

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 81172 (Consolidated with Case No. 81018)

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PAUL S. PADDA, AN INDIVIDUAL; AND PAUL PADDA LAW, PLLC, A NEVADA
PROFESSIONAL LIMITED LIABILITY COMPANY;

Cross-Appellants,

v.

RUTH L. COHEN, AN INDIVIDUAL,

Cross-Respondent,

On appeal from the Eighth Judicial District Court, Clark County, Nevada (Dept. XI, Hon.
Elizabeth Gonzalez); District Court Case No. A-19-792599-B

CROSS-APPELLANTS' REPLY BRIEF IN CASE NO. 81172

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Cross-Appellant Paul S. Padda is an individual;

Cross-Appellant Paul Padda Law, PLLC, is a Nevada professional limited liability company that has no parent company or entity and is not owned by any publicly held company or entity.

These parties have been represented by the following attorneys and law firms in the action below:

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DATED this 23rd day of April 2021.

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TABLE OF CONTENTS

RULE 26.1 DISCLOSURE	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
I. INTRODUCTION.....	1
II. ARGUMENT	4
A. Ms. Cohen had no legitimate claims to recover legal fees earned while she was a nonlawyer.....	4
B. The district court erred by considering the amount of Ms. Cohen’s claimed, yet legally unobtainable damages without considering the amount of the Padda Parties’ offer of judgment.....	9
C. The district court should have considered the amount of attorneys’ fees requested by the Padda Parties.	11
III. CONCLUSION	13
CERTIFICATE OF COMPLIANCE.....	14
VERIFICATION	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

	Page(s)
<u>CASES</u>	
<i>Beattie v. Thomas</i> , 99 Nev. 579, 668 P.2d 268 (1983).....	4, 8, 9, 11
<i>Brunzell v. Golden Gate Nat’l Bank</i> , 85 Nev. 345, 455 P.2d 31 (1969).....	12-13
<i>Cent. Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.</i> , 102 Nev. 139, 717 P.2d 35 (1986).....	4, 7
<i>Chicago Title Agency v. Schwartz</i> , 109 Nev. 415, 851 P.2d 419 (1993).....	4, 9
<i>Fireman’s Fund Ins. Co. v. Shawcross</i> , 84 Nev. 446, 442 P.2d 907 (1968).....	4, 5, 9
<i>Wynn v. Smith</i> , 117 Nev. 6, 16 P.3d 424 (2001).....	9
<i>Yamaha Motor Co., U.S.A. v. Arnoult</i> , 114 Nev. 233, 955 P.2d 661 (1998).....	8, 9

STATUTES

NRS 17.117.....	1
-----------------	---

OTHER AUTHORITIES

NRPC 5.4(a)	5
NRCP 11	1
NRCP 68	1, 4

I. INTRODUCTION

The very first inquiry a court must make when evaluating whether or not to award attorneys' fees pursuant to the penalty provisions of NRCP 68(f)(2) or NRS 17.117(10)(b) concerns whether the plaintiff brought her claims in good faith. Before a party brings a claim or set of claims seeking to recover damages, the party and her legal counsel have an affirmative duty to make a reasonable inquiry as to the evidentiary support for her claimed damages as well as the legal recoverability of those claimed damages under existing law. *See* NRCP 11(b). The party and her counsel certify they completed this inquiry by signing and filing the party's complaint. *See id.*

Cross-Respondent Ruth L. Cohen ("Ms. Cohen") brought ten (10) claims against Cross-Appellants Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, the "Padda Parties") on April 9, 2019. In every single claim, Ms. Cohen sought a single measure of damages: legal fees earned on several specified and unspecified cases. Virtually all of the damages Ms. Cohen sought—95%, *see* X JA 1988—came from the legal fees earned on two cases that were resolved while Ms. Cohen was a nonlawyer due to the suspension of her law license.

