

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY HENDRICKSON,
Appellant,
vs.
ERIC WHITNEY,
Respondent.

No. 83366-COA

FILED

JUL 21 2022

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

ORDER OF AFFIRMANCE

Amy Hendrickson appeals from a district court post-judgment award of attorney fees and costs. Second Judicial District Court, Family Court Division, Washoe County; Sandra A. Unsworth, Judge.

Hendrickson and respondent Eric Whitney share custody of their minor child, C.H.¹ In August 2020, Whitney filed a motion to modify physical custody and child support, seeking modification of an order filed in 2013.² Whitney's proposed custody modification essentially sought to formalize the physical custody arrangement that the parents had been informally practicing since approximately 2017, which they considered to be joint physical custody. Thereafter, Hendrickson filed in one document an opposition and a countermotion for primary physical custody for the purposes of relocation. After Whitney filed his reply in support of his motion to modify and an opposition to Hendrickson's countermotion, Hendrickson voluntarily withdrew the countermotion, with the district court's permission, so as to be in compliance with Washoe District Court Rule

¹We do not recount the facts except as necessary for our disposition.

²Whitney and Hendrickson share joint legal custody pursuant to the 2013 order, which is not at issue here.

(WDCR) 10(3)(a), which requires that “[a]ny motion, opposition, reply, etc., must be filed as a separate document unless it is pleaded in the alternative.”

Hendrickson then proceeded to file the countermotion as a separate motion for primary physical custody for the purposes of relocation. Less than a month later, she filed a motion for permission to relocate with the minor child. Whitney filed oppositions to each of these two additional motions. In his opposition to Hendrickson’s motion for primary physical custody for relocation, Whitney requested attorney fees. Whitney also requested the same attorney fees in his opposition to the motion for permission to relocate, arguing that he had to essentially respond to a motion for primary physical custody twice, and generally had to file oppositions to three motions over the span of only a few months.

The district court held a hearing related to the three motions.³ At the hearing, while discussing the factors related to Hendrickson’s relocation request, the district court found that she did not “even cross [the] initial threshold of having a sensible, good faith reason for the move.” The district court later determined at the conclusion of the hearing that “without [Hendrickson] even meeting the first prong, [Whitney was] entitled to fees relating to [the] action.”⁴ In its order after the hearing, the district court,

³The three motions before the court included (1) Whitney’s motion to modify custody and child support; (2) Hendrickson’s motion for primary physical custody for the purposes of relocation; and (3) Hendrickson’s motion for permission to relocate with minor child.

⁴The first factor that a “relocating parent must demonstrate to the court” is that “[t]here exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time.” NRS 125C.007(1)(a). The district court found that Hendrickson failed to satisfy this first threshold factor in denying her request for relocation.

without citing to any rule or relevant authority, held that Whitney was entitled to attorney fees and costs and that Whitney's attorney should submit "the appropriate affidavit for attorney's fees and costs."

After the declaration for attorney fees and costs was filed by Whitney's attorney, the district court entered an order granting fees and costs.⁵ In the order's "Law" section, the district court cited various authorities that generally permit, in various circumstances, the award of attorney fees and costs, such as NRS 18.010, NRS 18.020, and NRCP 11. However, we note that these authorities were written in a boilerplate fashion, and in our review, we perceive no specific findings as to bases for awarding fees and costs under the cited statutes and rule. The district court, however, in a separate "Order" section made detailed findings pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), but again did not indicate which of the authorities cited previously in the "Law" section were relied upon to award fees.

