

IN THE SUPREME COURT OF THE STATE OF NEVADA

MERL F. STEWART,  
Appellant,

vs.

VERA L. STEWART,  
Respondent.

No. 39563

MERL F. STEWART,  
Appellant,

vs.

VERA L. STEWART,  
Respondent.

No. 44064

**FILED**

**APR 19 2006**

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order granting a claim against funds on deposit and an order awarding attorney fees. Second Judicial District Court, Family Court Division, Washoe County; Scott Jordan, Judge.

We have reviewed the briefs and the record, and we affirm the judgment of the district court. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Claim against funds on deposit

A district court's award of legal interest as damages is reviewed de novo where the facts are undisputed. A preliminary injunction is wrongful where the injunction is subsequently dissolved.<sup>1</sup> A

<sup>1</sup>See Tracy v. Capozzi, 98 Nev. 120, 124, 642 P.2d 591, 594 (1982) ("injunctive restraints are 'wrongful' and recovery on the bond permissible, if such restraints are later dissolved regardless of the good or bad faith of the complainant in seeking the restraint").

party wrongfully enjoined is entitled to recover “the actual expense and loss occasioned by the writ of the injunction” from the posted bond, including “such other damage as the natural and proximate consequence of the issuance and enforcement of the writ, and no more.”<sup>2</sup> Merl Stewart posted a \$75,000 bond to enjoin Vera Stewart from selling her 100-acre parcel. The injunction was subsequently dissolved. The district court properly found that Vera was entitled to statutory interest as damages for Merl’s wrongful preliminary injunction. Merl’s preliminary injunction prevented Vera from selling the 100-acre parcel for \$238,360.26 in 1999. As a result of the injunction, Vera was unable to sell the property until 2002.

NRS 17.130(2) provides that a judgment or decree draws interest at the statutory rate “from the time of the entry of the judgment until satisfied.” It is well settled that the purpose of post-judgment interest is to “compensate the plaintiff for loss of the use of the money awarded in the judgment.”<sup>3</sup> Vera was awarded the 100-acre parcel in the parties’ divorce decree, as an equalizing payment in lieu of a promissory note. The injunction temporarily prevented Vera from realizing \$238,360.26 in proceeds from the sale of the property awarded in the divorce decree. Vera’s loss of monetary interest on the sale proceeds was a natural and proximate consequence of the injunction. Vera did obtain rental income from the property; however, the district court properly offset

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<sup>2</sup>American Bonding Co. v. Roggen Enters., 109 Nev. 588, 591, 854 P.2d 868, 870 (1993); see NRCPC 65(c).

<sup>3</sup>Powers v. United Servs. Auto Ass’n, 114 Nev. 690, 705, 962 P.2d 596, 605 (1998); see also Dillard Department Stores v. Beckwith, 115 Nev. 372, 381, 989 P.2d 882, 888 (1999).

damages with the net rental income. The district court did not err in awarding interest damages to Vera.

### Attorney fees

“Unless there is a manifest abuse of discretion, a district court’s award of attorney fees will not be overturned on appeal.”<sup>4</sup> A wrongfully enjoined party may also recover attorney fees to the extent the attorney fees relate to the dissolution of the injunction.<sup>5</sup> The district court found that \$7,359.00 of Vera’s attorney fees was related to the dissolution of the injunction. We affirm that finding.

Merl contends that the district court did not have jurisdiction to award attorney fees from the bond once the bond was released.<sup>6</sup> Vera requested attorney fees long before the bond was released. The district court failed to address Vera’s initial motion for attorney fees while the bond was still in place. Vera consequently appealed what she believed was the district court’s denial of her award of attorney fees. We dismissed Vera’s appeal on that issue because we held that the district court retained jurisdiction because it did not make a final written determination

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<sup>4</sup>Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994).

<sup>5</sup>Artistic Hairdressers, Inc. v. Levy, 87 Nev. 313, 317, 486 P.2d 482, 485 (1971); see also Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 959, 35 P.3d 964, 971 (2001).

<sup>6</sup>We have reviewed Buddy Systems, Inc. v. Exer-Genie, Inc., 545 F.2d 1164 (9th Cir. 1976). Buddy is distinguishable from this case.

on Vera's attorney fees.<sup>7</sup> The doctrine of the law of the case provides that "where an appellate court states a [principle] or rule of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower courts and on subsequent appeals, so long as the facts remain substantially the same."<sup>8</sup> Our holding was the law of the case, and the district court retained jurisdiction to award attorney fees after the bond was released. In addition, the award of attorney fees, combined with the award of damages, did not exceed the posted amount of the bond. Merl's arguments are meritless.

Further, "attorney's fees may be awarded in post-divorce proceedings under NRS 125.150(3)."<sup>9</sup> Merl contends that NRS 125.150(3) only allows continuing jurisdiction to award attorney fees in post-divorce proceedings for support and child custody. We disagree. Where the parties continue to engage in divorce and post-divorce proceedings, as the parties have here, the court has continuing jurisdiction to award attorney fees. The wrongful injunction was entered pending an appeal of the divorce decree. The wrongful injunction was a part of the post-divorce proceedings.

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<sup>7</sup>Stewart v. Stewart, Docket No. 39563 (Order Dismissing Appeal and Allowing Cross-Appeal to Proceed, October 3, 2003).

<sup>8</sup>Geissel v. Galbraith, 105 Nev. 101, 103, 769 P.2d 1294, 1295 (1989).

<sup>9</sup>Halbrook v. Halbrook, 114 Nev. 1455, 1461, 971 P.2d 1262, 1266 (1998).

The district court did not err in awarding Vera's damages and attorney fees from the injunction. Accordingly, we affirm the district court's orders.

It is so ORDERED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Chuck Weller, District Judge, Family Court Division  
Smith & Harmer  
Law Offices of Ryan J. Earl  
Washoe District Court Clerk