

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY R. SCHMIDT,
Appellant/Cross-Respondent,

vs.

UTILITIES SERVICE DIVISION OF
WASHOE COUNTY DEPARTMENT OF
WATER RESOURCES,
Respondent/Cross-Appellant.

No. 37830

FILED

SEP 10 2002

JANETIE M. GLOVER
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting attorney fees after a final judgment. After successfully filing suit to obtain public records he requested from respondent/cross-appellant Utilities Services Division of Washoe County Department of Water Resources ("USD"), appellant/cross-respondent Gary Schmidt requested over \$25,000.00 in attorney fees pursuant to NRS 239.011.¹ Although it

¹NRS 239.011 provides:

If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from

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found that Schmidt was the prevailing party, the district court believed that \$25,000.00 was an unreasonable fee amount, and accordingly reduced the fee award to \$6,300.00. On appeal, Schmidt claims that the district court abused its discretion in reducing his fee award. We disagree.

USD argued that it was not liable for Schmidt's fees because it acted in good faith, and was thereby immune from liability for damages under NRS 239.012.² The district court rejected this argument, ruling that attorney fees do not constitute "damages" under the public records statutes. USD now appeals this ruling. We affirm the order of the district court.

Damages under NRS 239.012

USD contends that Schmidt could not be the prevailing party because the district court found that USD did not act in bad faith. In contrast, Schmidt argues that the plain language of NRS 239.011 does not require a showing of governmental bad faith before a prevailing party may receive its fees and costs.

We believe that the plain language of NRS 239.011 allows a prevailing party to recover costs and fees regardless of a governmental

. . . continued

the governmental entity whose officer has custody
of the book or record.

²NRS 239.012 states: "A public officer or employee who acts in good faith in disclosing or refusing to disclose information and his employer are immune from liability for damages, either to the requester or to the person whom the information concerns."

entity's good or bad faith in failing to produce public records. NRS 239.012 provides immunity from damages for "[a] public officer or employee," rather than a governmental agency or entity itself. This language supports Schmidt's contention that NRS 239.012 protects individual government employees from an independent suit for money damages, but is unrelated to a party's entitlement to fees under NRS 239.011. Thus, the district court properly ordered USD to pay Schmidt's reasonable attorney fees.

Amount of attorney fees

The amount of attorney fees awarded is within the exercise of sound discretion by the trial court.³ A trial court should consider four factors in calculating attorney fees: "[1] the qualities of the advocate, [2] the character of the work to be done, [3] the work actually performed by the lawyer, and [4] the result. . . . [U]nless there is a manifest abuse of discretion, a district court award of attorney's fees will not be overturned on appeal."⁴


It is impossible to conclude that the district court abused its discretion in reducing the amount of attorney fees awarded to Schmidt. The parties extensively briefed the fee issue, and the district court analyzed each of the Brunzell factors and reviewed the parties' arguments.

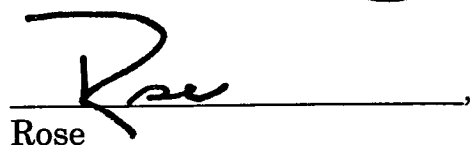
³See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 350, 455 P.2d 31, 33-34 (1969).


⁴Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991) (citations omitted).

The trial court was in the best position to determine the reasonableness of Schmidt's fees. Thus, we will not disturb this discretionary award. We hereby

ORDER the district court's order AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Gary M. Pakele
Washoe County District Attorney
JoNell Thomas
Washoe District Court Clerk