IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-27, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-27,
Appellant/Cross-Respondent,
vs.
LAMPLIGHT COTTAGES @ SANTOLI HOMEOWNERS' ASSOCIATION,
Respondent/Cross-Appellant.

No. 77295-COA

FILED

DEC 28 2020

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

ORDER OF AFFIRMANCE

The Bank of New York Mellon (BNYM) and Lamplight Cottages @ Santoli Homeowners' Association (Lamplight) appeal and cross appeal from a post-judgment district court order awarding attorney fees and costs in a real property matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

After SFR Investments Pool 1, LLC (SFR), which is not a party to this appeal, purchased the subject property at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116, BNYM—the beneficiary of the first deed of trust on the property—filed suit against both SFR and Lamplight. As relevant here, BNYM sought quiet title and declaratory relief against both SFR and Lamplight, and it also asserted alternative claims of wrongful foreclosure, unjust enrichment, tortious interference with contract, negligence, breach of contract, and breach of the covenant of good faith and fair dealing against Lamplight. By the end of trial, Lamplight had prevailed on all of BNYM's claims against it except for

the two breach claims.[1] And in the final judgment, the district court ruled in favor of BNYM on its claims against SFR, but it dismissed the remaining breach claims against Lamplight with prejudice.[2]

Lamplight then filed a post-judgment motion for attorney fees and costs under NRCP 68[3] on grounds that it had served BNYM with an offer of judgment after the close of discovery and that BNYM had rejected the offer and failed to obtain a more favorable judgment. Specifically, Lamplight's offer provided that Lamplight would have judgment taken against it and in favor of BNYM in the amount of $12,791.86; that Lamplight would not take a position regarding whether the foreclosure sale extinguished BNYM's deed of trust; that title would be quieted in BNYM's favor as between it and Lamplight; that Lamplight did not have a current

---

[1]BNYM was forced to abandon its unjust-enrichment claim just before trial in light of the district court's ruling on Lamplight's motion in limine preventing BNYM from introducing evidence of damages for that claim.

[2]We note that none of the district court's various resolutions of the underlying claims are at issue in this appeal, and our supreme court recently affirmed the district court's final judgment. *See SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon*, Docket No. 76644 (Order of Affirmance, September 18, 2020). Moreover, although the parties dispute on appeal whether the district court dismissed BNYM's breach claims against Lamplight with prejudice because it rejected them on their merits or because it determined they were moot, that distinction is ultimately not relevant to our disposition as set forth *infra* note 5.

[3]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Committee to Update and Revise the Nevada Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). We cite the pre-amendment versions of the rules herein, as they were in effect at all relevant times.

interest in the property; that Lamplight's lien would be deemed withdrawn in the event that the district court set the entire sale aside; and that all disputes between Lamplight and BNYM relating to the underlying litigation were thereby resolved. In its NRCP 68 motion, Lamplight requested over $100,000 in post-offer fees and over $10,000 in costs. With respect to costs, Lamplight argued that it was entitled to all of the costs set forth in its separately filed memorandum of costs as a prevailing party under NRS 18.020 or, in the alternative, a lesser amount reflecting its post-offer costs under NRCP 68.

The district court granted Lamplight's motion in a written order addressing all of the appropriate factors under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). It awarded Lamplight the full amount of its requested costs, but it chose to award only a flat amount of $25,000 in attorney fees. These appeals followed.

BNYM argues on appeal that Lamplight is not a prevailing party as required to obtain an award of attorney fees and costs, and also that Lamplight's offer of judgment was invalid because it was confusing, indefinite, and impermissibly conditional. It further contends that Lamplight's offer was unreasonable in timing and amount, and also that the amount of fees Lamplight requested was excessive. Finally, BNYM contends that this court should vacate the district court's award of costs to Lamplight and remand for further consideration on that point. And on cross appeal, Lamplight contends that the district court arbitrarily awarded it less than the full amount of fees it requested, even though the court determined that all of Lamplight's fees were reasonably incurred. We begin

by addressing BNYM's appellate arguments before turning to the issue Lamplight raises in its cross appeal.

With respect to BNYM's contention that Lamplight is not a prevailing party and is therefore ineligible for attorney fees or costs, we note first that the district court—while it specifically concluded that Lamplight was a prevailing party—awarded Lamplight its fees under NRCP 68, which does not contain a prevailing-party requirement of the sort found elsewhere in the law. *Compare* NRCP 68(f) (setting forth the penalties for rejecting an offer of judgment and "fail[ing] to obtain a more favorable judgment"), *with* NRS 18.010(2) (setting forth when courts may award attorney fees to prevailing parties).

