

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAT SONGER,
Appellant,
vs.
RAYMOND DELUCCHI; AND TOMMY
HOLLIS,
Respondents.

No. 67414

FILED

JUN 23 2016

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

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court order awarding attorney fees and costs. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

In the challenged order, the district court relied on a comparison of appellant Pat Songer's billed attorney fees with those of his codefendant, rather than awarding fees based on the factors outlined in *Brunzell v. Golden Gate National 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). Songer argues that this court should adopt the prevailing market rate as the measure for determining a reasonable rate in awarding attorney fees in pro bono, government, and insurance defense cases. We decline to do so and we conclude that the district court abused its discretion by failing to adequately address the *Brunzell* factors and by failing to provide sufficient reasoning and findings in support of its decision to award attorney fees. See *Gunderson v. D.R. Horton, Inc.*, 130 Nev., Adv. Op. 9, 319 P.3d 606, 615 (2014) (recognizing that appellate courts review attorney fee awards for an abuse of discretion); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005) (concluding that district courts may use any method rationally designed to calculate a reasonable rate for attorney fees,

and that rate will prove reasonable so long as the district court considers the amount in light of the factors enumerated in *Brunzell*).

Although findings may be implied if the record is clear, *Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970), the record on appeal in this case does not clearly demonstrate that the district court considered the factors or include evidence that clearly supports the amount of fees awarded. See *Logan v. Abe*, 131 Nev., Adv. Op 31, 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). As a result, we conclude that the award of attorney fees was an abuse of discretion. Accordingly, we vacate the judgment of fees and costs and remand this matter to the district court with instruction to follow the *Brunzell* factors and to make written factual findings to support the award of attorney fees.¹

It is so ORDERED.

Douglas J.
Douglas

Cherry J.
Cherry

Gibbons J.
Gibbons

¹We have considered the parties' remaining arguments and conclude that they are without merit.

cc: Hon. Kimberly A. Wanker, District Judge
Carolyn Worrell, Settlement Judge
Lipson Neilson Cole Seltzer & Garin, P.C.
Law Office of Daniel Marks
Nye County Clerk