Ms. Cohen maintains that her claims were legitimate and brought in good faith when neither she nor her counsel examined the legal viability of these claims in light

of her nonlawyer status at the time these legal fees were earned. In fact, Ms. Cohen testified that she believed her nonlawyer status at the time these cases were resolved had “nothing to do with” her claims. *See* III JA 267. That is, until the Padda Parties filed their Motion for Summary Judgment more than eight (8) months after Ms. Cohen filed her Complaint. Whatever “bringing claims in good faith” means, it cannot permit a party to assume she is entitled to recover whatever damages she feels she is owed without making any inquiry into whether her recovery of those damages is legal.

Ms. Cohen’s failure to determine whether she could recover her claimed damages manifested itself time and time again throughout discovery as she downplayed or denied her nonlawyer status during her deposition and in response to requests for admission. Instead of appreciating the legal roadblocks to her claimed damages, Ms. Cohen focused more and more attention on a sprawling set of general grievances with Mr. Padda personally and his management of his law practice that had little to do with her original claims. In short, Ms. Cohen neither brought her claims in good faith nor prosecuted them in good faith.

When the dispositive motions deadline arrived and the Padda Parties filed their Motion for Summary Judgment, they gave Ms. Cohen the opportunity to settle her case with a six-figure recovery through an offer of judgment despite the reality that Ms. Cohen was legally barred from recovering any of her damages. Once more,

Ms. Cohen did not seriously consider the fundamental legal flaw in her case nor did she put any thought into the Padda Parties' substantial offer of judgment. Rather than exercise reason, Ms. Cohen chose to take a dubious gamble that required the Padda Parties to spend hundreds of thousands of dollars in legal fees as they prepared for an extensive and hotly contested jury trial. Ms. Cohen did not reject the Padda Parties' offer of judgment in anything resembling good faith.

Ms. Cohen's theory of her case has been kaleidoscopic. As one version of her case dissolves, a brand-new image instantly appears without any reflection or careful consideration. Each transformation of Ms. Cohen's case is precipitated by the same problem: the evidence does not suit her theories and the law does not support her claims. Even at this late stage on appeal, Ms. Cohen is spontaneously generating new unsupported claims—*see, e.g.*, her recent claim that she “transferred responsibility” for the big cases in which she claims millions of dollars in legal fees to Mr. Padda years before they resolved, *see* Cross-Respondent's Answering Brief (CRAB) at 12. As Ms. Cohen careens thoughtlessly from unfounded claim to disproved allegation to legal impossibility, the Padda Parties have had to beat on, boats against the current, as they endeavor to preserve their business, the livelihood of their employees, and the financial security of their employees' families in the face of the existential threat posed by Ms. Cohen's machinations.

Because Ms. Cohen neither brought her claims nor rejected the Padda Parties' offer of judgment in good faith and because the Padda Parties' offer of judgment was fair and reasonable in both timing and amount, the district court abused its discretion by denying the Padda Parties' Motion for Attorneys' Fees. This Court should reverse.

II. ARGUMENT

A. Ms. Cohen had no legitimate claims to recover legal fees earned while she was a nonlawyer

Ms. Cohen correctly identifies that “the purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forego legitimate claims.” *See Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). However, Ms. Cohen never had any legitimate claims that she would have been forced to forego unfairly by accepting the Padda Parties' offer of judgment.

Whether a case sounds in tort or contract, the plaintiff must plead and prove her damages. *Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993); *Cent. Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986) (“[T]he burden of establishing damages lies on the injured party.”). If the plaintiff is barred from recovering the damages she seeks on a particular claim, the claim must fail as a matter of law. *See Chicago Title Agency*, 109 Nev. at 418, 851 P.2d at 421; *Fireman's Fund Ins. Co. v. Shawcross*, 84 Nev.

446, 453, 442 P.2d 907, 912 (1968) (citing *Brown v. Lindsay*, 68 Nev. 196, 228 P.2d 262 (1951)).