On appeal, Hendrickson argues that the award of attorney fees and costs was inappropriate because (1) the district court did not make a finding pursuant to NRS 18.010(2)(b) that she brought her motions "without reasonable grounds or to harass" Whitney, and NRS 18.010(2)(b) requires a money judgment; (2) she was being penalized for filing multiple motions in

⁵We note that Hendrickson never opposed the fees and costs set forth in the declaration, including the application of the *Brunzell* factors, or the reasonableness of the requested attorney fees, which she concedes in her opening brief. Her only argument on appeal is that because the district court failed to set forth a legal basis for awarding the fees and costs, the award should be reversed.

compliance with WDCR 10(3)(a)⁶; (3) the district court never ruled on her motion for primary custody for the purposes of relocation, and it did not fully consider or issue findings as to the best interest factors for each of the three motions⁷; (4) the district court did not comply with NRCP 11's requirements; and (5) NRS 18.020(3) is inapplicable, as there was no money judgment recorded. Whitney, proceeding pro se, mostly summarizes points from the district court's order granting attorney fees and costs, including that Hendrickson's motions had been denied because they were "without merit or good cause" and the district court's order based its findings on *Brunzell*, *Wilfong*, and various NRS provisions.

We "review[] a district court's award of attorney fees for an abuse of discretion." *Mack-Manley v. Manley*, 122 Nev. 849, 860, 138 P.3d

⁶We note that had Whitney followed the local rules from the beginning, the necessity of filing additional motions could have been avoided, particularly to the extent that she had to withdraw her initial countermotion and subsequently refile it as a separate motion for primary physical custody.

⁷We need not consider this argument on appeal because the district court's order regarding custody and relocation was not appealed, as Hendrickson only appealed from the order awarding attorney fees and costs. Nevertheless, we note from our review of the order related to the three motions regarding primary custody and relocation, it is clear that both of Hendrickson's motions were explicitly denied, and findings regarding the best interest factors were in fact issued under a section of the order that combined the discussion of Hendrickson's two motions. Though the district court may not have explicitly discussed the best interest factors in the order when addressing Whitney's motion to modify custody, we note that the court reasonably viewed all three motions as "inextricably linked," as the custody and relocation issues involved similar underlying factual considerations and arguments, and therefore, the best interest factors were analyzed by the court in its order. *See Monahan v. Hogan*, 138 Nev., Adv. Op. 7, 507 P.3d 588, 596 (Ct. App. 2022).

525, 533 (2006). “However, the district court may not award attorney fees absent authority under a statute, rule, or contract.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006). One such statute is NRS 125C.250, which provides that “in an action to determine legal custody, physical custody or visitation with respect to a child, the court may order reasonable fees of counsel and experts and other costs of the proceeding to be paid in proportions and at times determined by the court.”

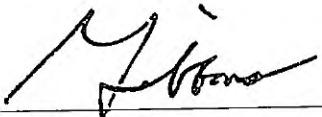
Though we generally agree with the concerns raised by Hendrickson related to the statutes and rule cited by the district court in its order and their applicability in the instant matter,⁸ we nevertheless affirm the award of attorney fees and costs as the district court always has the discretion to award attorney fees in child custody and parenting time matters pursuant to NRS 125C.250.⁹ See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (“This court will affirm a district court’s order if the district court reached the correct result, even if for the wrong reason.”). Thus, we cannot conclude, based on our

⁸For instance, the district court failed to explicitly issue a finding that Hendrickson’s motions were “maintained without reasonable ground or to harass” Whitney. NRS 18.010(2)(b) (awarding attorney fees “when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party”). We are left to merely speculate as to whether the district court was perhaps implying such a view in some of the comments made at the hearing or when in analyzing one of the *Brunzell* factors it provided that “this Court found Ms. Hendrickson’s multiple motions were denied in full as they were found to be without merit or good cause.” However, we need not make this determination given our ultimate disposition.

⁹We take this opportunity to remind district courts to apply relevant legal authority and make specific findings when awarding attorney fees and costs in advance of possible appellate review.

review of the record, that the district court abused its discretion in awarding Whitney attorney fees and costs in light of the protracted litigation on the custody issue.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla

TAO, J., concurring:

I concur in the judgment.


_____, J.
Tao

cc: Hon. Sandra A. Unsworth, District Judge, Family Court Division
Shawn B. Meador, Settlement Judge
M.J. Caffaratti Law, LLC
Eric Whitney
Washoe District Court Clerk

¹⁰Insofar 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 our disposition of this appeal.