

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NP RED ROCK LLC, D/B/A RED ROCK
CASINO RESORT SPA,
Appellant,
vs.
JANELLE VILLANUEVA TRAN,
Respondent.

No. 84357-COA

NP RED ROCK, LLC, D/B/A RED ROCK
CASINO RESORT SPA,
Appellant,
vs.
JANELLE VILLANUEVA TRAN,
Respondent.

No. 84490-COA

FILED

MAY 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

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

NP Red Rock, LLC, d/b/a Red Rock Casino Resort Spa (Red Rock), appeals from a district court judgment and post-judgment orders denying an NRCP 59 motion and awarding attorney fees and costs in a personal injury action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Respondent Janelle Villanueva Tran, who was 31 weeks pregnant at the time, and her husband Duy Tran, were patrons at the Red Rock buffet on November 10, 2017.¹ After their meal, the couple walked to the restrooms located inside the buffet area. As Tran entered the walkway outside the women's restroom, she slipped in a clear liquid substance which caused her to fall. Tran twisted her right ankle when she unsuccessfully tried to grab onto the wall to avoid falling due to her pregnancy. Although paramedics arrived on the scene, Tran declined treatment.

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

Because Tran continued to experience pain in her ankle, she sought medical treatment a week after her fall. X-rays revealed that Tran had sustained an avulsion fracture in her right ankle. Tran was prescribed crutches and an ankle brace to promote healing, which she used for approximately one month, and then on her own performed daily at-home exercises that she had learned during her employment with a physical therapy group. She gave birth in January 2018 and did not seek outside physical therapy services until January 2019, which she stopped after a few treatments because she discovered that she was pregnant with her second child. Following the birth of her second child in October 2019, and because her ankle pain persisted, Tran saw Dr. Randall Yee—an orthopedist—in March 2020. She was again diagnosed with an avulsion fracture and was provided with an ankle brace. Dr. Yee also recommended continued physical therapy. Due to the COVID-19 pandemic and the fact that her husband was immunocompromised, Tran discontinued treatment with Dr. Yee. As an alternative, she again engaged in at-home exercises to help alleviate the pain in her right ankle. Eventually, because her pain persisted, Tran returned to Dr. Yee on October 6, 2021. At that time, almost four years after her fall and the initial injury, Dr. Yee diagnosed Tran with post-traumatic arthritis.

Tran filed suit against Red Rock in November 2018, alleging two causes of action: (1) negligence; and (2) negligent hiring, training, supervision, and retention. Shortly after filing her complaint, Tran requested exemption from arbitration on the basis that her case involved an amount in issue greater than \$50,000 due to her past and future medical expenses and past and future pain and suffering. The case was exempted

from the arbitration program on that basis, and a scheduling order was issued.

The parties thereafter engaged in discovery. Early on, Tran served Red Rock with an offer of judgment for \$25,999, which Red Rock rejected. Tran also timely disclosed her treating physician, Dr. Yee, as her retained expert and indicated that Dr. Yee was expected to testify as to past and future medical treatment and future restrictions of activities consistent with his prescribed treatment. Red Rock did not retain an expert by the initial expert disclosure deadline to counter Dr. Yee's opinions, nor did Red Rock depose Dr. Yee. In May 2020, which was *after* the deadline for disclosing initial experts, Tran's counsel emailed Red Rock that Tran had no ongoing symptoms and no plans to return to treatment. In October 2021, after her follow-up appointment with Dr. Yee wherein he diagnosed her with post-traumatic arthritis, but did not recommend any new treatment, Tran timely supplemented her NRCP 16.1 disclosures with Dr. Yee's medical records from the October visit in accordance with NRCP 26(e). In advance of the trial, Red Rock never sought to depose Dr. Yee, nor did Red Rock move in limine to exclude his testimony regarding his October 2021 treatment of Tran or to exclude his October 2021 medical records.

Trial commenced in November 2021. Following opening statements and before Dr. Yee was called to testify, Red Rock orally objected to his testimony and requested that the district court exclude any testimony as to Dr. Yee's diagnosis of Tran's post-traumatic arthritis as well as his opinions regarding Tran's future limitations and treatment. The district court denied Red Rock's motion and found that Tran had timely disclosed the October 2021 medical records, and that Tran had made Red Rock aware of her future limitations and treatment from the beginning of the case.

