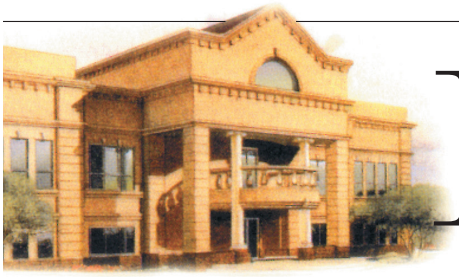

NEVADA
Legal Update
Winter 2017

Alverson Taylor Mortensen & Sanders • *Nevada's Law Firm*

Highlights

Debt is Subject to Garnishment if the Court Has Personal Jurisdiction Over the Debtor

The Nevada Supreme Court recently held that state district courts have jurisdiction to garnish an account funded by a debtor located outside the State of Nevada when the garnishment is authorized by statute and the court has personal jurisdiction over the debtor.

Verdict in Excess of $2 Million against Employer for Employee's Road Rage

Defendant driver, operating a vehicle within the course and scope of his employment, was involved in a collision at the entrance to a gas station. An altercation resulted and the Defendant ran over the Plaintiff with his vehicle. As a result, Plaintiff sustained injury including a fractured skull and injuries to her cervical spine, requiring surgery. After a 15 day trial, the jury rendered a verdict in favor of Plaintiff and awarded more than $2 million in damages.

Prevailing Party Must Demonstrate Expert Costs were Reasonable and Necessary to Recover More than the Amount Permitted by Statute

Nevada statute specifically provides that a prevailing party may recover expert costs in the amount of $1,500.00 per expert. In order to recover more than this statutorily permitted amount, the prevailing party must provide evidence to the district court showing why an amount greater than $1,500.00 per expert is reasonable and necessary. The district court is then required to weigh specific factors in reaching its award of expert fees and costs, and must explain its reasoning for the amount ultimately awarded.

Nevada Supreme Court Decisions

Personal Jurisdiction

Assets Located in Another State May be Subject to Garnishment if the Court Has Personal Jurisdiction Over the Debtor

Darren Badger and two associates defaulted on a $10 million loan provided by Pacific Western Bank (Pacific Western). Pacific Western sued the debtors in California, obtaining a judgment for $2,497,568.73, plus interest. Pacific Western domesticated the judgment in Nevada and the constable served Wells Fargo Advisors LLC (Wells Fargo) with a writ of execution and garnishment. Wells Fargo, a company that administered three qualified tuition accounts on Mr. Badger's behalf, served a written response stating it "maintained or referenced" Mr. Badger's accounts, but the funds were held by Scholar's Edge in New Mexico.

Mr. Badger argued that the three accounts were exempt from execution as they were intended to set aside money for his childrens' college education pursuant to a divorce decree. In support of his argument, Mr. Badger cited both NRS 21.090(1)(r)(5), exempting qualified tuition programs, and NRS 21.090(1)(s), exempting court ordered child support. Mr. Badger also argued that the accounts were outside the reach of Pacific Western as the funds were located in New Mexico and were exempt under New Mexico law. The district court held that the issue would have to be addressed in New Mexico. Pacific Western filed a Petition for Writ of Mandamus with the Nevada Supreme Court.

The Nevada Supreme Court held that the district court had jurisdiction to order execution on the accounts. In reaching its conclusion, the Court cited Section 68 of the Restatement (Second) of Conflicts of Laws, which noted that a state can exercise jurisdiction over an account held as a debt so long as the debtor is subject to the jurisdiction of the state, regardless of the location of the debt. The Court specifically noted that in this instance, the State of Nevada had jurisdiction over both Wells Fargo and Mr. Badger.

The Nevada Supreme Court held that the three accounts at issue were debts, as defined by *Black's Law Dictionary* as "a liability on a claim." Scholar's Edge was indebted to Mr. Badger as he had the right to the funds upon request. Additionally, Wells Fargo maintained the accounts located at Scholar's Edge in New Mexico. These accounts were under the control of Wells Fargo and belonged to Mr. Badger, who owed a judgment to Pacific Western. Therefore, Wells Fargo was subject to garnishment pursuant to NRS 31.450 and the district court had the power to garnish the debt. The Nevada Supreme Court ordered the district court to vacate the motion to quash the writs of execution and garnishment and to proceed with a determination on the claims for exemption. *Pacific Western Bank v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 78 (Nov. 2016).

