

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUANE JENSEN,
Appellant,
vs.
ANTOINETTE FRY; RALPH FRY;
DAVE OLSON, PERSONALLY AND IN
HIS OFFICIAL CAPACITY; AND
BOULDER CITY POLICE
DEPARTMENT,
Respondents.

No. 63045

FILED

DEC 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

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

This is a proper person appeal from a district court judgment in a tort action and from a post-judgment order granting attorney fees. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant filed a complaint against respondents seeking monetary damages for alleged fraud and slander during the course of a separate criminal proceeding. The district court dismissed respondents Antoinette and Ralph Fry from the case, granted summary judgment in favor of respondents Dave Olson and the Boulder City Police Department (collectively BCPD), and awarded attorney fees to all respondents. Appellant appealed.

As an initial matter, respondents argue that appellant's notice of appeal was untimely. While the district court initially dismissed the Frys from the case and awarded them attorney fees, the district court did not certify that judgment as final under NRCP 54(b); thus, those orders did not become final and appealable until after the district court resolved the case against the other defendants. NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). After the district court granted

summary judgment to BCPD, appellant filed a motion to clarify that the dismissal of his case was without prejudice. Appellant filed his notice of appeal within 30 days of service of the notice of entry of the order denying his motion. Thus, appellant's notice of appeal was timely, and this court had jurisdiction to consider the appeal. NRAP 4(a)(4)(C); *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1192-93 (2010).

As to the merits of the appeal, we conclude that the district court properly dismissed the Frys from the case and granted summary judgment in BCPD's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (dismissal under NRCP 12(b)(5)); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (summary judgment); see *Heck v. Humphrey*, 512 U.S. 477, 484-86 (1994) (noting that a convicted criminal defendant generally cannot collaterally attack the conviction in a civil action). We therefore affirm these district court orders.

Regarding the attorney fees awards, however, the district court must consider the reasonableness of the requested attorney fees under the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969), 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, we cannot determine whether the district court properly considered and evaluated the *Brunzell* factors because the district court's orders did not provide any analysis of the reasonableness of the attorney fees. Therefore, we vacate the district court's orders awarding attorney fees and remand this matter to the

district court to enter written findings concerning the reasonableness of the attorney fees under *Brunzell*. 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.

 Pickering , C.J.
Pickering

 Hardesty , J.
Hardesty

 Cherry , J.
Cherry

cc: Hon. Ronald J. Israel, District Judge
Duane Jensen
Feldman Graf
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Eighth District Court Clerk