

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATRINA DUNCAN, AN INDIVIDUAL,
Appellant,
vs.
GREGORY CARTER, INDIVIDUALLY;
AND GLENN CARTER,
INDIVIDUALLY,
Respondents.

No. 65339

FILED

APR 15 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a post-judgment order denying attorney fees and costs in a personal injury action and deeming a payment to be in full satisfaction of the judgment. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

After a jury verdict and judgment in her favor, appellant Katrina Duncan filed a motion for attorney fees, costs, and interest on May 4, 2011. Following a hearing, the district court orally denied Duncan's request for attorney fees, but it did not enter a written order regarding this ruling. Subsequently, respondents Gregory Carter and Glen Carter appealed a number of evidentiary issues to the Nevada Supreme Court, which affirmed the district court on December 18, 2013. Following the issuance of the remittitur for that appeal, Duncan filed a motion for attorney fees, costs, and interest on January 24, 2014. In the motion, Duncan sought attorney fees as set forth in her first motion together with additional attorney fees, costs, and interest. Incorporating its previous ruling, the district court entered an order on March 4, 2014,

denying attorney fees and costs and deeming a payment to be in full satisfaction of the judgment. This appeal followed.

On appeal, Duncan challenges the district court's decision on several bases. First, Duncan contends that the district court abused its discretion by denying Duncan's May 4, 2011, and January 24, 2014, requests for attorney fees as well as her January 24, 2014, request for costs. In addition, Duncan argues that the district court erred by finding the Carters' payment to be in full satisfaction of judgment.

The district court did not abuse its discretion by denying Duncan's request for attorney fees

We begin our examination of this case by considering Duncan's challenge to the denial of attorney fees. Duncan contends that the district court abused its discretion for the following reasons: the district court (1) only reviewed three of the four *Beattie* factors, (2) treated the third *Beattie* factor as determinative, and (3) incorrectly determined that the third *Beattie* factor weighed in favor of the Carters.¹ We disagree.

¹Duncan further argues that the district court abused its discretion by failing to consider the *Brunzell* factors. When assessing the fourth *Beattie* factor, which involves whether the requested fees were reasonable and justified, the district court must consider the factors enumerated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The district court's *Brunzell* analysis "will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination." *Schuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 121 P.3d 530, 549 (2005). Here, the district court found that Duncan's requested attorney fees were reasonable, but failed to provide the reasoning and findings in support of its determination. Because the district court found that Duncan's requested attorney fees were reasonable, any error was harmless, as the district court's determination favored appellant in the *Beattie* analysis. NRCP 61 ("The court at every stage of the proceeding must disregard any error or defect

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Absent an abuse of discretion, we will not reverse a district court's determination regarding requests for attorney fees under NRCP 68 and NRS 17.115. *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001). In evaluating whether to award attorney fees pursuant to NRCP 68, a district court must consider the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). While it is preferable that a district court explicitly address each *Beattie* factor in its order, we will defer to the district court's discretion if "the record clearly reflects that the district court properly considered the *Beattie* factors." *Wynn*, 117 Nev. at 13, 16 P.3d at 429.

Although the order denying Duncan's motion for attorney fees does not set forth the district court's reasoning and findings supporting its determination, we hold that the district court did not abuse its discretion, as the record indicates that the district court evaluated the *Beattie* factors. The parties extensively briefed the application of the *Beattie* factors, and Duncan provided a breakdown of the attorney fees she incurred in this case.² The written order denying Duncan's motion for attorney fees indicates that the district court held two hearings on the matter, and that the district court was fully apprised of the matter. At the hearings, the

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in the proceeding which does not affect the substantial rights of the parties.").

²The appendix does not include a breakdown of attorney fees incurred following entry of judgment in Duncan's underlying action. "When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. University & Community College System of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

district court explicitly ruled on each *Beattie* factor, and the record supports the district court's findings. Accordingly, we conclude that Duncan's arguments regarding the denial of her requests for attorney fees lack merit.³

The district court did not abuse its discretion by denying Duncan's request for costs

With regard to Duncan's challenge to the district court's denial of her request for costs, Duncan asserts that she is entitled to certain costs of trial and appeal pursuant to NRAP 39, NRCP 68, NRS 17.115, and NRS 18.020, and that the district court abused its discretion by denying Duncan's request for such costs. As the determination of allowable costs is within the sound discretion of the district court, we will not overturn the district court's determination absent an abuse of discretion. *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005).

NRS 18.110(1) sets forth the procedure for claiming costs taxable in the district court—specifically, the statute provides that a party seeking costs must file and serve, within 5 days after the entry of judgment, a verified memorandum of costs. Similarly, where a party

³Although Duncan did not raise the issue on appeal, we note that notwithstanding the offer of judgment to the Carters prior to trial, the district court did not assess the first *Beattie* factor in accordance with the Nevada Supreme Court's guidance in *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 251, 955 P.2d 661, 673 (1998). However, as no single factor is determinative, we must look to the district court's consideration of the remaining factors. *Id.* at 252 n.16, 955 P.2d 673 n.16. Because the remaining *Beattie* factors provided a sufficient basis for denying Duncan's request for attorney fees, we will not reverse the district court's determination.

seeks costs of appeal that are taxable in the Nevada Supreme Court, NRAP 39(c)(3) requires the party to file an itemized and verified bill of costs with the clerk within 14 days after entry of judgment.

In the present case, Duncan failed to follow the procedures set forth in NRS 18.110(1) and NRAP 39(c)(3). In her second motion for attorney fees, Duncan requested certain costs of trial. While Duncan filed a memorandum of costs following entry of final judgment in her underlying case, the memorandum of costs did not include the trial costs that Duncan presently seeks. As such, Duncan's request is untimely. In regards to the costs of her appeal, Duncan filed neither an itemized and verified bill of costs nor a verified memorandum of costs. Given Duncan's failure to comply with the procedures set forth in NRS 18.110(1) and NRAP 39(c)(3), the district court did not abuse its discretion by denying Duncan's request for costs.


The district court did not err by granting a full satisfaction of judgment


Finally, Duncan contends that the district court erred by granting a full satisfaction of judgment notwithstanding Duncan's second motion for attorney fees, costs, and interest. Duncan cites to *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008), a case in which the Nevada Supreme Court held that a partial satisfaction of judgment was appropriate where, at the time the judgment debtor tendered payment, a motion for attorney fees remained pending. *Barney* is inapposite to the present case, as the Carters tendered the entire amount due to Duncan, and the district court decided Duncan's second motion for attorney fees, costs, and interest leaving no pending matters. Duncan, therefore, failed to provide any legal authority indicating that a satisfaction of judgment is inappropriate where the judgment is satisfied

in full. As such, Duncan failed to demonstrate that the district court erred by granting a full satisfaction of judgment.

Accordingly, based on the reasoning set forth above, we affirm the district court's order denying attorney fees and costs and deeming a payment to be in full satisfaction of the judgment.

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Ronald J. Israel, District Judge
William C. Turner, Settlement Judge
Christensen Law Offices, LLC
Schuetze & McGaha, P.C.
Eighth District Court Clerk

⁴We have considered the Carters' alternative arguments regarding our jurisdiction to consider this appeal and the timing of Duncan's second motion for attorney fees and conclude that they are without merit.