IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA CLODFELTER AND WADE A. CLODFELTER,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MICHAEL CHERRY, FORMER DISTRICT JUDGE; AND THE JUSTICE COURT OF LAS VEGAS TOWNSHIP, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JAMES M. BIXLER, JUSTICE OF THE PEACE,
Respondents,
and
SHARON NEWTON,
Real Party in Interest.

No. 46690

FILED

JUN 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or, alternatively, prohibition, challenges a district court order affirming a justice's court order awarding attorney fees in a personal injury action.

FACTS

Real party in interest Sharon Newton originally filed her personal injury complaint against petitioners Brenda and Wade A. Clodfelter in the district court, but the action was dismissed for failure to meet the court's jurisdictional threshold amount. When her subsequent justice's court action was dismissed on statute of limitations grounds, Newton appealed to the district court. She also petitioned this court for extraordinary relief, based on the dismissals of both her original district

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court action, and her action in the justice's court, which we denied, noting that her attorney's failure to appeal from the original district court dismissal precluded any writ relief.[1] Nevertheless, under the district court's decision on appeal, Newton later was allowed to proceed in the justice's court based on equitable tolling principles. After a bench trial in the justice's court resulted in a $4,745 compensatory damages judgment, the court entered an $89,052 attorney fees award in favor of Newton.

The Clodfelters appealed the attorney fees award to the district court. The district court affirmed the award, and consequently, the Clodfelters filed a petition for a writ of mandamus in this court, which was granted on July 12, 2002.[2] In our order granting mandamus relief, we explained that an attorney fees award that was nearly twenty times greater than the judgment was "obscene" and "shocks our judicial conscience." In so doing, we pointed out that the record clearly indicated that the attorney fees award was inappropriately intended to punish the Clodfelters for not settling the case, and we concluded that the justice's court had abused its discretion by failing to engage in any analysis to support its attorney fees award. Accordingly, the writ issued to the district court, with instructions to remand the case to the justice's court

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[1]See Newton v. District Court (Clodfelter), Docket No. 33754 (Order Denying Petition for Writ of Mandamus, May 11, 1999).

[2]See Clodfelter v. District Court (Newton), Docket No. 38771 (Order Granting Petition for Writ of Mandamus, July 12, 2002).

for a determination of reasonable attorney fees, applying the factors set forth under SCR 155 and Schouweiler v. Yancey Company[3]

On remand, the justice's court entered a new order, again awarding Newton $89,052 in attorney fees. Indicating that it first reviewed the attorney fee request under SCR 155, the justice's court noted that Newton's attorneys had 35 years of legal experience and had submitted detailed itemizations covering six years of litigation, which, although not complex, nevertheless "consumed hundreds of billable hours." The court stated that the case had been "before every Nevada Court" and that, from the pages of billing, it was clear that Newton's counsel had been precluded from other employment during many stages of the litigation. According to the justice's court, in light of the "countless hearings and motions," it would be unjust to determine appropriate fees by comparing this case to the "usual automobile accident" case.

Next, the justice's court indicated that, under Schouweiler or Brunzell v. Golden Gate National Bank,[4] the fees were reasonable because Newton's attorneys (1) provided zealous representation, (2) were "required to rely on their many years of experience to litigate this case with such extensive and complex procedural requirements," and (3) provided itemized billing to support that many hours were committed to obtaining

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[3]101 Nev. 827, 833-34, 712 P.2d 786, 790 (1985) (outlining the factors, in accordance with Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), to be used in determining the reasonable value of an attorney's services).

[4]85 Nev. at 349, 455 P.2d at 33.

compensation for Newton. An order awarding $103,016, representing the attorney fee award plus interest, was then entered.

The Clodfelters appealed the new award to the district court, which affirmed, noting that the justice's court had "prepared a comprehensive analysis to support the award on remand." This petition for a writ of mandamus or prohibition followed.

DISCUSSION

A. Newton's argument that principles of finality and the Clodfelters' lack of diligence in the district court should preclude writ relief

Preliminarily, in response to the Clodfeleters' petition, which ultimately challenges the justice's and district courts' compliance with this court's 2002 order granting their first mandamus petition, Newton argues that constitutional finality and the Clodfelters' lack of diligence in prosecuting their district court appeal are grounds upon which to deny the Clodfelters' petition. She asserts that "re-litigating of the award violates 'the law of the case,' which was set by this court's previous writ."