Regardless, because the district court's identification of Lamplight as a prevailing party appears to have informed its decision to award fees—and consistent with our conclusion set forth below that Lamplight was entitled to costs as a prevailing party under NRS 18.020—we note that Lamplight prevailed with respect to every claim BNYM asserted against it in this action because they were all either involuntarily dismissed or abandoned for lack of evidence, or judgment on them was entered in Lamplight's favor.[4] *See Valley Elec. Ass'n v. Overfield*, 121 Nev.

[4]BNYM vaguely contends in the alternative that Lamplight only prevailed on some issues and not on others, but it fails to cogently argue that point in light of the favorable results Lamplight obtained on every claim asserted against it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by relevant authority or cogent argument). Moreover, even if BNYM were correct, determining which litigant is the prevailing party in such a scenario nevertheless rests in the sound discretion of the district court, *see Glenbrook Homeowners Ass'n v. Glenbrook Co.*, 111 Nev. 909, 922, 901 P.2d 132, 141 (1995), and we discern no abuse of that discretion here.

7, 10, 106 P.3d 1198, 1200 (2005) (defining a prevailing party as one that "succeeds on any significant issue in litigation which achieves some of the benefit it sought" (internal quotation marks omitted)). And we reject BNYM's contention that Lamplight was required to prevail for merits-based reasons—either in part or as a whole—in order to be a prevailing party. *See CRST Van Expedited, Inc. v. EEOC*, 136 S. Ct. 1642, 1651 (2016) ("[A] defendant need not obtain a favorable judgment on the merits in order to be a 'prevailing party.'"); *145 E. Harmon II Tr. v. Residences at MGM Grand – Tower A Owners' Ass'n*, 136 Nev. 115, 119-20, 460 P.3d 455, 458-59 (2020) (compiling authorities acknowledging that a dismissal with prejudice, even if not based upon the merits of the underlying claims, nevertheless constitutes an adjudication on the merits sufficient to confer prevailing-party status); *see also* NRCP 41(b) (providing that an involuntary dismissal, unless the court otherwise specifies and subject to certain exceptions not applicable here, operates as an adjudication on the merits).[5] We therefore discern no error on this point. *See 145 E. Harmon II Tr.*, 136 Nev. at 118, 460 P.3d at 457 (reviewing a question of prevailing-party status de novo).

BNYM next contends that Lamplight's offer of judgment was invalid because it was supposedly confusing, indefinite, and impermissibly

---

[5]To the extent BNYM contends that the district court dismissed its breach claims as moot and that such a dismissal does not constitute an adjudication on the merits, it ignores the extent to which the dismissal was nevertheless *with prejudice*. *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) (acknowledging that "with prejudice" is shorthand for "an adjudication upon the merits" (alteration and internal quotation marks omitted)). And if BNYM believed that characterizing the dismissal as such was improper—which it does not argue in this appeal—it could have challenged that decision by way of a direct appeal from the final judgment, but it declined to do so.

conditional. *See Stockton Kenworth, Inc. v. Mentzer Detroit Diesel, Inc.*, 101 Nev. 400, 404, 705 P.2d 145, 148 (1985) (holding that an offer of judgment "must be for a definite or ascertainable amount so that the parties can be unequivocally aware of what the defendant is willing to pay for his peace"); *see also Pombo v. Nev. Apartment Ass'n*, 113 Nev. 559, 562, 938 P.2d 725, 727 (1997) ("An offer of judgment must be unconditional and for a definite amount in order to be valid for purposes of NRCP 68."). But we are not persuaded that the typographical error BNYM points to in the calculations set forth in Lamplight's offer rendered it confusing or unascertainable in amount.

Despite the drafting error—a discrepancy between the written words identifying a particular dollar amount and the accompanying parenthetical identifying the amount numerically—the written words of the offer are all consistent with one another. *See Mendenhall v. Tassinari*, 133 Nev. 614, 624, 403 P.3d 364, 373 (2017) (applying traditional principles of contractual interpretation to offers of judgment); *WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. 884, 888, 360 P.3d 1145, 1147 (2015) (acknowledging a "cardinal principle of contract construction: that a document should be read to give effect to all its provisions and to render them consistent with each other" (internal quotation marks omitted)); *see also Payne v. Commercial Nat'l Bank of L.A.*, 169 P. 1007, 1008 (Cal. 1917) (citing authorities in support of the general rule of construction that "where both written words and figures are used in a contract to express the same number, and there is a discrepancy between the two, the written words must prevail over the figures"). Moreover, the written words and the numerical parenthetical identifying the net amount of the offer are fully consistent with each other and definitively convey that Lamplight was

offering to have judgment taken against it in the amount of $12,791.86. *See Stockton*, 101 Nev. at 404, 705 P.2d at 148.

