

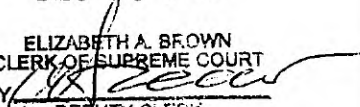
IN THE SUPREME COURT OF THE STATE OF NEVADA

STATEBRIDGE COMPANY, LLC,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ERIKA D. BALLOU, DISTRICT JUDGE,  
Respondents,  
and  
REDWOOD RECOVERY SERVICES,  
LLC; AND ELEVENHOME LIMITED,  
Real Parties in Interest.

No. 84192

FILED

DEC 19 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING IN PART AND DENYING IN PART PETITION  
FOR A WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court's order awarding compensatory damages, attorney fees, and costs against petitioner Statebridge Company, LLC.

Real parties in interest Redwood Recovery Services, LLC and Elevenhome Limited (collectively, Redwood) obtained monetary judgments, in Florida, in excess of \$17 million against nonparties Jeffrey Kirsch and various entities controlled by him (collectively, where applicable, "judgment debtors").<sup>1</sup> Redwood domesticated its judgments in Nevada and pursued post-judgment collection. Statebridge was never named as a party in those proceedings.

To prevent Redwood from executing on assets to satisfy its judgment, Kirsch transferred mortgage loans from judgment debtors to

---

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

other entities that were under his control, but not subject to the judgment. He also transferred the mortgages' servicing rights to different loan servicing companies, including Statebridge.

To protect its ability to execute on the judgment, Redwood obtained a temporary restraining order (TRO) preventing multiple loan servicing companies (including Statebridge) from transferring any interest in judgment debtors' properties or releasing any revenue generated by the properties to judgment debtors. Years later, Redwood applied for an order to show cause why Statebridge should not be held in contempt for violating the court's injunctive orders. The district court issued the order to show cause and held an evidentiary hearing.

After the hearing, the district court held Statebridge in contempt for transferring 67 mortgages with an unpaid balance of \$3,779,438.10, in violation of the injunction. Concluding that Statebridge's actions resulted in Redwood being unable to execute its judgment on the transferred mortgages, the district court awarded Redwood \$3,779,438.10 in compensatory damages. The district court further ruled that Redwood was entitled to attorney fees and costs, and awarded it \$674,818.00 in attorney fees and \$8,253.65 in costs.

Statebridge filed this petition for a writ of mandamus (1) seeking to vacate the district court's order awarding compensatory damages, attorney fees, and costs and (2) requesting that we direct the district court to recalculate its compensatory damages award to reflect Redwood's actual harm and reassess its attorney fees and costs award to reflect Statebridge's share of its liability.

*We elect to consider this petition because, as a non-party to the proceedings below, Statebridge lacks standing to appeal and is therefore without a plain, speedy and adequate remedy in the ordinary course of law*

Statebridge argues we should consider its writ petition because it was not a named party to the underlying proceedings and therefore lacks an adequate remedy at law as it has no standing to appeal the district court's order. Redwood summarily counters that Statebridge was the only party to the contempt proceedings and the only party to the challenged order.<sup>2</sup>

A writ of mandamus may be issued “to control a manifest abuse or arbitrary or capricious exercise of discretion.” *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). “A manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *Id.* at 932, 267 P.3d at 780 (internal quotation marks omitted). The writ shall issue “in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170. The consideration of a writ petition is within our sole discretion. *State, Dep't of Taxation v. Eighth Judicial Dist. Court*, 136 Nev. 366, 368, 466 P.3d 1281, 1283 (2020).

“A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order . . . .” NRAP 3A(a). A party is “aggrieved” under NRAP 3A(a) “when either a personal right or a right of property is adversely and substantially affected” by a district court's order. *Estate of Hughes v. First Nat'l Bank of Nev.*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980). To be considered a “party,” an entity must be named as

---

<sup>2</sup>Redwood also argues that we should deny Statebridge's writ petition because Statebridge failed to include a sufficient record for our review. However, pursuant to NRAP 30(b)(4), Redwood filed an appendix containing the documents it contends were needed to resolve this petition. Accordingly, we have the full record before us and decline to deny this petition on that basis.

a party in the lawsuit and be served with process and appear in the proceedings. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994).

