

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD L. SHERMAN, AN  
INDIVIDUAL,  
Appellant,  
vs.  
LARRY SMEAD, AN INDIVIDUAL,  
Respondent.

No. 83603-COA

RICHARD L. SHERMAN, AN  
INDIVIDUAL,  
Appellant,  
vs.  
LARRY SMEAD, AN INDIVIDUAL,  
Respondent.

No. 84071-COA

**FILED**

APR 14 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Richard L. Sherman appeals from both a district court order granting partial summary judgment, certified as final under NRCP 54(b), Docket No. 83603-COA, and an order granting a motion for attorney fees and costs, Docket No. 84701-COA, which have been consolidated for this appeal. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

*Facts and Procedural History*

In this case, former employees of respondent Larry Smead, who is a private electrical contractor and the owner of SASCO and related entities, retained Sherman to represent them in employment matters against Smead.<sup>1</sup> In November 2011, one of the former employees reached a settlement agreement with Smead to resolve the employment dispute

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

between them. This 2011 settlement agreement contained the following Covenants clause pertaining to Sherman and the lawyers in his firm:

6. Covenants of Magpiong's Attorneys. Magpiong's Attorneys, and each member of their respective firms, each further covenant and agree that he/she/it shall not publish any of the Smead Released Parties names in any manner in association with their law practice or in any way publish, promote, advertise or reference their participation in any action against any of the Smead Released Parties, inclusive of this Action.

The 2011 settlement agreement also generally allowed for an award of attorney fees and costs to be awarded to the nonbreaching party in the event of a breach of the agreement:

e. Attorneys' Fees. In the event of the bringing of any action, arbitration or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party will be entitled to have recovery of and from the other Party all costs and expenses of the action, arbitration or suit, reasonable attorneys' fees and any other professional fees resulting therefrom.

Subsequently, in 2018, Sherman was retained by two other former employees of Smead, Richard Rivetti and Jeffrey Hicks, to represent them in separate employment matters against Smead. Sherman sent a prelitigation letter to Smead on behalf of Rivetti—attempting to foster early settlement negotiations—and in doing so, alluded to prior litigation against Smead without stating any specific names. In the letter, Sherman stated the following:

[a]s you may recall, our office previously asserted claims on behalf of not less than five (5) high-level

employees of yours in the past. Mr. Rivetti's claims are strikingly similar to the claims previously filed against you, and the stories we have heard countless times from your former employees.

...

As was the case in the five previous cases filed by our office (each of which settled, but only after you had paid your lawyers sums that could have been avoided had you not rejected our offers to engage in early settlement discussions), we are willing to discuss the scheduling of a mediation or settlement meeting . . . .

Further, in a footnote, Sherman added:

[w]e note here the Motion for Terminating Sanctions, which was filed against you and your companies in one of the previous cases we handled, based upon attempts to hide relevant documents in that case. You may recall that Motion was filed shortly before that matter settled and after the initial hearing thereon, but before an order was issued by the Court.

In 2019, Sherman sent a similar prelitigation letter to Smead on behalf of Hicks. In a footnote, Sherman specifically referenced the prior 2011 litigation against Smead:

[w]e are especially dismayed that Larry would continue to destroy emails and insist they not exist after we filed a Motion for Terminating Sanctions against him in the Magpiong case for this very misconduct, where he attempted to defraud the Court by deleting the key emails in the case.

In the body of the letter, Sherman also emphasized Smead's conduct in the case involving Hicks to that in the Magpiong litigation:

Larry instructed Mr. Hicks to [engage in conduct] (which you may recall was similar to the illegal misconduct that Mr. Magpiong had observed and

objected to, leading to his own wrongful terminations and his lawsuit in California);

...

[W]e know this is because Larry uses the “forgiving” of these notes as a weapon against employees whom he wishes to retaliate against, as we experienced first-hand with Mr. Magpiong . . . .

In response to receiving these prelitigation letters, Smead filed a complaint in district court, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, and requesting attorney fees and costs. Smead alleged that Sherman breached the 2011 settlement agreement by disparaging Smead and referencing the 2011 litigation in Sherman’s letters to him. Smead also sought a judicial declaration “that the [s]ettlement [a]greement is valid and binding and that Sherman’s failure to comply with the terms of the [s]ettlement [a]greement is a breach thereof. Smead has sustained damages in excess of \$15,000.00 as a direct and proximate result of Sherman’s breach of the [s]ettlement [a]greement.”

