

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY MICHAEL STINZIANO,
Appellant,
vs.
AMBER MARIE WALLEY,
Respondent.

No. 72213

FILED

AUG 25 2017

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

ORDER OF AFFIRMANCE

Anthony Michael Stinziano appeals from a post-decree order denying attorney fees.¹ Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

Stinziano filed a motion for an order to show cause and related relief seeking to determine whether respondent Amber Marie Walley should be held in contempt for refusing to follow court orders, for compensatory visitation time, and an award of attorney fees. In his motion before the district court, Stinziano cited NRS 18.010, NRS 22.100, EDCR 5.11,² and EDCR 7.60 as providing bases to award him attorney fees. The district court denied the motion, including the request for attorney fees, and this appeal followed. On appeal, Stinziano points to these same statutes and

¹As the Nevada Supreme Court previously concluded that the appellate courts lack jurisdiction to hear any portion of the appeal other than the denial of attorney fees, *see Stinziano v. Walley*, Docket No. 72213 (Order Partially Dismissing Appeal and Directing Transmission of Record, March 6, 2017; and Order, March 30, 2017), only Stinziano's challenge to the denial of attorney fees is before us on appeal.

²EDCR 5.11 was repealed and replaced with EDCR 5.501, effective January 27, 2017. However, this has no effect on the disposition of this appeal, as the order at issue was entered prior to January 27, 2017 and is thus, governed by EDCR 5.11.

court rules in arguing that he was entitled to attorney fees. Orders denying attorney fees are reviewed for an abuse of discretion. *Stubbs v. Strickland*, 129 Nev. 146, 152, 297 P.3d 326, 330 (2013).

First, since the district court denied Stinziano's motion in its entirety, he is not a prevailing party pursuant to NRS 18.010(2)(a) and (b) (allowing an award of attorney fees to a prevailing party when that party has not recovered more than \$20,000 or when the opposing party's position "was brought or maintained without reasonable ground or to harass the prevailing party"). Therefore, the district court did not abuse its discretion in refusing to award attorney fees on this basis. Second, the district court did not find Walley to be in contempt and thus, the refusal to award fees under NRS 22.100(3) (allowing an award of attorney fees to the party seeking to enforce an order against a party who is ultimately found in contempt for violating such order) was likewise appropriate. Next, EDCR 5.11(a) only provides for the award of attorney fees to the nonmoving party if the moving party fails to attempt resolution prior to the matter being heard and then, only if the court believes a resolution would have been effected. Stinziano was the moving party in this instance and thus, EDCR 5.11(a) does not provide a basis to award him attorney fees.

Lastly, as to EDCR 7.60(b) (allowing an award of attorney fees as a sanction on various grounds, including when a party "[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously"), the record does not reveal any findings³ that Walley did

³While the order does not set forth any specific factual findings with regard to the denial of attorney fees, it does cite to a transcript. As appellant, it was Stinziano's burden to provide a copy of this transcript and he failed to do so. As such, we presume it supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that appellant is responsible for preparing an adequate appellate record and that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing [documents] support[] the district court's decision").

anything to multiply the proceedings and in fact, she was responding to Stinziano's motion. Moreover, Walley filed her own motion seeking to have Stinziano declared a vexatious litigant, and while this was denied, the district court did admonish Stinziano that any future filings he makes must have "extremely solid grounds and strong support," suggesting that if any party was potentially making improper filings it was Stinziano. Therefore, it was not an abuse of discretion to deny attorney fees under EDCR 7.60(b).

In light of the forgoing and, having reviewed Stinziano's arguments and the record on appeal, we conclude that the district court did not abuse its discretion in refusing to award Stinziano attorney fees. Accordingly, we affirm the order denying an award of such fees. *See Stubbs*, 129 Nev. at 152, 297 P.3d at 330.

It is so ORDERED.



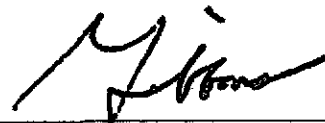
Silver

, C.J.



Tao

, J.



Gibbons

, J.

cc: Hon. William S. Potter, District Judge, Family Court Division
Anthony Michael Stinziano
Fine Carman Price
Eighth District Court Clerk