The jury heard testimony from various witnesses. Dr. Yee testified as to Tran's injuries, course of treatment, and her future limitations and treatment. Tran also testified to her injury and her limitations. Duy Tran testified regarding his observations of her limitations. Ultimately, the jury returned a verdict in favor of Tran and awarded her \$200,000 in damages, which consisted of \$50,000 in past pain and suffering and \$150,000 in future pain and suffering. Past medical and future medical expenses were not sought or awarded.

Following the jury's verdict, Red Rock filed a motion to alter or amend the judgment or, alternatively, for a new trial. Red Rock argued that the district court should have altered or amended the judgment pursuant to NRCP 59(e) to exclude the jury's award for future damages because the alleged untimely diagnosis of Tran's post-traumatic arthritis was unfair and prejudicial. Red Rock moved for a new trial, claiming that (1) the timing of Dr. Yee's post-traumatic arthritis diagnosis constituted an irregularity pursuant to NRCP 59(a)(1)(A) that prevented Red Rock from having a fair trial, (2) the jury awarded excessive damages pursuant to NRCP 59(a)(1)(F) based on Dr. Yee's alleged untimely diagnosis of post-traumatic arthritis, and (3) the district court was in error pursuant to NRCP 59(a)(1)(G) for allowing Tran to present evidence of future damages based on Dr. Yee's alleged untimely post-traumatic arthritis diagnosis. The district court summarily denied Red Rock's motion.

Tran filed a post-judgment motion for attorney fees under NRCP 68 because she prevailed on her offer of judgment, 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, 349-50, 455 P.2d 31, 33 (1969), weighed in her favor. Tran requested \$80,000 in

attorney fees, which was pursuant to a contingency fee agreement wherein she agreed to pay her counsel 40 percent of any amount recovered from the lawsuit. Red Rock opposed Tran's motion, arguing she could not satisfy the *Beattie* factors, particularly because the offer of judgment was served during the early stages of discovery and the medical expenses were only \$964.64.

Additionally, Tran separately filed her memorandum of costs and prejudgment interest arguing that, as the prevailing party, she was entitled to all the costs set forth in her memorandum pursuant to NRS 18.020. Tran argued that the following costs were reasonable and necessarily incurred: (1) Dr. Yee's expert fees of \$10,500, (2) seven focus groups amounting to \$3,480, (3) a right ankle medical illustration that cost \$575, and (4) a private mediation that cost \$1,850. Red Rock opposed Tran's memorandum of costs and moved to retax costs.²

The district court entered an order summarily granting Tran's motion for attorney fees pursuant to NRCP 68 and awarded \$80,000 in attorney fees based on the fee agreement. The court's order summarily stated that it considered the pleadings and applicable law and cited *Beattie* and *Brunzell*, among other cases, but contained no factual findings. The district court also entered a separate order that summarily denied Red Rock's motion to retax costs and awarded Tran \$29,084 in total costs outlined in her memorandum of costs and prejudgment interest, again without factual findings. This appeal followed.

On appeal, Red Rock claims the district court abused its discretion in (1) admitting Dr. Yee's testimony regarding Tran's future treatment and post-traumatic diagnosis because it was allegedly untimely

²Prejudgment interest is not at issue on appeal.

disclosed; (2) denying Red Rock's NRCP 59 motion to alter, amend or, alternatively, for a new trial based on improperly admitting Dr. Yee's testimony regarding future treatment, which was an irregularity or error of law that caused the jury damages to be excessive; (3) improperly awarding Tran attorney fees because the offer of judgment on which the award was based was served only 50 days after discovery had started and at that time her medical expenses totaled \$964.64; and (4) denying Red Rock's motion to retax because various costs were not reasonable or necessarily incurred.