In July 2021, Smead filed a motion for partial summary judgment alleging that there were no genuine disputes of material fact as to Sherman’s breach of the 2011 settlement agreement by referencing the 2011 litigation in the letters, and that Smead was entitled to declaratory relief to establish the validity of the settlement agreement and to an award of attorney fees and costs. In turn, Sherman filed his own motion for summary judgment arguing that he did not breach the 2011 settlement agreement and later arguing that Smead’s opposition failed to counter Sherman’s motion with genuine disputes of material fact to support such a breach, and therefore, Sherman was entitled to summary judgment. After

conducting a hearing, the district court granted Smead's motion for partial summary judgment in August 2021 and denied Sherman's motion.<sup>2</sup>

In its order, the district court found that Sherman breached the terms of the 2011 settlement agreement by referencing the prior litigation in the prelitigation letters sent on behalf of Rivetti and Hicks, and that the breach of contract claim damages were proven as evidenced by the attorney fees and costs incurred by Smead in having to litigate the claims. The district court further granted Smead's request for declaratory relief, finding that (1) the 2011 settlement agreement was valid and enforceable; (2) Sherman breached the agreement; and (3) an award to Smead of monetary damages in the form of attorney fees and costs was appropriate. Sherman appealed that decision. After Smead filed his memorandum for attorney fees and costs, the court awarded him the amount of \$60,266.96. Subsequently, Sherman also appealed the award of attorney fees and costs. In February 2022, the district court entered the parties' stipulation and order to certify the court's August 2021 order granting Smead's motion for partial summary judgment as a final judgment, pursuant to NRCP 54(b).<sup>3</sup> The appeals were consolidated.

On appeal, Sherman argues that the district court erred in granting summary judgment because (1) its interpretation of the 2011 settlement agreement in Smead's favor was incorrect, (2) Smead did not present evidence in support of the element of damages for his breach of

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<sup>2</sup>We note that Sherman did not appeal the district court's denial of his motion for summary judgment. Our order should not be taken as an opinion as to the merits of that denial.

<sup>3</sup>We note that NRCP 54(b) certification was required as the district court did not resolve all claims pending below.

contract claim, (3) declaratory relief should not have been granted for the purpose of awarding monetary damages, and (4) the award of attorney fees and costs was not justified.

Conversely, Smead argues that the district court properly granted his claim for declaratory relief, and any error in granting summary judgment on the breach of contract claim and awarding attorney fees as damages was harmless because the grant of declaratory relief allowed the district court to award such damages. Nevertheless, Smead also argues that Sherman breached the 2011 settlement agreement, and that the award of attorney fees permitted under the settlement agreement qualifies as special damages to support his breach of contract claim. Alternatively, Smead contends that the award of attorney fees and costs was warranted as he was the prevailing party. We agree with Sherman and therefore necessarily reverse and remand.

*Standard of Review and Relevant Authority*

As a preliminary matter, we review a district court's grant of summary judgment de novo. *Iliescu, Tr. of John Iliescu, Jr. & Sonnia Iliescu 1992 Family Tr. v. Reg'l Transp. Comm'n of Washoe Cty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that there exists no genuine dispute of material fact "and that the moving party is entitled to a judgment as a matter of law." *Id.* (internal quotation marks omitted); *see also* NRCP 56(a). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In rendering a decision on a motion for summary judgment, all evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* at 729, 121 P.3d at 1029. Additionally, while we generally

review an award of attorney fees for an abuse of discretion, *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006), whether attorney fees constitute special damages for the purpose of satisfying a breach of contract claim is subject to de novo review because this issue involves a question of law, *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 176, 444 P.3d 423, 426 (2019). Furthermore, whether a determination in an action for declaratory judgment is proper is a matter for the district court's discretion and will not be disturbed on appeal unless the district court abused that discretion. *Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998).

Relevant here, “[a] settlement agreement is a contract governed by general principles of contract law.” *Power Co. v. Henry*, 130 Nev. 182, 189, 321 P.3d 858, 863 (2014). To prove a breach of contract, a plaintiff must demonstrate that a valid contract exists, there was a breach of the contract, and that damages occurred. *See Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458. Breach of contract is the material failure to perform “a duty arising under or imposed by agreement.” *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (internal quotation marks omitted).

This court also reviews contract interpretation de novo by looking to the language of the contract and surrounding circumstances. *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011). When reviewing a contract, the objective “is to discern the intent of the contracting parties.” *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) (internal quotation marks omitted). In doing so, we will enforce the contract as written, so long as it is clear and unambiguous. *Id.*; *see also Canfora v. Coast Hotels & Casinos, Inc.*, 121

Nev. 771, 776, 121 P.3d 599, 603 (2005) (noting that the appellate court interprets unambiguous contracts according to the plain language of their written terms). However, “[a]n interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract.” *Dickenson v. State, Dep’t of Wildlife*, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994). And we will not construe a contract “so as to lead to an absurd result.” *Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947). We now address each of Sherman’s arguments.