Turning to whether the offer was impermissibly conditional, we again disagree with BNYM. NRCP 68 expressly contemplates offers of judgment containing nonmonetary terms and conditions of the sort Lamplight included in its offer here; the rule against conditional offers is meant only to prohibit offers that are themselves conditional. *See* NRCP 68(a) ("[A]ny party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions."); *Barella v. Exchange Bank*, 101 Cal. Rptr. 2d 167, 172 (Ct. App. 2000) (noting that "while [California's similar offer of judgment] statute contemplates that an offer made pursuant to its terms may properly include nonmonetary terms and conditions, the offer itself must, nonetheless, be unconditional" (footnote omitted)); *see also Stockton*, 101 Nev. at 403-04, 705 P.2d at 148 (concluding that defendant's offer whereby it would pay plaintiff $10,000 upon receiving "good title" to a vehicle was invalid because obtaining such title was a condition precedent to plaintiff receiving payment). Because none of the challenged terms in Lamplight's offer conditioned the effectiveness of the offer itself on anything other than BNYM's acceptance, it was not impermissibly conditional.[6] *See Condition*, *Black's Law Dictionary* (11th

---

[6]We acknowledge—as BNYM argues—that our supreme court in *Pombo* seemed to imply that conditions like those Lamplight included in its offer here are impermissible. *See* 113 Nev. at 562-63, 938 P.2d at 727. However, the *Pombo* court stopped short of actually holding as much and instead concluded that the conditions in a first offer of judgment were irrelevant in light of a superseding second offer that did not include any conditions. *Id.* at 563, 938 P.2d at 727. And a later unpublished order of the supreme court, although not citable by litigants under NRAP 36(c)(3),

ed. 2019) (defining "condition" as "[a] future and uncertain event on which the existence or extent of an obligation or liability depends; an uncertain act or event that triggers or negates a duty to render a promised performance").

Next, BNYM essentially requests that this court reweigh the *Beattie* and *Brunzell* factors and conclude that Lamplight's offer was not reasonable in timing or amount and that its requested fees were excessive. When determining whether to award attorney fees under NRCP 68, the district court must consider all of the *Beattie* factors, which are:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

O'Connell v. Wynn Las Vegas, LLC, 134 Nev. 550, 554, 429 P.3d 664, 668 (Ct. App. 2018) (quoting *Beattie*, 99 Nev. at 588-89, 668 P.2d at 274). And when determining whether the fees sought are reasonable, the district court must consider all of the factors set forth in *Brunzell*. *Id.* at 555, 429 P.3d at 668 (citing *Brunzell*, 85 Nev. at 349, 455 P.2d at 33). We will affirm the

---

supports the notion that only conditions that call the effectiveness of the offer itself into question—not any conditions at all—render an offer of judgment impermissibly conditional. *See Popowitz v. B.A. Sundown, LLC*, Docket No. 62438 (Order of Affirmance, July 31, 2014). Regardless, it is the text of NRCP 68 that controls the analysis here, and the rule expressly allows for conditions in offers and therefore does not prohibit them to the extent *Pombo* implies. *See* NRCP 68(a); *In re Execution of Search Warrants*, 134 Nev. 799, 804, 435 P.3d 672, 676 (Ct. App. 2018) (noting that "the scope of a [rule] is defined not by a few words taken from isolated cases, but rather by the words of the [rule] itself").

district court's decision with respect to these factors so long as it considered all of them and did not abuse its discretion in doing so, meaning that its analysis was not arbitrary or capricious. *See id.* at 554, 429 P.3d at 668; *see also Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005).

Here, the district court considered all of the relevant factors; BNYM simply takes issue with how the district court analyzed them. For instance, BNYM argues that the district court improperly elevated the second *Beattie* factor over its findings of good faith with respect to the first and third factors.[7] But BNYM fails to identify any authority in support of the notion that a district court may not award fees under NRCP 68 when it rules in favor of the offeree with respect to the first and third *Beattie* factors, but not the second and fourth, *see Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38, nor have we found any in our own research. *Cf. Frazier v.*

---

[7]BNYM also contends that the first *Beattie* factor is entitled to more weight in NRS Chapter 116 cases. In support, it argues that our supreme court took such a position in an unpublished order where it supposedly treated the first factor as, in BNYM's words, "quasi-outcome determinate." *See Nev. Ass'n Servs., Inc. v. Las Vegas Rental & Repair, LLC Series 78*, Docket No. 73157 (Order Affirming in Part and Reversing in Part, December 27, 2018). Although the supreme court confined its discussion of the *Beattie* factors in that case to the first factor, it did not actually conclude that the first factor holds any sort of primacy in HOA foreclosure matters, and even if it had, that ruling would not overrule published precedent establishing that none of the *Beattie* factors are outcome determinative. *See* NRAP 36(c)(2) (providing that, subject to certain exceptions, "[a]n unpublished disposition . . . does not establish mandatory precedent"); *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998) ("The district court is reminded that no one factor under *Beattie* is determinative and that it has broad discretion to grant the request so long as all appropriate factors are considered.").

