

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE COLBY
GORMLEY IRISH IRREVOCABLE
TRUST.

No. 80285-COA

FILED

APR 29 2021

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

LORI IRISH,
Appellant,
vs.

F. PHILIP IRISH, TRUSTEE OF THE
COLBY GORMLEY IRISH
IRREVOCABLE TRUST,
Respondent.

No. 80286-COA

IN THE MATTER OF THE COLBY
GORMLEY IRISH IRREVOCABLE
TRUST.

LORI IRISH,
Appellant,
vs.

F. PHILIP IRISH, TRUSTEE OF THE
COLBY GORMLEY IRISH
IRREVOCABLE TRUST,
Respondent.

ORDER OF AFFIRMANCE

In these consolidated matters, Lori Irish appeals from district court orders dismissing her petition in a trust and estates matter and awarding attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

As part of a post-divorce settlement, Lori's former husband, James Gormley, settled the Colby Gormley Irish Irrevocable Trust (CGIIT) for the benefit of their child, Colby Gormley Irish. Lori served as the initial

trustee of the CGIIT until she was removed as trustee in 2008. Respondent F. Philip Irish now serves as the current trustee of the CGIIT.

This litigation appears to arise out of a long-standing familial dispute between Lori and her two brothers, Philip and Joseph Irish. As relevant here, Lori filed a "complaint" and, later, several amended petitions in probate court against Philip and Joseph, alleging that both brothers were stealing and misappropriating funds from various trusts (including the CGIIT) that were set up for the benefit of Colby, and requesting an accounting of the CGIIT. However, these initial filings were dismissed for failure to follow proper procedure and to notice interested persons. Around this time, Lori attempted to initiate discovery, but the negotiations to do so fell through when Lori purportedly began sending threatening emails and shouting at Philip's counsel and his counsel's staff over the telephone.

After some additional preliminary proceedings in front of the probate commissioner, Lori successfully requested that the matter be transferred to a probate judge and filed the underlying amended petition concerning the CGIIT dated January 8, 1999, which included allegations of: (1) breach of fiduciary duty, (2) aiding and abetting another's breach of fiduciary duty, (3) fraud, and (4) intentional infliction of emotional distress against Philip and Joseph.

Shortly thereafter, Philip filed a combined motion to dismiss Lori's petition and a motion to declare Lori a vexatious litigant. In his motion, Philip asserted that Lori did not have standing to request an accounting of the CGIIT and that the court should restrict Lori's ability to file lawsuits against Philip in the future, citing approximately 18 other cases where Lori's complaint and other filings were dismissed with

prejudice for failure to state a claim. As part of this motion, Philip also sought attorney fees and costs.

Similarly, Joseph appeared for the first time in this matter and filed a counterpetition to dismiss, arguing that the district court lacked jurisdiction over him as (1) he is a resident of Maine with no contacts with the state of Nevada; and (2) he is not an interested person in the trust as he is not a trust advisor, beneficiary, or trustee.

Lori, in turn, opposed the two requests for dismissal. She also filed several motions of her own that requested, among other things, that Philip be prohibited from bribing Colby or exerting undue influence over him, to compel discovery and for sanctions for failure to cooperate with discovery, to compel the return of certain funds, to deny Philip's motion to dismiss, and to compel Philip to pay her attorney fees. Along with these motions, Lori filed a "notice to the court that the trustee has been using the wrong trust document." Within this document, Lori alleged that she recently "discovered" the true original copy of the CGIIT dated April 5, 1999. However, Lori's notice to the court did not contain any affirmative requests for relief, nor did it request that the district court assume jurisdiction over the trust.

After full briefing on the motions and Joseph's counterpetition to dismiss, the probate judge held a hearing on these filings. However, before argument began, Lori informed the judge that she was not "capable of listening" to Philip's counsel due to the "lies" and "fabrications" he included in his motion to declare her a vexatious litigant, and requested that she be allowed to leave the room during his arguments. After this statement, all of the parties waived oral argument and submitted this matter on their pleadings.

Thereafter, the judge granted Joseph's request for dismissal, granted Philip's motion to dismiss, and declared Lori a vexatious litigant. At that time, the district court also denied all of Lori's pending motions and requests for relief, and instructed Philip's counsel to submit a memorandum of attorney fees and costs.¹ Roughly a month after the hearing, the district court awarded Philip's counsel a combined \$33,763.51 in attorney fees and costs. Lori now appeals.

