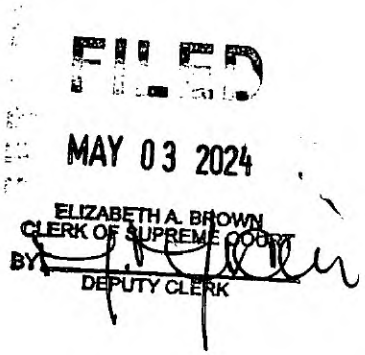
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEELU PAL, M.D.,
Appellant,
vs.
ESTATE OF JACOB HAFTER; HAFTER FAMILY TRUST; BRANDON L. PHILLIPS; JACOB HAFTER TRUST, AND JACLYN HAFTER,
Respondents.

No. 85816-COA



ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Neelu Pal, M.D. appeals from a final order in a civil matter.[1] Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Pal retained attorney Jacob Hafter and his firm, HafterLaw, LLC, to represent her in several cases. HafterLaw withdrew as counsel before the final case was resolved. HafterLaw later filed suit against Pal for breach of contract, asserting that it was entitled to over $100,000 in attorney fees for its representation of Pal in that case based upon the parties' contingent fee agreement. Pal filed an answer and counterclaims alleging legal malpractice.

[1]Although the Honorable Bonnie Bulla, Judge, was the discovery commissioner during the early stages of the underlying proceeding, she did not have any involvement in any decision relevant to the issues presented on appeal and, therefore, Judge Bulla participated in the decision of this matter.

24-15690

In 2014, HafterLaw moved for summary judgment and sought dismissal of Pal's counterclaims. The district court granted HafterLaw's motion for summary judgment and motion to dismiss Pal's counterclaims, and Pal appealed. This court affirmed the district court's grant of summary judgment in favor of HafterLaw as to liability but reversed and remanded as to the district court's determination of the amount of fees owed because HafterLaw sought summary judgment on liability only and reversed and remanded as to the court's dismissal of Pal's counterclaims. *Pal v. HafterLaw, LLC*, No. 67473-COA, 2016 WL 1190352 (Nev. Ct. App. Mar. 11, 2016) (Order Affirming in Part, Reversing in Part and Remanding).

On remand, pursuant to this court's order, the district court set the matter for trial as to Pal's counterclaims and as to damages only on HafterLaw's claims, and discovery commenced. In 2017, Pal moved for an order of restitution, asserting that, before this court issued its decision in Docket No. 67473-COA, HafterLaw obtained a writ of execution for a total amount of $168,836.09 based on the district court's entry of summary judgment. The district court denied Pal's motion for an order of restitution, concluding that because liability was established and affirmed by this court on appeal, such that the only remaining issue as to HafterLaw's complaint was damages, the question of whether Pal was entitled to restitution should not be considered until final adjudication of the claims.

Pal later moved to voluntarily dismiss her counterclaims, which the district court granted. Following Hafter's death, the district court entered an order granting Pal's motion to join and/or substitute respondents Estate of Jacob Hafter, Jacob Hafter Trust, Hafter Family Trust, Jaclyn Hafter, and Brandon Phillips into the action below as HafterLaw's successors in interest and directing the clerk of the court to add the

respondents to the case caption. In October 2019, Pal moved to dismiss the complaint pursuant to NRCP 41(e), as the case had not proceeded to trial within three years of issuance of the remittitur on appeal and reasserted her request for restitution. The district court granted her motion to dismiss, entering an order dismissing the complaint with prejudice pursuant to NRCP 41(e), but concluding that there would be no additional relief.