This court has original jurisdiction to consider petitions for mandamus and prohibition.[5] This court has complete discretion to determine if such petitions will be considered.[6] A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,[7] or to control a manifest

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[5]Nev. Const. art. 6, § 4; State of Nevada v. Dist. Ct., 116 Nev. 127, 994 P.2d 692 (2000).

[6]See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

[7]NRS 34.160; see also Smith, 107 Nev. 674, 818 P.2d 849.

abuse of, or an arbitrary or capricious exercise of, discretion.[8] The counterpart to a writ of mandamus, a writ of prohibition, is available when a district court acts without or in excess of its jurisdiction.[9] Because parties aggrieved by a justice's court decision have a plain, speedy, and adequate legal remedy in the form of an appeal to the district court,[10] this court generally declines to entertain writ petitions requesting review of a district court's appellate decision, unless the district court, in rendering its decision, exceeded its jurisdiction, or manifestly abused or exercised its discretion in an arbitrary or capricious manner.[11]

At issue here is whether the district court, in reviewing and affirming the justice's court's second attorney fees award on appeal, exercised its discretion in an arbitrary or capricious manner when it determined that the justice's court engaged in a thorough Brunzell and SCR 155 analysis to support its award and, therefore, complied with this court's 2002 mandate, even though it determined that an award in the same "conscious-shocking" amount was appropriate. Accordingly, we will consider this petition because, while finality principles concerning the district court's appellate decision often preclude our review, extraordinary relief nevertheless remains appropriate in cases where the district court

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[8]Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[9]State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

[10]See State of Nevada, 116 Nev. at 134, 994 P.2d at 696; NRS 34.170; NRS 34.330.

[11]See State of Nevada, 116 Nev. at 134, 994 P.2d at 696.

exercised its discretion arbitrarily or capriciously in rendering that decision.[12]

B. The Clodfelters' argument that the justice's court improperly based its attorney fees award on proceedings that took place in the district court and in this court

The Clodfelters argue that the justice's court, by awarding fees for the original district court action, which was dismissed, and for work that took place in the district court on appeal and in this court, interfered with the district court's jurisdiction and authority to award attorney fees to a prevailing party under NRS 69.050, and this court's jurisdiction and authority to award attorney fees as sanctions under NRAP 38.

Newton responds that the Clodfelters raised this argument for the first time in their last appeal to the district court and, therefore, this court should decline to consider it. Alternatively, Newton argues that, after she became the prevailing party following the bench trial, the justice's court had authority under NRS 17.115, NRS 18.010, NRS 69.030, JCRCP 68, and NRCP 68, to award attorney fees for services performed before the justice's court, the district court, and this court.

From the documents submitted to this court, it is unclear when the Clodfelters first raised the issue concerning the justice's court's authority to award fees for work performed outside of the justice's court. Nevertheless, the Clodfelters have challenged the reasonableness of the justice's court's attorney fees award throughout the history of this case.

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[12]Id. Because the district court decided the Clodfelters' appeal on its merits, we are not persuaded by Newton's argument that we should decline to consider this petition based on any lack of diligence that the Clodfelters may have exhibited in the district court.

And, following this court's 2002 writ of mandamus, the justice's court, on remand, apparently accepted all of Newton's attorneys' billings, including billings for proceedings in the district court and this court. Thus, the justice's court's first $89,052 award may have raised different issues, so that the Clodfelters did not waive this argument by failing to raise it during the earlier proceedings.[13] Moreover, even if the Clodfelters failed to timely raise this issue, we elect to address it, since it implicates subject matter jurisdiction concerns, which can be raised at any time.[14]

We agree that the justice's court was without jurisdiction to award attorney fees for any matters that proceeded outside of the justice's court for two reasons: (1) Newton did not prevail in certain proceedings for which she was awarded fees, or she caused additional work based on her failure to act following certain district court rulings; and in any case, (2) no constitutional or statutory provision authorizes the justice's court to impose attorney fees for actions that took place in other courts.