Here, Statebridge was ordered to pay over \$4 million to Redwood. That order “substantially affected” Statebridge’s rights, and Statebridge was therefore aggrieved by it. However, while Statebridge was served and appeared in the proceedings, it was not a party under NRAP 3A(a) because it was not named as such in the proceedings. Accordingly, we exercise our discretion to consider Statebridge’s writ petition because we conclude Statebridge lacks standing to appeal and is therefore without a plain, speedy and adequate remedy at law.

*The district court manifestly abused its discretion by awarding the unpaid balance of the transferred mortgages as compensatory damages to Redwood*

Statebridge argues the district court manifestly abused its discretion because its compensatory damages award does not reflect Redwood’s actual harm. It argues that while the court treated all the loans transferred by Statebridge as equal, many of the loans were non-performing and thus not able to be collected upon. Statebridge argues the district court’s award was speculative because it was based on the view that Redwood “could have” used the mortgages toward the satisfaction of its judgment against judgment debtors.

Redwood counters that the district court’s injunction was crucial to prevent Kirsch from rendering its judgment uncollectable through “never ending transfer and concealment of the mortgage loans.” It argues that Statebridge’s violations of the TRO deprived Redwood of the opportunity to collect on its judgment.

District courts are accorded wide discretion in calculating damages, and we review an award of damages for an abuse of discretion.

*Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997). “A district court’s findings will not be disturbed on appeal unless they are clearly erroneous and are not based on substantial evidence.” *Id.* at 1378, 951 P.2d at 74 (internal quotation marks omitted). “Compensatory damages are awarded to make the aggrieved party whole . . . .” *Hornwood v. Smith’s Food King No. 1*, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991); see also *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 432 (2001) (“[Compensatory damages] are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant’s wrongful conduct . . . .”). The party seeking compensatory damages bears the burden of demonstrating the amount of those damages. *Clark Cty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 397, 168 P.3d 87, 97 (2007). “Although the amount of damages need not be proven with mathematical certainty, testimony on the amount may not be speculative.” *Id.* (internal footnote omitted). The party seeking damages “must provide to the court an evidentiary basis upon which it may properly determine the amount” of their damages. *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

Here, the district court manifestly abused its discretion because the compensatory damages award was speculative and not based on Redwood’s actual harm, which was a clearly erroneous application of the law. The district court explained that the purpose of the injunction was to “protect and preserve [Kirsch’s] mortgage loan assets . . . from further transfer or concealment until Redwood could confirm who claimed ownership of the loans and who was servicing the loans so that the mortgage loans could be executed on and applied toward Redwood’s judgments.” Thus, the harm caused by Statebridge’s contempt, was the additional

transfer and concealment of Kirsch's assets. Although Redwood incurred damages as a result, such as the cost of tracking down those loans again, the district court's calculation of compensatory damages was not based on substantial evidence.

The district court summarily concluded that any third-party purchasers "likely acquired the mortgage loans without notice of the [i]njunction and would be good faith purchasers for value [and] Redwood would not have any basis under the law to try to deprive the purchasers of those loan rights and interest three years after their purchase." Redwood presented testimony that one of the 67 transferred mortgages had been discharged—meaning, presumably, that Redwood would no longer be able to execute on it. However, Redwood otherwise failed to present any similar evidence related to the remaining 66 transferred mortgages. And Redwood fails to point to any other evidence in the record supporting the district court's finding that the transferred mortgages were "likely acquired" by good faith purchasers. Accordingly, this finding lacks an evidentiary basis.