Conversely, Tran argues that the district court did not abuse its discretion in (1) admitting Dr. Yee's testimony because she timely disclosed relevant medical records pursuant to NRCP 26(e)(1) and NRCP 16.1(a)(3); (2) denying Red Rock's NRCP 59 motion because admitting Dr. Yee's testimony was not an irregularity or error of law, and the jury damages were not excessive; (3) awarding Tran attorney fees because the jury awarded Tran a greater amount than the offer of judgment and the district court appropriately found that the *Beattie* and *Brunzell* factors weighed in her favor; and (4) denying Red Rock's motion to retax because Tran submitted a detailed itemization and the district court appropriately determined that all costs were reasonable and necessarily incurred.

The district court did not abuse its discretion in admitting Dr. Yee's testimony and Tran's October 2021 medical records

Red Rock argues that the district court abused its discretion in admitting Dr. Yee's testimony regarding Tran's future treatment and post-traumatic arthritis because it relied on the May 2020 email from Tran's counsel pursuant to DCR 16, which stated that Tran had no ongoing

symptoms or plans to seek further treatment at that time.³ “[W]e review a district court’s decision to admit expert testimony for an abuse of discretion.” *Krause Inc. v. Little*, 117 Nev. 929, 933-34, 34 P.3d 566, 569 (2001).

Pursuant to NRCP 16.1(a)(2), parties are required to disclose the identity of anyone they intend to call as an expert witness at trial and to provide a written report to the extent one is required. Additionally, NRCP 26(e) requires a party to supplement expert disclosures within the time limits required by NRCP 16.1(a)(3)(B) (providing that pretrial disclosures are due at least 30 days before trial).

Having reviewed the record, we conclude that Tran timely disclosed Dr. Yee’s report well before the initial expert disclosure deadline in accordance with NRCP 16.1 and NRCP 26(e). Dr. Yee’s March 2020 report stated that Tran would need future treatment in the form of a brace and physical therapy, and when Tran sought further treatment in October 2021, Dr. Yee reaffirmed his treatment plan and also diagnosed Tran with post-traumatic arthritis. The record demonstrates that Tran served Dr. Yee’s supplemental medical records pertaining to her 2021 October visit, which included the diagnosis of post-traumatic arthritis, 33 days prior to trial as required.⁴ Accordingly, we conclude that the district court did not

³We normally will discuss a matter in terms of DCR 16 even when it is more appropriately argued under EDCR 7.50 when the matters arise in the Eighth Judicial District Court. *See Grisham v. Grisham*, 128 Nev. 679, 683, 289 P.3d 230, 233 (2012).

⁴To the extent that Red Rock argues that it relied on the May 2020 email from Tran’s counsel, this email exchange was not a stipulation as Red Rock argues because the email was not an agreement between the parties to limit Tran’s future treatment, only that she did not have plans for future

abuse its discretion in allowing Dr. Yee to testify in accordance with his expert report and supplement records.⁵

The district court did not abuse its discretion in denying Red Rock's NRCP 59 motion to alter or amend the judgment, or for a new trial

Second, Red Rock argues that the district court abused its discretion in denying Red Rock's motion to alter or amend the judgment or, alternatively, for a new trial because the jury awarded Tran \$150,000 in future damages based on Dr. Yee's alleged untimely diagnosis of Tran's post-traumatic arthritis. Conversely, Tran avers that Red Rock was on notice throughout the entire case of Tran's future treatment, the jury award was supported by substantial evidence, and Red Rock did not demonstrate that it did not have a fair trial. We agree with Tran.

Red Rock's motion to amend or alter the judgment

NRCP 59(e) provides that a party may file a motion requesting that the district court alter or amend a judgment. "Orders deciding an NRCP 59(e) motion are not independently appealable but are reviewed for an abuse of discretion when included with a proper appeal." *A Cab, LLC v.*

treatment at the time the email was sent. *See* DCR 16 ("No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney.").

⁵Furthermore, we note that the record supports that Red Rock was on notice of Tran's future treatment at various points since the initiation of the case, i.e., Tran's request for exemption from arbitration due to future damages, Tran's deposition testimony regarding future treatment, Tran's initial expert disclosure which stated that Dr. Yee would testify as to future treatment, and Red Rock's own opposition to Tran's motion for partial summary judgment acknowledging future treatment. Thus, Red Rock's claim that it suffered trial by ambush is not supported by the record.

