

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICE A. ANDERSON, AN
INDIVIDUAL; AND TONI ANDERSON,
AN INDIVIDUAL,
Appellants,
vs.
DOI HUYNH,
Respondent.

No. 63319

FILED

MAR 03 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a final judgment and award of attorney fees and costs in a torts action under the Nevada Short Trial Rules. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In the underlying case, appellants Patrice A. Anderson and Toni Anderson filed a civil complaint against respondent Doi Huynh for damages allegedly sustained in a car accident.¹ Although Patrice and Toni were initially successful in an arbitration proceeding, a trial de novo followed, and Doi prevailed at the trial. Thereafter, Doi was awarded attorney fees and costs under NRS 17.115 and NRCP 68 because Patrice and Toni had rejected offers of judgment extended to them by Doi before discovery. This appeal followed.² Having reviewed the record and the

¹To avoid confusion, we will refer to the parties by their first names in this order because appellants, who are mother and daughter, share the same last name.

²On appeal, only the award of attorney fees is challenged.

arguments on appeal, we conclude that, although the inclusion of a specific discussion of the *Beattie* factors in the challenged order would have been preferable, the short trial judge sufficiently indicated that he had considered those factors when deciding to award attorney fees. See *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (identifying factors to be considered by a trial court in deciding whether attorney fees are warranted based on the rejection of an offer of judgment). In particular, the *Beattie* factors were argued by the parties in their motion practice, and the short trial judge indicated that he had considered all of the pleadings submitted by the parties in making his decision.³ See *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428-29 (2001) (providing that an attorney fees award may be affirmed, despite the absence of specific findings, “[i]f the record clearly reflects that the district court properly considered the *Beattie* factors” and the court’s decision was not an abuse of discretion).

Moreover, on the record before us, we cannot conclude that the short trial judge abused his discretion in finding that attorney fees were warranted in this matter under the *Beattie* factors or that the fees

³The short trial judge’s order also stated that he had considered arguments made by the parties at a hearing regarding the attorney fees issue. Because no transcript of that hearing was presented for our review, we presume that the proceedings at that hearing supported the short trial judge’s decision. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that “appellants are responsible for making an adequate appellate record,” such that when necessary documentation is missing from the record, the appellate court will presume that the missing items support the trial court’s decision).

requested were reasonable.⁴ See *Beattie*, 99 Nev. at 589, 668 P.2d at 274. Although the offer of judgment was made before discovery, Patrice and Toni have not pointed us to any authority supporting the conclusion that a pre-discovery offer is, in and of itself, necessarily unreasonable, nor have they identified any specific information that they needed to evaluate the reasonableness of the offer of judgment that they did not have at the time that the offer was extended. Thus, we cannot conclude that the short trial

⁴Patrice and Toni also argue that the short trial judge failed to expressly consider the specific factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and later repeated in *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833-34, 712 P.2d 786, 790 (1985), for considering whether a request for attorney fees is reasonable in amount. Nothing in the record indicates, however, that Patrice and Toni presented any arguments to the short trial judge regarding the need to consider the *Brunzell* factors or whether the requested fees were unreasonable under those factors. Similarly, Patrice and Toni argue on appeal that the offer of judgment should not have been given effect after they prevailed at the court annexed arbitration, but they did not raise this argument below. Moreover, in addition to failing to present these arguments to the short trial judge, nothing in the record indicates that Patrice and Toni filed any objection to the district court regarding the attorney fees and costs award, which was included in the proposed final judgment that was submitted to the district court for approval. See NSTR 3(d)(2), (3) (permitting objections to the proposed judgment to be presented to the district court and providing that, upon consideration of any objection, the district court shall either approve or reject the proposed judgment, in whole or in part). Because these arguments were not presented to the short trial judge or the district court, we decline to consider them on appeal. See *Mason v. Cuisenaire*, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006) ("Generally, failure to raise an argument in the district court proceedings precludes a party from presenting the argument on appeal.").

judge was required to find that the timing of the offer was so unreasonable as to preclude an award of attorney fees.

Finally, with regard to the remaining *Beattie* factors, the circumstances discussed by the parties for and against the attorney fees award are open to interpretation in different ways, and we therefore defer to the short trial judge's discretion in concluding that attorney fees were warranted under these circumstances. *See Wynn*, 117 Nev. at 13, 16 P.3d at 428-29. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Scott Michael Cantor, LTD.
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Eighth District Court Clerk