

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL F. ROYAL, DO, HMD, JD,
INDIVIDUALLY; KRYSTAL J. TAYLOR,
MA, INDIVIDUALLY; VERONICA
SIMON, MA; AND ROYAL MEDICAL
GROUP, PLLC, A NEVADA
CORPORATION,
Appellants,
vs.
KIMBERLY PHILLIPS, AN
INDIVIDUAL; AND ADVANCED
CLINICAL PROFESSIONALS OF
NEVADA, LLC, A NEVADA
CORPORATION,
Respondents.

No. 79387-COA

FILED

MAR 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daniel F. Royal, Krystal J. Taylor, Veronica Simon, and Royal Medical Group, PLLC (collectively referred to herein as Royal), appeal from a district court post-judgment order awarding attorney fees and costs in a contract and tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Respondents Kimberly Phillips and Advanced Clinical Professionals of Nevada, LLC (collectively referred to herein as Phillips), commenced the underlying proceeding against Royal in connection with a contract for the purchase of a medical practice and several related agreements, and the parties asserted various contract and tort claims against each other. Royal eventually submitted an offer of judgment to Phillips, which provided that Royal and Phillips were each to receive \$100

in satisfaction of their respective claims and that “the offer is intended to include attorneys[] fees and costs, and is voided by an award of the same.” Phillips declined the offer, however, and the matter proceeded to a bench trial. Following trial, the district court entered a judgment in which it concluded that Royal failed to meet his burden with respect to any of his claims, and that although Phillips demonstrated that Royal breached the parties’ contract, the related agreements, and the covenant of good faith and fair dealing, she was not entitled to damages with respect to any of her claims. The district court later clarified—and the parties do not dispute—that an earlier ruling on a request for injunctive relief, coupled with the final judgment after trial, essentially permitted Phillips to retain the medical practice while releasing her from certain obligations to Royal without requiring her to compensate him.¹

Royal then moved for an award of attorney fees and costs, arguing that he was entitled to the same under the parties’ contract as the prevailing party in the underlying proceeding. Moreover, Royal argued that he was entitled to attorney fees and costs under NRCP 68 because Phillips rejected his offer and failed to obtain a more favorable result. Phillips opposed that motion and separately moved for an award of attorney fees

¹We note that Royal did not include any of the documentation relating to the request for injunctive relief in the parties’ joint appendix. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant’s burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, “we necessarily presume that the missing [documents] support[] the district court’s decision”).

and costs on the grounds that she was the prevailing party and that Royal's offer of judgment was invalid because it was confusing. Following a hearing, the district court ruled in favor of Phillips and entered an order awarding her \$136,160 in attorney fees and \$8,806 in costs. The district court found that, even though Phillips was not awarded money damages in the final judgment, she was nevertheless the prevailing party because that decision effectively allowed her to retain the medical practice while releasing her from certain obligations to Royal without requiring her to compensate him. Further, the district court determined that Royal's offer of judgment was invalid because it was confusing since it included an award of \$100 to both parties and did not address what was to happen with the medical practice and Phillips's obligations to Royal.

Royal subsequently sought reconsideration of the order awarding Phillips attorney fees and costs or relief from that decision under NRCP 59(e), which the district court denied. This appeal followed.

We generally review district court orders awarding attorney fees and costs for an abuse of discretion. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014). But when such orders implicate a question of law, including matters of contract interpretation, we review them de novo. *See id.*; *see also Fed. Ins. Co. v. Coast Converters, Inc.*, 130 Nev. 960, 965, 339 P.3d 1281, 1284 (2014) (providing that, absent ambiguity or other factual complexities, contract interpretation presents a question of law, which is subject to de novo appellate review).

On appeal, Royal initially disputes whether Phillips was the prevailing party in the underlying proceeding, such that she was entitled to

an award of attorney fees and costs under the parties' contract. See *U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002) ("A district court is not permitted to award attorney fees or costs unless authorized to do so by a statute, rule or contract."). Royal does so by arguing that, although he was not successful with respect to any of his claims against Phillips, he was nevertheless the prevailing party because Phillips did not obtain a money judgment on any of her claims against him.