Murray, 137 Nev. 805, 821, 501 P.3d 961, 976 (2021); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). “In general, the jury’s findings will be affirmed on appeal if they are based upon substantial evidence in the record.” *Prabhu v. Levine*, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996). “Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion.” *Id.* (internal quotation marks omitted).

An award for pain and suffering is “within the province of the jury.” *Canterino v. The Mirage Casino-Hotel*, 117 Nev. 19, 24, 16 P.3d 415, 418 (2001), *opinion modified on reh’g*, 118 Nev. 191, 42 P.3d 808 (2002). A party may need to present expert witness testimony related to future pain and suffering depending on whether the injury in question is subjective or objective. *Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1548, 908 P.2d 226, 229 (1995). An injury is subjective when it is not demonstrable to others, whereas an objective injury is one that is readily observable by jurors. *Id.* In the instance of a subjective injury, such as a headache, the plaintiff’s testimony is not competent to allow damages for future pain and suffering and “expert testimony that the disability will probably continue is needed before an award for future damages is permissible.” *Id.* (quoting *Gutierrez v. Sutton Vending Serv., Inc.*, 80 Nev. 562, 566, 397 P.2d 3, 4 (1964)). On the other hand, an award for future pain and suffering might be permitted without supporting medical expert testimony for an objective, observable injury. *Id.* at 1548, 908 P.2d at 229 (concluding that a shoulder injury causing a demonstrably limited range of arm motion was an objective injury that did not require expert testimony for a jury to award damages for future pain and suffering); *see also Krause*, 117 Nev. at 938, 34 P.3d at 572 (holding that a broken bone is an objective injury and that the plaintiff did not need

to present expert testimony before the district court instructed the jury as to future damages).

As a preliminary matter, the basis for Red Rock's motion to alter or amend the judgment is the district court's purported error in admitting Dr. Yee's testimony regarding Tran's future treatment and post-traumatic arthritis diagnosis. However, we already concluded above that the district court did not abuse its discretion in admitting this testimony. Additionally, a review of the record demonstrates that substantial evidence supports the jury's award of past and future pain and suffering, as evidenced by testimony from Tran, her husband, and Dr. Yee. Thus, substantial evidence supports the jury verdict. See *Prabhu*, 112 Nev. at 1543, 930 P.2d at 107; see also *Sierra Pac. Power Co. v. Anderson*, 77 Nev. 68, 75-76, 358 P.2d 892, 896 (1961) (concluding that the jury did not commit reversible error with respect to awarding damages for future pain and suffering because "[a]ll that is required is that there be sufficient evidence from which the jury can arrive at the conclusion that the party will probably suffer such damages in the future"); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (noting that "[a] jury is permitted wide latitude in awarding tort damages, and the jury's findings will be upheld if supported by substantial evidence"). Accordingly, we conclude that the district court did not abuse its discretion in denying Red Rock's motion to alter or amend the judgment.

Red Rock's motion for a new trial

We review the district court's "denial of a motion for a new trial under an abuse of discretion standard." *Krause*, 117 Nev. at 933, 34 P.3d at 569. A new trial may be granted, in relevant part, for (1) an "irregularity in the proceedings of the court, jury, master, or adverse party or in any order

of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial”; (2) “excessive damages appearing to have been given under the influence of passion or prejudice”; or (3) “error in law occurring at the trial and objected to by the party making the motion.” NRCPC 59(a)(1)(A), (F), (G). “However, even if one of NRCPC 59(a)’s new-trial grounds has been established, the established ground must have materially affect[ed] the substantial rights of [the] aggrieved party to warrant a new trial.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 263-64, 396 P.3d 783, 786 (2017) (alterations in original) (internal quotation marks omitted).