In This Issue

Statute Of Limitations

Employees Have Two Years to Sue Their Employers for Alleged Minimum Wage Violations

Deborah Perry, a former employee of Terrible Herbst, Inc., filed suit more than two years after leaving the company claiming Terrible Herbst failed to pay her and other employees minimum wage as required by the Minimum Wage Amendment to the Nevada Constitution (MWA). The MWA permits an employer to pay a lower minimum wage if the employer provides qualifying health benefits. At the time of Ms. Perry's employment, the minimum wage was $7.25 per hour if health benefits were provided and $8.25 per hour if health benefits were not provided. Ms. Perry alleged that she was paid less than $8.25 per hour and was not provided health benefits. Terrible Herbst filed a motion for judgment on the pleadings, pursuant to Rule 12 of the Nevada Rules of Civil Procedure, claiming the complaint was filed beyond the two year statute of limitations provided in NRS 608.260. The district court granted the motion holding that the statute of limitations for claims asserted under the MWA was two years. Ms. Perry appealed to the Nevada Supreme Court.

Ms. Perry argued that since the MWA did not identify a specific statute of limitations, the statute of limitations should be four years pursuant to NRS 11.220, the catchall limitations period. The Nevada Supreme Court disagreed, holding that when no specific timeframe was identified, the court should apply the most analogous limitations period. The four year catchall limitation is to be utilized only when there are no analogous cases or when analogous cases are in conflict with one another.

The MWA was established to create a minimum wage, which could not be waived contractually unless in a bona fide collective bargaining agreement. The MWA also permitted employees to file suit if the employers failed to pay the constitutionally established minimum wage. NRS 608.250 similarly dealt with wages and allowed the Labor Commissioner to create a minimum wage in accordance with federal law. NRS 608.260 also permitted employees to sue for back pay if their employers failed to pay the minimum wage that the Labor Commissioner established. The Nevada Supreme Court noted that this analogous statute specifically provided a two year statute of limitations. Because the two laws were analogous and not in conflict, as both laws could be followed simultaneously, the Court held that the statute of limitations to sue an employer for violations of the MWA was two years. *Deborah Perry v. Terrible Herbst, Inc.*, 132 Nev. Adv. Op. 75 (Oct. 2016)

NEVADA JURY VERDICTS

Personal Injury

Plaintiff Appropriately Detained by Defendant Casino

Plaintiff, a 26 year old male, and his non-party friend made sports bets at Defendant casino. Plaintiff alleged that when he and his friend attempted to cash in their tickets, Defendant noted that Plaintiff's non-party friend was "gaming barred." As a result, both men were taken into a satellite security office where Plaintiff was allegedly falsely imprisoned and assaulted by Defendant's security personnel. Plaintiff alleged emotional trauma and an ear injury. Defendant denied liability and maintained that Plaintiff was properly detained after ignoring trespass warnings.

Plaintiff made a pretrial demand of $150,000.00 and Defendant offered $45,000.00. The court entered a directed verdict for Defendant on the issue of punitive damages. After a seven day trial, the jury found unanimously for Defendant on Plaintiff's remaining claims. *Williams v. Bellagio, LLC*, June 21, 2016.

Defendant Employer Liable for Employee's Road Rage

Defendant Reed, operating a pickup truck owned by Defendant Daken & Associates, was involved in a motor vehicle collision with Third-Party Defendant Southall near the entrance to a gas station. Plaintiff was a passenger in Mr. Southall's vehicle.

