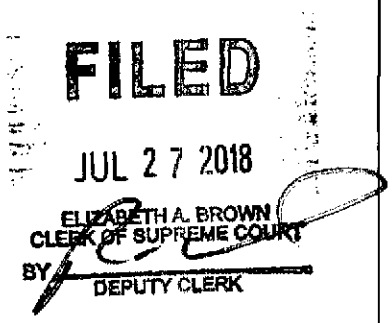
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENT P. WOODS, PERSONAL REPRESENTATIVE OF THE ESTATE OF R. GLEN WOODS,
Appellant/Cross-Respondent,
vs.
WENDY J. WOODS,
Respondent/Cross-Appellant.

No. 72665



ORDER OF AFFIRMANCE

R. Glen Woods[1] appeals and Wendy J. Woods cross-appeals from a post-decree order awarding attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

Glen and Wendy were divorced by decree, which incorporated the parties' property settlement agreement (PSA).[2] Approximately eight years later, Glen moved to modify his alimony obligation. Wendy opposed Glen's motion and filed a countermotion raising various claims pertaining to and requesting that the district court find Glen in contempt for Glen's management of real estate and financial instruments encompassed by the PSA. The parties litigated Glen's motion and Wendy's countermotion extensively. Ultimately, Glen withdrew his motion and the parties settled their dispute over the real estate. The final stipulation and order in the

[1]Counsel for Glen filed a "Suggestion of Death on the Record" informing this court that Glen had died while this appeal was pending. On July 23, 2018, this court granted Kent P. Woods' "Motion for Substitution of Personal Representative for Appellant." Nevertheless, we refer to appellant as "Glen."

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

case was filed on August 24, 2016, and the notice of entry was filed and served on the same day.

On August 26, 2016, Wendy moved for attorney fees. She sought her "actual" attorney fees in the amount of $260,046.01 because, she argued, she was the prevailing party under a provision in the PSA that permitted actual attorney fees and costs for defending against Glen's motion to modify alimony.

On September 14, 2016, Glen filed a motion for an extension of time to file his opposition to Wendy's motion for attorney fees and his countermotion for attorney fees and sanctions. The district court granted Glen's request for an extension. Glen then filed a supplemental motion to extend the time for him to file an opposition and countermotion on September 22, 2016 and, finally, filed his opposition and countermotion the following day.

The district court found Glen's countermotion for fees and sanctions to be untimely under NRCP 54(d)(2)(B) and concluded it lacked jurisdiction to extend the time to file a motion for fees as the rule's 20-day window had expired. It also found that Wendy was entitled to fees for defending Glen's motion to modify alimony even though Glen withdrew that motion because Glen only did so during the middle of the evidentiary hearing after litigating the matter at great length. The district court, however, found that Glen's motion to modify alimony was brought pursuant to NRS 125.150, not the PSA, so Wendy's fee award had its basis under NRS 18.010, not the PSA. Accordingly, the district court concluded Wendy was only entitled to "reasonable" fees, not "actual" fees, and awarded her

$85,287.13 after considering the *Brunzell* factors,[3] the parties' disparity in income, and making a number of reductions based upon duplicate/block billing and the fees already awarded to Wendy in prior proceedings.

Glen appeals from this order, arguing that the district court erred by (1) finding his countermotion for fees and sanctions untimely, (2) finding that Wendy was the prevailing party under NRS 18.010 when she did not receive a money judgment, (3) finding Wendy was the prevailing party on Glen's motion to modify alimony, (4) finding Wendy met her burden to show her requested attorney fees were reasonable, (5) not identifying the billings or value of the billings it discounted from Wendy's "blanket billings", and (6) awarding Wendy $85,287.13 for opposing Glen's motion to modify.

Wendy cross-appeals from this order raising one issue: whether the district court erred by only awarding her "reasonable" attorney fees when she was entitled to "actual" attorney fees under the PSA.

Standard of review

This court reviews an award of attorney fees for an abuse of discretion. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (noting that the standard of review for attorney fees in divorce proceedings is abuse of discretion and applying that standard to review an attorney fees award in a paternity action). "Court rules, when not inconsistent with the Constitution or certain laws of the state, have the effect of statutes." *Margold v. Eighth Judicial Dist. Court*, 109 Nev. 804,

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[3]*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The factors are: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result. *Id.*

806, 858 P.2d 33, 35 (1993). We review legal conclusions regarding court rules de novo. *See Casey v. Wells Fargo Bank*, 128 Nev. 713, 715, 290 P.3d 265, 267 (2012). Similarly, this court reviews de novo a district court's statutory interpretation and application. *See Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. 118, 123, 319 P.3d 618, 621 (2014).

The district court did not err by concluding Glen's countermotion for attorney fees and sanctions was untimely

Glen argues that the district court erred by finding his countermotion untimely under NRCP 54(d)(2)(B) because he filed his initial request for an extension within the rule's 20-day window. Thus, he avers, the district court properly granted his first and second requests for an extension.