Here, Ms. Cohen sought, through various contract-based and tort-based claims, to enforce a contractual provision that would putatively require Mr. Padda to pay Ms. Cohen millions of dollars in legal fees earned on certain cases resolved when Ms. Cohen was a nonlawyer. In short, Ms. Cohen sought a judgment that would require Mr. Padda, a lawyer, to share legal fees with Ms. Cohen, a nonlawyer, contrary to the plain language of NRPC 5.4(a).

From the start of her case through present, Ms. Cohen has never presented any direct or analogous legal support from this jurisdiction or any other that would permit her to share in legal fees earned on matters resolved while she was a nonlawyer and in which she had only perfunctory participation while she was a lawyer. Instead, Ms. Cohen has elected to downplay the legal consequences of her nonlawyer status, *see* II JA 264 (304:9-12), 265 (309:3-20), 267 (316:2-3), deny that she was in fact suspended from the practice of law, *see* I JA 129, seek reinstatement of her law license, *see* III JA 565-566; IV JA 860-863, contend that she never had a role in these matters and was not required to do any work to earn a share of the fees, *see* CRAB at 4 (citing VIII JA 1705), and suggest without support—and contrary to her contention she little role in these cases—that she had sole responsibility for these matters and transferred that responsibility to Mr. Padda and/or Padda Law in

exchange for a share of the fees, *see* CRAB at 12; Cohen's Opening Brief (COB) at 2, 8, 10. Ms. Cohen's argumentative tap-dancing betrays the legal vacuousness of her claims. Simply, no legal avenue or mechanism exists that would allow Ms. Cohen to recover legal fees earned while she was a nonlawyer in this case.

Ms. Cohen recasts the Padda Parties' arguments in this appeal as suggesting that Ms. Cohen's claims lack legitimacy *because* the district court said so. *See* CRAB at 17. This is an inaccurate portrayal of the Padda Parties' position. The Padda Parties maintain that, irrespective of the district court's order, Ms. Cohen's claims were always illegitimate because she sought a judgment that would require a lawyer to share legal fees with a nonlawyer contrary to Nevada law. *See generally* Respondents' Answering Brief (RAB) at 23-32. For this reason, the Padda Parties maintain that Ms. Cohen could not have brought her claims in good faith such that the district court ought to have granted their Motion for Attorneys' Fees. It just so happens to be the case that the district court's order granting the Padda Parties' Motion for Summary Judgment supports the Padda Parties' position and undermines the district court's order denying the Padda Parties' Motion for Attorneys' Fees.

Ms. Cohen assails the Padda Parties' contention that she did not bring her claims or reject their offer of judgment in good faith by citing what she suggests is abundant evidence supporting the elements of her claims beyond damages. *See* CRAB at 17-20. However, without a lawful path to recover the damages she sought

due to the nature of those damages in combination with Ms. Cohen's nonlawyer status, the legitimacy or evidentiary support for the other elements of Ms. Cohen's claims are, as the district court effectively concluded, irrelevant. While the Padda Parties strenuously disagree with the extremely charitable summary of the evidence Ms. Cohen provides this Court in her Answering Brief, the fact remains that the other elements of Ms. Cohen's claims cannot salvage her lack of legally recoverable damages. Without any recoverable damages, Ms. Cohen's claims necessarily failed as a matter of law. *See Cent. Bit Supply, Inc.*, 102 Nev. at 142, 717 P.2d at 37.

Ms. Cohen then accuses the Padda Parties of faulting her for introducing her legal arguments in support of her ability to recover legal fees while she was a nonlawyer for the first time in her post-judgment motion for reconsideration. *See* CRAB at 20-21. While Ms. Cohen's failure to raise any meaningful legal arguments showing she was allowed to share in legal fees earned when she was a nonlawyer at the summary judgment stage is troubling in its own right, *see* RAB at 32-33, the trouble with Ms. Cohen's raising her arguments for the first time in her motion for reconsideration here is that Ms. Cohen, under the heading "Plaintiff's decision to reject the offer of judgment was not grossly unreasonable or in bad faith," stated that "the law relied upon by Plaintiff in her request for reconsideration" supported her belief that she could recover legal fees earned while she was suspended. *See* X JA 2183-2184. Or, put more coherently, Ms. Cohen stated that she relied on law she

did not cite or even know about until months *after* she rejected the Padda Parties' offer of judgment in order to decide to reject that offer of judgment. Ms. Cohen's rationale shows that she had no good faith reason for rejecting the Padda Parties' offer of judgment.

