

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SUSAN SHALOV,
Appellant,

vs.

RAMZY P. LADAH, AN INDIVIDUAL;
LADAH LAW FIRM PLLC, A NEVADA
PROFESSIONAL LIMITED LIABILITY
COMPANY; AND LAS VEGAS
PERSONAL INJURY, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondents.

No. 69973

FILED

APR 28 2017

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

ORDER OF AFFIRMANCE

Appellant Susan Shalov appeals from a district court post-judgment order awarding costs in a torts action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.¹

Shalov sued respondents Ramzy Ladah, the Ladah Law Firm, PLLC, and Las Vegas Personal Injury, LLC, (collectively referred to as

¹To the extent Shalov's arguments can be construed as challenging the dismissal of her claims, we lack jurisdiction to consider them. In particular, the district court's November 30, 2015, dismissal order constituted the final judgment in the underlying case, see *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining what constitutes a final, appealable judgment), and Shalov failed to timely appeal that decision. See NRAP 4(a)(1) (setting forth the time for taking an appeal). Although the post-judgment order at issue here also purports to dismiss Shalov's action, that portion of the order was duplicative of the November 30 final judgment and Shalov cannot challenge the dismissal of her claims through an appeal from this post-judgment decision. See *Campos-Garcia v. Johnson*, 130 Nev. ___, ___, 331 P.3d 890, 890 (2014) (explaining that "an appeal must be taken from an appealable order when first entered" and that duplicative judgments are not appealable and generally should not be rendered).

Ladah) asserting claims for legal malpractice and breach of fiduciary duty. After Shalov refused to have her deposition taken, Ladah moved for dismissal of her action under NRCP 37, and the district court ultimately granted that motion. Ladah then moved for an award of costs under NRS 18.020(3), which requires costs to be awarded to the prevailing party in an action for the recovery of money or damages in excess of \$2500. The district court later granted that motion in part, and this appeal followed.

On appeal, Shalov first argues that Ladah was not the prevailing party for purposes of NRS 18.020 because the underlying proceeding was not resolved by a trial on the merits. To prevail for purposes of NRS 18.020, a party must “succeed[] on any significant issue . . . which achieves some of the benefit [he or she] sought.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotation marks omitted) (defining “prevailing party” for costs purposes and explaining that the term is broadly construed to include defendants).

Here, Ladah obtained a dismissal under NRCP 37, which is an adjudication on the merits that precludes Shalov from bringing the same claims against him again. See NRCP 41(b) (providing that “[u]nless the court in its order for dismissal otherwise specifies, a dismissal” for failure to comply with the rules of civil procedure “operates as an adjudication upon the merits”); see also *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1057-58, 194 P.3d 709, 715 (2008) (recognizing that the dismissals identified by NRCP 41(b) are meant to have preclusive effect, and treating the NRCP 41(b) dismissal order in that case as a valid final judgment satisfying the elements of claim preclusion). And because the dismissal constituted an adjudication on the merits, Ladah prevailed for purposes of

NRS 18.020. See *Carter v. Inc. Vill. of Ocean Beach*, 759 F.3d 159, 165 (2d Cir. 2014) (recognizing that a defendant will be considered the prevailing party where the judgment constitutes an adjudication on the merits for purposes of claim preclusion) (citing *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health and Human Res.*, 532 U.S. 598 (2001)); *Szabo Food Serv., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076-77 (7th Cir. 1987) (“A dismissal under Rule 41(a) is unlike a dismissal with prejudice under Rule 41(b), which enables the defendant to say that he has ‘prevailed.’”); see also *Foster v. Dingwall*, 126 Nev. 56, 71-73, 227 P.3d 1042, 1052-53 (2010) (affirming an award of attorney and special master fees to a third-party plaintiff as the prevailing party where the third-party defendants’ answer was struck and a default judgment was entered pursuant to NRCP 37). Thus, reversal is not warranted on this basis.

Shalov next challenges whether Ladah necessarily incurred costs for retaining expert witnesses, arguing that they were retained for an improper purpose and ultimately did not testify. Expert witness fees are not recoverable as costs unless they were necessarily incurred. See NRS 18.005(5) (authorizing recovery of certain expert witness fees); see also *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. ___, ___, 345 P.3d 1049, 1054 (2015) (explaining that costs are not recoverable unless they were necessarily incurred). Here, although the underlying proceeding was dismissed before Ladah’s experts could testify, it was necessary for him to incur the costs of retaining these experts to prepare to contest issues that would have been raised had Shalov’s case proceeded to trial. See *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 667-68, 765 P.2d 184, 185 (1988) (explaining that a plaintiff in a legal malpractice action must establish that an attorney client relationship existed, that the attorney owed the

client a duty and breached it, and that the breach proximately caused the client's damages); *Bebo Constr. Co. v. Mattox & O'Brien, P.C.*, 990 P.2d 78, 83 (Colo. 1999) (recognizing that the causation element of a legal malpractice action requires the plaintiff to "demonstrate that the claim underlying [it would] have been successful if the attorney had acted in accordance with his or her duties"); cf. *Bergman v. Boyce*, 109 Nev. 670, 679-80, 856 P.2d 560, 566 (1993) (holding that percipient witnesses need not testify at trial for their fees to be recoverable as costs). Thus, Shalov failed to demonstrate that reversal is warranted on this basis.


Based on the foregoing, Shalov has not established that the district court abused its discretion in granting Ladah's motion for costs under NRS 18.020(3). See *Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (providing that district court orders awarding costs are reviewable for an abuse of discretion). Accordingly, we affirm the district court's decision.

It is so ORDERED.²



C.J.

Silver



J.

Tao



J.

Gibbons

²We have considered Shalov's remaining arguments and conclude that they do not provide a basis for reversal.

cc: Hon. Susan Johnson, District Judge
Susan Shalov
Laxalt & Nomura, Ltd./Las Vegas
Eighth District Court Clerk