IN THE SUPREME COURT OF THE STATE OF NEVADA

AMHARE KIDANE, AN INDIVIDUAL,
Appellant,
vs.
SUPAMAT TONGSONGTHAM, AN INDIVIDUAL,
Respondent.

No. 86065

ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING

This is an appeal from a district court default judgment in a personal injury action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

After appellant Amhare Kidane's car collided with respondent Supamat Tongsongtham's car, Tongsongtham filed a complaint against Kidane for negligence. Kidane filed an answer. During discovery, Kidane failed to provide verified interrogatory responses and failed to participate in four noticed depositions. Tongsongtham moved to strike Kidane's answer. After a hearing, the district court granted the motion. The district court then held a prove-up hearing on damages and entered a default judgment against Kidane that awarded Tongsongtham $1.912 million in damages, and $637,333.27 in attorney fees. Kidane appeals.

Default judgment

Kidane argues the district court abused its discretion by striking the answer without properly addressing the *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), factors in its case-ending sanctions order. Reviewing the district court's decision under the heightened abuse-of-discretion standard set forth in *Young* and considering the factual circumstances here, we affirm. *Foster v. Dingwall*, 126 Nev. 56,

65, 227 P.3d 1042, 1048 (2010) (observing that under *Young*, a somewhat heightened standard of review applies when the district court strikes pleadings, thereby ending the case).

The record shows that Kidane did not meaningfully and substantively refute Tongsongtham's arguments in opposing the motion to strike or at the corresponding hearing. Because Kidane did not advance developed arguments to refute Tongsongtham's claim that case-ending sanctions should apply under the circumstances, our review is limited. Indeed, Kidane offered generalized conclusory statements, devoid of even minimal factual and legal analysis necessary for our review of the issue presented. Courts will not supply arguments and analysis for the parties, and we cannot address arguments on appeal that were not properly developed for review.[1] *See Reeve v. Carroll Cnty.*, 285 S.W.3d 242, 245 (Ark. 2008) (observing that courts "will not make a party's argument for them" and "will not consider an argument that is not properly developed"); *see also McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones." (quoting *Citizens Awareness Network, Inc. v. United States Nuclear Regul. Comm'n*, 59 F.3d 284, 293-94 (1st Cir.1995))).

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[1]In his appellate briefing, Kidane cites EDCR 2.34(d), which requires parties to confer over discovery disputes before seeking judicial relief, in arguing that the district court abused its discretion in granting the motion to strike. We decline to consider this argument as Kidane did not raise it below. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) ("[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks omitted)).

Therefore, based on Kidane's skeletal presentation below and the corresponding limited record, we cannot conclude that the district court abused its discretion, and we affirm the default judgment in Tongsongtham's favor as to damages.[2]

Attorney fees

Kidane next challenges the district court's award of attorney fees, arguing that the court failed to properly address the *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969), factors in its order. Under either an abuse of discretion or plain error review, we agree. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014) (explaining that this court generally reviews attorney fees and costs awards for an abuse of discretion); *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) (observing that "this court [has the ability] to consider relevant issues"—such as the application of a statute (and by extension, a principle of law)—"*sua sponte* in order to prevent plain error").

The district court not only neglected to analyze the *Brunzell* factors to justify its attorney fee award, it also failed to identify the rule or statutory basis it relied on in awarding attorney fees to Tongsongtham. *See Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 9, 106 P.3d 1198, 1199 (2005) (stating the general rule that "[i]n Nevada, a court may provide for an award of attorney fees only if a statute or rule authorizes such an award"). This is plain error. *Williams v. Zellhoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789

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[2]We decline to consider Kidane's argument regarding an evidentiary hearing because Kidane did not request one in his opposition or at the motion hearing where counsel stated the matter should be submitted on the briefing. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

(1973) (observing that an error is plain if it "is so unmistakable that it reveals itself by a casual inspection of the record"); *see Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006) (addressing entitlement to prejudgment interest on attorney fees *sua sponte* based on the plain error of not properly applying a statute); *Bradley*, 102 Nev. at 105, 716 P.2d at 228 (considering an issue *sua sponte* where the district court failed to apply controlling law); *W. Indus., Inc. v. Gen. Ins. Co.*, 91 Nev. 222, 229-30, 533 P.2d 473, 478 (1975) (reversing based on a plain error in a judgment that seemed to allow respondents to both keep their stock and grant them full value of the stock, although the parties raised no issue in this regard).

Even assuming an attorney fee award is authorized, the amount of the award here is not supported by the required *Brunzell* analysis. "District courts may award . . . attorney fees based on a contingency-fee agreement without billing records so long as the party seeking fees satisfies the . . . *Brunzell* factors." *Capriati Constr. Corp. v. Yahyavi*, 137 Nev. 675, 680, 498 P.3d 226, 231 (2021) (citing *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 562, 429 P.3d 664, 673 (Ct. App. 2018)); *see Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (listing factors the district court must consider when awarding attorney fees); *see also Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005) (explaining that the district court must provide "sufficient reasoning and findings in support of its" attorney fee award). Although Tongsongtham argues the district court could have relied on the *Brunzell* analysis contained in her affidavit in support of attorney fees, Tongsongtham failed to include that affidavit in the appendix filed with this court. *See* NRAP 30(b)(4) (requiring respondent to file an appendix that

includes "documents necessary to rebut appellant's position on appeal which are not already included in appellant's appendix"). Nor is there any indication in the record that the district court relied on or adopted such analysis when it issued its order awarding attorney fees. Without such documents, or anything in the record to show the district court applied *Brunzell* apart from the court's mere statement that it did so in its order, we conclude that the district court committed plain error. *Cf. Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 830, 192 P.3d 730, 737-38 (2008) (holding that the district court abused its discretion in awarding attorney fees without making specific *Brunzell* findings to support the award). Thus, the attorney fee award must be vacated and remanded for the district court to determine whether a statute or rule authorizes such an award and, if so, to conduct an appropriate analysis under *Brunzell*. Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Department 27, Eighth Judicial District
Hon. Jerry A. Wiese, II, Chief Judge
Persi J. Mishel, Settlement Judge
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