NRCP 54(d)(2)(B) provides:

> Unless a statute provides otherwise, [a] motion [for attorney fees] must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, documentation concerning the amount of fees claimed, and points and authorities addressing appropriate factors to be considered by the court in deciding the motion. *The time for filing the motion may not be extended by the court after it has expired.*

(Emphasis added.)

Under the plain language of NRCP 54(d)(2)(B), the district court did not err by finding Glen's countermotion for attorney fees was

untimely as it was filed 27 days after the filing and service of the notice of entry.[4]

Alternatively, Glen argues that his countermotion was timely because the fees were sought as sanctions pursuant to NRCP 54(d)(2)(C). NRCP 54(d)(2)(C) exempts "claims for fees . . . as sanctions *pursuant to a rule or statute*, or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages" from the time limit in NRCP 54(d)(2)(B). (Emphasis added.) Although Glen's countermotion requested that the district court award attorney fees as a sanction, he failed to support his request by citing to or identifying a rule or statute. Thus, we are unpersuaded by Glen's argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Wendy was entitled to attorney fees as the prevailing party[5] on Glen's motion to modify alimony and the amount of the award was not an abuse of discretion

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[4]Glen also asks this court to establish a rule whereby a countermotion to a motion for fees is timely so long as the opposition to the motion for fees the countermotion is filed with is timely. Glen provides no legal support for this proposition. Thus, we need not consider this request. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that an appellate court need not consider issues that are not cogently argued or supported by relevant authority).

[5]We are not persuaded by Glen's contention that Wendy was not the prevailing party. Glen withdrew his motion to modify alimony only after learning that he would likely lose on the merits, even though he prevailed on a subset of that motion regarding modifiability. Therefore, his reliance on *Dimick v. Dimick*, 112 Nev. 402, 405, 915 P.2d 254, 256 (1996), is misplaced. Glen also did not argue below that his goal in filing the motion was only to obtain the hearing. Therefore, we do not consider this argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

Glen argues the district court erred by finding Wendy to be the prevailing party entitled to attorney fees under NRS 18.010 when she did not secure a money judgment award. We agree.

NRS 18.010(2) provides:

> In addition to the cases where an allowance [of attorney fees] is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
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> (a) When the prevailing party has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party.

A party must recover "a money judgment" to be entitled to attorney fees under NRS 18.010(2)(a). *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 285, 890 P.2d 769, 774 (1995). Wendy did not secure a money judgment. Thus, she is not entitled to attorney fees under NRS 18.010(2)(a). Additionally, the district court never made a finding that Glen brought his motion to modify alimony "without reasonable ground or to harass" Wendy. NRS 18.010(2)(b). Accordingly, Wendy was not entitled to attorney fees under NRS 18.010(2).

Still, this court will affirm a district court's order if it "reached the correct result, even if for the wrong reason." *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010). Here, the district court found that because Glen brought his motion to modify under NRS 125.150, its determination about Wendy's fee request was a statutory

matter.[6] NRS 125.150(4) provides "[e]xcept as otherwise provided in NRS 125.141, whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce." Glen's motion does not fall under NRS 125.141. Thus, while she cannot receive fees under NRS 18.010(2), the district court could award her fees under NRS 125.150(4). Accordingly, we affirm the district court's conclusion that a legal basis existed for awarding Wendy fees.

Glen argues the amount of fees awarded to Wendy is unreasonable under *Brunzell*. We conclude that the district court did not abuse its discretion. The district court diligently walked through each *Brunzell* factor. It also considered the disparity in incomes of Wendy and Glen, which is required when determining attorney fees in family law matters. *See Miller*, 121 Nev. at 623, 119 P.3d at 730 (outlining the steps the district court must take in awarding attorney fees in a family law matter). Additionally, the district court reduced the requested fees by approximately two-thirds to account for perceived overbilling and fees not attributed to Glen's motion.[7]

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[6]The district court also found that an award of attorney fees would have to be reasonable regardless of the PSA's provision for actual fees.

[7]Glen also argues that Wendy improperly included all of her legal fees and costs in her motion and this "blanket request for fees" is not legally supportable. Wendy, however, filed her motion under the theory that she was entitled to all of her "actual" attorney fees because of a provision in the PSA. Accordingly, Wendy's request was not devoid of legal support.

Glen also avers the district court committed reversible legal error by failing to specify each and every billing statement it found reasonable or unreasonable in its order. Glen points to no legal support for this

Wendy's cross-appeal

Wendy avers that the attorney fees awarded by the district court were inadequate because the PSA prescribes the prevailing party will receive "actual fees," not reasonable fees. Wendy's argument for expanding her award of attorney fees is not supported by any relevant authority. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Additionally, the district court based the attorney fees award by applying statutes, not the PSA. Though the court discussed the terms of the PSA and "actual" versus "reasonable" fees and made findings in its order, it did not need to do so under these circumstances. Thus, we do not consider Wendy's argument. *See id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Radford J. Smith, Chartered
Mushkin & Rosenblum, Chartered
Black & LoBello
Eighth District Court Clerk

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proposition. Thus, we need not consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.