*The district court erred in its interpretation of the Covenants clause*

Sherman argues that the district court erred in its interpretation of the Covenants clause to find that he breached the 2011 settlement agreement by merely referencing the Magpiong litigation in subsequent prelitigation letters sent to Smead. We agree. By interpreting the Covenants clause to prohibit the mere “reference” to the parties’ prior litigation, the district court failed to consider the context of how the word reference is used in the agreement. “The doctrine of *noscitur a sociis* teaches us that ‘words are known by—acquire meaning from—the company they keep.’” *Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. 78, 85, 294 P.3d 1228, 1234 (2013) (quoting *Ford v. State*, 127 Nev. 608, 622 n.8, 262 P.3d 1123, 1132 n.8 (2011)). “When several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195 (2012).

In this case, the Covenants clause contained a list of similar words that were associated with one another: “publish, promote, advertise



or reference.”<sup>4</sup> The district court erred by assigning an overly broad meaning to the word “reference” that did not comport with the meaning of the related terms, all of which contemplated some form of communication to a third party in an effort to solicit business. Thus, it was unreasonable for the district court to interpret the contract to preclude Sherman from merely referencing the prior litigation in discussions with Smead, as Smead could not be considered a third party as he was already aware of the Magpiong litigation, and could not be surprised by the information, nor harmed by it. *See Dickenson*, 110 Nev. at 937, 877 P.2d at 1061. Instead, based on our review of the plain language of the contract, the Covenants clause was designed to ensure that Sherman would not publicize the prior litigation or use it for advertising purposes, such as to solicit new clients against Smead. There is no indication in the record, at this point in the litigation, that either of the letters or the information related to the Magpiong litigation was used to advertise or solicit further business for Sherman, as the prelitigation letters were specifically sent to Smead to foster early settlement negotiations after Sherman had already been retained by Rivetti and Hicks. Thus, based on the principles of statutory

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<sup>4</sup>In interpreting the contract, we look to the plain language contained in the Covenants clause. Black’s Law Dictionary defines “publish” as “to communicate (defamatory words) to someone other than the person defamed.” *Publish*, *Black’s Law Dictionary* (11th ed. 2019). An advertisement or to advertise is defined as “[a] commercial solicitation; an item of published or transmitted matter made with the intention of attracting clients or customers.” *Advertisement*, *Black’s Law Dictionary* (11th ed. 2019). To reference is defined as “the act of referring or consulting.” *See Reference*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020). Further, to promote is to “move forward” and “contribute to the growth or prosperity of.” *Promote*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020).

construction, we conclude that the district court erred, without more, in finding that mere references to the Magpiong litigation in subsequent prelitigation letters was sufficient to demonstrate a breach.

*Smead's breach of contract claim currently fails for lack of damages*

Sherman argues that even if there was a breach of the settlement agreement, Smead failed to set forth the element of damages required for a breach of contract claim, and therefore his claim fails as a matter of law. *See Richardson v. Jones & Denton*, 1 Nev. 405, 408 (1865) (“It is necessary to establish actual damages resulting from [a claimed] breach [of contract]”). Conversely, Smead argues that the attorney fees he incurred in litigating his case constitute such damages. We agree with Sherman and address this argument in the alternative.

Attorney fees may be awarded as either (1) “fees as a cost of litigation” or (2) “fees as an element of damage[s].” *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 955, 35 P.3d 964, 968-69 (2001), *receded from on other grounds by Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007); *see generally Liu v. Christopher Homes, LLC*, 130 Nev. 147, 321 P.3d 875 (2014) (clarifying the extent to which *Horgan* receded from *Sandy Valley*). While attorney fees are not awarded “unless there is a statute, rule or contract providing for such an award,” the Nevada Supreme Court has allowed for attorney fees to constitute special damages<sup>5</sup> in limited circumstances. *Pardee*, 135 Nev. at 174, 444 P.3d at 424.

