IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN DAVID LAVIGNE,
Appellant,
vs.
NICHOLE L. LAVIGNE,
Respondent.

No. 68505

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court post-judgment order awarding attorney fees in a divorce case. Eighth Judicial District Court, Family Court Division, Clark County; Mathew Harter, Judge.

In the challenged order, the district court did not provide the basis for its award of attorney fees and, to the extent it made findings in support of its decision, the findings were minimal and did not address the *Brunzell* factors.[1] *See Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (providing that when awarding attorney fees there must be a rule or statute that authorizes the award, that the district court must consider the *Brunzell* factors, and that in family law cases, the court must consider the income disparity between the parties); *see also Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (identifying factors the district court must consider when making an award of reasonable attorney fees). Further, the district court stated in its

[1]Specifically, the court found that appellant withdrew his motion for child custody at the hearing on that motion and that the parties had similar incomes, but did not identify how those findings impacted its decision to award fees or the amount of fees awarded.

order that its "award is by no means reflective of the quality or the necessity of the work performed by [respondent's] counsel," which suggests that the district court did not consider, or improperly considered, the *Brunzell* factors. *See* 85 Nev. at 345, 455 P.2d at 31 (requiring the district court to consider the qualities of the advocate and the work performed when determining a reasonable fee to award).

Although findings may be implied if the record is clear, *Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970) (explaining that "even in the absence of express findings, if the record is clear and will support the judgment, findings may be implied"), the record on appeal in this case does not clearly demonstrate that the district court considered the factors or include substantial evidence that clearly supports the decision to award $15,500 in fees to respondent. *See Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139, 1143 (2015) (providing that when assessing the reasonableness of a request for attorney fees under *Brunzell*, explicit findings on each factor are not required, but the district court must demonstrate that it considered the required factors and the award must be supported by substantial evidence). In particular, while respondent argued that appellant litigated certain portions of the case with nefarious motives, *see* NRS 18.010(2)(b); EDCR 7.60(b), it is not clear on the face of the record that the district court awarded fees based on this argument or that an award on this basis was proper. *See Logan*, 131 Nev. at ___, 350 P.3d at 1143; *see also Pease*, 86 Nev. at 197, 467 P.2d at 110. As a result, we conclude that the award of attorney fees to respondent was an abuse of discretion, *see Miller*, 121 Nev. at 622, 119 P.3d at 729 (recognizing that appellate courts review attorney fees awards for an abuse of discretion),

and we therefore reverse that order and remand this matter to the district court for further proceedings.

It is so ORDERED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Mathew Harter, District Judge, Family Court Division
John David Lavigne
Radford J. Smith, Chtd. D/B/A Smith & Taylor
Eighth District Court Clerk

[2]Because we conclude that the district court abused its discretion, we need not address John's remaining arguments regarding the award of attorney fees.