After the collision, Mr. Southall shouted a profanity at Defendant Reed, who then exited his vehicle and began kicking the driver's door of Mr. Southall's vehicle. Mr. Reed then reentered his vehicle and drove to another location in the parking lot. Mr. Southall and Plaintiff then exited their vehicle and approached Defendant Reed on foot. Mr. Reed again exited his vehicle, this time swinging a golf club. Defendant Reed then reentered his vehicle as Mr. Southall approached the driver's side window. Plaintiff approached the front passenger window of Mr. Reed's vehicle and at some point yelled, "he's got a gun!" Defendant Reed then accelerated forward, running over Plaintiff.

Plaintiff alleged that Defendant Reed, in the course and scope of his occupational duties for Defendant Daken & Associates, had been drinking prior to his arrival at the gas station and had previously been reported for suspected intoxicated driving by a non-party. Plaintiff further alleged

Nevada Legal Update is published quarterly by
Alverson, Taylor, Mortensen & Sanders
7401 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 384-7000 | Fax (702) 385-7000
www.alversontaylor.com

that after the initial collision, Defendant Reed fled the scene and his erratic driving was reported by an off-duty police officer. Plaintiff claimed that Defendant Daken & Associates negligently entrusted its vehicle to Defendant Reed and negligently hired, trained, and/or supervised him.

Daken & Associates denied liability, arguing that Third-Party Defendant Southall abruptly turned in front of Defendant Reed as he was entering the parking lot. Additionally, Mr. Southall attempted to engage Mr. Reed in a physical confrontation after the accident and, fearing for his life, Mr. Reed unintentionally struck Plaintiff with his vehicle while attempting to flee the scene.

Plaintiff sustained a fractured skull with a brain bleed, a fractured right ankle requiring surgery, crush injuries to the left foot and ankle, and injuries to her cervical spine requiring surgery. Plaintiff alleged residual post-concussion syndrome that required ongoing treatment and claimed an additional cervical spine surgery was required. Plaintiff claimed that her injuries were permanent in nature, as she experienced residual chronic pain, cognitive difficulties, forgetfulness, sleep disturbances, anxiety, and reduction in her exercise and activities. Plaintiff sought $403,837.56 in past medical expenses and $781,000.00 in future medical expenses.

After a 15 day trial, the jury found for Defendant Daken & Associates on Plaintiff's claims of negligent entrustment and negligent hiring, training, and supervision. The jury found in favor of Plaintiff on the remaining claims and awarded her $2,022,086.49 in compensatory damages. This total included $386,263.49 in past medical expenses, $135,823.00 in future medical expenses, and $1,500,000.00 for past and future pain and suffering. Third-Party Defendant Southall settled with Plaintiff for his $15,000.00 insurance policy limits during the first day of trial. The jury also determined that Plaintiff was entitled to recover punitive damages against Defendant Reed. *Kephart v. Daken and Associates, LLC and Reed*, June 21, 2016.

Defendant's Negligence Reduces the Award on His Counterclaim to Zero

Defendant was operating a 2006 GMC Savanna box-type rental truck on the entrance ramp to the long-term parking garage at McCarran International Airport in Las Vegas. Plaintiff was traveling directly behind Defendant in a 2013 Mercedes Benz. Defendant allegedly failed to stop for an overhead height restriction bar and struck the overhead cement clearance barrier, and then came to an abrupt, immediate, and complete forced stop. Plaintiff was allegedly unable to avoid rear-ending Defendant. Plaintiff further claimed that, unaware he had been struck from behind, Defendant reversed his vehicle and backed into the front of Plaintiff's vehicle, causing a second collision. Defendant alleged that Plaintiff caused the accident and counterclaimed for his damages.

As a result of the collision, Plaintiff allegedly sustained cervical, thoracic, and lumbar soft tissue injuries and a closed head injury. After a one day trial, the jury awarded Defendant $36,000.00 on his counterclaim, including $32,600.00 in medical expenses and $4,000.00 for pain and suffering. Defendant was, however, found to be 75 percent at fault and he was therefore unable to recover, pursuant to NRS 41.141. *Beal v. Rask*, June 24, 2016.