1. Newton's original district court complaint and actions related to it

As noted above, Newton's original district court action was dismissed, and her later petition to this court was denied based on her

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[13]See Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997) ("Parties 'may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.'" (quoting Powers v. Powers, 105 Nev. 514, 516, 779 P.2d 91, 92 (1989))).

[14]Quicksilver Co. v. Thiers, 62 Nev. 382, 152 P.2d 432 (1944); Provenzano v. Long, 64 Nev. 412, 183 P.2d 639 (1947).

attorney's failure to appeal from that dismissal.[15] Although Newton later was allowed to file a new complaint in the justice's court, Newton did not prevail in the district court and supreme court matters that preceded the filing of her justice's court's complaint; consequently, the justice's court had no basis to award Newton attorney fees for the earlier dismissed district court case or the earlier denied writ petition before this court.[16]

2. District court appeals and writ proceedings following the justice's court bench trial and judgment

We also agree that NRS 69.050 authorizes only the district court to award attorney fees to the prevailing party on appeal from a justice's court action, and that, under NRAP 38, only this court has authority to award attorney fees for proceedings in this court. NRS 69.050 allows the district court to award costs to the prevailing party on appeal from the justice's court and specifically provides as follows:

> In the event of an appeal the district court is authorized to award to the prevailing party . . . a reasonable attorney fee to

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[15]See Baughman v. Wilson Freight Forwarding Co., 583 F.2d 1208, 1216 (3rd Cir. 1978) (concluding that it was inappropriate to award fees for portions of the trial that were caused by the prevailing plaintiff's errors); Knutson v. Daily Review, Inc., 479 F. Supp. 1263, 1269, 1274-75 (N.D. Cal. 1979).

[16]See Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 288-89, 994 P.2d 1149, 1150-51 (2000) (concluding that the district court acted in excess of its jurisdiction when it entered a post-appeal order awarding the prevailing party attorney fees and costs incurred in prosecuting the appeal and in opposing post-trial motions); Torrey v. Hamilton, 872 P.2d 186, 187 (Alaska 1994) (providing that an attorney fee award "must relate solely to attorney's services performed in the case in which the judgment is entered").

be fixed and allowed by the district court for all services rendered in behalf of the prevailing party.

Under NRAP 38(b), this court has the authority to award attorney fees when an appeal has been taken frivolously or when the appellate processes of this court have been misused.

In Board of Gallery of History, Inc. v. Datecs Corporation,[17] we concluded that, because no statutory provision authorizes the district court to award a prevailing party attorney fees incurred on appeal, the district court exceeded its jurisdiction by awarding attorney fees for appellate work. Similarly, as no statute allows the justice's court to award fees incurred on appeal or in writ proceedings, the justice's court likewise was without authority to award Newton attorney fees for work performed outside of the matter before it. Thus, the district court manifestly abused its discretion by affirming the justice's court's unauthorized[18] award of

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[17]116 Nev. at 288, 994 P.2d at 1150; see also Fournier v. Fournier, 874 P.2d 600, 603 (Idaho Ct. App. 1994) (declining to award attorney fees on appeal); Vinton Eppsco Inc. of Albuquerque v. Showe Homes, Inc., 638 P.2d 1070, 1071 (N.M. 1981) (providing that "[w]hat constitutes a reasonable attorney fee on appeal is discretionary with the appellate courts"); Coons v. Coons, 491 P.2d 1333, 1337 (Wash. Ct. App. 1971) (noting that appellate courts have authority to either make an allowance of attorney fees on appeal or to remand to the lower court for that purpose).

[18]See NRS 69.030 (authorizing the justice's court to award reasonable attorney fees to the prevailing party in a justice's court action); NRS 69.050 (authorizing the district court to award attorney fees to the prevailing party on an appeal from the justice's court) NRAP 38 (authorizing this court to impose attorney fees under certain circumstances).

attorney fees that were incurred in district court appeals and in writ proceedings in this court.

C. The Clodfelters' argument that the district court manifestly abused its discretion by affirming the justice's court's second award of $89,052 because the justice's court failed to comply with this court's mandate concerning a reasonable award of fees based on the SCR 155 and Brunzell factors

The Clodfelters assert that the justice's court's attorney fee award was designed to punish them for not settling the case. They point out that the justice's court bench trial took less than four hours to complete, and they contend that it was inconsistent for that court to find that the case was "not complex" and to also find that the $89,052 attorney fees request was reasonable. According to the Clodfelters, the justice's court failed to engage in any meaningful analysis under SCR 155 and Brunzell, as mandated by this court's 2002 order granting their petition for a writ of mandamus.

