IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELICA RIOS; AND REBECA VELASCO,
Appellants,
vs.
PROGRESSIVE NORTHERN INSURANCE COMPANY,
Respondent.

No. 71225

FILED

AUG 24 2017

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

ORDER OF REVERSAL AND REMAND

Angelica Rios and Rebeca Velasco appeal from a post judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.[1]

Following an automobile collision, appellants Rios and Velasco jointly sued their underinsured motorist coverage carrier, respondent Progressive Northern, for failing to compensate them as required by their insurance policy. The suit went to arbitration and Rios and Velasco prevailed. The arbitrator awarded Rios $7,500 and Velasco $6,500, as well as attorney fees. Progressive requested a trial de novo. At the short trial, appellants prevailed again, though the short trial judge awarded only $2,000 to Rios and $1,000 to Velasco. Presumably because Progressive reduced the total judgment, the short trial judge declared Progressive the "prevailing party" and awarded Progressive $5,442.97 in fees and costs. Thus, despite winning the trial, the appellants ultimately owed more money to Progressive than Progressive owed them.

Appellants appealed and we reversed, holding that because Rios and Velasco prevailed on the one cause of action litigated at the short

[1]The presiding short trial judge was John Graves Jr.

trial and obtained a money judgment in their favor, they—not Progressive—were the prevailing parties. *Rios v. Progressive N. Ins. Co.*, No. 68631, 2016 WL 2870777, at *2 (Nev. App. May 9, 2016) (unpublished) (citing *Scott v. Zhou*, 120 Nev. 571, 573-74, 98 P.3d 313, 314-15 (2004); *Sack v. Tomlin*, 110 Nev. 204, 215, 871 P.2d 298, 305 (1994)). Further, in the same order, we explicitly instructed the district court to "vacate the award of attorney's fees and costs to respondent, and determine the amount of reasonable attorney's fees and costs to be awarded to appellants as the prevailing party pursuant to NAR 20(B) and NSTR 27(b)." *Id.* at *2 n.3.

On remand, the parties argued over the amount of fees and costs the district court should award Rios and Velasco. After holding a hearing, the district court ordered as follows:

> IT IS HEREBY ORDERED THAT Plaintiff's Motion for Fees and Costs granted in part and denied in part. Consistent with the Court of Appeals order filed on May 9, 2016, the award of attorney fees and costs to Defendant is vacated. Plaintiffs are entitled to reasonable costs of $2,040.05, not including the arbitrator fees. The Court exercises its discretion to award fees to Plaintiff. Pursuant to NSTR 27(b)(4), these fees may not exceed a total of $3,000.

Rios and Velasco appeal again. This time, they argue that the district court's award of attorney fees is unclear as to how much, if any, it has awarded each of them, and that the district court's order was erroneous because it relied on a misinterpretation of NSTR 27(b)(4) and disregarded the governing legal principles of *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

We review a district court's decision on a motion for attorney fees for an abuse of discretion. *Las Vegas Metro. Police Dep't v. Blackjack Bonding*, 131 Nev. ___, ___, 343 P.3d 608, 614 (2015), *reh'g denied* (May 29,

2015), *reconsideration en banc denied* (July 6, 2015). An abuse of discretion occurs "when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *Id.* (citing *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993)). "Questions of statutory construction, including the meaning and scope of a statute, are questions of law, which this court reviews de novo." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (citing *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003)).

When determining the amount of attorney fees to which a prevailing party is entitled, the trial court must first consider the factors the Nevada Supreme Court announced in *Brunzell*, which include: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969). A district court should consider each of these factors and no one element should predominate or be given undue weight. *Id.*

After a short trial, "[t]he prevailing party at the short trial is entitled to all recoverable fees, costs and interest pursuant to statute or N.R.C.P. 68." NSTR 27(b)(1). However, "[a]n award of fees under subsections (1) or (2) of this rule may not exceed a total of $3,000, unless the

parties otherwise stipulate or the attorney's compensation is governed by a written agreement between the parties allowing a greater award." NSTR 27(b)(4). Progressive argues that NSTR 27(b)(4) means that the maximum a losing party will have to pay in attorney fees—no matter how many prevailing parties arise from a short trial—is $3,000, while Rios and Velasco argue that this rule simply means that each of them are independently entitled to a maximum of $3,000.

