

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS DANIELSON,  
Appellant,  
vs.  
FALCONCREST HOMEOWNER'S  
ASSOCIATION,  
Respondent.

No. 67068

**FILED**

FEB 18 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
CHIEF DEPUTY CLERK

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

This is an appeal from a district court summary judgment in a wrongful foreclosure action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

After appellant Thomas Danielson stopped paying his homeowner's association dues, respondent Falconcrest Homeowner's Association (the HOA), filed a notice of lien and election to sell against Danielson's home. Danielson did not pay the delinquent dues, and the HOA sold the home at foreclosure, to itself, for a minimal amount. Danielson sued for wrongful foreclosure, and the district court ultimately granted summary judgment in favor of the HOA and awarded the HOA attorney fees. This appeal followed.

Below, Danielson conceded that all of his claims were based on the premise that the HOA had improperly foreclosed on his property pursuant to NRS 116.3116(2), which limits an HOA's lien amount that is superior to other enumerated liens to nine months of dues, not including additional fees, penalties, and interest.<sup>1</sup> Based on that concession, the

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<sup>1</sup>Danielson's contention was that, by including more than nine months of assessments, fees, penalties, and interest in the calculations of what Danielson owed, the HOA violated various statutes and the foreclosure was therefore improper.

district court granted summary judgment in favor of the HOA, concluding that there were no competing priorities of liens, and thus, the HOA was not limited to nine months' dues and could also include fees, penalties, and interest in the lien amount under NRS 116.3116(1) (allowing an HOA to have a lien for delinquent dues, as well as fines and penalties related to those delinquent dues).

Rather than address the district court's conclusion regarding NRS 116.3116(1), Danielson's civil appeal statement comments about the hardships he has endured and difficulties with his counsel below. While we recognize these adversities, Danielson has not provided any argument regarding how he contends the district court erred in granting summary judgment pursuant to NRS 116.3116(1), and we therefore conclude that he has waived any such argument. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that an issue not raised on appeal is deemed waived). As a result, we necessarily affirm the district court's grant of summary judgment in favor of the HOA without addressing the merits of that decision.<sup>2</sup>

Turning to the award of attorney fees, we conclude that the district court abused its discretion by failing to consider the factors set forth for evaluating the reasonableness of such fees in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). *See Estate & Living Tr. of Miller*, 125 Nev. 550, 552, 216 P.3d 239, 241 (2009) (providing that "the award of attorney fees is generally entrusted to the

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<sup>2</sup>To the extent Danielson's civil appeal statement could be read to argue that the district court improperly failed to consider his claims regarding the HOA's refusal to fix problems with his home's foundation, Danielson waived this argument by conceding below that all the claims in the complaint were based on the HOA improperly foreclosing under NRS 116.3116(2) and failing to present any argument in the district court regarding the foundation issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

sound discretion of the district court"). In its request for fees, the HOA failed to address the *Brunzell* factors, and, after appellant noted this failure in his opposition to the fees motion, the HOA replied that consideration of the *Brunzell* factors was unnecessary for an award of attorney fees made under NRS 116.3116(8)<sup>3</sup> (providing that reasonable attorney fees must be awarded to the prevailing party in an action brought under that statute). Likewise, the district court did not assert that it had considered the reasonableness of the fee award or otherwise provide any reasoning for the amount of fees it awarded.

Thus, we conclude that the district court abused of discretion because NRS 116.3116(8) requires the award of attorney fees under that section to be reasonable. And the Nevada Supreme Court has held that, in determining the reasonableness of an attorney fees award, the court must consider the factors established in *Brunzell*. See *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 549 (2005). Therefore, because the record demonstrates that the district court abused its discretion by failing to consider the *Brunzell* factors, we reverse the award of attorney fees and remand this case to the district court for reconsideration of the attorney fees award in light of the *Brunzell* factors.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

<sup>3</sup>In 2015, the Nevada Legislature renumbered subsection 8 of NRS 116.3116 as subsection 12, but the subsection was not substantively amended. See 2015 Nev. Stat., ch. 266, § 1, at \_\_\_\_.

cc: Hon. Patrick Flanagan, District Judge  
Thomas Danielson  
Angius & Terry LLP/Las Vegas  
Washoe District Court Clerk