On appeal, in Docket No. 80286, Lori challenges the district court's order granting Philip's motion to dismiss and declaring her a vexatious litigant.² And in Docket No. 80285, she appeals the order awarding attorney fees and costs to Philip. We begin by addressing Lori's contentions as to Philip's motion to dismiss.

This court reviews an order granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the complaint as true and drawing all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Similarly,

¹Shortly thereafter, the matter was transferred to Department VIII of the Eighth Judicial District Court.

²Portions of Lori's opening brief indicate that she also challenges the district court order dismissing the underlying case as to Joseph as part of her appeal in Docket No. 80286. But despite appearing to challenge this determination, Lori fails to offer any cogent argument as to the grounds on which Joseph was dismissed, and we therefore decline to consider her challenge to this ruling. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider an argument where a party "neglected [its] responsibility to cogently argue" the issue). As a result, the district court's dismissal of Joseph from the case is affirmed.

we review questions of statutory interpretation de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).

With regard to the order granting Philip's motion to dismiss, Lori raises a general argument related to the April 5, 1999, trust and challenges the district court's determination that she is not entitled to an accounting under the terms of the CGIIT. Accordingly, we limit our review to these issues and do not address the district court's findings as to the merits of Lori's petition. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived").

First, Lori contends that the district court erred in failing to consider the April 5, 1999, trust document. However, our review of the record below reveals that Lori made no affirmative requests for relief associated with the purported April 5 trust. Indeed, Lori's filings relating to the April 5 trust simply mention that Philip is purportedly using an improper trust document without providing any additional argument or requests for relief, or even seeking to have the court assume jurisdiction over the April 5 trust.

Additionally, while the district court did not expressly determine the validity of the April 5 trust in its order, the record reveals that the district court did consider Lori's "notice of incorrect trust document," but found that filing to be frivolous and filed with the intent to harass Philip. Indeed, the district court's order makes express note of the fact that (1) Lori based the underlying proceedings and all of her initial filings on the CGIIT dated January 8, 1999; and (2) the district court had previously assumed jurisdiction over the CGIIT, dated January 8, 1999, and confirmed that several of the trust assets at issue here were assets of the

January trust in a separate proceeding in 2009. Accordingly, we conclude that the district court did not err when it declined to take action regarding the April 5, 1999, trust. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (stating that “[t]he absence of a ruling awarding the requested [relief] constitutes a denial of the claim”).

Second, Lori contends that the district court erred when it determined that she was not entitled to an accounting under the terms of the CGIIT. To this point, Lori argues that she is entitled to an accounting as a remainder beneficiary under the CGIIT. However, this argument lacks merit, as Section 11 of the trust instrument specifically mandates that trust accountings will be available to only the trustor or the trustor’s representative. As Lori is neither the trustor nor the trustor’s appointed representative, she is not entitled to an accounting under the terms of the CGIIT. *See* NRS 165.1204(2) (providing that “[t]he trustee of a nontestamentary trust shall satisfy the duty to account by delivery of an account in the form, manner and to the persons as required by the terms and conditions stated in the trust instrument”); NRS 165.1207(1) (providing the requirements for satisfying a duty to account “[t]o the extent that the trust instrument does not provide otherwise”).

Lori next contends that she is entitled to an accounting as a settlor of the CGIIT pursuant to NRS 166.018(2), which defines a settlor of a spendthrift trust as “[a]ny person who contributes assets to the spendthrift trust as to the assets he or she contributed to the spendthrift trust except to the extent of consideration received therefor by that person.” But Lori fails to offer any argument or explanation as to how this statute would entitle her to an accounting in light of the express provisions, set forth in Section 11 of the trust instrument, that delineate the only parties

who are entitled to receive an accounting under the terms of the CGIIT. As a result, she has failed to provide any cogent argument on this point, and we therefore decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, for the reasons articulated above, we conclude that the district court properly granted Philip's motion to dismiss, and we therefore affirm that determination.

Next, Lori contends that the district court erred when it declared her a vexatious litigant under NRS 155.165 "without following the proper procedures." This court reviews an order limiting a vexatious litigant from accessing the courts for an abuse of discretion. *Jordan v. State, Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005), *abrogated on other grounds by Buzz Stew*, 124 Nev. at 228 n.6, 181 P.3d at 672 n.6. Under NRS 155.165(1), "[t]he court may find that a person . . . is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit, [or] intended to harass or annoy" a trustee.

