trust. Based on this rationale, the district court concluded he brought his case without reasonable grounds and awarded Rosalie over \$144,000 in attorney fees under NRS 18.010(2)(b). Jeffrey appealed both orders, and the appeals were consolidated.

*The district court did not abuse its discretion by applying equitable estoppel*

Regarding the appeal in docket number 76479-COA, Jeffrey argues that the district court erred when it determined there was no trust. However, Jeffrey's opening brief does not directly address the district court's central ruling: specifically, that Jeffrey was equitably estopped from claiming there is a trust. Therefore, we must determine if the district court abused its discretion when it applied equitable estoppel before we would

need to address whether there was a trust. We conclude the district court did not abuse its discretion and affirm this order.

“Equitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party’s conduct.” *In re Harrison Living Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-62 (2005) (footnote omitted) (applying equitable estoppel to bar an NRCP 60(b)(4) motion). In Nevada, equitable estoppel has four elements:

(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

*Id.* at 223, 112 P.3d at 1062 (quoting *Chequer, Inc. v. Painters & Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)). We limit our review to the first element of equitable estoppel, as that is the only element that Jeffrey addresses in his opening brief. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that “[i]ssues not raised in an appellant’s opening brief are deemed waived”). Appellate courts review a district court’s decision to apply equitable estoppel for an abuse of discretion. *In re Harrison Living Trust*, 121 Nev. at 222, 112 P.3d at 1061 (footnote omitted).

Here, Jeffrey argues that he did not know until 2011 that Rosalie was not holding the titles of the three properties in trust for him, and thus, the first element of equitable estoppel was not satisfied. However, the district court found that Jeffrey had notice that the properties were not held in trust, as the 2003 order made no mention of a trust. Additionally,

Jeffrey testified that he attempted to cloud the titles of two of the properties in 2004 by recording affidavits, suggesting that he knew the titles did not indicate they were being held in trust for him. Furthermore, in 2005, he recognized that one of the properties was falling into disrepair and that Rosalie was renting it out without providing an accounting of the rents. But Jeffrey did not attempt to enforce any of his rights as a potential beneficiary until 2011. Based on these facts, we cannot say that the district court abused its discretion when it found Jeffrey was apprised of the facts and applied equitable estoppel to deny Jeffrey's claim.

*The district court abused its discretion when it awarded attorney fees*

For the appeal in docket number 77483-COA, Jeffrey argues that the district court abused its discretion when it awarded Rosalie attorney fees per NRS 18.010(2)(b). We agree.

When a district court “finds that [a] claim . . . was brought or maintained without reasonable ground,” it may award attorney fees to the prevailing party. NRS 18.010(2)(b). When reviewing an attorney fee award pursuant to NRS 18.010(2)(b), appellate courts review for an abuse of discretion. *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 580, 427 P.3d 104, 112 (2018). “Although a district court has discretion to award attorney fees under NRS 18.010(2)(b), there must be evidence supporting the district court’s finding that the claim or defense was unreasonable or brought to harass.” *Id.* at 580-81, 427 P.3d at 113 (quoting *Bower v. Harrah’s Laughlin Inc.*, 125 Nev. 470, 493, 215 P.3d 709, 726 (2009)). For a claim to be frivolous or groundless under NRS 18.010(2)(b), there cannot be any credible evidence to support it. *Id.* at 580, 427 P.3d at 113 (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995)).

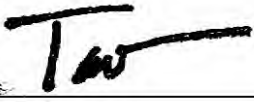
NRS 18.010(2)(b) has two components. Fees may be awarded either when (1) a pleading was initially brought with no reasonable ground, or (2) an action was initially brought with reasonable grounds, but it becomes apparent there is no reasonable ground for maintaining it. Here, the district court relied solely upon the first ground. Thus, the district court needed to find that Jeffrey's petition was brought without reasonable grounds at the outset.

The court ultimately concluded that Jeffrey's claim was barred by the doctrine of equitable estoppel, but it did not find that the petition lacked all merit or that it was initially filed in order to harass Rosalie. More importantly, whether or not it actually made these findings, our review of the record reveals that it could not have. Quite to the contrary, the record indicates that the documents in question were rife with ambiguities that could easily have been resolved in Jeffrey's favor and, had the court not sua sponte applied the defense of estoppel, he might well have prevailed. Moreover, although Jeffrey ultimately lost based upon that defense, the defense was not asserted in the responsive pleadings below, which suggests that even Rosalie did not initially recognize the defense as a valid one. Rather, estoppel was first mentioned much later when the district court raised it for the first time—sua sponte—after the trial had already concluded. Under these circumstances, when the defendant herself did not recognize the defense, the district court sua sponte raised the defense, and the application of the defense requires a delicate balancing of factors which, in this case, could go either way, it cannot be said that Jeffrey's petition was so obviously going to fail from the beginning that it should never have been brought at all. Thus, the district court abused its discretion when it

awarded Rosalie attorney fees pursuant to NRS 18.010(2)(b). Accordingly,  
we

ORDER the district court's order denying Jeffrey's petition in  
Docket No. 76479-COA AFFIRMED and REVERSE the district court's  
attorney fee order in Docket No. 77483-COA.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Connie J. Steinheimer, District Judge  
David E. Adkins  
M. Jerome Wright  
Michael C. Lehnert  
Robertson, Johnson, Miller & Williamson  
Washoe District Court Clerk