In *Sandy Valley*, the supreme court concluded that attorney fees are only to be considered special damages “when a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct

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<sup>5</sup>Special damages are actual pecuniary losses that can be determined with relative certainty. 25 C.J.S Damages § 4 (2022).

or a breach of contract.” 117 Nev. at 956, 35 P.3d at 969. However, the supreme court also indicated that “[b]ecause parties always know lawsuits are possible when disputes arise, the mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney fees as damages.” *Id.* at 957, 35 P.3d at 969. Further, the supreme court has specifically stated that special damages are inappropriate where “a plaintiff merely seeks to recover fees incurred for prosecuting a breach-of-contract action against a breaching defendant.” *Pardee*, 135 Nev. at 178, 444 P.3d at 426.

The supreme court outlined the necessary steps to properly plead a claim for attorney fees as special damages and defined three limited circumstances in which a party can request such fees as special damages. *Sandy Valley*, 117 Nev. at 956-58, 35 P.3d at 969-70. To properly plead and potentially receive an award of fees, (1) the attorney fees “must be pleaded as special damages in the complaint pursuant to NRCP 9(g)”; (2) the attorney fees must be “proved by competent evidence just as any other element of damages”; and (3) the attorney fees “must be the natural and proximate consequence of the injurious conduct.” *Id.* at 956-57, 35 P.3d at 969. The three limited circumstances to recover attorney fees as special damages are when (1) the fees are “an element of damage in cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant”; (2) the fees are incurred while recovering real or personal property taken because of the wrongful conduct of the defendant or when clarifying or removing a cloud upon the title of the property; and (3) in actions for declaratory or injunctive relief when “the actions were necessitated by the opposing party’s bad faith conduct.” *Id.* at 957-58, 35 P.3d at 970.

In this case, at this point in time, the only damages Smead has alleged for his breach of contract claim are in the form of attorney fees and costs incurred as a result of bringing a civil suit against Sherman for allegedly breaching the 2011 settlement agreement.<sup>6</sup> As noted above, *Sandy Valley* and *Pardee Homes* prohibit an award of attorney fees as special damages incurred simply by commencing an action based on the injurious conduct of another. *See Pardee Homes*, 135 Nev. at 178, 444 P.3d at 427 (“[U]nder [the respondents’] theory, any breach-of-contract suit would warrant attorney fees as special damages because it would be foreseeable that an aggrieved party would retain the services of an attorney to remedy a breach. This conflicts with our caselaw.”). Further, merely bringing a lawsuit which results in fees and costs being incurred does not support that such fees and costs are the “natural and proximate consequence” of Sherman’s conduct. *See Sandy Valley*, 117 Nev. at 957, 35 P.3d at 969-70 (“As a practical matter, attorney fees are rarely awarded as [special] damages simply because parties have a difficult time

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<sup>6</sup>To the extent Smead contends that the attorney fees and costs incurred in pursuing his claim of breach of contract can satisfy the element of contractual damages via the settlement agreement’s “prevailing party” language, this argument fails in light of our disposition. As discussed above, pursuant to *Sandy Valley*, attorney fees incurred in pursuing a lawsuit do not satisfy the required element of contract damages, but assuming there are quantifiable contract damages, attorney fees and costs may be recoverable by the prevailing party where a contract so provides. *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (noting that attorney fees are recoverable if “allowed by express or implied agreement or when authorized by statute or rule” (internal quotation marks omitted)); *cf. Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 422, 373 P.3d 103, 107 (2016) (stating that where judgment in favor of the respondent must be reversed, the respondent is no longer the prevailing party and the award of fees and costs is reversed).

demonstrating that the fees were proximately and necessarily caused by the actions of the opposing party and that the fees were a reasonably foreseeable consequence of the breach or conduct.”).

Therefore, we conclude that Smead has failed to prove the element of damages required for breach of contract, thereby precluding the grant of summary judgment. See *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989) (“The party seeking damages has the burden of proving both the fact of damages and the amount thereof.”); see also *Nev. Cap. Ins. Co. v. Farmers Ins. Exch.*, No. 70572, 2018 WL 4614152, at \*2 (Nev. Sept. 21, 2018) (stating that “a failure to establish ‘the existence or cause of damage’ will bar recovery” (quoting *Knier v. Azores Constr. Co.*, 78 Nev. 20, 24, 368 P.2d 673, 675 (1962))).

