IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHEYENNE VALLEY INVESTORS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; AND JAMES R. RIGGS, AN INDIVIDUAL,
Appellants,
vs.
MB REO-NV LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 69391

FILED

OCT 26 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

After the district court granted summary judgment in favor of respondent MB REO-NV Land, LLC (MB),[1] MB moved for attorney fees and costs, which appellants Cheyenne Valley Investors, LLC and James R. Riggs (collectively, Cheyenne Valley) opposed. Cheyenne Valley also filed a motion to retax costs, which MB opposed. After a hearing, the district court awarded MB all of its requested fees and costs except for expert fees for one expert witness and the travel costs of one attorney.[2] Cheyenne Valley's appeal followed.

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[1]This court affirmed the grant of summary judgment in *Cheyenne Valley Investors, LLC v. MB REO-NV Land, LLC*, Docket No. 68508 (Order of Affirmance, September 6, 2016).

[2]MB did not appeal the denial of these costs, thus the propriety of that determination is not before us on appeal.

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On appeal, as it did below, Cheyenne Valley presents numerous, detailed arguments that the attorney fees requested by MB were not reasonable and that the district court therefore abused its discretion in awarding them. *See 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); *see also Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (reviewing an award of attorney fees for an abuse of discretion). And while MB responds to many of these arguments, the district court failed to make any findings of fact either in its order or at the hearing of the matter, or make any statements that it had even considered the *Brunzell* factors in coming to its decision.[3]

Although findings of fact 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 pertinent factors or include evidence that clearly supports the amount of fees awarded. *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). For example, Cheyenne Valley argues that MB failed to provide adequate information regarding the ability, training, education, experience, professional standing, and skill of each person it

[3]Indeed, at the hearing the district court merely stated that "the attorney fees are reasonable," and the order makes no mention of the reasonableness of the fees requested.

requested fees for; that certain fees were duplicative and/or did not further the litigation; that fees were claimed for the drafting of a default judgment even though Cheyenne Valley had already answered the complaint months earlier; and that MB's first two summary judgment motions were not fully successful.[4] There is nothing before this court to demonstrate, however, that the court even considered these arguments, much less explain why they were rejected. *See Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (listing factors for consideration that include the qualities of the advocate, the time and attention needed to perform the given work, and the result). Due to the lack of findings or evidence in the record that clearly supports the district court's award, we conclude that the award of attorney fees was an abuse of discretion and we must vacate that award and remand this matter for the court to make factual findings to support its fees award.[5]

Cheyenne Valley makes similarly detailed arguments regarding the district court's award of costs and why that award was also

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[4]This is not meant to be an exclusive list of the arguments that were raised below and on appeal regarding the attorney fees award, nor is it a statement as to whether these arguments have merit.

[5]Cheyenne Valley also argues that the attorney fees should have been requested as special damages in the complaint, but that argument lacks merit given that the underlying matter was a case where attorney fees were awarded as a cost of litigation pursuant to an agreement rather than as an element of damages. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956-58, 35 P.3d 964, 969-70 (2001) (differentiating between attorney fees awarded as a cost of litigation pursuant to an agreement, statute, or rule, and those awarded as an element of damages), *overruled on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007).

an abuse of discretion.[6] *See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998) (providing that an award of costs must be reasonable but "is within the sound discretion of the trial court"). Among these are arguments that MB did not substantiate all of its requested costs, that it failed to demonstrate how the majority of its costs were necessary to the litigation, and that an improper amount of fees was awarded for an expert witness.[7] *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. ___, ___, 345 P.3d 1049, 1054 (2015) ("[C]osts must be reasonable, necessary, and actually incurred."); *see also* NRS 18.005(5) (limiting the amount of costs awarded for an expert witness unless certain circumstances are met). And while MB asserts that the necessity of its costs was clear, more is needed for the district court to appropriately award costs. *See Vill. Builders 96, LP v. U.S. Labs., Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005) (concluding that an

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[6]Cheyenne Valley also argues that certain fees, such as those for pre-litigation activities, and costs, such as those not specifically provided for in NRS 18.005 (defining costs), should not have been granted because they are not allowed under the relevant statues and caselaw. But the guarantee Riggs executed provided that he would pay MB's "reasonable attorneys' fees and all costs and other expenses" incurred in enforcing its rights under that agreement, and Cheyenne Valley presents no cogent argument or relevant authority that the parties could not include such additional expenses in their agreement. As a result, we do not consider Cheyenne Valley's challenge to this portion of the award. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that the court need not consider claims that are not cogently argued or supported by relevant authority).