Newton responds that this court should respect the justice's and district courts' "careful exercise of discretion in awarding and affirm[ing] attorney fees in this case." She asserts that denying writ relief would "support and encourage" parties to offer to settle and "discourage" the "pursuit of excessive and abusive litigation on small cases."

In this case, the justice's court was authorized to award attorney fees to Newton under NRS 69.030, which provides that the prevailing party in the justice's court "shall receive, in addition to the costs of court as now allowed by law, a reasonable attorney fee." Although the court has discretion to determine a reasonable fee based on any method,

that discretion must be tempered "by reason and fairness."[19] Accordingly, while the court "may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee,"[20] it must consider the requested amount in light of the SCR 155(1)[21], and Brunzell[22] factors in determining the reasonableness of an attorney's requested fees. The SCR 155(1) factors are as listed:

> (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (c) The fee customarily charged in the locality for similar legal services;
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> (d) The amount involved and the results obtained;

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[19]Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005) (internal citations and quotations omitted).

[20]Shuette, 121 Nev. at 864, 124 P.3d at 549.

[21]The rules governing professional conduct were substantially revised in May 2006, and, as a result of the revision, SCR 155(1) was repealed and replaced by NRPC 1.5(a). Nevertheless, since the events at issue here took place before the revision's effective date, SCR 155(1) applies. At any rate, other than renumbering, rule 155(1) is basically the same as NRPC 1.5(a).

[22]85 Nev. at 349-50, 455 P.2d at 33.

(e) The time limitations imposed by the client or by the circumstances;

(f) The nature and length of the professional relationship with the client;

(g) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(h) Whether the fee is fixed or contingent.

Under Brunzell, the elements to be considered in determining the reasonable value of an attorney's services are (1) the advocate's professional qualities, (2) the nature of the litigation, including its difficulty, intricacy, its importance, and the time and skill required, (3) the work actually performed, and (4) the results, i.e., whether the attorney was successful and what benefits were derived for the client.[23]

The SCR 155 and Brunzell factors are designed to ensure that any attorney fee award is reasonable and fair. As other jurisdictions have concluded, although the method for determining reasonable attorney fees is discretionary with the court, that methodology should be adjusted to ensure that the fees awarded are within the range of fees freely negotiated in the legal marketplace for comparable litigation.[24] And as this court

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[23]Id.

[24]See Missouri v. Jenkins, 491 U.S. 274, 283 (1989) (noting, in the context of a fee award under 42 U.S.C. § 1988, that attorney fees "are to be based on market rates for the services rendered"); Gaskill v. Gordon, 160 F.3d 361, 363 (7th Cir. 1998) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market would set."); Cooper v. Casey, 97 F.3d 914, 920 (7th Cir. 1996) (providing that a "reasonable fee is capped at the prevailing market rate

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explained in its order granting the Clodfelters' previous petition for a writ of mandamus, attorney fees awards under a prevailing party statute are compensatory, and the justice's court cannot use an attorney fees award to punish the Clodfelters for their failure to settle the case.[25]

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for lawyers engaged in the type of litigation in which the fee is being sought") (emphasis omitted); Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988) (concluding that reasonable attorney fees should be calculated based on the "prevailing market rate" and the attorney bears the burden of producing satisfactory evidence that the requested fee is in line with the prevailing market, which evidence "necessarily must speak to rates actually billed and paid in similar lawsuits"); Glendora Com. Redevel. Agency v. Demeter, 202 Cal. Rptr. 389, 394-95 (Cal. Ct. App. 1984) (concluding that a trial court should consider a fee agreement's terms when determining reasonable attorney fees and award fees in the same amount as the fee agreement's terms, so long as other factors also bearing on reasonableness are considered as well); Lealao v. Beneficial California, Inc., 97 Cal. Rptr. 2d 797, 821 (Cal. Ct. App. 2000) (providing that a trial court has discretion to adjust an attorney fee request to ensure that it is within the range of fees freely negotiated in the legal marketplace in comparable litigation); Pancakes of Hawaii v. Pomare Properties, 944 P.2d 83, 96 (Haw. Ct. App. 1997) (noting that, if the fee awarded appears disproportionate to the extent of legal services normally required to be expended in a case of the same nature as the one before the trial judge in which the fee was awarded, then the award must then stand the appellate court's reasonableness scrutiny on the record).