In light of our conclusion that the district court did not abuse its discretion in admitting Dr. Yee’s testimony, we conclude that Red Rock has failed to demonstrate an irregularity or error in law that materially affected its substantial rights to warrant a new trial. *See id.* at 268, 396 P.3d at 789 (determining that the district court did not abuse its discretion in denying appellant’s motion for a new trial because appellant failed to “meaningfully explain why she was prejudiced”). Additionally, while Red Rock argues that the jury damages were excessive pursuant to NRCPC 59(a)(1)(F), it failed to demonstrate that the jury awarded the damages under the influence of passion or prejudice. *See Canterino*, 117 Nev. at 24, 16 P.3d at 418 (noting that “[t]he mere fact that a verdict is large is not conclusive that it is the result of passion or prejudice”); *see also Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority). Thus, we conclude that the district court did not abuse its discretion in denying Red Rock’s motion for a new trial and the district court’s decision is affirmed.

The district court abused its discretion in granting Tran's motion for attorney fees

“An award of attorney fees is generally reviewed for an abuse of discretion.” *Harrison v. Ramparts, Inc.*, 137 Nev. 637, 641, 500 P.3d 603, 608 (Ct. App. 2021). A party may seek attorney fees when allowed by an agreement, rule, or statute. See NRS 18.010 (governing awards of attorney fees); *RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that “a court may not award attorney fees absent authority under a specific rule or statute”). NRCP 68 establishes the rules regarding offers of judgment. A party may serve an offer “[a]t any time more than 21 days before trial.” NRCP 68(a). If a party “rejects an offer and fails to obtain a more favorable judgment,” that party is responsible for “the offeror’s post-offer costs and expenses, including . . . applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer.” NRCP 68(f)(1)(B); see also *RTTC*, 121 Nev. at 40-41, 110 P.3d at 28.

When considering whether to grant a prevailing party’s request for attorney fees pursuant to NRCP 68, district court must evaluate the *Beattie* factors, which as relevant here, ask

(1) whether the plaintiff[s] claim was brought in good faith; (2) whether the . . . offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the . . . decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith, and (4) whether the fees sought by the offeror are reasonable and justified in amount.

N. Las Vegas Infrastructure Inv. & Constr., LLC v. City of N. Las Vegas, 139 Nev., Adv. Op. 5, 525 P.3d 836, 841 (2023) (quoting *Beattie*, 99 Nev. at 588-

89, 668 P.2d at 274); *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 554, 429 P.3d 664, 668 (Ct. App. 2018). “Although explicit findings with respect to [the *Beattie*] factors are preferred, the district court’s failure to make explicit findings is not a per se abuse of discretion.” *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001). “The district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence.” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *see also Wynn*, 117 Nev. at 13, 16 P.3d at 428-29 (“If the record clearly reflects that the district court properly considered the *Beattie* factors, we will defer to its discretion.”).

Although Red Rock does not challenge that the district court *considered* the *Beattie* factors, it challenges the lack of findings as to whether the offer was made in good faith based on the timing of the offer and also the limited amount of medical expenses known at the time the offer was made before summarily awarding Tran \$80,000 in attorney fees. While a district court need not make explicit findings as to each of the *Beattie* factors, it is required to demonstrate that it sufficiently considered the required factors. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143. In this case, because there was no hearing on the motion for fees, nor were there any factual findings in the district court’s order to support consideration of the primary *Beattie* factors at issue on appeal, we are unable to ascertain in the first instance if the attorney fees were properly awarded under NRCP 68 in accordance with *Beattie*. *See Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well suited to make factual determinations in the first instance.”). Thus, the district court abused its discretion in not making sufficient factual findings to support an award of fees under *Beattie*, and

therefore, we reverse the order granting Tran's motion for attorney fees and remand for further proceedings.

The district court abused its discretion in awarding Tran costs

Red Rock argues that the district court should have retaxed certain costs that Tran sought to recover in her memorandum of costs. Specifically, Red Rock argues that the following costs were not recoverable under NRS 18.005(5) and NRS 18.005(17): (1) Dr. Yee's expert witness fees, (2) the costs for seven focus groups, (3) the cost for a right ankle medical illustration, and (4) the cost for a private mediation. Further, Red Rock argues that these costs were neither reasonable nor necessary pursuant to NRS 18.005(17). Conversely, Tran argues that the district court did not abuse its discretion because the costs were permitted under NRS 18.005(5) and NRS 18.005(17), as they were reasonable and necessary. Because the district court failed to make relevant factual findings related to the costs at issue, we necessarily reverse the district court's order awarding costs and remand for factual findings.