Pal appealed from the district court's decision and asserted the district court erred by refusing to order HafterLaw and the other parties to return her money after dismissal of the complaint with prejudice. On appeal, this court noted that it appeared the district court rejected Pal's request for restitution because all of her counterclaims had been dismissed. *Pal v. Est. of Hafter*, No. 80478-COA, 2021 WL 2178477, *2 (Nev. Ct. App. May 27, 2021) (Order of Reversal and Remand). This court noted, however, that HafterLaw's complaint was dismissed for failure to prosecute, such that it never obtained a money judgment that would entitle it to keep any money collected under the prior summary judgment order, and this court accordingly directed the district court to consider Pal's request for restitution from HafterLaw. *Id.* This court also directed the district court to consider the other parties' contentions that they were not proper parties to this action and cannot be held liable for any restitution owed to Pal. *Id.* at *2 n.3.

Following remand to the district court, the parties submitted written arguments concerning restitution. Pal contended she was entitled to restitution from HafterLaw as well as from the Jacob Hafter Trust, Hafter Family Trust, Jaclyn Hafter, and Brandon Phillips, as Pal contended they were alter egos of HafterLaw. As a result, Pal sought a summary adjudication of her alter-ego claims against those parties. In addition, Pal

contended she was entitled to collect restitution from Jacob Hafter's estate and the life insurance proceeds following Hafter's demise. And finally, Pal sought interest in the amount of $248,540.39 and contended that she was entitled to an award of costs in the amount of $28,377.51.

Respondents and HafterLaw stated that Pal was only owed restitution from HafterLaw and that she was entitled to interest on the restitution award but contended that Pal miscalculated the interest amount. Respondents put forth their own calculation of interest at a simple interest rate and contended that Pal was only owed interest in the amount of $16,124.48. Respondents also contended that any claim against Hafter's estate was time barred pursuant to NRS 147.130(1). In addition, respondents contended that Pal was not entitled to collect restitution from other parties for several reasons, including Pal's failure to properly plead alter-ego claims, the expiration of the statute of limitations for any alter-ego claims, and Pal's failure to prove any respondent was liable as an alter ego of HafterLaw, as it is a limited liability company (LLC). Moreover, respondents argued that Pal did not demonstrate that any debt owed by HafterLaw was transferrable to another party, as respondents also contended that Brandon Phillips was merely a special administrator for the estate and Pal was not permitted to collect any debts owed by the estate from Phillips personally. Finally, respondents claimed that Pal failed to show that Jaclyn Hafter was personally responsible for restitution.

The district court subsequently entered a written order awarding Pal restitution from HafterLaw in the amount of $168,836.09. The court also concluded Pal was not entitled to restitution from any other party. The court noted that Pal had not joined Jacob Hafter individually as a party and the estate was the only successor in interest for Hafter

personally. The court found that the relevant statutes of limitations barred any alter-ego claims against Jacob Hafter individually. The court also found that Hafter's estate had previously rejected Pal's contention that the estate owed her a debt, she failed to raise a timely challenge to the estate's rejection of her claim, and that any remaining claim Pal had against Hafter's estate was time barred pursuant to NRS 147.130(1). Therefore, the court found that the estate and Jaclyn Hafter, as the personal representative of the estate, were not liable for restitution owed to Pal from HafterLaw.

The court also recognized that HafterLaw was an LLC, and that Pal was not entitled to recover restitution from the Jacob Hafter Trust and Hafter Family Trust under NRS 86.376 as alter egos of HafterLaw because she did not sufficiently allege and provide proof that they were actually alter egos of HafterLaw. In addition, the district court found that Brandon Phillips, as a special administrator of the estate, was not personally liable for any of the estate's debts and liabilities pursuant to NRS 140.040(3). Moreover, the court concluded that Pal was not entitled to a portion of the life insurance proceeds.

Finally, in a separate written order, the district court awarded Pal costs in the amount of $1,595. The court noted that respondents filed a countermotion to retax Pal's requested costs but that Pal had not opposed that countermotion. And in the countermotion, respondents did not oppose Pal's request for an award of $1,595 in costs for some filing fees and CourtCall fees but respondents objected to Pal's request for $25,000 in expert witness fees, several of the filing fee requests, and costs related to transcripts and service of process. The court found that Pal did not demonstrate the challenged costs were reasonable and necessary, and that

Pal failed to timely request those costs. The court also found that Pal's failure to oppose respondents' countermotion to retax costs constituted a concession that the countermotion was meritorious and should be granted under EDCR 2.20(e).

