IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHRYN KELLER; AND GREATFUL PET, LLC, Appellants, vs. RANDY STANTON, D.V.M., INDIVIDUALLY AND D/B/A BOULDER CITY ANIMAL HOSPITAL; HENDERSON ANIMAL HOSPITAL; AND STEPHANIE ANIMAL HOSPITAL, Respondents.	No. 71265
KATHRYN KELLER; AND GREATFUL PET, LLC, Appellants/Cross-Respondents, vs. RANDY STANTON, D.V.M., INDIVIDUALLY AND D/B/A BOULDER CITY ANIMAL HOSPITAL; HENDERSON ANIMAL HOSPITAL; AND STEPHANIE ANIMAL HOSPITAL, Respondents/Cross-Appellants.	No. 71817

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to enforce a settlement agreement (docket no. 71265) and a consolidated appeal and cross-appeal from a district court order awarding attorney fees and costs (docket no. 71817). Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellants/cross-respondents Kathryn Keller and Greatful Pet, LLC (collectively Keller) and respondents/cross-appellants Randy Stanton, DVM, and Boulder City Animal Hospital, Henderson Animal Hospital, and Stephanie Animal Hospital (collectively Dr. Stanton) entered into a settlement agreement that included an antidisparagement clause.

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Thereafter, the Las Vegas Review-Journal published an article quoting comments Dr. Stanton allegedly made regarding Dr. William Flannery, a competing veterinarian and co-owner of Greatful Pet. Keller, Dr. Flannery's business partner, moved to enforce the settlement agreement between herself and Dr. Stanton, arguing Greatful Pet was entitled to damages for Dr. Stanton's breach of the antidisparagement clause. Dr. Stanton opposed the motion and filed a countermotion for attorney fees and Rule 11 sanctions.

At the evidentiary hearing, Dr. Stanton denied making the quoted statements. When Keller sought to introduce the newspaper article into evidence to prove Dr. Stanton made disparaging statements, the district court ruled the newspaper article's contents constituted inadmissible hearsay within hearsay and excluded it from evidence. The district court entered a written order denying the motion to enforce the settlement agreement. The district court found that Dr. Stanton did not make disparaging comments. Further, even if his comments could be construed as disparaging, the alleged comments referred only to Dr. Flannery, who was not a party to the lawsuit. The district court further found that Keller did not bring her motion for an improper purpose and, as a result, denied Dr. Stanton's countermotion for attorney fees and Rule 11 sanctions.

Dr. Stanton filed a motion for attorney fees and costs, arguing he was entitled to recover $62,108.78 in attorney fees under the parties' settlement agreement. The district court agreed Dr. Stanton was entitled to reasonable attorney fees under the settlement agreement, but determined the claimed amount was unreasonable. The court instead awarded a reduced amount of $10,000 based on the amount of work the

court found was reasonable to defend against the motion to enforce the settlement agreement.[1]

In this appeal, consolidated appeal, and cross appeal, Keller argues the district court abused its discretion by denying her motion to enforce on grounds that Dr. Flannery was not a party to the lawsuit and by excluding the article from evidence as inadmissible hearsay. Dr. Stanton argues the district court improperly reduced his attorney fees.[2]

We review the district court's decision to enforce a settlement agreement for an abuse of discretion. *See Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012). A district court may render judgment for or against a person only where the court has jurisdiction over the parties. *C.H.A. Venture v. G. C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 383, 794 P.2d 707, 708 (1990). Thus, a court may not enter a judgment for or against a nonparty. *See Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987). Therefore, because Dr. Flannery was not a party to the litigation, the district court correctly concluded it had no jurisdiction to enter a judgment for him.

We next consider whether the district court erred by excluding evidence of the newspaper article as inadmissible hearsay. To prevail on her motion to enforce the settlement agreement, Keller needed to

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[1]We do not recount the facts except as necessary to our disposition.