The plain language of both NSTR 27(b)(1) and 27(b)(4), when read in combination, provide that the $3,000 award limit is to be the maximum award granted *per prevailing party*, rather than prevailing "side." NSTR 27(b)(1) explicitly states that "[t]he prevailing party at the short trial is entitled to all recoverable fees," which uses the singular form of the word "party," indicating that this rule applies to individual parties rather than a collective group. In the legal lexicon, courts refer to a "party" to a lawsuit to refer to an individual person or entity. *Party*, Black's Law Dictionary (10th ed. 2014) ("2. One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment; litigant <a party to the lawsuit>"). And a "prevailing party" is thus an individual "party"—i.e. an independent person or entity—who wins at that trial. *See id.* ("prevailing party (17c) A party in whose favor a judgment is rendered, regardless of the amount of damages awarded . . ."); *see also Smith v. Crown Financial Services of America*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995) (holding that the term "prevailing party" includes "plaintiffs, counterclaimants and defendants"); *Blackjack Bonding*, 131 Nev. at ___, 343 P.3d at 614 (holding that a "prevailing party" is one that succeeds "on any significant issue in litigation which achieves some of the benefit it

sought in bringing suit."). A "party" or "prevailing party" as meant by NSTR 27(b), therefore, does not refer to the entire group of plaintiffs who prevailed at trial as a whole, nor does it refer to any group of plaintiffs represented by a single attorney. Rather, it means exactly what it says: "one by or against whom a lawsuit is brought," meaning an individual person or entity, regardless of the existence of co-parties.

Also, the phrase "an award" as used in NSTR 27(b)(4) refers to an individual award made to an individual "prevailing party" under NSTR 27(b)(1), not the total judgment the losing party needs to pay between all prevailing parties. Otherwise, NSTR 27(b)(4) would limit "a judgment" regarding attorney fees to $3,000 per *losing party*, or refer to it as "a penalty" upon the losing party. But it does not, it refers to "an award" to the prevailing party. *See* NSTR 27(b)(1) and 27(b)(4).

Progressive argues that limiting the award to $3,000 per side—i.e. requiring all joint prevailing parties in a short trial to share a combined maximum award of $3,000 in attorney fees—is consistent with the spirit of the short trial program, which is meant to keep costs low. But capping the attorney fees award at $3,000 per individual prevailing party still keeps costs much lower than a full jury trial. Moreover, Progressive's interpretation would create uncertainty in results. For example, in this case, if Rios prevailed on her claim, but Velasco did not, it would be unclear whether the court should award the $3,000 in attorney fees if the phrase "prevailing party" meant both Rios and Velasco. The more logical interpretation is that "prevailing party" means each individual party and, under this hypothetical, Rios could be awarded fees while Velasco is not.

Therefore, we agree with Rios and Velasco that the $3,000 limit of NSTR 27(b)(4) means that a court can award the prevailing parties after a short trial no more than $3,000 each.

Consequently, the trial court abused its discretion in ruling on attorney fees because in deciding the issue, it relied on a misinterpretation of law or disregarded the guiding legal principles in deciding the issue. *See Blackjack Bonding*, 131 Nev. at ___, 343 P.3d at 614 (citing *NOLM, LLC*, 120 Nev. at 739, 100 P.3d at 660-61); *Bergmann*, 109 Nev. at 674, 856 P.2d at 563).[2] Accordingly, we

ORDER the judgment of the trial court REVERSED AND REMAND this matter for proceedings consistent with this order.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Kathleen M. Paustian, Settlement Judge
Kenneth L. Hall
Dennett Winspear, LLP
Eighth District Court Clerk

[2]To the extent the order could theoretically be construed as a denial of attorney fees, which would not require application of the *Brunzell* factors, *see Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P.3d 326, 330 n.1 (2013), remand is still required because the trial judge misconstrued the law for the reasons discussed above.