Expert witness fees pursuant to NRS 18.005(5)

"A district court's decision to award more than \$1,500 in expert witness fees is reviewed for an abuse of discretion." *Frazier v. Drake*, 131 Nev. 632, 644, 357 P.3d 365, 373 (Ct. App. 2015). 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).

In this case, there was no analysis contained in the district court’s order that expressly sets forth the court’s rationale for awarding Dr. Yee’s expert fees above the presumptive statutory limit. Under *Frazier*, the court was required to explain how Dr. Yee’s role on behalf of Tran’s case necessitated a greater expert fee award applying the factors in *Frazier*. See *id.* Therefore, we conclude that the district court abused its discretion in awarding Dr. Yee’s expert fees above \$1,500 without providing its analysis for doing so. See *Khoury v. Seastrand*, 132 Nev. 520, 541, 377 P.3d 81, 95 (2016) (concluding that the district court abused its discretion because it “awarded expert fees in excess of \$1,500 without stating a basis for its decision”). Accordingly, we reverse the district court’s order denying Red Rock’s motion to retax in part and remand for application of the *Frazier* factors in determining whether expert fees above the presumptive statutory limit should be awarded.

Other costs pursuant to NRS 18.005(17)

We review an award of costs for an abuse of discretion. *In re DISH Network Derivative Litig.*, 133 Nev. 438, 450, 401 P.3d 1081, 1092 (2017). NRS 18.020(3) provides for an award of costs to the prevailing party “[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” “Taxable costs must be provided for by statute; otherwise, the district court retains sound, but not unlimited, discretion to determine which expenses are allowable as costs.” *N. Las Vegas Infrastructure Inv. & Constr., LLC*, 139 Nev., Adv. Op. 5, 525 P.3d at 842. “NRS 18.005 lists the categories of taxable costs, which includes costs for ‘[a]ny . . . reasonable and necessary expense incurred in connection with

the action.” *Id.* (alteration and omission in original) (quoting NRS 18.005(17)); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) (recognizing that any cost awarded “must be reasonable, necessary, and actually incurred”).


Here, the district court summarily denied Red Rock’s motion to retax costs and awarded Tran costs in the amount of \$29,084. It appears the district court granted costs in full pursuant to Tran’s memorandum of costs without explaining its reasons for doing so in accordance with NRS 18.005(17) and NRS 18.020. Although Tran’s memorandum of costs contained various invoices to support certain costs incurred, the district court failed to set forth which costs were reasonable and necessary. *See Cadle*, 131 Nev. at 121-22, 345 P.3d at 1055 (explaining that an award pursuant to NRS 18.020 must be reasonable and necessary but the district court must have “justifying documentation” that is more than a memorandum of costs to support the award); *see also RJRN Holdings, LLC v. Bank of N.Y. Mellon*, No. 81303-COA, 2021 WL 3702009, at *3 (Nev. Ct. App. Aug. 19, 2021) (Order Affirming in Part, Reversing in Part and Remanding) (concluding that we cannot adequately review the costs award when the district court failed to analyze which costs it deemed to be reasonable and necessary). Consequently, we reverse the district court’s order denying Red Rock’s motion to retax costs and awarding Tran costs and remand this matter to the district court to determine whether Tran’s costs were reasonable and necessary expenses incurred in connection with the action.

Therefore, we affirm in part the district court allowing evidence of Dr. Yee’s October 2021 diagnosis of post-traumatic arthritis and future damages, the court’s denial of Red Rock’s motion to alter or amend the

judgment or, alternatively, for a new trial. We reverse in part the district court's award of attorney fees and remand for the district court to make factual findings that apply the *Beattie* factors. Additionally, we reverse the district court's award of costs related to (1) Dr. Yee's expert witness fees, (2) the costs for seven focus groups, (3) the cost for the right ankle medical illustration, and (4) the cost of the private mediation, and remand for the district court to make findings under *Frazier*, NRCP 18.005, and NRCP 18.020 in order to determine whether these 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.⁶


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Pyatt Silvestri
De Castroverde Law Group
Eighth District Court Clerk

⁶Insofar 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.