

IN THE SUPREME COURT OF THE STATE OF NEVADA

NADER MIRZAI,
Appellant,

vs.

JACK CONLEY, INDIVIDUALLY AND
D/B/A EAGLE ONE REALTY; JUANITA
HILARIO A/K/A JANIE HILARIO,
INDIVIDUALLY AND D/B/A EAGLE
ONE REALTY; ARNOLD GARCIA,
INDIVIDUALLY AND D/B/A EAGLE
ONE REALTY; AND EAGLE ONE
REALTY, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Respondents.

No. 58786

FILED

JAN 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Tracie K. Lindeman*
DEPUTY CLERK

ORDER AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

This is a proper person appeal from a district court judgment in a breach of contract, tort, and declaratory relief action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In the case below, appellant failed to appear for a trial under the Nevada short trial program, and the district court entered a judgment dismissing his claims and awarded respondents attorney fees and costs. On appeal, appellant argues that he did not have notice of the short trial date. We review the district court's dismissal of appellant's case for failure to appear at trial for abuse of discretion. Moore v. Cherry, 90 Nev. 390, 394-95, 528 P.2d 1018, 1021-22 (1974). Appellant originally retained an attorney to represent him in this case. The attorney withdrew, and the order granting the attorney's motion to withdraw specified appellant's Meadowvale Road address. Appellant used this address on all subsequent filings. The order setting the short trial date, subsequent scheduling

letters, and respondent's filings were all mailed to this address. Based on these facts, we conclude that appellant had adequate notice of the trial date and that the district court did not abuse its discretion when it dismissed appellant's complaint and entered judgment against him. Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (holding that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950))). Accordingly, we affirm the portion of the district court's judgment dismissing appellant's claims.¹

¹According to the record, notice of entry of judgment was given on June 9, 2011. Appellant filed an "Amended Motion to Alter or Amend Judgment Rule 59(E)" on June 29, 2011. Appellant filed a notice of appeal on July 11, 2011. No opposition to appellant's June 29 motion was filed, no district court order was entered addressing the motion, and the motion is still pending in the district court.

It appears, however, that appellant attempted to file a "Motion to Vacate Award of Attorney Fees and Costs and Request for New Arbitration Hearing Date" on June 15, 2011. The district court refused to file appellant's motion, and the ADR Commissioner returned the motion as not requesting an appropriate remedy. This was error. The district court may not return documents that have been presented to it for filing; any such documents must be accepted and appear in the record. Donoho v. District Court, 108 Nev. 1027, 1029-30, 842 P.2d 731, 733 (1992); Whitman v. Whitman, 108 Nev. 949, 951-52, 840 P.2d 1232, 1233-34 (1992). Once received, a district court judge may take whatever action is appropriate, but the documents and the record must be accurately preserved for appellate review.

In this case, however, the June 15 motion is not in the record and has not been provided to this court. Therefore, because appellant's June 15 motion was not filed and his June 29 motion for NRCP 59(e) relief was

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Appellant also argues that the award of attorney fees should be vacated or reduced because the district court did not consider the appropriate factors or the limitation on attorney fees in short trials under NSTR 27(b). Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). This court reviews a district court's award of attorney fees for an abuse of discretion. Beattie v. Thomas, 99 Nev. 579, 589, 668 P.2d 268, 274 (1983). NSTR 27(b)(4) limits attorney fees to \$3,000, "unless . . . the attorney's compensation is governed by a written agreement between the parties allowing a greater award." This matter arose out of a Property Management Agreement, which provides in section 19(B) that the prevailing party in a lawsuit is entitled to reasonable attorney fees. This is an agreement between the parties that allows an award greater than \$3,000. Therefore, the district court's award was not limited to \$3,000 under NSTR 27(b)(4).

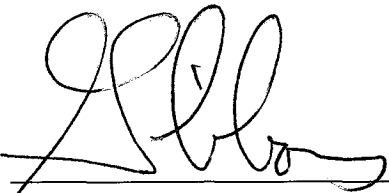
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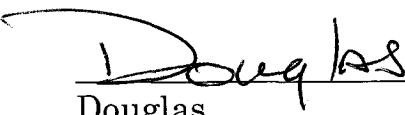
filed beyond the ten-day filing period, neither motion tolled the time for filing a notice of appeal and this court has jurisdiction over this appeal. NRAP 4(a).

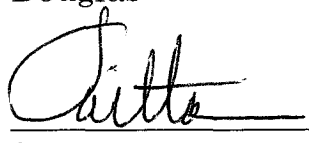
Appellant's June 29 motion also sought relief from the judgment under NRCP 60(b); arguing, among other things, that his failure to appear at trial was due to mistake, inadvertence, or excusable neglect, and that there was alleged fraud, misrepresentation, or other misconduct by respondent's attorney. Because the district court has not ruled on that motion, this portion of appellant's appeal is premature and we have not considered any additional facts or arguments raised in appellant's pending motion. Accordingly, nothing in this order should be construed as limiting the district court's ability to consider and resolve appellant's June 29 motion as one properly seeking relief under NRCP 60(b). AA Primo Builders v. Washington, 126 Nev. ___, ___ & n.2, 245 P.3d 1190, 1194 & n.2 (2010). Once the district court resolves appellant's June 29 motion, any aggrieved party may appeal from the order. NRAP 3A(b)(8).

To determine the reasonableness of attorney fees, the district court is required to consider the Brunzell factors and set forth its analysis in its order. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 865, 124 P.3d 530, 549 (2005). In this case, it does not appear that respondents provided the district court with evidence supporting the requested attorney fees, and the district court's order did not provide any analysis of the reasonableness of the attorney fees under Brunzell. Therefore, we vacate the district court's award of attorney fees and remand this issue to the district court for further proceedings. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Valerie Adair, District Judge
Nader Mirzai
Spencer M. Judd
Eighth District Court Clerk