IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RJRN HOLDINGS, LLC,
Appellant,
vs.
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 2005-46CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-46CB, AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Respondents.

No. 81303-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

RJRN Holdings, LLC (RJRN), appeals from post-judgment district court orders awarding attorney fees and costs in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

After purportedly acquiring the subject property from the purchaser at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116, RJRN brought the underlying quiet title action against respondents Mortgage Electronic Registration Systems, Inc., and The Bank of New York Mellon (referred to collectively as BNYM)—respectively the former and present beneficiary of the first deed of trust on the property—which counterclaimed for the same. During the proceeding, BNYM offered to pay RJRN $5,000 in exchange for RJRN agreeing to have judgment entered against it and in favor of BNYM, but RJRN rejected the offer of judgment. The matter eventually proceeded to a bench trial, and

the district court ruled in BNYM's favor for three reasons. First, the district court determined that RJRN lacked standing to pursue its claims because it failed to establish that it acquired the subject property from its predecessor in interest. Second, the district court concluded that BNYM's obligation to tender was excused pursuant to *Bank of America, N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. 42, 435 P.3d 1217 (2019), *vacated on reconsideration en banc*, Docket No. 73785 (Order Affirming in Part, Reversing in Part, and Remanding, May 7, 2020), which was the seminal excuse-of-tender opinion in the HOA foreclosure context at the time in question. Third, the district court held that the HOA's lien was subordinate to BNYM's deed of trust because the mortgage-savings clause in the HOA's covenants, conditions, and restrictions (CC&Rs) was valid since the CC&Rs were recorded before NRS 116.1104's prohibition against HOAs waiving their superpriority lien rights was enacted.

BNYM then filed a post-judgment motion for attorney fees and costs under NRCP 68, arguing that the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), weighed in its favor. BNYM requested $54,033.50 in attorney fees and argued that, as the prevailing party, it was entitled to all the costs set forth in its separately filed memorandum of costs—$10,934.73—pursuant to NRS 18.020 or, in the alternative, a lesser amount reflecting its post-offer costs under NRCP 68. RJRN opposed BNYM's motion and moved to retax costs.

The district court entered an order granting BNYM's NRCP 68 motion in part, which awarded it $39,854.50 in attorney fees based on the summary finding that the *Beattie* and *Brunzell* factors weighed in BNYM's favor. The district court also entered a separate order that granted RJRN's

motion to retax costs in part and awarded BNYM $8,285.53 in costs. This appeal—which challenges both orders—followed.

On appeal, RJRN initially challenges the award of attorney fees under NRCP 68, arguing that the district court did not make sufficient findings concerning the *Beattie* and *Brunzell* factors, incorrectly determined that the *Beattie* factors favored BNYM, and failed to explain or justify the amount of fees awarded. This court generally reviews a district court's award of attorney fees pursuant to NRCP 68 for an abuse of discretion, looking to whether the district court clearly disregarded the guiding legal principles. *See Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001).

When a party rejects an offer of judgment and later fails to obtain a more favorable result, the district court may order the party to pay the offeror's reasonable post-offer attorney fees and costs. NRCP 68(f)(1)(B). But first, the district court must determine whether such an award is warranted by weighing the *Beattie* factors, which as relevant here, ask whether: (1) the plaintiff's claims or defenses to any counterclaims were brought in good faith, (2) the defendant's offer of judgment was reasonable and in good faith in both timing and amount, (3) the plaintiff's rejection of the offer was grossly unreasonable or in bad faith, and (4) the defendant is seeking reasonable attorney fees. 99 Nev. at 588-89, 668 P.2d at 274; *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998) (clarifying the application of the first *Beattie* factor as it relates to a party's defenses). And to determine whether the attorney fees that are being sought are reasonable, the district court must also weigh the *Brunzell* factors, which given the issues before us, need not be enumerated here. 85 Nev. at 349, 455 P.2d at 33. Explicit findings with respect to the *Beattie* and *Brunzell* factors are generally preferred, but "the district court's failure

to make explicit findings is not a per se abuse of discretion." *Wynn*, 117 Nev. at 13, 16 P.3d at 428. To the contrary, this court will defer to the district court's discretion "[i]f the record clearly reflects that the district court properly considered the *Beattie* [and *Brunzell*] factors." *Id.* at 13, 16 P.3d at 428-29.

In the present case, although the district court did not make explicit findings concerning the *Beattie* and *Brunzell* factors in its written order, the court's order indicates that it considered the arguments presented in the parties' motion practice, which included a thorough analysis of the pertinent factors.[1] Thus, despite RJRN's assertions to the

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[1]In stating its conclusions regarding the *Beattie* factors, the district court's order misstates the first factor as requiring that the claims be "brought to trial in good faith" and likewise misstates the third factor as providing that the rejection of the offer be "unreasonable and in bad faith." As set forth in *Beattie*, the first factor considers whether "the plaintiff's claim[s were] . . . brought in good faith" while the third factor considers whether "plaintiff's decision to reject the offer . . . was *grossly* unreasonable or in bad faith." 99 Nev. at 588, 668 P.2d at 274 (emphasis added). In its underlying motion practice, BNYM similarly misstates the first *Beattie* factor. But on appeal, RJRN does not mention these misstatements of the law, much less argue that they warrant reversal, and thus any such argument is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Regardless, despite its misstatement of the third factor, the challenged order incorporates the *Beattie* factor discussion in BNYM's motion practice, which set forth the proper analysis of that factor, such that we cannot say that this misstatement impacted the court's decision. And because, as discussed more fully below, the award of attorney fees is otherwise supportable under the second, third and fourth *Beattie* factors, the district court's application of an incorrect version of the first factor does not provide a basis for relief. *See Frazier v. Drake*, 131 Nev. 632, 642, 357 P.3d 365, 372 (Ct. App. 2015) (noting that none of the factors are outcome determinative); *see also* NRS 18.010(2)(b) (providing for an award

contrary, the record demonstrates that the district court considered the required factors before awarding BNYM attorney fees pursuant to NRCP 68. *See id.*