When the offeree is the plaintiff, the first and third *Beattie* factors ask a trial court to consider the plaintiff's good faith in bringing/prosecuting her case and in rejecting an offer of judgment. *See Beattie*, 99 Nev. at 588–89, 668 P.2d at 274. In conducting this evaluation, this Court has expressly instructed district courts to take into account the good faith of the parties in litigating “damage issues.” *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

According to Ms. Cohen, “neither party knew that the district court would focus entirely on this single issue [the effect of Ms. Cohen's nonlawyer status on her ability to enforce a contract to share in legal fees earned while she was a nonlawyer] and consider nothing else.” *See* CRAB at 20. Ms. Cohen suggests that the Padda Parties “are asking this Court to find that only victorious parties can be deemed to have proceeded in good faith.” *See* CRAB at 23. Not so.

The Padda Parties are simply asking this Court to determine that a plaintiff cannot bring or litigate in good faith without thoroughly vetting whether her damages are legally recoverable *before* filing her complaint or rejecting a six-figure offer of judgment. The fact that Ms. Cohen expressed shock that the district court

granted judgment in favor of the Padda Parties simply because Ms. Cohen had no legally recoverable damages, *see* CRAB at 20, demonstrates the lack of seriousness Ms. Cohen gave to considering whether her claims had merit. As the Padda Parties have cited *ad nauseum* in this brief and their opening brief, when a party brings claims seeking damages, whether those damages are legally recoverable or whether they even exist is essential. *See Chicago Title Agency*, 109 Nev. at 418, 851 P.2d at 421; *Fireman's Fund Ins. Co.*, 84 Nev. at 453, 442 P.2d at 912.

To this end, Ms. Cohen cannot have acted in good faith when she brought her claims or when she rejected the Padda Parties' offer of judgment if she completely ignored the effects of her nonlawyer status on her ability to recover legal fees as damages. For these reasons, this Court should reverse the district court's order denying the Padda Parties' Motion for Attorneys' Fees.

B. The district court erred by considering the amount of Ms. Cohen's claimed, yet legally unobtainable damages without considering the amount of the Padda Parties' offer of judgment

A district court must *consider* every *Beattie* factor in deciding a motion for attorneys' fees, *see Yamaha*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16, even if, as Ms. Cohen correctly points out, that court is not required to make explicit findings on each factor, *see Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001). The district court should have considered the amount of the Padda Parties' offer of

judgment when it decided their Motion for Attorneys' Fees, especially since it chose to make an express finding regarding the amount of damages Ms. Cohen sought.

The district court found and concluded that, as a matter of law, Ms. Cohen had no recoverable damages because she sought only legal fees and she was either more than fully compensated (on the Garland Case) or was a nonlawyer at the time the fees were earned (the Moradi and Cochran Cases). Yet, despite determining that Ms. Cohen had suffered no damages and/or could not recover any damages, the district court weighed Ms. Cohen's claimed damages in her favor while ignoring the fact that the Padda Parties offered to pay Ms. Cohen \$150,000.00 to settle her case.