Plaintiff Not Entitled to Future Pain and Suffering Damages Following Collision on Interstate 215

Plaintiff, a 19 year old male construction worker, was rear-ended in a construction zone on Interstate 215 by Defendant, a 26 year old male security guard. Defendant admitted negligence, but disputed Plaintiff's alleged damages. As a result of the collision, Plaintiff allegedly sustained cervical, thoracic, and lumbar disk injuries and an annular tear in his vertebra. Plaintiff's pain management specialist opined that initial conservative treatment was appropriate, that Plaintiff's disk injuries and annular tear would worsen over time, and that Plaintiff's injuries would eventually require injections and possible surgical intervention. Plaintiff served a pre-trial offer of judgment of $61,500.00. Defendant served an offer of judgment for $29,001.00.

During closing arguments, Plaintiff's counsel asked the jury to award an unspecified amount for past pain and suffering and over $400,000.00 for future pain and suffering. Defendant suggested that the jury award $12,000.00 for past pain and suffering but give no award for future pain and suffering. After a four day trial, the jury unanimously awarded Plaintiff $5,000.00 in past damages, with no award for future medical treatment or future pain and suffering. *Pulido v. Ajoub*, August 4, 2016.

Pedestrian Fails to Recover after Being Struck by Defendant's Car

Plaintiff, a 21 year old female, was struck by a 2000 Mercedes Benz operated by Defendant, a 30 year old male, as she was walking across the intersection of Santiago Drive and Landing Dock Street. Plaintiff was thrown into the air and sustained a fractured arm, a closed head injury, injury to her hip and facial abrasions. Plaintiff claimed that she suffered from residual migraine headaches, loss of memory, and lumbar pain, which would require ongoing treatment.

At trial, Plaintiff relied on the testimony of a physiatrist and pain management specialist. Defendant relied on the testimony of a retained orthopedic physician. Plaintiff sought more than $60,000.00 in past medical expenses and $212,400.00 for future medical expenses. After a three day trial, the jury unanimously found for Defendant. *McComas v. Burridge*, August 10, 2016.

Defendant Liable for Sideswipe Collision after Appealing Arbitration Award

Defendant appealed an award rendered in Nevada's arbitration program, awarding Plaintiff wife $11,332.50, and Plaintiff husband $11,155.01. The arbitrator found that Plaintiff wife and Defendant were each 50 percent at fault, thereby reducing Plaintiff wife's arbitration award to $5,666.25.

At the time of the motor vehicle accident at issue, Plaintiff wife was operating a 2010

Nissan Versa with her husband as the front seat passenger. Plaintiffs alleged that Defendant executed an unsafe lane change and sideswiped Plaintiffs' vehicle while they waited to execute a left turn.

Plaintiff wife alleged cervical, thoracic, and lumbar soft tissue injury. Plaintiff husband claimed similar injuries, with pain radiating into his left arm and secondary headaches. The wife sought $6,337.51 in medical expenses and her husband sought $6,155.01. After a one day short trial, the jury found Defendant to be 100 percent at fault. Plaintiff wife was awarded $6,337.51 in compensatory damages and Plaintiff husband $6,155.01. *Pfurr v. Hristov*, August 5, 2016.

Products Liability

Defense Verdict for Claims Arising out of Allegedly Defective HVAC Unit

Plaintiffs, husband and wife, alleged that a single package gas-electric heating and cooling unit, manufactured by Defendant, was defective in design and that the alleged defect caused the unit to spread various noxious chemical compounds throughout Plaintiffs' residence. As a result of the alleged noxious chemical compounds, Plaintiffs claimed that they developed a myriad of physical symptoms including headaches, metallic taste, eye and throat irritation, and tingling in the fingertips and lips. Moreover, Plaintiffs alleged that their residence was left non-habitable and their personal property within the home unusable.

At trial, Plaintiffs relied on the testimony of an environmental scientist who testified that his testing revealed the presence of various chemical compounds in Plaintiffs' residence. Defendant relied on the testimony of an environmental scientist and a toxicologist, who testified that these chemicals were present in every home and were not causally related to the physical symptoms alleged by Plaintiffs. Defendant also relied on the testimony of Plaintiffs' treating physician, who was unable to causally relate Plaintiffs' alleged symptoms to the HVAC unit and noted that all of the objective medical testing was unremarkable.

