

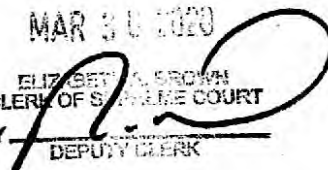
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABRIELLE DARREN, N/K/A
GABRIELLE ABBOTT,
Appellant,
vs.
MICHAEL DARREN,
Respondent.

No. 78018-COA

FILED

MAR 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Gabrielle Darren n/k/a Gabrielle Abbott appeals from a post-decree order awarding attorney fees and costs in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce entered in 2007. Pursuant to the terms of the decree, the parties shared joint legal and joint physical custody of their minor child. In 2017, Gabrielle moved to modify custody and the district court temporarily awarded her primary physical custody while the parties attended family therapy. The court subsequently referred respondent Michael Darren and the child to reunification therapy and ordered Michael to pay the costs of the reunification therapy, subject to potential retaxing. After the district court received the therapist's report regarding reunification, the court reinstated the parties' prior joint physical custody arrangement as provided for in the decree of divorce. The court then ordered Gabrielle to pay the costs of the reunification therapy in the amount of \$5,690 and Michael's attorney fees in the amount of \$9,731. This appeal followed.

On appeal, Gabrielle challenges the district court's award of attorney fees and therapy costs. 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). Similarly, this court reviews the award of costs for an abuse of discretion. *Campbell v. Campbell*, 101 Nev. 380, 383, 705 P.2d 154, 156 (1985).

First, Gabrielle asserts that the district court abused its discretion in reallocating the therapy costs that Michael paid to Gabrielle because Michael was not the prevailing party pursuant to NRS 18.110. But regardless of whether either party was the prevailing party, the district court has discretion to order reasonable costs to be paid in proportions and at times determined by the court. NRS 125C.250; *see also* EDCR 5.305(b) (allowing the district court to make provisions for the payment of a psychological evaluation in a custody case). Thus, under the circumstances here, we cannot conclude that the district court abused its discretion in ordering Gabrielle to pay the costs of therapy. *See Campbell*, 101 Nev. at 383, 705 P.2d at 156.

Next, Gabrielle asserts that the district court had no legal basis for awarding attorney fees and failed to make any findings in support of its award. She also asserts that the district court abused its discretion in awarding \$9,731 in fees as not all of those fees related to litigation regarding the reunification therapy. The district court generally may not award attorney fees absent authority under a statute, rule, or contract. *Albios v. Horizon Cmtys., 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).

After determining that an award of attorney fees is warranted, the district court must then consider the factors set forth in *Brunzell v.*

Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (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 required factors, the failure to do so is not a per se abuse of discretion. See *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245, 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). Additionally, we note that no one factor should be given undue weight. *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.

Here, the district court did not expressly cite which rule it relied upon in granting the request for attorney fees. But the district court's order did include some conclusions that suggest the court may have held that an award of attorney fees was appropriate under NRS 18.010(2)(b) or EDCR 7.60(b). Specifically, in awarding fees, the district court concluded that the therapist's report indicated Michael was not a risk to the child and that Gabrielle's conduct subjected the child to distressing concerns about her relationship with Michael. While these conclusions may have been intended to show fees were warranted because Gabrielle's conduct was unreasonable or done to harass, the district court's order fails to expressly make any such findings. We also note that the district court has discretion to award attorney fees in custody matters pursuant to NRS 125C.250. However, because the district court failed to cite which rule it relied upon in awarding the fees, this court is unable to determine whether the district

court's award was appropriately based on a rule or statute. *See Albios*, 122 Nev. at 417, 132 P.3d at 1028; *see also Liu*, 130 Nev. at 151, 321 P.3d at 878.

Additionally, although the district court's order includes some findings regarding the *Brunzell* factors, the district court's order fails to address the disparity in the parties' income, if any, pursuant to *Miller*. 121 Nev. at 623-24, 119 P.3d at 730 (explaining that when awarding fees, family law trial courts must consider the *Brunzell* factors and the disparity in the parties' income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)). Based on the foregoing, we must reverse and remand the award of attorney fees for the district court to clarify the rule it relied upon in determining fees are warranted and consideration of all of the relevant factors. *See Albios*, 122 Nev. at 417, 132 P.3d at 1028; *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

Accordingly, 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.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Black & LoBello
Michael Darren
Eighth District Court Clerk