Similarly, at the evidentiary hearing, a forensic accountant testified that Statebridge never owned an interest in the judgment debtors' properties but rather only owned the right to service the mortgages. Nevertheless, the district court found that "because of Statebridge's actions, Redwood lost the opportunity to execute on 67 mortgage loans . . . which mortgage loans Redwood could have used toward the satisfaction of its judgments against [j]udgment [d]ebtors." But, with the one exception described above, Redwood did not present evidence of its efforts to trace the transferred loans or determine which loans could have been executed upon. Accordingly, the district court's finding that Redwood lost the opportunity to execute on the transferred mortgages lacks an evidentiary basis and does

not sufficiently reflect Redwood's actual harm—presumably the cost of tracing the loans to their new owners or servicers.

Finally, Statebridge presented testimony at the hearing that the mortgages could not be valued based simply on their unpaid balances, but rather that each loan would have to be individually appraised to determine its worth. The district court noted this but explained that Statebridge had failed to present credible evidence of the loan pool's value. However, it was Redwood's burden to demonstrate damages. *Mort Wallin*, 105 Nev. at 857, 784 P.2d at 955. The district court thus improperly shifted the burden of proving damages to Statebridge, thereby manifestly abusing its discretion.

In light of the foregoing, we conclude that the district court's calculation of compensatory damages is not based on substantial evidence in the record and does not reflect Redwood's actual harm. The award therefore constitutes a manifest abuse of discretion because it is a clearly erroneous application of the law. *Armstrong*, 127 Nev. at 931, 267 P.3d at 779. Accordingly, we grant Statebridge's petition as to compensatory damages.

*The district court manifestly abused its discretion in awarding attorney fees unrelated to Statebridge's contempt*

Statebridge next argues the district court manifestly abused its discretion in awarding attorney fees that could not be attributed to the contempt proceedings. It also argues that the court did not consider procedural missteps by Redwood that unnecessarily increased its attorney fees. Redwood counters that the award of attorney fees was properly "limited to the [i]njunctions, related discovery, and [Statebridge's] contempt."

“We review an award of attorney fees for an abuse of discretion . . .” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). NRS 22.100(3) allows a district court to require a contemnor to reimburse the attorney fees of the party seeking to enforce the court’s order. The Eighth Judicial District Court’s rules likewise permit a court to impose attorney fees upon a party for failure to comply with an order of the court. EDCR 7.60(b)(5). Attorney fees awarded pursuant to either NRS 22.100(3) or EDCR 7.60(b)(5) must be reasonable under *Brunzell v. Golden Gate National Bank*,<sup>3</sup> and must also be incurred “as a result of the contempt.” *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev. 202, 213-14, 486 P.3d 710, 721 (2021) (quoting NRS 22.100(3)).

Here, not all of the attorney fees awarded by the district court were incurred as a result of Statebridge’s contempt. Specifically, in addition to awarding Redwood attorney fees that it incurred applying for the order to show cause and in connection with the evidentiary hearing (fees incurred as a result of Statebridge’s contempt), the district court also awarded attorney fees “incurred in obtaining the [i]njunction, defending the [i]njunction both in district court and on appeal, and in attempting to pursue discovery in support of the [i]njunction as well as other related proceedings.”

However, Redwood obtained the TRO against multiple entities to protect its ability to execute on Kirsch’s assets to satisfy its judgment against Kirsch. And Redwood defended that order on appeal against Kirsch. Although Statebridge was one of the entities subject to the

---

<sup>3</sup>85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969) (setting out this court’s reasonableness analysis for attorney fees).



injunction, it is unclear why Statebridge would be responsible for Redwood's attorney fees related to obtaining the injunction and defending it on appeal against a separate party. The attorney fees Redwood incurred obtaining the injunction could not have resulted from Statebridge later violating that injunction. Accordingly, the district court manifestly abused its discretion in awarding attorney fees incurred in obtaining the injunction and defending it on appeal. *Armstrong*, 127 Nev. at 931, 267 P.3d at 779.