After an eight day trial, and approximately one hour of deliberation, the jury found unanimously for Defendant. *Johnson v. Goodman Manufacturing Company*, August 17, 2016

Medical Malpractice

Defense Verdict after Complications from Hip Replacement Surgery

Plaintiff presented to non-party hospital for total hip replacement surgery, performed by Defendant Trainor. During the surgery, Plaintiff suffered a greater trochanteric fracture of the right hip, which required open reduction with implantation of internal fixation devices. Two months post surgery, Plaintiff developed an iliacus hematoma, which required urgent surgical intervention.

Plaintiff alleged that Defendant Trainor fell below the standard of care during the first surgery when he placed extrinsic pressure at the level of Plaintiff's right fibular head and failed to properly maintain Plaintiff's anticoagulants following the procedure. As a result, Plaintiff allegedly sustained complete common peroneal nerve palsy, paralysis of the fibular nerve from his knees to his toes, weakness and decreased sensitivity in his right lower extremity and foot, and right sciatic and femoral neuropathies. Plaintiff also alleged residual chronic neuropathic pain syndrome, gait disturbance requiring him to use crutches, ambulation dysfunction, and limited activity level.

After an eight day trial, the jury found unanimously for Defendant. *Busick v. Yee Advanced Orthopedics and Sports Medicine and Trainor, M.D.*, July 20, 2016.

Plaintiff Fails to Convince Jury He Was Injured by Blood Draw

Plaintiff, a 22 year old landscaper, claimed that Defendant phlebotomist, a person trained to draw blood, fell below the standard of care by using improper techniques and ignoring Plaintiff's complaints of pain while performing a blood draw. Plaintiff alleged that due to Defendant's negligence, he sustained paresthesia of the right arm and developed complex regional pain syndrome.

During trial, Plaintiff relied on the testimony of a nursing standards and practices expert, who opined that Defendant improperly "fished" for Plaintiff's vein and negligently ignored Plaintiff's complaints of pain. Plaintiff's pain management specialist testified that Plaintiff's complex regional pain syndrome was treated with routine injections.

Defendant denied Plaintiff's allegations, maintaining that it was a routine blood draw that did not result in injury. In the alternative, Defendant argued that if Plaintiff was injured, the injury was unrelated to any alleged negligence of Defendant. Defendant also relied on the testimony of a nursing standards and practices expert, who opined that Plaintiff's medical records suggested a routine and successful blood draw. Defendant's expert neurologist opined that Plaintiff's symptoms were not related to complex regional pain syndrome, and even if he had complex regional pain syndrome, it was not caused by a routine blood draw.

Plaintiff sought $90,000.00 in medical expenses, but made a pretrial settlement demand of $50,000.00. Defendant served a $10,000.00 offer of judgment. After a seven day trial, the jury unanimously found for Defendant. *Garcia v. Valley Health System, L.L.C. dba Centennial Hills Hospital Medical Center*, June 1, 2016.

Premises Liability

Substantial Jury Award for Pain and Suffering Following Fall on Stairway

Plaintiff, a guest at Defendant hotel, alleged that she slipped on a wet area and then fell down stairs while on Defendant's premises. Plaintiff alleged that the stairs were negligently designed and maintained. Defendant argued comparative fault.

Plaintiff sustained unspecified injuries and incurred $58,731.84 in past medical expenses. Plaintiff also sought future medical expenses, $23,409.00 in past lost wages, an unspecified amount in future lost wages, and $1,848.00 in lost household services. Plaintiff's husband asserted a claim for loss of consortium.

After a five day trial, the jury found Defendant to be 100 percent at fault and

awarded Plaintiff a total of $489,988.84. The total verdict included $58,731.84 in past medical expenses, $55,000.00 in future medical expenses, $23,409.00 in lost wages, $2,848.00 for loss of household services, $150,000.00 for past pain and suffering, and $200,000.00 for future pain and suffering. No award was given to Plaintiff's husband for his alleged loss of consortium. *Visuwan v. Circus Circus Casinos, Inc.*, June 10, 2016.

