

APN# 1318-10-415-072



KAREN ELLISON, RECORDER

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Order Regarding Attorney's Fees

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Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

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Richard J. McGuffin, Esq. Attorney for Wallaces

Printed Name

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1 Case No. 15-CV-0132

2 Dept. No. II

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[Signature]
DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

9 GERALD L. WALLACE JR., and
10 ELIZABETH O. WALLACE,
11 individually, and as Husband
12 and Wife,

Plaintiffs,

12 vs.

ORDER REGARDING ATTORNEY'S FEES

13 GREGORY J. PISANI and GENNEL A.
14 PISANI, individually and as
15 Trustees of the PISANI FAMILY
16 TRUST; ALL OTHER PERSONS
17 UNKNOWN CLAIMING ANY RIGHT,
18 TITLE, ESTATE, LIEN OR INTEREST
19 IN THE REAL PROPERTY DESCRIBED
20 IN THE COMPLAINT ADVERSE TO
21 PLAINTIFFS' OWNERSHIP, OR ANY
22 CLOUD UPON PLAINTIFFS' TITLE
23 THERETO; and DOES 1 through 10,
24 inclusive,

Defendants.

21 THIS MATTER comes before the Court on Defendants' *Objection*
22 *to an Order Granting Attorney's Fees*, filed December 8, 2017, and
23 *Plaintiffs' Motion to Enlarge Award of Attorney's Fees*, filed
24 November 13, 2018. The Court having considered the briefs,
25 exhibits and the record herein, finds and orders as follows:

26 Procedural Background

27 On November 17, 2017, the Court entered an *Order Granting*
28 *Motion to Enforce Settlement ("Order")*. The Court awarded

1 Plaintiffs reasonable attorney's fees pursuant to NRS 18.010(2)(b)
2 and ordered Plaintiffs to file affidavits and/or exhibits
3 supporting the amount of fees requested. *Id.* The Court also
4 entered a *Judgment of Permanent Injunction* and an *Order Quieting*
5 *Title and Adjusting Property Boundaries*.

6 On December 1 and December 6, 2017, counsel for Plaintiffs
7 filed affidavits in support of their request for attorney's fees
8 totalling \$16,421.25.

9 On December 8, 2017, Defendants filed an *Objection to an*
10 *Order Granting Attorney's Fees* ("*Objection*"). Plaintiffs filed a
11 responsive brief on December 26, 2017. Defendants did not file a
12 reply.

13 On January 2, 2018, Defendants filed a *Notice of Appeal* and
14 a *Case Appeal Statement*. In part, Defendants' appeal contested
15 the award of attorney's fees. *Case Appeal Statement*, p. 5.

16 On October 23, 2018, the Nevada Supreme Court issued an *Order*
17 *Dismissing Appeal* "pursuant to the stipulation and amended
18 stipulation of the parties." The parties stipulated that "the
19 issue of costs and fees, if any are recoverable, shall be
20 addressed by the trial court on remand." *Stipulation to Dismiss*
21 *and Amended Stipulation to Dismiss*.

22 On November 13, 2018, Plaintiffs filed the pending *Motion to*
23 *Enlarge Award of Attorney's Fees* ("*Motion*"). The *Motion* has been
24 fully briefed and is ripe for consideration.

25 Analysis

26 **I. Pre-Appeal Attorney's Fees**

27 The Court having been fully apprised of the arguments for and
28 against an award of attorney's fees pursuant to NRS 18.010(2)(b),

1 awarded Plaintiffs pre-appeal attorney's fees. Order, November
2 17, 2017. The Order was entered upon consideration of the request
3 for attorney's fees contained within Plaintiffs' Motion to Enforce
4 Settlement. Defendants opposed the request for attorney's fees in
5 Defendants' Opposition to Motion to Enforce Settlement.
6 Plaintiffs further addressed the issues of attorney's fees in
7 Plaintiffs' reply brief.

8 On December 8, 2017, Defendants filed a document entitled
9 *Objection to An Order Granting Attorney's Fees*, wherein Defendants
10 once again argue against the appropriateness of awarding
11 attorney's fees pursuant to NRS 18.010(2)(b). The *Objection* re-
12 states the same or similar arguments as those raised by Defendants
13 in their *Opposition to Motion to Enforce Settlement*.

14 Defendants' *Objection* is a fugitive document in the sense
15 that it does not cite legal authority authorizing its filing and
16 does not request any relief from the Order. "No motion once heard
17 and disposed of shall be renewed in the same cause, nor shall the
18 same matters therein embraced be reheard, unless by leave of court
19 granted upon motion therefor, after notice of such motion to the
20 adverse parties." DCR 13(7); NJDCR 6(h). Defendants did not
21 request leave of court to have the matter reheard and leave has
22 not been granted. A motion for reconsideration must be filed
23 within "twenty (20) days after enter of the order..." NJDCR 6(h).
24 Defendants' *Objection* was filed twenty-one (21) days after entry
25 of the Order.

