IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LORAINE VALIENTE,
Appellant,
vs.
DAVID LAWRENCE BEHAR, AN INDIVIDUAL; GANZ & HAUF; AND LAW OFFICES OF ERIC R. BLANK,
Respondents.

No. 76675-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Loraine Valiente appeals from a district court order awarding attorney fees and costs and denying her motion to deny attorney's liens. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Valiente was injured in a car accident and sued.[1] During the course of the litigation, three different sets of attorneys represented Valiente, all under contingency agreements. After settling her case for $165,000, she filed a motion to deny the attorney liens filed by her two previous law firms, the Law Offices of Eric R. Blank (Blank) and Ganz and Hauf (G&H), asserting that neither had brought substantial value to her case. The district court held an evidentiary hearing to resolve the matter. At the evidentiary hearing, Valiente argued that both firms failed to perfect their liens under NRS 18.015, based in part on their failure to provide the "green card" return receipts obtained after filing their notices of attorney liens via certified mail. The district court found that under NRS 18.015, Blank and G&H were entitled to recover attorney fees and costs, and the fee would be a portion of the hourly rate requested because each demonstrated

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

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through testimony that they had performed beneficial work on Valiente's case. Further, the total fees to be awarded would be $66,000 (40% of $165,000) to be shared among Blank ($12,785), G&H ($38,000), and Valiente's final attorney, Huggins ($15,215). Additionally, the district court also awarded all three firms their costs, which had been advanced to Valiente to prosecute her case. However, in its order, the district court subtracted these costs from the total amount of fees to be awarded ($66,000), ultimately reducing each firms' fee award from the intended fees identified above.

On appeal, Valiente argues that the district court abused its discretion by: (1) finding that Blank and G&H perfected their attorney liens—because Blank and G&H were required to provide the "green card" return receipt to properly perfect their attorney liens under NRS 18.015; (2) improperly calculating the amount of attorney fees Blank and G&H were entitled to under a quantum meruit analysis; (3) failing to make sufficient factual findings to support the attorney fee award; and (4) deducting the awarded costs from the awarded attorney fee. Respondents in turn argue that the district court properly found that they had perfected their liens, and appropriately awarded attorney fees and costs.[2]

We review an attorney lien adjudication for an abuse of discretion. *Bero-Wachs v. Law Office of Logar & Pulver*, 123 Nev. 71, 80 n.21, 157 P.3d 704, 709 n.21 (2007). When a district court issues an order in an attorney lien case, disbursing a client's settlement, it is required to:

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[2]It should be noted that on appeal G&H stated that "all parties" recognized that the costs should not have been subtracted from the $66,000, and have requested that this court modify the district court's order accordingly. In light of our remand we decline to do so.

> [M]ake certain findings and conclusions before distribution, including whether (1) NRS 18.015 is available to the attorney, (2) there is some judgment or settlement, (3) the lien is enforceable, (4) the lien was properly perfected under NRS 18.015(2), (5) the lien is subject to any offsets, and (6) extraordinary circumstances affect the amount of the lien.

McDonald Carano Wilson v. Bourassa Law, 131 Nev. 904, 908, 362 P.3d 89, 91 (2015) (citing *Michel v. Eighth Judicial Dist. Court.*, 117 Nev. 145, 151-52, 17 P.3d 1003, 1007-08 (2001)).

Under NRS 18.015(1)(a), a discharged attorney can recover, "[u]pon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted." Further, pursuant to NRS 18.015(2), "[a] lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for the reasonable fee for the services which the attorney has rendered for the client." Under NRS 18.015(3) "an attorney lien . . . is only enforceable when it is attached and perfected pursuant to statute." *Golightly & Vannah, PLLC v. T J Allen, LLC*, 132 Nev. 416, 419, 373 P.3d 103, 105 (2016).

After determining a lien has been perfected, a court may then award attorney fees. We review an attorney fee award for an abuse of discretion. *Argentena Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 531, 216 P.3d 779, 782 (2009), *abrogated on other grounds by Fredianelli v. Fine Carman Price*, 133 Nev. 586, 588-89, 402 P.3d 1254, 1256 (2017).

"In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the

requested amount is reviewed in light of the *Brunzell* factors." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (internal quotation marks and citation omitted). The *Brunzell* factors are:

> (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 [and]; (4) *the result*: whether the attorney was successful and what benefits were derived

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33-34 (1969).

We now consider each of Valiente's arguments in determining whether the district court abused its discretion in adjudicating the attorney liens in favor of Blank and G&H and awarding attorney fees. First, we consider whether the district court abused its discretion when it determined, as a factual matter, that Blank and G&H properly perfected their attorney liens. To make this determination, we must address Valiente's claim that NRS 18.015 requires an attorney to submit a return receipt to perfect their lien. This court reviews the meaning of NRS 18.015 de novo. *Leventhal v. Black & LoBello*, 129 Nev. 472, 476, 305 P.3d 907, 910 (2013). Moreover, the statutory language of NRS 18.015 is unambiguous. *Fredianelli*, 133 Nev. at 590, 402 P.3d at 1257. Under NRS 18.015(3), to perfect a lien an attorney must "serv[e] notice in writing, in person or by certified mail, return receipt requested, upon his or her client and . . . the party against whom the client has a cause of action."