Because vexatious litigant orders limit a litigant's right to access the courts, the orders must meet four factors: (1) the litigant must first receive notice and an opportunity to oppose such a sanction, to protect the litigant's due process rights; (2) the district court must create an adequate record for review by including a list of the cases and documents, or an explanation of the reasons, that it relied on in determining that a restrictive order was needed to stop repetitive or abusive conduct; (3) the district court must make substantive findings as to the frivolous or harassing nature of the conduct; and (4) the order must be narrowly drawn to address the specific problem. *Jordan*, 121 Nev. at 60-62, 110 P.3d at 42-44. The restrictions imposed by a vexatious litigant order may include

prohibiting the litigant from filing future actions against a particular party or from filing new actions without first demonstrating to the court that the proposed case is not frivolous. *Peck v. Crouser*, 129 Nev. 120, 123, 295 P.3d 586, 587 (2013).

Here, Lori received notice of the proposed sanctions against her and drafted an opposition to the same.³ Additionally, the district court's order includes a detailed recitation of the history of the case and all of Lori's filings in this and other cases. In addition, the district court found that Lori's filings in the instant case were frivolous and filed for the "sole purpose of harassing and annoying F. Philip Irish, as Trustee." See NRS 155.165(1); *Jordan*, 121 Nev. at 61, 110 P.3d at 43 (explaining that, as to the third factor, the litigant's conduct must be repetitive or abusive, and without an arguable factual or legal basis or filed with an intent to harass). Finally, the district court's order is narrowly tailored to the extent that it restricts Lori's ability to file future actions against Philip.⁴ See *Jordan*, 121 Nev. at 62, 66, 110 P.3d at 44, 46 (explaining that restrictive orders can prohibit a

³The district court also held a hearing on the issue, but both Lori and counsel for Philip waived oral argument and submitted the matter on the pleadings.

⁴In reaching this conclusion, we note that Lori presents no argument regarding the district court's requirement that she obtain the "advice of counsel in order to analyze and evaluate the veracity of the claims" before filing any future actions against Phillip. Because this restriction represents a departure from the procedure discussed in *Jordan* where subsequent filings are subject to review by the district court, rather than private counsel, we reserve the right to address this restriction in the future should such be necessary. See *Jordan*, 121 Nev. at 62, 110 P.3d at 44 (explaining that restrictive orders may "bar a litigant from filing any new actions unless the court first determines that the proposed action is not frivolous or brought for an improper purpose and/or implicates a fundamental right").

litigant from filing new actions against a specific defendant or from filing without first demonstrating to the court that the proposed action is not brought for an improper purpose). Thus, the district court's order included the required findings and is sufficiently limited to address the specific problem at hand. *See id.* at 60-62, 110 P.3d at 42-44. Accordingly, we affirm the district court's order declaring Lori a vexatious litigant.

Finally, Lori challenges the district court's order awarding attorney fees and costs to Philip under EDCR 7.60. This court reviews a district court's award of attorney fees and costs for an abuse of discretion. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (attorney fees); *see also Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) (costs). Here, Lori contends that the district court abused its discretion in awarding attorney fees and costs to Philip, claiming she was never properly served with Philip's memorandum of fees and costs, or the proposed orders accompanying that memorandum.

However, this assertion is belied by the record, which reveals that Lori is a registered user of the Eighth Judicial District Court's electronic filing system and that she received and opened the memorandum of fees and costs.⁵ *See* NEFCR 9(b), (c) (providing that "[r]egistered users of an EFS are deemed to consent to receive electronic service through the EFS" and that notice sent through an EFS constitutes "valid and effective service of the document on the registered users and has the same legal effect as service of a paper document"). Further, as Lori does not challenge the

⁵Any additional concerns regarding proper service were remedied by Lori's written request to be served with the memorandum and proposed orders via email. *See* NRCP 5(b)(2)(E) (providing that service may be effected by sending the document "by other electronic means that the person consented to in writing").

amount of the fees and costs award on appeal, and because the district court's decision complied with the requirements of EDCR 7.60 and properly analyzed the *Brunzell* factors, we affirm the district court's order awarding attorney fees and costs to Philip. See *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (stating that a district court has discretion to award attorney fees and costs under EDCR 7.60(b) if a party brings an unreasonable or frivolous claim); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969).

Accordingly, for the foregoing reasons, we affirm the dismissal of Lori's petition and the decision to declare Lori a vexatious litigant at issue in Docket No. 80286. We further affirm the award of attorney fees and costs at issue in Docket No. 80285.

It is so ORDERED.⁶


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁶Insofar as Lori raises 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: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Hon. Linda Marquis, District Judge, Family Court Division
Lori Irish
Solomon Dwiggin & Freer, Ltd.
Eighth District Court Clerk