

IN THE SUPREME COURT OF THE STATE OF NEVADA

C. CONRAD CLAUS, PC, A NEVADA PROFESSIONAL CORPORATION,

Appellant,

vs.

CLARK COUNTY SELF FUNDED BENEFIT PLAN; AND RED ROCK DIAGNOSTICS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

No. 61866

**FILED**

**MAR 12 2015**

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

C. CONRAD CLAUS, PC, A NEVADA PROFESSIONAL CORPORATION,

Appellant,

vs.

CLARK COUNTY SELF FUNDED BENEFIT PLAN; AND RED ROCK DIAGNOSTICS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

No. 62667

C. CONRAD CLAUS, PC, A NEVADA PROFESSIONAL CORPORATION,

Appellant,

vs.

CLARK COUNTY SELF FUNDED BENEFIT PLAN; AND RED ROCK DIAGNOSTICS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

No. 63106

RED ROCK DIAGNOSTICS, LLC,

Appellant,

vs.

C. CONRAD CLAUS, PC, A NEVADA PROFESSIONAL CORPORATION,

Respondent.

No. 63246

**ORDER OF AFFIRMANCE**

These are consolidated appeals from a district court judgment in an interpleader action and post-judgment orders awarding attorney fees

and denying relief from the judgment. Eighth Judicial District Court, Clark County; Susan Scann, Judge.

Appellant C. Conrad Claus, PC first argues that the district court abused its discretion when it denied Claus's motion to dismiss the underlying action. While it is unclear whether a *plaintiff* may move for dismissal under NRCP 4(i) or NRCP 16.1(e)(2), instead of NRCP 41(a)(2), a determination of good cause and dismissal under these rules rests in the district court's discretion. *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050, 1052 (2007) (NRCP 16.1(e)(2)); *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 513, 998 P.2d 1190, 1193-94 (2000) (NRCP 4(i)); *Harris v. Shell Dev. Corp., Nev., Inc.*, 95 Nev. 348, 351, 594 P.2d 731, 733 (1979) (NRCP 41(a)(2)). Here, Claus did not move to dismiss the action until several years after serving certain defendants and after respondents Clark County Self-Funded Benefit Plan and Red Rock Diagnostics, LLC had filed answers, made appearances, and argued motions. Having considered the record and the parties' arguments, we conclude that the district court did not abuse its discretion in denying Claus's motion to dismiss.

Next, Claus challenges the district court's grant of summary judgment to Clark County and Red Rock and its adjudication of the interpleaded funds. Here, Claus principally argues that its retaining liens, which arose from litigation separate from the action that generated the personal injury recovery, were validly asserted in the interpleader action and had priority over Clark County's and Red Rock's liens.

Without reaching the priority of the retaining liens, we conclude that Claus may not assert the retaining liens in this action. In this regard, a district court adjudicating a retaining lien must consider the

reasonableness of the attorney fees in the context of setting the amount of the lien. *Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 540 n.2, 216 P.3d 779, 788 n.2 (2009); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). And in general, proving the reasonableness of attorney fees requires the attorney to submit evidence, such as detailed invoices, time-keeping records, or affidavits, demonstrating the time actually spent and work actually performed by the advocate and why that time and work was reasonable. See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008); *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). But here, attorney C. Conrad Claus admitted in his deposition that he did not keep contemporaneous time and billing records at the time of his representation of his client, and the records that he presented to the district court were audits of his past work performed years later by his current attorney. In these circumstances, it is impossible for an attorney to prove with any certainty how much time he spent on his client's matter or what work was actually performed, and thus it is also impossible for a court to consider the reasonableness of the attorney fees forming the basis of the retaining lien. See *Calhoun v. Acme Cleveland Corp.*, 801 F.2d 558, 560 (1st Cir. 1986) (requiring detailed, contemporaneous time-keeping records demonstrating the date, the time spent on each task, and the work performed); *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1327 (D.C. Cir. 1982) ("Casual after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees."). Therefore, even if the retaining liens had priority over the medical liens, Claus did not present sufficient evidence of reasonable services to allow any value to be assigned to the

retaining liens. Accordingly, the retaining liens do not alter the outcome of the district court's summary judgment, and we affirm the summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

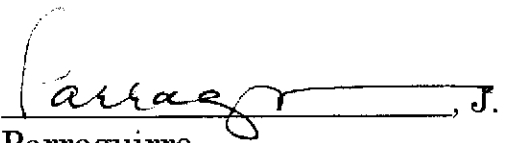
As to the district court's NRS 18.010(2)(a) and (b) attorney fees award to Red Rock, Claus argues that the district court abused its discretion when it awarded attorney fees to Red Rock, while Red Rock, in its appeal, argues that the award should have included additional amounts of attorney fees and awarded sanctions. Here, however, the district court thoroughly analyzed the parties' arguments and awarded the specified attorney fees, in part for Claus's frivolous arguments. Having considered the record and the parties' arguments on appeal, we conclude that the district court did not abuse its discretion, and we affirm the district court's award of attorney fees and denial of other sanctions. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. \_\_\_, \_\_\_, 319 P.3d 606, 615 (2014) (attorney fees); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330-31, 130 P.3d 1280, 1288 (2006) (Rule 11 sanctions).

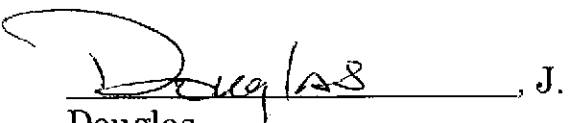
Finally, the district court did not abuse its discretion when it denied Claus's motion for NRCP 60(b) relief. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 657-58, 218 P.3d 853, 861 (2009) (specifying that this court reviews a district court's denial of NRCP 60(b) relief for an abuse of discretion). Nothing prohibited Clark County and Red Rock from entering into a stipulation regarding their relative lien priorities, regardless of whether their statutory priority differed from their stipulated priority; the district court approved the stipulation; and Claus did not

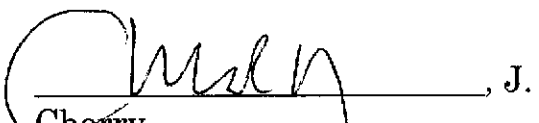
contemporaneously attack the stipulation. Therefore, we affirm the district court's order denying NRCP 60(b) relief.

Accordingly, we

ORDER the judgment and orders of the district court  
AFFIRMED.<sup>1</sup>

  
Parraguirre, J.

  
Douglas, J.

  
Cherry, J.

cc: Hon. Susan Scann, District Judge  
William F. Buchanan, Settlement Judge  
Stovall & Associates  
Law Office of Ladine Oravetz  
Clark County District Attorney/Civil Division  
Eighth District Court Clerk

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<sup>1</sup>We have considered the parties' other arguments on appeal and conclude that they lack merit.