RJRN nevertheless maintains that the district court incorrectly determined that the first three *Beattie* factors, which concern the parties' reasonableness and good faith in making and responding to offers, weighed in BNYM's favor. *See Frazier*, 131 Nev. at 644, 357 P.3d at 373 (holding that the fourth *Beattie* factor becomes irrelevant when the first three factors weigh in favor of the offeree). In particular, RJRN essentially argues that it was reasonable for it to reject BNYM's offer of judgment because the applicability of the excuse-of-tender doctrine to the parties' claims was supposedly uncertain when the offer was served since a petition for en banc reconsideration of *Thomas Jessup* was pending at the time. But RJRN overlooks that the judgment in favor of BNYM was not only based on *Thomas Jessup*'s holding concerning the excuse-of-tender doctrine, but also the district court's determinations with respect to RJRN's lack of standing and the effect of the mortgage-savings clause in the HOA's CC&Rs. Because RJRN therefore fails to provide any argument or explanation with respect to how the issues underlying these determinations would have impacted the district court's assessment of *Beattie*'s good-faith factors, we decline to further address its argument on this point.[2] *See Edwards v. Emperor's*

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of attorney fees to a prevailing party when the claim was brought or maintained without reasonable ground).

[2]We note that, insofar as the district court determined that the mortgage-savings clause in the HOA's CC&Rs affected the priority of the HOA's lien since they were recorded before NRS 116.1104's prohibition against HOAs waiving their superpriority rights was enacted, the court's determination was erroneous. In particular, under NRS 116.1206, the

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 cogent argument or relevant legal authority).

RJRN's only remaining basis for challenging the attorney-fees award is that the district court failed to explain or justify the amount of fees awarded. During the underlying proceeding, RJRN did not dispute that the *Brunzell* factors favored BNYM, and it only presented limited argument with respect to BNYM's billing entries. Although the district court did not expressly relate the attorney fees that it awarded to any specific attorney fees that BNYM sought, the record reflects that the court considered the parties' arguments on this matter, which included BNYM's fees statements, and awarded BNYM attorney fees in an amount that was substantially less than what it requested. Given that the district court considered all the relevant factors in reaching this decision and because the decision is supported by substantial evidence, we cannot say that the court abused its discretion. *See Wynn*, 117 Nev. at 13, 16 P.3d at 428-29; *see also Logan v. Abe*, 131 Nev. 260, 266-67, 350 P.3d 1139, 1143 (2015) (affirming an award of attorney fees where the district court considered the required factors and

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HOA's CC&Rs are deemed to conform to NRS Chapter 116, including NRS 116.1104's anti-waiver provision, meaning that the conflicting mortgage-savings clause in the HOA's CC&Rs is not enforceable. *See, e.g., U.S. Bank Nat'l Ass'n v. Pawlik*, Docket No. 75452 (Order of Affirmance, April 16, 2020) (relying on NRS 116.1206 to reject an argument that NRS 116.1104 does not operate retroactively to invalidate mortgage-savings clauses in CC&Rs that were recorded prior to NRS 116.1104's enactment). But no appeal was taken from the final judgment in the underlying case, and this issue is not before us here in the context of RJRN's appeal from the district court's post-judgment orders awarding attorney fees and costs. Instead, we are concerned only with RJRN's failure to address this issue in the context of its argument with respect to the *Beattie* factors.

the award was supported by substantial evidence in the record). Thus, we affirm the district court's order awarding BNYM attorney fees.

Lastly, with respect to the award of costs to BNYM, RJRN once again argues that the district court failed to explain or justify the amount of the award. We review an award of costs for an abuse of discretion. *See Logan*, 131 Nev. at 267, 350 P.3d at 1144. Initially, the district court did not specifically identify the legal basis for the award of costs to BNYM. *See U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers, Local 357*, 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."). But BNYM sought costs under both NRS 18.020 and NRCP 68, and it appears that the district court relied on the former in making the award, as the court could not have awarded the amount of costs that it did unless it considered the costs that BNYM incurred prior to service of its offer of judgment. *Compare* NRS 18.020(5) (requiring an award of costs to the prevailing party in action concerning title to real property without consideration of when the costs were incurred), *with* NRCP 68(f)(1)(B) (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 result).

Nevertheless, RJRN's motion to retax costs presented numerous challenges to BNYM's requested costs, and although the district court reduced its costs award from the $10,934.73 that BNYM sought to $8,285.53, we cannot adequately review the costs award without any analysis as to which costs the district court deemed to be reasonable and necessary or what the reduction applied to. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) (explaining that costs awarded pursuant to NRS 18.020 must be, among other things,

reasonable and necessary). Consequently, we reverse the district court's order awarding BNYM costs and remand this matter to the district court to determine whether BNYM's costs were reasonable and necessary. 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.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Law Offices of William R. Killip, LLC
Akerman LLP/Las Vegas
Eighth District Court Clerk