On December 2, 2019, Ms. Cohen served the Padda Parties with her Twelfth Supplement to her Initial Disclosures, the last such disclosure before the Padda Parties served their December 18, 2019, offer of judgment. *See* II JA 368. In these disclosures, Ms. Cohen calculated her compensatory damages at \$3,314,227.49 in legal fees from, primarily, the Moradi and Cochran Cases. *See* I JA 382-383. Given that Ms. Cohen was a nonlawyer when the legal fees were earned in the Moradi and Cochran Cases and so she could not share in any legal fees earned in those cases and given that Ms. Cohen incurred no damages from the Garland Case, Ms. Cohen's only remaining damages—assuming, without conceding, the truth of her own disclosures—would be \$150,522.18 from “Other Contingency Matters for Clients Who Retained C & P Prior to 12/31/2014.” *See id.* Thus, while the Padda Parties

dispute (both then and now) that Ms. Cohen could ever recover any amount of legal fees from any matters, the Padda Parties' offer of judgment for \$150,000.00 accounted for 99.7% of Ms. Cohen's claimed compensatory damages for these "other" cases. Accordingly, by Ms. Cohen's own disclosures and damages computation, the Padda Parties' December 18, 2019, offer of judgment for \$150,000.00 was reasonable and in good faith in its amount.

The Padda Parties made virtually this same argument to the district court. *See* X JA 1988. However, the district court did not make any finding as to the good faith or reasonableness of the amount of the Padda Parties' offer of judgment despite the evidence and its own rulings. *See* XV JA 3227-3228. The district court's explicit endorsement of the inflated and unrecoverable damages Ms. Cohen claimed and its silence as to the Padda Parties' substantial offer of judgment indicates that the district court failed to consider each of the required *Beattie* factors in arriving at its decision to deny the Padda Parties' Motion for Attorneys' Fees. Thus, the district court abused its discretion and this Court should reverse.

C. The district court should have considered the amount of attorneys' fees requested by the Padda Parties.

Because the district court did not fully consider the first three *Beattie* factors and because it abused its discretion in finding that Ms. Cohen did not act in bad faith in bringing her claims and rejecting the Padda Parties' offer of judgment, the district court also failed to weigh the amount of attorneys' fees sought by the Padda Parties

according to the factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (the “*Brunzell* factors”). Even though the Padda Parties presented the district court with all of the evidence and arguments required by *Brunzell*, see X JA 1995-2001, the district court failed to make any findings as to the amount of attorneys’ fees the Padda Parties sought because it had wrongfully concluded that Ms. Cohen’s decision to reject the Padda Parties’ offer of judgment was reasonable. XV JA 3228.

Because this Court should reverse the district court’s erroneous findings as to Ms. Cohen’s good faith in bringing and prosecuting her case as well as rejecting the Padda Parties’ Offer of Judgment, it should also remand with instructions for the district court to consider the amount of attorneys’ fees sought by the Padda Parties under *Brunzell*.

III. CONCLUSION

For all the reasons provided above, this Court should reverse the district court's order denying the Padda Parties' Motion for Attorneys' Fees and remand with instructions for the district court to consider the attorneys' fees sought by the Padda Parties under *Brunzell* and make an award of attorneys' fees accordingly.

DATED this 23rd day of April 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **CROSS-APPELLANTS' REPLY BRIEF IN CASE NO. 81172**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. Moreover, this brief complies with the page limitation provided in NRAP 32(a)(7)(A)(i) as it contains **13 pages** and does not exceed 15 pages.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 23rd day of April 2021.

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VERIFICATION

I, Ryan A. Semerad, declare:

1. I am an attorney with Donald L. Fuller, Attorney at Law, LLC, counsel of record for Cross-Appellants Paul S. Padda and Paul Padda Law, PLLC. My Nevada Bar License is No. 14615.

2. I verify that I have read the foregoing **CROSS-APPELLANTS' REPLY BRIEF IN CASE NO. 81172**; that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of April 2021, in Natrona County, Wyoming.

/s/ Ryan A. Semerad
Ryan A. Semerad, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Donald L. Fuller, Attorney at Law, LLC, and that on this 23rd day of April 2021, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **CROSS-APPELLANTS' REPLY BRIEF IN CASE NO. 81172** properly addressed to the following:

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