In this respect, we recognize that, in the context of NRS 18.010(2)(a), which authorizes the district court to award attorney fees to a prevailing party who recovers less than \$20,000 in a lawsuit, the supreme court has held that a party must obtain a money judgment to qualify as a prevailing party. See *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 285, 890 P.2d 769, 774 (1995) (holding that a party does not qualify as a prevailing party for purposes of NRS 18.010(2)(a) absent the recovery of a money judgment); see also *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 93-94, 127 P.3d 1057, 1065-66 (2006) (reaffirming that a money judgment is a prerequisite to an award of attorney fees under NRS 18.010(2)(a) and refusing to overrule *Crown Financial*). Because the district court did not award monetary damages, attorney fees and costs were not recoverable under this statute.

However, in this case, insofar as the parties' contract expressly authorizes an award of attorney fees and costs to the "prevailing party" in an action, "without regard to whether or not such matter be prosecuted to final judgment," it anticipates that a party may be entitled to attorney fees

and costs as the “prevailing party” without obtaining a money judgment. *See Coast Converters*, 130 Nev. at 965, 339 P.3d at 1284. And because the district court’s resolution of the parties’ respective claims, including its determination that Royal breached the parties’ contract, the related agreements, and the covenant of good faith and fair dealing, effectively permitted Phillips to retain the medical practice at issue here while releasing her from certain obligations to Royal without requiring her to compensate him, we discern no error in the district court’s determination that Phillips qualified as the “prevailing party” under the parties’ contract. *See id.*

Royal next seeks to demonstrate that, under NRCP 68, Phillips cannot recover attorney fees for the period after service of his offer of judgment and before the entry of the final judgment. To prevail on this argument, Royal must first demonstrate that the offer was valid for purposes of NRCP 68, and towards that end, he disputes the district court’s determination that the offer was confusing. *See Edwards Indus. Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035, 923 P.2d 569, 575 (1996) (concluding that an invalid offer of judgment could not provide a proper basis for an award of attorney fees and costs); *see also Stockton Kenworth, Inc. v. Mentzer Detroit Diesel, Inc.*, 101 Nev. 400, 404, 705 P.2d 145, 148 (1985) (explaining 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”). Here, although the district court wisely determined that the offer of judgment was confusing, we need not address that conclusion because the offer was invalid for another reason. In

particular, the offer stated that it would be “voided by an award of [attorney fees and costs],” which is an impermissible condition that rendered it void.² See *Pombo v. Nev. Apartment Ass’n*, 113 Nev. 559, 562, 938 P.2d 725, 727 (1997) (stating that an offer of judgment must be unconditional to be valid under NRCP 68); see also *Quinlan v. Camden USA, Inc.*, 126 Nev. 311, 314-15, 236 P.3d 613, 615 (2010) (citing the rule that an offer of judgment must be unconditional as an example of “formal requirements” to which such offers must adhere). Thus, we conclude that relief is unwarranted.

Lastly, Royal challenges the amount of attorney fees that were awarded to Phillips based on her trial testimony concerning the fees that she had incurred up until that time. Royal failed, however, to raise this issue in opposition to Phillips’s motion for attorney fees and costs. And although Royal eventually raised the matter when he sought reconsideration of the award of attorney fees and costs or NRCP 59(e) relief from that decision, the district court refused to consider it in the first instance at that time. See *Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (indicating that a district court has discretion in determining whether to consider issues presented for the first time in a motion for reconsideration). Royal does not dispute the propriety of this decision on appeal, and he waived any challenge thereto as a result. See *Powell v.*


²We recognize that this issue was not raised by the parties or the district court, but our authority to consider relevant issues *sua sponte* in order to prevent plain error is well established. See *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) (considering an issue *sua sponte* where the district court failed to apply a clearly controlling statute).

Liberty Mut. Fire Ins. Co., 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Thus, given the foregoing, we conclude that the district court did not abuse its discretion by granting Phillips's motion for attorney fees and costs. See *Gunderson*, 130 Nev. at 82, 319 P.3d at 616. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Mont E. Tanner
Black & Wadhams
Eighth District Court Clerk

³Insofar as the parties raise arguments that are not specifically addressed herein, we have considered them and conclude that they either do not present a basis for relief or need not be addressed given our disposition of this appeal.