NRS 18.015(3) requires an attorney who chooses to send their notice of attorney lien by certified mail to request a return receipt, and the attorney only perfects the lien upon completion of that requirement. However, the plain language of the statute does not require an attorney to provide a copy of the returned receipt to the court, or to the party upon whom the attorney served notice of the lien, in order to perfect the lien. Thus, we conclude that Blank and G&H's failure to provide return receipts at the hearing did not adversely affect the perfection of their attorney liens. Their liens were perfected once the requirements of the statute were met, which do not include filing a copy of the return receipt with the court.[3] Instead, as discussed below, testimony demonstrating that an attorney sent the notice of attorney lien by certified mail is sufficient to prove the attorney fulfilled the requirements of the statute—especially in cases like this one where Valiente admits that she received service of the notice.

During the evidentiary hearing, Blank testified that he served his lien notice by certified mail. G&H managing partner, Majorie Hauf, testified that the firm served G&H's lien notice by certified mail, based on information she obtained from her firm's case management system. Even more compelling, Valiente testified that she received both Blank and G&H's notices and specifically received G&H's by certified mail.[4] Valiente argues on appeal that Hauf's testimony lacked personal knowledge and was hearsay not within an exception. However, because she failed to object to Hauf's

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[3]This court has also carefully considered Valiente's denial of due process argument on appeal. We conclude that it does not warrant relief because the statute does not mandate production of the return receipt.

[4]Huggins concedes that it received G&H's and Blank's notices of attorney liens.

testimony on these grounds below, we will not consider the issue on appeal. *See Thomas v. Hardwick*, 126 Nev. 142, 156, 231 P.3d 1111, 1120 (2010) ("The failure to specifically object on the grounds urged on appeal preclude[s] appellate consideration on the grounds not raised below." (alteration in original) (internal quotation marks omitted)). Therefore, the district court did not abuse its discretion when it found that Blank and G&H perfected their liens pursuant to NRS 18.015 and *Michel*.

Next, we consider whether the district court abused its discretion by awarding attorney fees and failing to consider the quantum meruit standard in doing so. Valiente does not contest that she signed valid contingency agreements with Blank and G&H and subsequently discharged both firms. Instead, she argues the district court improperly calculated the amount of attorney fees Blank and G&H were entitled to under a quantum meruit analysis. We disagree. Blank represented that he assisted Valiente in the beginning stages of her potential suit by referring her to medical doctors, arranging treatment, and compiling all medical records and information for a lawsuit. Hauf testified that G&H added substantial value to Valiente's case because the firm filed the complaint, obtained an expert affidavit, and, most importantly, obtained an initial settlement offer of $125,000 for Valiente, which she initially rejected. Valiente denied that she received this settlement offer at the hearing and in an affidavit attached to her motion to deny the attorney's liens. The district court, however, found that G&H had communicated the offer which was rejected by Valiente, and we will not disturb this finding on appeal. Thus, because Blank and G&H's expertise and contributions added substantial value to Valiente's case (i.e., quantum merit analysis), we conclude that the district court did not abuse its discretion in deciding to award both firms attorney fees. However, we agree that the district court failed to consider the *Brunzell* factors when

awarding fees, and therefore it failed to make sufficient findings to support the fee awards as discussed in more detail below.

In addressing whether the district court abused its discretion by failing to make sufficient factual findings to support the attorney fees award, we focus on *Brunzell*. Valiente argues the district court's factual findings—made verbally at the end of the evidentiary hearing and in a minute order, were never embodied in a written order, and are insufficient to support a fee award under *Brunzell*. We agree and conclude that the district court failed to satisfy the requirements of *Brunzell* in awarding fees as required. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. For example, the district court's calculations of attorney fees for G&H appeared to include fees for staff and paralegal services a rate of $500 per hour. Such rate appears excessive in view of known prevailing market rates, without any findings regarding why a higher rate should be the basis for an award. Consequently, on remand the district court must apply the *Brunzell* factors and make the necessary findings to support the fee amounts awarded to each of the three firms. We also encourage the district court to revisit its quantum meruit analysis in determining the contributions made by each of the three firms as there is a limited amount of fees ($66,000) to distribute.[5]

Finally, we consider whether the district court abused its discretion when it deducted $23,593.15 in costs from the $66,000 in attorney

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[5]We note that both fee agreements entered into by Valiente with Blank and G&H contain termination clauses. However, awarding the prior firms their attorney fees under these clauses is impracticable because such fees would be wholly disproportionate to the amount of available funds to distribute. Therefore, a quantum meruit analysis is appropriate in conjunction with the application of the *Brunzell* factors. *See, e.g., Cooke v. Gove*, 61 Nev. 55, 61, 114 P.2d 87, 89 (1941) (awarding compensation for legal services based on quantum meruit principles).

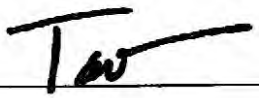
fees to be awarded, resulting in a reduced fee amount of $42,406.85 to be divided among Blank, G&H, and Huggins. At the conclusion of the evidentiary hearing, the district court clarified that the award of costs would not reduce the amount of $66,000 to be distributed, but the costs would have to be repaid by Valiente from her separate recovery because the advancement of costs by the firms were in essence loans. It also should be noted that both Blank and G&H's contingency agreements specified that Valiente would be required to reimburse the firms' costs advanced to prosecute her case *after* attorney fees were deducted from the gross amount recovered, or, in other words, costs would be paid from her share of the recovery.

Nevertheless, in its written order, the district court deducted the total costs to be awarded to each firm from the total contingency fee to be distributed, thus resulting in a lesser fee award to each firm. Under these circumstances, the district court abused its discretion by deducting the costs awarded from the $66,000 rather than from Valiente's separate share of the recovery.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
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cc: Hon. Nancy L. Allf, District Judge
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