Pal filed a motion to reconsider and reiterated that she was entitled to an award of prejudgment interest but the district court denied that motion and specifically rejected Pal's request for prejudgment interest. This appeal followed.

First, Pal argues the district court abused its discretion by rejecting her request for restitution from Brandon Phillips, Jaclyn Hafter, the Jacob Hafter Trust, and the Hafter Family Trust. Pal contends that they benefited from HafterLaw and were thus alter egos of HafterLaw.

A party who obtains money based on a judgment that is reversed may be ordered to pay restitution. *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 267-68, 71 P.3d 1258, 1262 (2003). Restitution is permitted in order to avoid unjust enrichment in favor of the party whose judgment was overturned. *Id.* at 267, 71 P.3d at 1262. The decision whether to order restitution is within the discretion of the district court. *Id.* at 267, 71 P.3d at 1263.

However, whether a person acts as the alter ego of an LLC is a question of law, which this court reviews de novo. NRS 86.376(3) ("The question of whether a person acts as the alter ego of a limited-liability company must be determined by the court as a matter of law."); *Nev. Dep't of Corrs. v. York Claims Servs.*, 131 Nev. 199, 203, 348 P.3d 1010, 1013 (2015) ("[Appellate courts] review questions of law de novo."). This court will uphold a district court's alter ego determination "if substantial evidence exists to support the decision." *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev.

896, 904, 8 P.3d 841, 846 (2000). "Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion." *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010) (internal quotation marks and brackets omitted).

Typically, members of an LLC may not be held personally liable for the debts or liabilities of the company unless they acted as the LLC's alter ego. NRS 86.371; NRS 86.376 ("[N]o person other than the limited-liability company is individually liable for a debt or liability of the limited-liability company unless the person acts as the alter ego of the limited-liability company."). NRS 86.376(2) states that a person acts as the alter ego of an LLC only if three elements are met: (a) the LLC is influenced and governed by the person, (b) there is a unity of interest and ownership such that the person and LLC are inseparable, and (c) adherence to the notion of separate entities would sanction fraud or promote injustice.

Here, the district court noted that Pal alleged that Jacob Hafter was the sole member of HafterLaw, that income earned by Hafter and HafterLaw was distributed to the Hafter Family Trust, that the other parties benefited from HafterLaw, and they were responsible for its debts as the successors to HafterLaw. The court found that such allegations were insufficient to demonstrate that respondents were alter egos of HafterLaw. Pal's contentions that Jacob Hafter was the sole member of HafterLaw and that the other parties earned income or benefited from HafterLaw were insufficient to demonstrate that respondents were alter egos of HafterLaw because they do not bear upon any of the elements for such a finding. *See* NRS 86.376(2). Pal's allegations were thus insufficient to demonstrate that the other parties influenced or governed HafterLaw, there was a unity of interest and ownership between HafterLaw and the other parties such that

they were inseparable from each other, or that adherence to the notion that HafterLaw and the other parties were separate entities would sanction fraud or promote manifest injustice. *See id.* Accordingly, we conclude that the record supports the district court's denial of Pal's alter-ego claims.

Next, while Pal generally contends that the estate and Brandon Phillips should be required to satisfy the restitution owed by HafterLaw, Pal does not present argument concerning the district court's conclusion that Pal was time-barred from challenging the rejection of her claim against the estate because she did not bring it within 60 days after its rejection as required by NRS 147.130. *See* NRS 147.130(1) (requiring a claimant to challenge the decision to reject a claim against an estate within 60 days "or the claim is forever barred").

Pal also fails to address the district court's conclusion that neither Brandon Phillips, as a special administrator of the estate, nor Jaclyn Hafter, as a personal representative of the estate, were personally responsible for debts owed by the estate or HafterLaw. *See* NRS 140.040(3) (stating a special administrator is not liable "[t]o any creditor on any claim against the estate"); NRS 147.230 (explaining that a personal representative of the estate is generally not personally responsible for the liabilities and debts of the decedent unless a written agreement so authorizes).

