

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARON PETERSON,
Appellant,
vs.
MEDICWEST AMBULANCE, INC.,
Respondent.

No. 80654-COA

FILED

NOV 19 2021

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

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

Sharon Peterson appeals from a post-judgment order awarding expert fees as costs. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Peterson filed the underlying personal injury action against respondent MedicWest Ambulance, Inc. (MedicWest), alleging that she became injured after MedicWest's ambulance driver negligently operated his vehicle by proceeding into an intersection, causing a collision with a moped scooter operated by non-party Michael Ortiz. Following a four-week trial, the jury returned a verdict in favor of MedicWest and found that Peterson had not proven MedicWest's ambulance driver was negligent on the date of the accident.

After prevailing at trial, MedicWest filed a memorandum of costs and disbursements, requesting—among other things—three sets of expert witness fees that were in excess of \$1,500. Specifically, MedicWest requested costs in the amount of (1) \$12,837.50 for Brian Jones, its accident

reconstruction expert; (2) \$9,989 for Dr. Raymond Kelly, its toxicology expert; and (3) \$38,000 for Dr. Michael Seiff, its medical expert. Peterson filed a motion to retax costs, arguing that the expert witness fees were excessive and should be reduced. After full briefing on the matter, the district court entered an order granting MedicWest's motion for costs in part and ultimately awarded MedicWest its requested fees for Mr. Jones, Dr. Kelly, and Dr. Seiff in full. Overall, the district court awarded MedicWest \$60,826.50 in costs for expert witness fees.

In the portion of its order dealing with expert witness fees, the district court listed the fourteen factors identified in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015), and only made the following summary finding: "[t]he Court finds that costs listed for Expert Fees have been reasonably and actually incurred, and that the case demands justify allowing higher expert fees. Thus, under *Frazier*, [MedicWest's] expert fees are reasonable, necessary, and actually incurred." Notably, the district court did not provide any additional rationale for awarding MedicWest its expert witness fees in excess of \$1,500 for each of the three witnesses. In line with its order, the district court entered its written judgment and awarded costs in the amount of \$90,215.25, \$60,826.50 of which are the expert fees challenged in this appeal. Peterson now appeals.

On appeal, Peterson challenges the district court's order, alleging that the court's brief statement regarding expert witness fees did not comport with this court's opinion in *Frazier*, 131 Nev. at 650, 357 P.3d

at 377, requiring an “express, careful, and preferably written . . . analysis” of factors relevant to the requested fees. We agree.

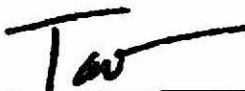
“A district court’s decision to award more than \$1,500 in expert witness fees is reviewed for an abuse of discretion.” *Id.* at 644, 357 P.3d at 373. NRS 18.005(5) provides for the recovery of “[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” A district court abuses its discretion when it fails to explain “by an express, careful, and preferably written explanation of the court’s analysis of factors pertinent to determining the reasonableness of the requested fees and whether the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” *Frazier*, 131 Nev. at 650, 357 P.3d at 377 (internal quotation marks omitted).

Here, the district court failed to provide sufficient findings or analysis as to any of the factors from the non-exhaustive list identified in this court’s opinion in *Frazier* or otherwise provide a basis for its decision to award expert fees in the amount of \$60,826.50 for MedicWest’s three expert witnesses. Accordingly, we conclude that the district court abused its discretion by awarding expert fees in excess of \$1,500 without stating a sufficient basis for its decision. *See Khoury v. Seastrand*, 132 Nev. 520, 541, 377 P.3d 81, 95 (2016). We therefore reverse the portion of the district court’s order awarding expert witness fees above the presumptive statutory

limit as costs and remand this matter for further proceedings.¹ On remand, any order resolving the request for expert witness fees shall include the required express, careful analysis of the factors outlined in *Frazier*, 131 Nev. at 650-51, 357 P.3d at 377-78.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Adriana Escobar, District Judge
Stovall & Associates
McBride Hall
Eighth District Court Clerk

¹Peterson does not challenge the other portions of the district court's order, and therefore any challenge to the same is deemed waived. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Accordingly, we affirm the remainder of the district court's order.

²Insofar 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.