[25]See Clodfelter v. District Court (Newton), Docket No. 38771 (Order Granting Petition for Writ of Mandamus, July 12, 2002); see also, International Travel, Etc. v. Western Airlines, 623 F.2d 1255, 1275 n.23 (8th Cir. 1980) ("An award of attorney's fees is compensatory, not punitive." (quoting Planned Parenthood v. Citizens for Com Action, 558 F.2d 861, 871 (8th Cir. 1977)).

In this case, the justice's court re-awarded attorney fees in the same amount that we have already recognized as "obscene" and a "shock to our judicial conscience." And although the justice's court referenced SCR 155 and Brunzell, it failed to appropriately conduct an analysis, with regard to a number of factors set forth under these authorities, to ensure that the resulting award was reasonable and fair. Thus, even when the fees associated with work preformed outside of the justice's court are removed from the award, the award was not in accord with this court's earlier writ of mandamus, which instructed the court, on remand, to determine a reasonable fee in light of SCR 155 and the Brunzell factors.

1. The justice's court application of the SCR 155(1) factors

For example, as the justice's court noted, liability was never at issue in this case, and the only matter for consideration at trial was the amount of damages. Although Newton's attorneys apparently devoted a significant amount of time to this case, SCR 155(1)(a) directs the court to analyze the time and labor required to perform the legal service, in light of the questions presented, which in this case was solely the damages issue.[26]

Additionally, although the court found that, under SCR 155(1)(b), Newton's attorneys were likely precluded from accepting other employment while working on this case, it made no finding as to whether

[26]See Industrial General v. Sequoia Pacific Systems, 849 F. Supp. 820, 826 (D. Mass. 1994) (considering a plaintiff's request for $115,000 in attorney fees, but instead awarding $18,887, after "question[ing] the judgment that caused lawyer and client to expend $115,000 in pursuit of damages which from the beginning were known to total only $80,000," and determining that the case involved a simple breach of contract, presented no novel legal issues or complex facts, but was nonetheless "disturbingly overlawyered"), rev'd on other grounds, 44 F.3d 40 (1st Cir. 1995).

it was reasonable for her attorneys to accept her case—knowing that, based on Newton's medical expenses and earlier offers of judgment, she likely would recover between $2,500 and $6,000 in damages—and then litigate it to the extent that they expended $89,052 and were foreclosed from working on matters for other clients.[27]

Also, while the justice's court noted that this case was not the "usual automobile accident" case, SCR 155(1)(c), directs the court to consider the fee customarily charged in the area for similar legal services, and thus, it would have been appropriate for the court to adjust the requested fees to ensure that they were within the range of fees that Newton and her attorneys freely negotiated, that is, within the range paid for comparable litigation. Since Newton's attorneys accepted this case on a contingency fee basis, it seems likely that they expected to receive a percentage of the damages award, which would have been far less than $89,052.[28] The justice's court neglected to make findings connecting its fee award to an amount customary for this type of case or to the fee agreement that Newton and her attorneys negotiated.

With regard to SCR 155(1)(d), based on its order, the justice's court also apparently failed to consider the amount of damages at stake in this case and the $4,745 result obtained. Although Newton recovered damages, she recovered less than her settlement offer and less than the arbitrator recommended.

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[27]See id.

[28]See SCR 155(1)(c) and (h).

2. The justice's court's application of the Brunzell factors

Turning to the Brunzell factors, although the justice's court found that Newton's attorneys spent "hundreds of billable hours" securing the $4,745 judgment in Newton's favor, it neglected to analyze whether her attorneys were justified in consuming that much time litigating the case, given its nature, importance, and the amount of damages involved.[29] Additionally, the attorney fees award in this case was nearly twenty times higher than the damages award. Application of the Brunzell factor requiring the justice's court to consider the nature of the litigation, including its difficulty and importance,[30] is particularly appropriate here, since policy concerns that might weigh in favor of a disproportionately large attorney fee award were not at issue in this matter.[31]

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[29]See Brunzell, 85 Nev. at 349, 455 P.2d at 33; International Travel, Etc., 623 F.2d at 1275 n.23 ("A party is not entitled needlessly to accumulate exorbitant legal fees with the expectation that the losing party will be called upon to pick up the entire tab." (quoting Planned Parenthood, 558 F.2d at 871)).