Insofar as the attorney fees award rested on discovery, it appears that the district court awarded attorney fees to sanction Statebridge's bad faith participation in discovery. But the TRO Statebridge violated did not order Statebridge to participate in discovery. And while the district court noted Statebridge's misconduct during discovery, it is not clear from the contempt order whether the court found Statebridge in contempt for its conduct during discovery. Indeed, the court's order maintains that Statebridge's discovery misconduct is relevant to its violation of the TRO (the contempt). And the court's compensatory damages award was only related to Statebridge transferring the mortgages in violation of the TRO, not any purported misconduct that occurred during discovery. Accordingly, we conclude that the district court manifestly abused its discretion in awarding attorney fees related to Redwood's pursuit of discovery.

Pursuant to NRS 22.100(3) and EDCR 7.60(b)(5), Redwood can only recover attorney fees incurred by Statebridge's contempt. Because Redwood's attorney fees related to its initial application for the TRO and obtaining discovery from Statebridge were not incurred because of Statebridge's contempt, the district court manifestly abused its discretion in awarding attorney fees related to those matters. We therefore grant Statebridge's petition as to attorney fees.

*The district court did not manifestly abuse its discretion in awarding costs*

Statebridge argues the district court manifestly abused its discretion in awarding costs because Redwood's request for costs was not filed within five days of the order and was therefore untimely. Statebridge also summarily argues that the district court's award of costs lacks evidentiary support. Without pointing to any examples in the record, Statebridge asserts that Redwood voluntarily increased its own costs by choosing higher-priced services. It argues that it would be unreasonable to reimburse Redwood for such costs. Redwood counters that the district court properly considered Redwood's memorandum of costs. Redwood argues the reasonableness of the district court's award of costs is supported by the court's detailed findings explaining the rationale for awarding costs and rejecting Statebridge's challenges to Redwood's memorandum.

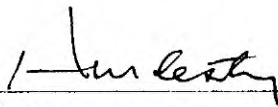
We review a district court's award of costs for an abuse of discretion. *Vill. Builders 96 v. U.S. Labs.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). Like attorney fees, costs must be reasonable. NRS 22.100(3); EDCR 7.60(b). The costs must also be incurred by the party seeking costs "as a result of the contempt." NRS 22.100(3); *cf. Detwiler*, 137 Nev. at 214, 486 P.3d at 721 (interpreting NRS 22.100(3) and EDCR 7.60(b)(5) to require causation between the contemnor's action and the attorney fees incurred).

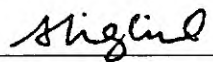
First, Redwood's memorandum for costs was timely because NRS 18.110(1) grants the district court discretion to determine when the costs must be submitted, and the district court exercised that discretion here. Second, unlike its attorney fee award, the district court only awarded Redwood costs incurred by bringing the application for the order to show cause and the evidentiary hearing. Statebridge generally argues that the district court's award of costs was unreasonable but does not point to any specific cost which should not have been awarded. Statebridge thus fails to

demonstrate that the district court's costs award constituted a manifest abuse of discretion. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted). We therefore deny Statebridge's writ petition as to the district court's award of costs.

Accordingly, we grant Statebridge's petition for a writ of mandamus in part and deny it in part. The clerk of this court shall issue a writ of mandamus directing the district court to vacate its order as to compensatory damages and attorney fees and remand to recalculate its awards in accordance with this order, conducting further proceedings as necessary.

It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Herndon

cc: Hon. Erika D. Ballou, District Judge  
Olson, Cannon, Gormley, & Stoberski  
Howard & Howard Attorneys PLLC  
Levine, Kellogg, Lehman, Schneider & Grossman  
Eighth District Court Clerk

---

<sup>4</sup>To the extent the parties' additional arguments are not addressed herein, we have reviewed those arguments and conclude they do not warrant a different result.