

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LILY HARVEY,
Appellant,
vs.
SAM R. HARVEY,
Respondent.

No. 74092

FILED

SEP 14 2018

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

ORDER OF AFFIRMANCE

Lily Harvey appeals an award of attorney fees in a post-decree child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

In the proceedings below, respondent Sam Harvey moved for an order to show cause why Lily should not be held in contempt of court for violating the court's custody order when she retained the children during Sam's parenting time. Sam sought an order requiring the parties to return to their prior week on/week off custody schedule; monetary sanctions for each violation of the custody order; and his attorney fees and costs, citing NRS 18.010, EDCR 7.60, EDCR 5.501, and NRS 22.100. While the parties were unable to resolve the matter prior to the filing of the motion and prior to the hearing on the motion, Lily ultimately stipulated to the relief Sam requested in his motion—make-up parenting time for Sam and a return to the prior week on/week off custody schedule. After a hearing on the matter, the district court denied Sam's motion for an order to show cause, but granted Sam his attorney fees and costs, concluding that Lily's conduct forced Sam to bring the unnecessary motion before the court and that the matter could have been resolved without the court's involvement. While

Sam requested \$3,233.52 in attorney fees and costs, the district court awarded him \$1,500. This appeal followed.

On appeal, Lily asserts that the district court abused its discretion in awarding Sam \$1,500 in attorney fees. Specifically, Lily contends that the district court failed to consider the disparity between the parties' incomes, as Sam makes significantly more than Lily, and that substantial evidence did not support the award. The district court generally may not award attorney fees absent authority under a statute, rule, or contract. *Albios v. Horizon Cmty., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006); *see also Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 878 (2014). This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).

As noted above, Sam's motion sought the award of attorney fees pursuant to several rules. Although the district court did not cite which rule it relied upon in granting the request for attorney fees, the district court's order concluded that the matter at issue could have been resolved without court intervention. Additionally, the court found that, despite Lily making a late attempt to resolve the matter before the hearing, it was Lily's conduct that forced the matter to proceed to litigation. Based on this court's review of the record, substantial evidence supports these findings and, therefore, the award of attorney fees would be proper pursuant to NRS 18.010(2)(b), EDCR 5.501, or EDCR 7.60(b). Additionally, we note that the district court always has discretion to award attorney fees in custody matters pursuant to NRS 125C.250. Accordingly, we cannot conclude that the district court abused its discretion in determining an award of attorney fees was warranted. *See Miller*, 121 Nev. at 622, 119 P.3d at 729; *Saavedra-*

Sandoval v. Wal-Mart Stores, Inc., 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (explaining that this court will affirm a district court's order if the district court reached the correct result, even if for different reasons).

After determining that an award of attorney fees is warranted, the court must then consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), to determine a reasonable amount of fees. *Miller*, 121 Nev. at 623, 119 P.3d at 730. In family law matters, the district court must also consider the disparity in the parties' incomes when awarding attorney fees. *Id.* at 623-24, 119 P.3d at 730. While the district court should make explicit findings as to the *Brunzell* factors, the failure to do so is not a per se abuse of discretion. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. ___, ___, 416 P.3d 249, 258-59 (2018). "Instead, the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).


Here, the district court did not make explicit findings regarding each of the *Brunzell* factors or the parties' relative incomes, but in the transcript from the proceedings and in the district court's order, the court noted that it considered the same. Specifically, the court commented that it considered the qualities of Sam's counsel, the billing records it reviewed in determining the amount of work performed, the time the matter took, the nature of the work performed, and the parties' respective incomes as evidenced by their financial disclosures and the court's knowledge of the case based on its extensive litigation history. Additionally, we note that the district court awarded less than half the amount of fees requested, indicating that the district court did consider the relevant factors in determining a reasonable amount of fees to award. Thus, based on this

court's review of the record, the district court's award of attorney fees is supported by substantial evidence. *See MEI-GSR Holdings, LLC*, 134 Nev. at ___, 416 P.3d at 259 (concluding that substantial evidence supported the district court's award when support for an implicit ruling on one or more of the factors was clear from the record). Accordingly, we cannot conclude that the district court abused its discretion in awarding Sam attorney fees in the amount of \$1,500. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Lily Harvey
Law Offices of F. Peter James, Esq.
Eighth District Court Clerk