Drake, 131 Nev. 632, 643-44, 357 P.3d 365, 373 (Ct. App. 2015) (noting that none of the *Beattie* factors are outcome determinative and holding that a district court may not award fees based solely on a favorable finding for the offeror on the fourth factor). And despite BNYM's arguments to the contrary, the district court appropriately considered the circumstances of the underlying litigation—including that discovery had been completed at the time Lamplight made its offer and that the parties therefore had all of the relevant information for evaluating their claims available to them—in determining that Lamplight's offer was made in good faith and was reasonable in its timing and amount.[8]

Although we understand BNYM's position that the law surrounding superpriority tenders in Nevada at the time Lamplight served the offer was not well settled and that it wished to preserve its alternative claims in the event that its deed of trust was extinguished, we cannot conclude that the district court exercised its discretion in an arbitrary or capricious manner, especially in light of its decision to award less than 25 percent of the total amount of fees requested by Lamplight. *See O'Connell*, 134 Nev. at 554, 429 P.3d at 668. Likewise, we cannot conclude that the district court awarded an excessive amount of fees, as BNYM fails to explain

---

[8]Although BNYM claims that it would have been entitled to a six-figure damages award against Lamplight had the district court ruled that the deed of trust was extinguished—and that Lamplight's offer was therefore unreasonably low—it makes little effort on appeal to explain its legal theories (i.e., how Lamplight's conduct supposedly amounted to a breach of contract or of the covenant of good faith and fair dealing) or how the evidence admitted at trial would have entitled it to such relief. We therefore decline to disturb the district court's exercise of discretion on this point. *See O'Connell*, 134 Nev. at 554, 429 P.3d at 668; *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

how the district court's drastic reduction of the amount requested to a flat fee of $25,000 did not adequately compensate for the few examples of supposedly excessive billing BNYM vaguely alludes to in its briefing. *See Miller*, 121 Nev. at 623, 119 P.3d at 730.

Concerning the district court's award of costs, BNYM contends that this court should vacate the award and remand for further consideration because of various irregularities in the order, including that the district court appears to have awarded costs under NRCP 68, but that it awarded the full amount reflected in Lamplight's memorandum of costs, which exceeded the amount Lamplight was requesting in connection with its offer of judgment. *See* NRCP 68(f)(2) (requiring the offeree to pay only the offeror's post-offer costs when the offeree rejected an offer and failed to obtain a more favorable judgment). BNYM also points to the fact that the district court mistakenly referred to a nonparty HOA instead of Lamplight in the section of the order discussing costs and that the district court did not expressly identify which authority it was relying on in awarding costs. We are not persuaded that these irregularities warrant further proceedings, as Lamplight was entitled to all of its costs as a prevailing party in an action concerning title to real property. NRS 18.020(5). Moreover, the district court's order, despite the typographical error, quite clearly awards costs to Lamplight when considered in context, and the final line of the order states that "costs are taxed against BNYM and in favor of Lamplight in the amount of $10,916.03." We therefore affirm the costs award.

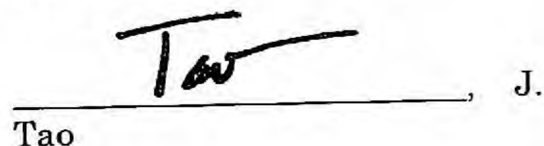
Finally, we turn to Lamplight's sole argument on cross appeal, which is that the district court arbitrarily reduced the amount of fees it awarded even though it determined that all of Lamplight's requested fees were reasonably incurred. On this point, the district court stated simply

that the reduced amount was "reasonable and justified under the circumstances of this case." Previously in the order, in its discussion of the *Beattie* factors, the district court elaborated on those circumstances, including the good faith of BNYM in bringing its claims and rejecting Lamplight's offer, as well as the evolving nature and complexity of the law regarding HOA foreclosure sales. In light of those findings, the district court appropriately exercised its discretion in awarding Lamplight less than it requested. *See* NRCP 68(f)(2) ("[T]he offeree shall pay the offeror's . . . reasonable attorney's fees, *if any be allowed* . . . ." (emphasis added)); *Search Warrants*, 134 Nev. at 801, 435 P.3d at 675 ("This court reviews a district court's award of attorney fees for a manifest abuse of discretion." (internal quotation marks omitted)).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[9]

_______________________, C.J.
Gibbons



_______________________, J.
Tao

_______________________, J.
Bulla

---

[9]Insofar 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. Mark R. Denton, District Judge
Akerman LLP/Las Vegas
Gordon Rees Scully Mansukhani LLP
Eighth District Court Clerk