[30]Brunzell, 85 Nev. at 349, 455 P.2d at 33.

[31]See Spano v. Simendinger, 613 F. Supp. 124, 126 (S.D.N.Y. 1985) (concluding that, since important constitutional concerns are implicated in civil rights cases, and the purpose of the Civil Rights Act's fee provision "is to encourage the vindication of civil rights regardless of the amount of damages, it was not error for the district court to grant substantial attorneys' fees" even where only nominal damages had been awarded); Martinez, 914 P.2d at 90 (noting that, because damages awards do not reflect fully the public benefit derived from civil rights litigation, Congress did not intend for attorney fees "in civil rights cases, unlike most private law cases, to depend on obtaining substantial monetary relief" (quoting Riverside v. Rivera, 477 U.S. 561, 575 (1986)).

Brunzell directs the court to include in its analysis a measure of the results obtained.[32] As many other jurisdictions have concluded, although it is within the trial court's discretion to determine a method for calculating reasonable attorney fees, the fee award must bear some relationship to the damages award.[33] We fail to see how the justice's court's $89,052 attorneys fee award bears any relationship to Newton's $4,745 damages award.

CONCLUSION

We conclude that the justice's court's attorney fee award was unreasonable and unfair and contrary to our previous mandate, as it was not issued in accordance with the district court's instructions on remand,

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[32]See Brunzell, 85 Nev. at 349, 455 P.2d at 33; Shuette, 121 Nev. at 864-65, 124 P.3d at 549.

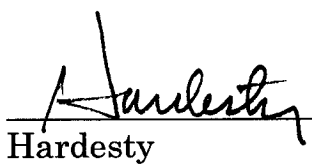
[33]See West v. Nabors Drilling USA, Inc., 330 F.3d 379, 395 (5th Cir. 2003) (noting that proportionality between the damages and attorney fee awards is an appropriate consideration in a typical case); International Travel, Etc., 623 F.2d at 1274-75 (concluding that the fee award must bear a reasonable relationship to the damage award, and a high fee-to-damages ratio requires close examination of the fee award's reasonableness); Morse v. Mutual Federal S. & L. Ass'n of Whitman, 536 F. Supp. 1271, 1283 (D. Mass. 1982) (explaining that there must be a relationship "between the depth of the services provided and what is at stake"); Glendora, 202 Cal. Rptr. at 396; Lumbermens Mut. Cas. Co. v. Quintana, 366 So. 2d 529 (Fla. Dist. Ct. App. 1979) (reversing a $20,000 attorney fee award in a case where there was only a $15,000 liability); Meredith v. Smith, 35 P.3d 1002 (Okla. Civ. App. 2001) (concluding that a $3,300 attorney fee award was unreasonable in an action resulting in a $485 judgment); Armstrong Forest Products v. Redempco, 818 S.W.2d 446 (Tex. App. 1991) (affirming a trial court's attorneys fee award that was less than the amount requested, based on the trial court's conclusion that the requested amount was excessive in relation to the actual damage award).

directing the justice's court to consider the award by applying the SCR 155(1) and Brunzell factors. Given that the district court exercised its discretion arbitrarily and capriciously by affirming the unreasonable award under the circumstances, we conclude that extraordinary relief is warranted.

Accordingly, we grant this petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order affirming the attorney fees award, reverse the award, and remand the matter to the justice's court for a reasonable attorney fees award. The district court's order should specifically instruct the justice's court to focus on the relevant reasonableness factors as outlined above and the award's relationship to the result obtained in the underlying matter, and enter its award exclusive of any fees incurred in the dismissed district court action, the district court appeals, or the writ proceedings in this court.

It is so ORDERED.

_____, J.
Parraguirre



_____, J.
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_____, J.
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