26 The Court already awarded Plaintiffs' pre-appeal attorney's
27 fees pursuant to NRS 18.010(2)(b). To the extent Defendants'
28 *Objection* seeks reconsideration of the ruling, the request is not

1 appropriately before the Court and is denied.

2 Turning to the amount of the award, Plaintiffs request pre-
3 appeal attorney's fees of \$16,421.25. Defendants' *Objection* does
4 not contest or address the reasonableness of pre-appeal fees
5 requested by Plaintiffs. The same goes for Defendants' *Opposition*
6 to *Motion to Enlarge Award of Attorney's Fees*. The Court
7 considers Defendants' failure to contest the amount of the fees as
8 an admission that the amount requested is reasonable and proper.
9 DCR 13(3). Nonetheless, the Court has reviewed the affidavits of
10 Plaintiffs' counsel filed back in December 2017 and has weighed
11 all of the factors supplied by *Brunzell v. Golden Gate Nat. Bank*,
12 85 Nev. 345 (1969). The work performed by Plaintiffs' counsel was
13 important as it sought to keep intact the settlement that was
14 achieved after enormous effort. Based upon the result, the work
15 performed was effective. The amount of time contributed to the
16 effort was reasonable as are the hourly rates charged by counsel.
17 The Court finds that \$16,421.25 represents a reasonable value for
18 the pre-appeal legal services rendered by Plaintiffs' counsel in
19 seeking enforcement of the settlement.

20 **II. Attorney's Fees on Appeal**

21 Following dismissal of Defendants' appeal, Plaintiffs filed
22 the pending *Motion to Enlarge Award of Attorney's Fees*.
23 Plaintiffs request an additional award of \$22,737.50, representing
24 attorney's fees generated in opposing Defendants' appeal.
25 Defendants are opposed.

26 Attorney's fees may only be awarded as authorized by statute,
27 rule or contract. *U.S. Design & Constr. v. I.B.E.W. Local 357*,
28 118 Nev. 458, 462 (2002). Plaintiffs' request for attorney's

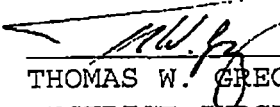
1 fees on appeal is made pursuant to NRS 18.010(2)(b). That statute
2 does not authorize the Court to award attorney's fees for efforts
3 to defend an appeal. NRS 18.010; *Bd. of Gallery of History v.*
4 *Datecs Corp.*, 116 Nev. 286, 288 (2000); *Bobby Berosini, Ltd. v.*
5 *People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1356-
6 57 (1998).

7 Plaintiffs argue that through legislative amendments to NRS
8 18.010, the statute now authorizes district courts to grant
9 attorney's fees generated on appeal. The Court disagrees. NRS
10 18.010 does not expressly authorize awarding attorney's fees to
11 defend an appeal. The Nevada Supreme Court continues to cite
12 approval for the above noted authorities despite the legislative
13 amendments. *See, e.g., Tulelake Horseradish, Inc. v. Santa*
14 *Margarita Ranch, LLC*, 2016 Nev.LEXIS 570 (June 20, 2016, Docket
15 69305) (Unpublished). Plaintiffs' request for attorney's fees on
16 appeal pursuant to NRS 18.010 is denied.

17 IT IS HEREBY ORDERED that Defendants' *Objection to an Order*
18 *Granting Attorney's Fees* is DENIED. The award of attorney's fees
19 provided for in the *Order Granting Motion to Enforce Settlement* is
20 affirmed. The amount of award, \$16,421.25 payable by Defendants
21 to Plaintiffs, is reduced to judgment.

22 IT IS FURTHER ORDERED that Plaintiffs' *Motion to Enlarge*
23 *Award of Attorney's Fees* is DENIED.

24 DATED this 20th day of December, 2018.

25
26 
27 THOMAS W. GREGORY
28 DISTRICT JUDGE

1 Copies served by mail on December 20th, 2018, addressed to:
2
3 Richard J. McGuffin, Esq.
4 P.O. Box 3390
5 Stateline, Nevada 89449
6
7 John M. Langeveld, Esq.
8 2450 St. Rose Parkway, Ste 200
9 Henderson, Nevada 89704
10
11 Robert Otilie, Esq.
12 444 West C. Street, Ste. 320
13 San Diego, California 92101
14
15 Richard L. Elmore, Esq.
16 3301 S. Virginia Street, Suite 125
17 Reno, Nevada 89502

Erin C. Plante
Erin C. Plante

CERTIFIED COPY

27 The document to which this certificate is attached is a
28 full, true and correct copy of the original in file and of
record in my office...

DATE January 11, 2019
BOBBIE R. WILLIAMS, Clerk of Court
of the State of Nevada, in and for the County of Douglas,
By [Signature] Deputy

THOMAS W. GREGORY
DISTRICT JUDGE
NINTH JUDICIAL
DISTRICT COURT
P.O. BOX 218
MINDEN, NV 89423