Jury Awards More than Eight Times the Amount of Plaintiff's Pretrial Settlement Demand

Plaintiff, a retired 66 year old male, allegedly slipped and fell on sulfuric acid while walking on Defendant's driveway. Plaintiff alleged that Defendant failed to warn of a dangerous condition. As a result of the slip and fall, Plaintiff reportedly sustained a labral tear of the shoulder that required surgery, chemical exposure to his skin, and eye irritation. Defendant admitted negligence, but argued that Plaintiff's alleged injuries were not causally related to his fall. At trial, Plaintiff's orthopedic physician opined that the alleged injuries were causally related to the fall, while Defendant's expert physician disagreed.

Plaintiff made a pretrial settlement demand of $25,000.00 and Defendant offered $20,000.00. After a three day trial, the jury awarded Plaintiff $210,000.00 in compensatory damages. *Nappa v. Wynn Las Vegas, LLC*, June 29, 2016.

Verdict for Plaintiff after Apartment Slip and Fall Due to Alleged Inadequate Lighting

Plaintiff, a 41 year old female casino housekeeper, rented an apartment from Defendant. After living in Defendant's apartment for three months, Plaintiff slipped and fell on the last step of the stairs from her apartment. Plaintiff claimed that she fell because the area was too dark and that she had previously complained about the inadequate lighting. Defendant denied liability, claiming that it had no notice of a potential issue and that Plaintiff had used the stairs hundreds of times and never complained about poor lighting.

As a result of the fall, Plaintiff sustained a severe ankle sprain and sought $2,797.00 in medical expenses. Plaintiff made a pretrial settlement demand of $2,976.00 and Defendant served a $500.00 offer of judgment. After a one day trial, the jury awarded Plaintiff $3,000.00 in compensatory damages. *Martinez v. Reyes*, July 15, 2016.

Breach Of Contract

Defense Verdict in Claim for Insurance Bad Faith

Plaintiff, a 50 year old male, asserted that Defendant insurer breached an insurance contract between the parties by failing to honor Plaintiff's claim for personal property items that were stolen from his trailer while he was camping. Some of these stolen items were subsequently located, but Plaintiff maintained that he had no knowledge of or relationship to the owner of the residence where those items were found.

Defendant denied liability, arguing that Plaintiff misrepresented material facts regarding his claim and that no theft actually occurred. Defendant specifically alleged that Plaintiff asked the third-party homeowner for permission to temporarily store the aforementioned items.

Plaintiff sought $69,987.72 in compensatory damages and served a pretrial offer of judgment for $60,000.00. Defendant offered $2,000.00. After a three day trial, the jury returned a verdict for Defendant. *Herrera v. Fire Insurance Exchange*, June 15, 2016.

Gambler Owes $1 Million for Failing to Repay Casino

Plaintiff casino alleged that Defendant executed a credit application, credit agreement, and numerous credit line increases with Plaintiff for up to $1,000,000.00. Plaintiff also alleged that from June 1 to June 3, 2008, Defendant executed 12 casino markers in favor of Plaintiff, totaling $1,070,000.00. Defendant repaid $70,000.00 of this gambling debt, but allegedly breached the credit contract when he failed to repay the $1,000,000.00 balance for the casino markers. Defendant denied liability and claimed that he did not sign the casino markers. After a three day jury trial, the jury awarded Plaintiff casino $1,000,000.00 in compensatory damages. *Wynn Las Vegas, LLC. v. LaBarbera*, June 15, 2016

Comments

Prevailing Party Must Demonstrate that the Fees and Costs Incurred for Expert Witnesses were Reasonable and Necessary for Award that Exceeds the Statutory Amount

Pursuant to NRS 18.005(5), a party may recover for "reasonable fees of not more than five expert witnesses in an amount no more than $1,500.00 per each witness..." The statute includes an exception, however, which allows the district court to award more than $1,500.00 per witness "after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." Two recent Nevada Supreme Court cases provide guidance to both the district courts and parties regarding expert witness costs that are in excess of the statutory award of $1,500.00 per expert. Specifically, the district court must have evidence that the expert witness costs were reasonable, necessary, and actually incurred, and the district court must explain the reasoning behind any award for expert fees.