Because Pal fails to raise arguments concerning the district court's decisions regarding these issues, she has waived them on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Next, Pal argues that the district court erred by rejecting her request for prejudgment interest for her award of restitution. "We review challenges to prejudgment interest awards for error." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 428, 132 P.3d 1022, 1034 (2006). "[I]nterest should be awarded on damages suffered after serving the complaint but prior to judgment once the time when incurred and the amount of these damages have been proven by a preponderance of the evidence." *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 290, 792 P.2d 386, 390 (1990). Moreover, "[p]rejudgment interest . . . start[s] to accrue from the date the damages were actually sustained, and not from the date the complaint was filed or the judgment entered." *Keystone Realty v. Osterhus*, 107 Nev. 173, 178, 807 P.2d 1385, 1388 (1991); *see also* NRS 17.130(2) (explaining that a judgment draws interest); NRS 99.040(1)(c) (providing for the payment of interest upon money used for another's benefit without the owner's consent).

"Three items must be determined to enable the trial court to make an appropriate award of interest: (1) the rate of interest; (2) the time when it commences to run; and (3) the amount of money to which the rate of interest must be applied." *Kerala Properties, Inc. v. Familian*, 122 Nev. 601, 604, 137 P.3d 1146, 1148-49 (2006) (internal quotation marks and brackets omitted). "Interest is simple unless otherwise stated in a contract or statute." *Torres v. Goodyear Tire & Rubber Co.*, 130 Nev. 22, 27, 317 P.3d 828, 831 (2014); *see also Campbell v. Lake Terrace, Inc.*, 111 Nev. 1329, 1334, 905 P.2d 163, 165 (1995) ("[U]nless an instrument specifically calls for compound interest, only simple interest will be allowed."), *overruled on other grounds by Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 121, 110 P.3d 59, 64 (2005).

Here, Pal contended she was entitled to interest and offered calculations in support of her contention. Respondents initially acknowledged that Pal was entitled to prejudgment interest but contended that Pal's calculations were erroneous and she was only entitled to simple interest. They later contended that Pal waived her argument for interest by first requesting compound interest. The district court ultimately rejected Pal's request for interest, finding that her calculations amounted to requests for compound interest or interest as provided for in the contingent fee agreement with HafterLaw. The court determined that Pal was not entitled to compound interest and both that she waived a claim as to interest under the contingent fee agreement and the clause concerning interest in the contingent fee agreement only applied to HafterLaw's costs and not to a restitution award in favor of Pal. The record supports the court's conclusions that Pal was not entitled to compound interest or interest based on the contingent fee agreement. *See Torres*, 130 Nev. at 27, 317 P.3d at 831.

However, the district court's consideration of whether Pal was owed interest should not have ended with its finding that Pal was not owed compound interest or interest pursuant to a contractually agreed-upon rate. Instead, the court should have addressed whether Pal was entitled to interest on her restitution award under the pertinent statutes, *see Las Vegas-Tonopah-Reno Stage Line*, 106 Nev. at 290, 792 P.2d at 390, and it should have then determined the appropriate rate of interest, the time when the interest commenced, and the appropriate amount of money for which the interest must be applied, *see Kerala Properties*, 122 Nev. at 604, 137 P.3d at 1148-49. Here, after the court found that Pal was not entitled to compound interest or a different rate under a contract, it should have

ascertained the appropriate amount of interest due to Pal based upon a calculation of simple interest. *See Campbell*, 111 Nev. at 1334, 905 P.2d at 165. The court's failure to make appropriate findings as to whether Pal was owed interest for her restitution award and, if so, the amount of interest that HafterLaw owed to Pal based on an appropriate calculation using an appropriate rate of simple interest, the date upon when interest commenced, and an appropriate time for when interest applied, constituted error. Moreover, because the date for when the interest calculation should begin has not yet been established and therefore must be proven by the parties, *see Las Vegas-Tonopah-Reno Stage Line, Inc.*, 106 Nev. at 290, 792 P.2d at 390, and because the district court must also set the appropriate interest rate upon which the calculation must be made, there are insufficient findings to ascertain the appropriate interest amount at this time. Accordingly, we reverse the district court's decision to reject Pal's request for interest and remand for the district court to make an appropriate award of simple interest to Pal based on Pal's award of restitution from HafterLaw.[2]

