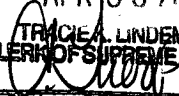


IN THE SUPREME COURT OF THE STATE OF NEVADA

CELEBRATE HOMES XI, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
BREAN MACKENZIE; AND LISA
MACKENZIE,
Respondents.

No. 50796

FILED

APR 08 2009
TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND


This is an appeal from a district court judgment awarding attorney fees and costs pursuant to a settlement agreement. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.


The parties entered into a settlement agreement regarding the underlying construction defect claims in this case. As part of the settlement agreement, appellant agreed to pay respondents' reasonable attorney fees and costs. The parties agreed that if the amount of attorney fees and costs was disputed, the issue would be brought before the district court for resolution. After a hearing, the district court awarded the full amount of attorney fees and costs requested by respondents. This appeal followed.

We review an award of attorney fees and costs for an abuse of discretion. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 673, 137 P.3d 1110, 1129 (2006). Having reviewed the briefs and appendices on appeal, we conclude that the district court abused its discretion. In particular, the district court failed to provide any findings of fact regarding its award of the full amount of attorney fees and costs requested. Appellant has identified some attorney billing entries that, while small, should not have

been awarded. In addition, several attorney billing entries appear duplicative or unnecessary. The basis for the district court's decision that these entries were reasonable is unclear from the district court's judgment or the record on appeal. The district court also failed to state any findings as to why the full amount of costs should be awarded. When the district court fails to provide a basis for its award of attorney fees and costs, and the decision is not clearly supported by the record, it abuses its discretion. Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998).¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Hardesty


_____, J.
Gibbons

¹While appellant does not raise this argument, we note that, in awarding attorney fees, the district court is also required to take into consideration the factors outlined in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). See Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 863-65, 124 P.3d 530, 548-49 (2005) (stating that the district court is required to evaluate whether the requested fee is reasonable and to consider these factors in determining the reasonableness of an attorney fees award under NRS 40.655).

CHERRY, J., dissenting:

I dissent. In my view, we should overrule the holding in Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530 (2005), which subjected a statutorily mandated attorney fees award to application of the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). I would therefore affirm the district court's order awarding fees in this case.

Cherry, J.
Cherry

cc: Hon. Susan Johnson, District Judge
Coleman Law Associates
Burdman Law Group
Eighth District Court Clerk