

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE MARGARET
MARY ADAMS 2006 TRUST

No. 61710

MARGARET MARY ADAMS 2006
TRUST; AND WAYNE ADAMS,
TRUSTEE,
Appellants,
vs.
LAWRENCE DEVITA,
Respondent.

FILED

MAR 26 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART
AND REMANDING*

This is an appeal from district court orders resolving a petition for instructions in a trust action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

This case arises out of the administration of the Margaret Mary Adams 2006 Trust. Margaret passed away in June 2010, at which time Lawrence DeVita, her son from a prior marriage, became the trust beneficiary. Wayne Adams, Margaret's husband and the trustee, distributed the trust's real property to Lawrence and sent Lawrence an accounting compilation. Lawrence refused to accept the accounting compilation and requested a more detailed accounting. Wayne petitioned the district court, seeking to confirm himself as trustee and to affirm his accounting. Wayne also sought 10 percent of the 2008 to 2010 rental income as a management fee, and, although he initially waived a trustee fee, he later sought a 2 percent trustee fee in his trial statement. Lawrence opposed the petitions.

After a bench trial, the district court found that the accounting was sufficient but sanctioned Wayne by refusing to award him any trustee or management fees because, although the rental income was listed in the accounting compilation, Wayne had failed to provide direct proof of the rental income and thus had breached his trustee's duties by failing to keep documentation of the trust's finances. See NRS 165.135(4). Wayne also requested \$39,270.74 in attorney fees, but the district court awarded only \$7,050.00, categorically excluding all "block billed" attorney fees, which the district court found interfered with its ability to determine whether the fees were reasonable under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). This appeal followed.

Wayne first argues the district court abused its discretion in denying him trustee and extraordinary rental management fees. This court reviews a district court's order regarding the administration of a trust or distribution of trust funds for an abuse of discretion. *Hannam v. Brown*, 114 Nev. 350, 362, 956 P.2d 794, 802 (1998). As to the management fee, Wayne did not provide any rental or other receipts or any records regarding his management of the properties. We therefore conclude that the district court did not abuse its discretion in denying Wayne's requested management fees. See *In re Estate of Bissinger*, 388 P.2d 682, 691 (Cal. 1964) ("[T]he trustee should be required to show in detail the nature and extent of such services rendered by it . . . and the time and effort entailed thereby over and beyond usual and ordinary services."). As to the trustee fee, we find no abuse of discretion in the district court's sanction denying Wayne a trustee fee for a breach of his trustee's duties in failing to "make all the information used in the preparation of the financial report available to each beneficiary." NRS

165.135(4); *see also In re Wills of Jacobs*, 370 S.E.2d 860, 865 (N.C. Ct. App. 1988) (holding that the trial court may refuse to award a trustee any fees when the trustee breached his duties). Accordingly, we affirm the district court's order regarding the requested trustee and property management fees.

As to the attorney fees award, Wayne argues that the district court abused its discretion by categorically excluding all attorney time entries that contained block billing. This court reviews the district court's decision regarding attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014). When determining whether to award attorney fees, the district court must review the reasonableness of the attorney fees under the *Brunzell* factors. *See id.* at ___, 319 P.3d at 615-16. In this case, the district court purportedly attempted to do so but found that it was prevented from considering the reasonableness of the attorney fees by appellants' attorney's use of block billing.

Block billing is the time-keeping practice whereby a lawyer enters the total daily time spent working on a case and lists all of the tasks worked on during the day, rather than separately itemizing the time spent on each task. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007). The courts that have addressed block billing observe that block billing makes it difficult for a court to review the reasonableness of the requested attorney fees, as compared with single task time entries. *See, e.g., id.* at 948 (“[B]lock billing makes it more difficult to determine how much time was spent on particular activities.”). And as an increasing number of tasks are listed for a particular time entry, reviewing the reasonableness of the time entries becomes correspondingly more difficult.

See Okla. Natural Gas Co. v. Apache Corp., 355 F. Supp. 2d 1246, 1264 (N.D. Okla. 2004) (finding that it was difficult, if not impossible, to review the reasonableness of block-billed time entries, one of which was a time entry for 7.3 hours containing eight tasks).


Nevertheless, block-billed time entries are generally amenable to consideration under the *Brunzell* factors, *see Mendez v. Cnty. of San Bernardino*, 540 F.3d 1109, 1129 (9th Cir. 2008), *overruled on other grounds by Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir. 2014), and a district court must consider block-billed time entries when awarding attorney fees. If a district court encounters difficulty considering the character of the work done or the work actually performed because of block billing, then the district court may order additional briefing or discount the relevant block-billed time entry or entries by an appropriate amount.¹ *See Welch*, 480 F.3d at 948 (suggesting that a 10 to 30 percent reduction might be reasonable for block-billed fees). But only where a district court determines that none of the task entries comprising the block billing were necessary or reasonable may a district court categorically exclude all of the block-billed time entries. *Mendez*, 540 F.3d at 1129 (“[S]uch billing practices are legitimate grounds for reducing or eliminating certain claimed hours, but not for denying all fees.”).

In this case, the block-billed entries submitted by Wayne’s counsel contained two to four task entries. This is not an extreme example of block billing and does not unduly interfere with the district

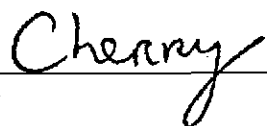
¹Regardless of its decision, the district court must explain in its order why a reduction in attorney fees, or lack thereof, was fair and reasonable under the *Brunzell* factors. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

court's ability to judge the reasonableness of the attorney fees. *See, e.g., Meriwether v. Coughlin*, 727 F. Supp. 823, 827 & n.5 (S.D.N.Y. 1989) (finding that a time entry of 2.25 hours for "Conversation with Mr. Lauer, letter to Judge Stewart, preparation of motion for class" contained sufficient specificity to gauge the reasonableness of the attorney fees); *cf. Okla. Natural Gas*, 355 F. Supp. 2d at 1264 (finding eight task entries spanning 7.3 hours to be difficult to review). Thus, we conclude that it was an abuse of discretion for the district court to categorically exclude all block-billed time entries from the attorney fees award. Accordingly, we reverse this portion of the district court's order and remand this matter to the district court for the district court to reconsider what amount of attorney fees should be awarded to the trust for its attorney fee expenses.

It is so ORDERED.²


Parraguirre


Douglas


Cherry

cc: Hon. Connie J. Steinheimer, District Judge
Nicholas F. Frey, Settlement Judge
Smith & Harmer
Brian Kelly, LLC
Washoe District Court Clerk

²We have considered the parties' other arguments and conclude that they lack merit.