

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHELE ARCURI,
Appellant,
vs.
DOUGLAS CERASO,
Respondent.

No. 68923

FILED

JUN 09 2016

ORDER OF AFFIRMANCE

TRACIE K. ANDEMAN
CLERK OF SUPREME COURT
CLERK

This is an appeal from a district court post-judgment order awarding attorney fees in a custody action. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

On appeal, appellant argues the district court abused its discretion by awarding only \$1,700 in attorney fees, rather than the \$10,000 she requested, because the court failed to properly consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and failed to allow her to present additional evidence in support of her attorney fees request. See *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 731 (2005) (reviewing an award of attorney fees in a paternity action for an abuse of discretion). Respondent argues that no additional fees were warranted.

With regard to appellant's contention that the court should have allowed her to produce additional evidence, it is the responsibility of the party seeking attorney fees to support a "fee request with affidavits or other evidence" demonstrating that an award is warranted under the

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relevant factors. *Id.* at 623-24, 119 P.3d at 730. The record demonstrates that appellant sought attorney fees in a written motion filed prior to the trial, but she did not support this request with any affidavits or other evidence to demonstrate that the fees were warranted. Moreover, at trial, while appellant offered to provide further briefing at the court's request, she did not seek leave to do so. Instead, appellant stated that she believed that enough information had already been provided. Nothing in the record indicates that appellant ever attempted to provide the required evidence to the district court, and thus, we conclude that she waived any argument that the court should have given her the opportunity to submit additional evidence in support of her request for fees. *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.").

As to consideration of the relevant factors, the district court's order demonstrates that the court considered the factors set forth in *Brunzell* and the disparity in the parties' incomes. *See Brunzell*, 85 Nev. at 349, 455 P.2d at 33; *see also Miller*, 121 Nev. at 623-24, 119 P.3d at 730 (explaining that the court must consider the *Brunzell* factors and any disparity in income under *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), when deciding whether to award attorney fees in family law cases). In this regard, appellant contends that, by reducing the award based on the conclusion that neither party clearly prevailed, the district court improperly focused on the result achieved. But the court's order was not unduly focused on this factor, as the court also took into

account the generally good result received by appellant, counsel's experience, and the difference in the parties' incomes. Nothing in appellant's arguments demonstrates that the district court was required to award a greater amount based on the relevant considerations, and thus, as the court considered the appropriate factors, we will not second-guess the district court's conclusion as to the amount of fees that were ultimately awarded. *See Brunzell*, 85 Nev. at 350, 455 P.2d at 33-34 ("The value to be placed on the services rendered by counsel lies in the exercise of sound discretion by the trier of the facts.").


Finally, appellant contends that the court should have awarded her additional attorney fees under NRS 18.010(2)(b), which authorizes a court to award attorney fees to a prevailing party when the opposing party brought or maintained a claim or defense "without reasonable ground or to harass the prevailing party." Here, the district court concluded that neither party clearly prevailed in the action, and that conclusion is supported by the record. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence). Moreover, the court did not find that respondent brought or maintained any claim or defense without reasonable grounds or to harass appellant. Indeed, appellant has not argued on appeal that respondent did so, and thus, 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) (providing that an issue not raised on appeal

is deemed waived). As a result, an award of attorney fees under NRS 18.010(2)(b) would not have been appropriate.

For the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Linda Marquis, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Kurth Law Office
Douglas Ceraso
Eighth District Court Clerk