

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BO YANG,  
Appellant,  
vs.  
HAIMING PAN,  
Respondent.

No. 77581-COA

**FILED**

DEC 23 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bo Yang appeals from a district court post-divorce decree order awarding attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Yang and Haiming Pan were divorced by default in Nevada in 2015.<sup>1</sup> Since that time, Yang has brought several motions challenging the divorce decree. In 2018, Yang filed a motion to set aside, alleging the district court lacked jurisdiction to divide the parties' real property assets because the assets had already been adjudicated in China. Yang also argued the decree was void because Pan had perpetuated a "fraud upon the court" by failing to previously disclose the lawsuits in China regarding the real property. Pan filed a countermotion for attorney fees and costs under both NRS 18.010 and EDCR 7.60 to defend against Yang's motion, which she alleged was unreasonable and frivolous. The district court denied Yang's motion and awarded attorney fees and costs to Pan in the amount of \$8,650.

On appeal, Yang argues the district court abused its discretion by awarding attorney fees because it failed to specify the legal basis of the

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

award, its award was not supported by substantial evidence, and the award was not reasonable. We disagree.

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). A party may recover attorney fees if "allowed by express or implied agreement or when authorized by statute or rule." *Id.* at 623, 119 P.3d at 730 (internal quotation marks omitted). In its discretion, the district court may award attorney fees under NRS 18.010(2)(b) and EDCR 7.60(b) if a party brings an unreasonable or frivolous claim.<sup>2</sup> *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009); *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687 (1995). But, "there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass." *Rivero*, 125 Nev. at 441, 216 P.3d at 234. A claim is frivolous or unreasonable if it is "not supported by any credible evidence." *See Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (internal quotation marks omitted), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017).

Here, Pan's countermotion requested attorney fees and costs pursuant to NRS 18.010 and EDCR 7.60. Although the district court did not expressly cite which statute or rule it relied upon in awarding attorney fees and costs, it was within its discretion to award fees under either or both. The district court's order emphasized that Yang's motion presented

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<sup>2</sup>A district court may also award attorney fees under NRS 18.010(2)(a) if a prevailing party was awarded a money judgment. *State Indus. Ins. Sys. v. Snapp*, 100 Nev. 290, 294, 680 P.2d 590, 592 (1984). Because neither Yang nor Pan was awarded money damages, we conclude that NRS 18.010(2)(a) could not have been the basis for the award.

no “valid basis to set aside the [order],” that his claims of fraud by Pan were “not supported by any competent evidence,” and his motion was unreasonable because it was not brought timely. Thus, the district court’s findings would have sufficed to justify an award under either NRS 18.010(2)(b) or EDCR 7.60. Accordingly, we conclude that substantial evidence supports the district court’s award of attorney fees under either NRS 18.010(2)(b) or EDCR 7.60(b) and the district court did not abuse its discretion by awarding attorney fees and costs despite its failure to expressly cite the legal basis of the award.

Lastly, we consider whether the amount of the attorney fee award was reasonable. After granting a request for attorney fees the district court must then consider the factors outlined in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), to decide whether the fee requested is reasonable. *Miller*, 121 Nev. at 623, 119 P.3d at 730. While express findings under each of the *Brunzell* factors are preferred, it is not a requirement. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). “Instead, the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence.” *Id.*


Here, the district court’s order awarding attorney fees does not make express findings under each of the *Brunzell* factors. However, Pan’s attorney’s affidavit of counsel and memorandum for attorney fees and costs described why the requested fee was reasonable under each *Brunzell* factor. Although the district court did not expressly mention *Brunzell* in its order, it stated that it was awarding the fees and costs “subject to the filing of an [a]ffidavit . . . which was filed.” Thus, the district court demonstrated impliedly that it considered the *Brunzell* factors in making its decision and

the award was supported by the affidavit of counsel and memorandum which also included itemized billing statements. On appeal, Yang also makes several arguments contesting the accuracy of Pan's submitted billing statements and challenges their validity. However, because he failed to assert them below before the district court, Yang has waived any objection to these potential defects. *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."). Accordingly, we cannot conclude that the district court abused its discretion by awarding Pan attorney fees in the amount of \$8,650.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division  
McFarling Law Group  
Black & LoBello  
Eighth District Court Clerk