Further, we are also not persuaded by Smead’s allegation that he was disparaged by the reminder of the litigation in the letters and that this was sufficient to satisfy the damages element for a breach of contract claim. We note that the Rivetti letter did not specifically refer to any former employees by name or identify the litigation by party name. And to the extent the Hicks letter referenced Magpiong by name, this information was directed to Smead, who was already in possession of it, thus the mere reference to it in the letter could not have given rise to money damages necessary to recover on a breach of contract claim. Cf. *Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 392, 284 P.3d 377, 382 (2012) (stating that money damages ordinarily “make the aggrieved party whole and . . . place the plaintiff in the position he would have been in had the contract not been breached” (internal quotation marks omitted)). Smead also fails to disclose any damages he sustained as a result of the

disclosure for the purpose of settlement negotiations that was directed to him and not to a third party. *Cf. Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 91 (2002) (holding that to establish defamation a false statement must be published to a third party without privilege); *Nev. Ind. Broadcasting v. Allen*, 99 Nev. 404, 418, 664 P.2d 337, 346 (1983) (concluding that a political candidate was entitled to recover under defamation per se for comments that were publicly made and thus injured his professional reputation).

Accordingly, Smead has not demonstrated any breach of contract damages incurred as a result of receiving the prelitigation letters from Sherman. And as noted above, the district court erred by finding that the attorney fees Smead incurred merely as the cost of litigation constituted special damages in contravention of *Sandy Valley*. Thus, even assuming there was a breach of the settlement agreement, Smead has failed at this juncture to establish the element of damages necessary to support his claim for breach of contract as a matter of law and, therefore, the district court erred in granting Smead summary judgment on his breach of contract claim.

*The district court abused its discretion in resolving the declaratory relief claim*

Sherman argues that the district court abused its discretion in granting declaratory relief to award attorney fees and costs as special damages. The Nevada Supreme Court has held that “declaratory relief determines [the parties’] legal rights *without* undertaking to compel either party to pay money or to take some other action to satisfy such rights as are determined to exist by the declaratory judgment.” *Aronoff v. Katleman*, 75 Nev. 424, 432, 345 P.2d 221, 225 (1959) (emphasis added). To the extent the district court granted declaratory relief in its entirety for the purpose of

awarding Smead his attorney fees and costs as monetary damages to satisfy a breach of the 2011 settlement agreement, not to determine a legal right, the district court abused its discretion in awarding declaratory relief.

In reaching this decision, we are mindful that a court is permitted to award attorney fees and costs as special damages under the limited declaratory relief exception stated in *Sandy Valley*. 117 Nev. at 957-58, 35 P.3d at 970. Even assuming, without deciding, that this exception applies, the district court failed to make findings as to whether Sherman's conduct constituted bad faith to properly award Smead his attorney fees and costs based on the declaratory relief exception set forth in *Sandy Valley*. Further, whether Sherman engaged in bad faith conduct is typically a decision for the jury or trier of fact, and therefore, summary judgment is inappropriate where genuine disputes remain as to Sherman's intent in referencing the prior litigation. See *Lee v. GNLV Corp.*, 117 Nev. 291, 296, 22 P.3d 209, 212 (2001) ("Whether a defendant's conduct was 'reasonable' under a given set of facts is generally an issue for the jury to decide."); see also *Myers v. Miller*, No. 81189, 2021 WL 4238033, at \*1 (Nev. Sept. 16, 2021) (Order of Reversal and Remand) (concluding that the district court erred when it found that the appellant's conduct was unreasonable and constituted bad faith at the summary judgment stage on a breach of contract claim, because that is a question for the jury); cf. *Armentrout v. Mead*, No. 83858-COA, 2022 WL 17185094, at \*9 (Nev. Ct. App. Nov. 23, 2022) (Order of Affirmance) (concluding, in the alternative, that attorney fees as special damages were incurred when the district court found that a party acted in bad faith). Thus, the district court abused its discretion in granting declaratory relief for the purpose of awarding attorney fees and

costs as special damages without making the requisite findings necessary under *Sandy Valley*.

Therefore, we reverse the district court's order granting partial summary judgment because mere references to the prior litigation did not, in and of themselves, constitute a breach of the Covenants clause, and because Smead has failed to demonstrate the element of damages necessary to state a claim for breach of contract, and further failed to establish a claim for declaratory relief at this time. We also necessarily reverse the order granting attorney fees and costs. *See, e.g., Cain v. Price*, 134 Nev. 193, 198, 415 P.3d 25, 30 (2018) (explaining that where a district court's order granting summary judgment is reversed, it is no longer appropriate to consider the respondents the prevailing party, and an award of attorney fees is inappropriate).

Accordingly, we

ORDER the judgments of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>7</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>7</sup>Insofar as the parties have raised 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: Hon. Carli Lynn Kierny, District Judge  
Ara H. Shirinian, Settlement Judge  
Olson, Cannon, Gormley, & Stoberski  
Maier Gutierrez & Associates  
Eighth District Court Clerk