In *Frazier v. Drake*, 131 Nev. Adv. Op. 64 (Sept. 2015), Plaintiffs Anika Frazier and Randy Keys sued Defendant Patrick Drake for personal injuries sustained after Defendant rear-ended Plaintiffs at a stoplight. After the Plaintiffs rejected Defendant's offer of judgment, the jury found in favor of Defendant at trial. Defendant subsequently moved for attorney fees and costs based on both the offer of judgment and as the prevailing party. Defendant requested $107,635.73 in total fees and costs for five expert witnesses, whose individual expenses were $32,657.52, $10,804.00, $20,325.00, $26,449.21, and $7,400.00. The district court determined that these costs were excessive and reduced the total award to $47,400.00: $10,000.00 for the first four experts and $7,400.00 for the fifth expert. Plaintiffs appealed. On appeal, the Nevada Supreme Court held

Alverson Taylor Mortensen
& Sanders
7401 W. Charleston Blvd.
Las Vegas, Nevada 89117

If you would like to receive our Nevada Legal Update via email please visit: alversontaylor.com/subscribe

that the district court abused its discretion by granting $47,400.00 in expert witness costs, while failing to explain its rationale. The matter was therefore remanded to the trial court for reconsideration.

Similarly in *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52 (July 2016), Plaintiff Margaret Seastrand obtained a personal injury judgment against Defendant Riad Khoury following a rear-end motor vehicle accident. Plaintiff filed a Memorandum of Costs for a total of $75,015.61, which included $42,750.00 for expert witnesses. The Nevada Supreme Court held that the district court abused its discretion in awarding expert costs, as it failed to explain why the fees in excess of the statutory amount were justified.

In deciding *Frazier*, the Nevada Supreme Court created a non-exhaustive list of factors the district courts can use to determine whether larger expert witness costs were reasonable and necessary. The list included importance of the expert's testimony to the party's case; degree to which the expert's opinion aided the trier of fact; whether the expert's reports or testimony were repetitive of other expert witnesses; the extent and nature of the work performed by the expert; whether the expert had to conduct independent investigations or testing; the amount of time the expert spent preparing and in court; the expert's area of expertise, education and training; the fee actually charged to the party who retained the expert; fees traditionally charged by the expert on related matters; comparable experts' fees in similar cases; and costs that would have been incurred to hire a local, comparable expert instead of hiring an out-of-state expert. The district court is required to analyze the pertinent factors on a case by case basis and include an express, careful, and preferably written explanation of its analysis.

Pursuant to NRS 18.020, the prevailing party may be able to recover costs when the damages sought at trial were in excess of $2,500.00. These costs include expert witness fees, with a limit of $1,500.00 per expert witness for up to five experts. See NRS 18.005(5). Expert witnesses are generally one of the most expensive aspects of a trial. According to recent research, the median cost for a medical expert to testify at trial has reached $385.00 per hour. This does not include retainers, review of documents, or preparation of reports. Although expensive, experts are necessary to address key issues such as liability and damages.

Trial courts cannot simply award expert witness fees and costs in excess of $1,500.00, without specific evidence and justification for doing so. A party seeking to recover costs in excess of the statutory amount must produce evidence of the relevant *Frazier* factors in its Memorandum of Costs. *Frazier* and *Khoury* suggest that an expert may not be required to perform testing or prepare a supplemental report in order for that expert to be considered necessary to the party's case and justify an award of costs. Other factors must, however, be evaluated including the importance of the expert's testimony and the degree of helpfulness to the party's case. If this specific evidence is not included in the Memorandum of Costs, the trial court does not have authority to award more than the statutory amount.