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[2]While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would not be helpful concerning this issue. Here, respondents initially acknowledged that Pal was entitled to some amount of interest from HafterLaw based on the restitution it owed to her. Respondents later contended that Pal waived any interest by requesting compound interest in her petition for restitution. However, a review of Pal's petition reveals that Pal did not waive an award of simple interest. *See Sayedzada v. State*, 134 Nev. 283, 288, 419 P.3d 184, 190 (Ct. App. 2018) (explaining that waiver is an intentional relinquishment of a known right). And, as explained previously, the district court did not address whether Pal was entitled to simple interest. Because the district court should have considered whether Pal was entitled to an award of simple interest, a response from respondents is not helpful in this instance.

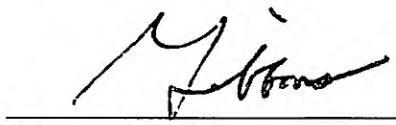
Next, Pal challenges the district court's denial of her request for an award of costs. This court reviews an award of costs for an abuse of discretion. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005). In addition, under EDCR 2.20(e), the district court has the discretion to construe a party's failure to oppose a motion "as an admission that the motion . . . is meritorious and a consent to granting the same." *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278 & n.15, 182 P.3d 764, 768 & n.15 (2008) (reviewing a district court decision to grant a motion pursuant to EDCR 2.20(b) (now EDCR 2.20(e)) for an abuse of discretion). A district court abuses its discretion when its findings are not supported by substantial evidence. *See Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). Moreover, "costs must be reasonable, necessary, and actually incurred." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). The party seeking an award of costs "must demonstrate how such claimed costs were necessary to and incurred in the present action." *Id.* (internal quotation marks and brackets omitted).

Here, the district court found that respondents did not oppose Pal's request for costs in the amount of $1,595 for court-filing fees and CourtCall costs and that Pal was therefore entitled to an award for those costs. However, the court noted that Pal requested an award of $25,000 in costs for expert witness fees, but it found those costs were in excess of that permitted by NRS 18.005(5), Pal did not demonstrate the relevance of those expert witnesses as they related to a malpractice claim Pal voluntarily dismissed years prior, and Pal did not timely seek approval for costs related to expert witnesses as required by NRS 18.110(1). The court also found that Pal failed to demonstrate any additional costs she sought were reasonable

and that she did not timely request costs stemming from the years earlier dismissal of HafterLaw's complaint. *See Valladares v. DMJ, Inc.*, 110 Nev. 1291, 1293, 885 P.2d 580, 582 (1994) (reviewing a district court's decision concerning application of the timely filing requirement under NRS 18.110(1) for an abuse of discretion). In addition, the court concluded that Pal's failure to oppose respondents' countermotion to retax costs constituted a concession that it had merit and should be granted pursuant to EDCR 2.20(e). The district court therefore awarded Pal $1,595 in costs against HafterLaw.

The district court's findings are supported by the record. As a result, we conclude that Pal fails to demonstrate the district court abused its discretion when awarding costs. *See Sheehan*, 121 Nev. at 493, 117 P.3d at 227; *Las Vegas Fetish & Fantasy Halloween Ball,* 124 Nev. at 278 & n.15, 182 P.3d at 768 & n.15. 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.[3]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[3]Insofar as Pal raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Timothy C. Williams, District Judge
Neelu Pal
Solomon Dwiggins Freer & Steadman Ltd.
Eighth District Court Clerk