[2]Dr. Stanton further argues he is entitled to attorney fees incurred during this appeal, but as this is an issue for the district court to decide, we do not address it here. *See Musso v. Binick*, 104 Nev. 613, 615, 764 P.2d 477, 477-78 (1988) (holding that where a contract indemnifies the parties from their reasonable attorney fees, the issue of attorney fees involves questions of fact that should be addressed by the district court, subject to this court's review (internal quotation marks omitted)).

demonstrate that Dr. Stanton made disparaging statements regarding either herself or Greatful Pet, and in order to prove her case Keller solely relied on the contents of the newspaper article.[3]

We review the district court's decision to exclude the newspaper article from evidence for an abuse of discretion. *See Las Vegas Metro. Police Dep't v. Yeghiazarian*, 129 Nev. 760, 764, 312 P.3d 503, 507 (2013). NRS 51.035 defines hearsay as "a statement offered in evidence to prove the truth of the matter asserted." Here, Keller relied solely on the newspaper article's contents to prove Dr. Stanton made the disparaging statements regarding either herself or Greatful Pet. When used in this manner—to show Dr. Stanton in fact made the quoted statements—the contents of the article are inadmissible hearsay as the contents were made by the author of the article, not Dr. Stanton. *See Larez v. City of Los Angeles*, 946 F.2d 630, 642 (9th Cir. 1991) (concluding newspaper articles are hearsay when offered to prove that a person made the statement reported in the article), *overruled on other grounds by Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011). Because Keller presented no other evidence to show that Dr. Stanton in fact made disparaging comments, she failed to carry her burden to prove damages. Therefore, the district court did not abuse its discretion by denying Keller's motion to enforce.[4]

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[3]Although Keller argues other evidence demonstrated disparagement, the record belies that argument as our review of the record reveals no evidence supported Keller's claim that Dr. Stanton made disparaging comments.

[4]Keller also argues that Dr. Flannery was a third-party beneficiary of the settlement agreement and therefore had a right to enforce the agreement. This argument is irrelevant because Dr. Flannery did not sue Dr. Stanton to enforce the agreement with Keller. *See Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379, 566 P.2d 819, 824-25 (1977) (defining third-party

Lastly, we turn to Dr. Stanton's arguments regarding attorney fees. We review a district court's decision regarding a motion for attorney fees for an abuse of discretion. *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015). Before awarding attorney fees, a district court must consider the four factors articulated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (emphasis omitted): the qualities of the attorney, "the character of work to be done," "the work actually performed," and "the result." Here, nothing demonstrates that the district court was required to award a greater amount based on the *Brunzell* factors. The record shows the court adequately considered those factors, and we will not second-guess the district court's determination of the value of the services rendered. *See id.* at 349-50, 455 P.2d at 33-34 (noting that the value of an attorney's services "lies in the exercise of sound discretion by the trier of the facts" and that we will affirm an attorney fees award where the district court adequately considers the relevant factors).[5]

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beneficiaries). Moreover, as the record does not show Keller raised this argument below, we need not consider it on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

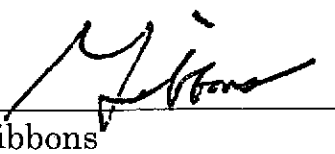
[5]Dr. Stanton further asserts that his requested attorney fees were also justified as a sanction under NRCP 11(c). We conclude the district court did not abuse its discretion by denying Rule 11 sanctions here. *See Stubbs v. Strickland*, 129 Nev. 146, 152, 297 P.3d 326, 330 (2013) (reviewing a district court's decision regarding Rule 11 sanctions for an abuse of discretion). A court should sanction a party under Rule 11 for frivolous actions. *See Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (addressing the grounds for Rule 11 sanctions). Here, however, Keller potentially could have obtained evidence to support her position and the motion was, therefore, not frivolous.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
James J. Jimmerson, Settlement Judge
Black & LoBello
Michael B. Lee, P.C.
Eighth District Court Clerk