[7]Again, we are not purporting to list all of Cheyenne Valley's arguments against the award of costs, nor do we address the merits of these arguments or otherwise address the propriety of this award.

argument that a party did not need to provide justification for "each copy made or each call placed to substantiate the reason for the copy or call" when the total costs appeared reasonable in light of the length of litigation was "unpersuasive because such documentation is precisely what is required under Nevada law" (internal quotation marks omitted)).

NRS 18.110(1) provides that to recover costs, the prevailing party must provide "a memorandum of the items of the costs in the action or proceeding." The prevailing party must also provide sufficient documentation that the costs were necessary and actually incurred. *See Cadle Co.*, 131 Nev. at ___, 345 P.3d at 1054. Here, it is not clear that the district court conducted any analysis of the adequacy of the memorandum and supporting documentation. Instead, it appears that the court summarily granted the majority of MB's costs. In not conducting the review of the costs documentation as provided in NRS 18.110, the district court abused its discretion in awarding costs, and we reverse and remand that decision.[8]

Cheyenne Valley's final argument is that respondent Riggs's liability is limited by the guarantee he executed, and that the district court's award of attorney fees and costs exceeded that maximum liability. MB contends, and the district court agreed, that while Riggs's liability for

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[8]Cheyenne Valley also asserts that MB is not entitled to costs because it supplemented its memorandum of costs after the five-day deadline. *See* NRS 18.110(1) (requiring a party to file a memorandum of costs within five days after the entry of judgment, "or such further time as the court or judge may grant"). Because it provides no cogent argument or any authority for the proposition that a memorandum of costs cannot be supplemented, we decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

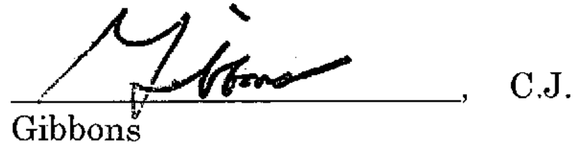
Cheyenne Valley's indebtedness to MB was limited by the guarantee, that limit did not apply to the attorney fees, costs, and other expenses incurred by MB in collecting the indebtedness and/or enforcing the guarantee against Riggs.

While the guarantee does limit Riggs' maximum liability as to the money Cheyenne Valley owed to MB, it also provides that Riggs "shall also pay" MB's fees, costs, and other expenses incurred in enforcing the guarantee. We agree with the district court that the guarantee cannot be interpreted as not allowing the award of fees, costs, and other expenses because such an interpretation would render that language meaningless. *See Musser v. Bank of Am.*, 114 Nev. 945, 950, 964, P.2d 51, 54 (1998) ("[C]ontracts should be construed so as to avoid rendering portions of them superfluous."); *see also Dobron v. Bunch*, 125 Nev. 460, 463-64, 215 P.3d 35, 37 (2009) (providing that general contract interpretation principles apply to the interpretation of guaranty agreements and that such interpretations are subject to de novo review on appeal). Thus, the district court properly determined that Riggs was responsible for MB's fees, costs, and other expenses in addition to his liability for Cheyenne Valley's indebtedness.

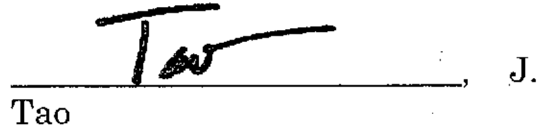
In sum, we reverse the district court's award of attorney fees and costs and remand for the court to make the findings necessary to support such awards. We affirm, however, the district court's conclusion

that Riggs was liable for MB's attorney fees, costs, and other expenses.

It is so ORDERED.



_______________, C.J.
Gibbons



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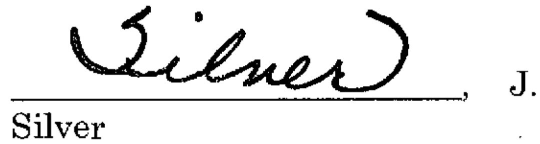

_______________, J.
Silver

cc: Hon. William D. Kephart, District Judge
Glen J. Lerner & Associates
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Eighth District Court Clerk