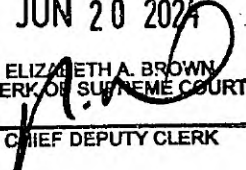


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAMARA VASEY, INDIVIDUALLY
AND AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
DELAND SIDNEY VASEY,
Appellants,
vs.
BURRIS & THOMAS, LLC,
Respondent.

No. 86710-COA

FILED
JUN 20 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Tamara Vasey appeals from a district court order granting in part a motion to adjudicate her prior counsel's lien for attorney fees. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

In 2018, Vasey retained a law firm, respondent Burris & Thomas, LLC (hereinafter Burris or the Burris firm) for a personal injury and wrongful death matter, initially on a contingent fee basis.¹ According to the retainer agreement Vasey signed, she agreed not to terminate or substitute the Burris firm, and "if substitution [of attorneys] is effected in violation hereof, my attorney shall be entitled to his full contingent fee share, or seven hundred fifty dollars an hour plus costs, whichever amount is more." Several attorneys at the Burris firm, including attorney Travis Shetler, were assigned to Vasey's case.

In 2020, Shetler left the Burris firm and opened his own practice, and Vasey elected to retain him as her attorney. Vasey requested that Burris transfer her case file to Shetler's practice. The parties do not dispute that this transfer was a substitution of attorneys in violation of the retainer agreement that entitled Burris to recovery.

¹We recount the facts only as necessary for our disposition.

In January 2022, Burris sent a letter to Vasey stating that he had placed a lien on her case in the amount of \$907,199 for fees and costs incurred since 2018. In November 2022, Vasey moved to adjudicate Burris's lien and requested that the district court "enter a Judgment determining the amount, if any, of [Burris's] lien."

Burris's opposition argued that the court should approve a lien in the amount of \$1,164,942.21, which was more than the amount listed in his letter to Vasey. Burris also addressed whether the district court was required to conduct an analysis under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), to determine whether his requested attorney fees were reasonable. Although Burris took the position that *Brunzell* did not apply to an attorney fee lien authorized under NRS 18.015, Burris also argued in the alternative that the amount of the lien requested was reasonable on the merits under *Brunzell*. Burris provided billing time logs to the district court documenting hours billed on Vasey's case dating from December 2018 to September 2022. Many entries represented time billed by associate attorneys at the Burris firm at \$750 per hour.

In her reply, Vasey argued that the district court should reduce Burris's lien to \$86,250.48; she claimed that many of Burris's billing entries were "padded" to support his claimed lien and did not reflect actual time spent on her case. She also argued that many of the billing entries postdated her termination of the Burris firm and that Burris failed to adequately address the *Brunzell* factors.

After a hearing, the district court concluded that Burris's lien was proper but excluded the entries that occurred after Vasey terminated the Burris firm as well as one particular billing entry for a workshop that the court found was unrelated to Vasey's representation. The district court found that Burris was entitled to \$786,757.48, inclusive of fees and costs. The court

calculated the amount “based on a \$750.00 / hour rate for attorney work, pursuant to the signed retainer agreement.” However, the district court’s order did not address whether the amount of the award was proper under *Brunzell* or otherwise reference the *Brunzell* factors.

Vasey then filed a motion requesting that the district court “clarify” its award. The court denied Vasey’s motion, finding that the prior order “was clear” and that “clarification [was] not required.” This appeal followed. Vasey contends that the district court abused its discretion in adjudicating Burris’s lien because his billing logs contained several exaggerated and inaccurate billing entries. Vasey also argues that the district court abused its discretion in failing to evaluate the reasonableness of Burris’s attorney fee amount under *Brunzell*.

We decline to consider Vasey’s unsupported arguments regarding Burris’s billing entries

Vasey first contends that many of Burris’s billing entries were “fraudulent[]” and exaggerated the actual time spent on her case. However, it is the appellant’s “responsibility to cogently argue, and present relevant authority, in support of [their] appellate concerns.” *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 318, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). This court “need not consider the contentions of an appellant where the appellant’s opening brief fails to cite to the record on appeal.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993); *see also* NRAP 28(a)(10)(A) (requiring the argument in an appellant’s brief to contain “appellant’s contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies”).

Vasey’s brief does not provide citations to the record to support her claims of fraudulent and exaggerated billing. Though Vasey included a lengthy table contrasting Burris’s “claimed hours” in his billing entries with the purported “actual hours” spent on Vasey’s case, she does not support

these allegations with any record citations. Accordingly, we decline to consider Vasey's argument regarding the accuracy of Burris's time logs or any alleged discrepancy between his claimed hours and the actual hours spent on Vasey's case.² See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

The district court abused its discretion in failing to consider the Brunzell factors when adjudicating Burris's attorney fee lien

Vasey next contends that the district court abused its discretion in adjudicating Burris's lien because the court did not determine whether the amount of the lien was reasonable under *Brunzell*. We agree.

"The decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a manifest abuse of discretion." *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (internal quotation marks omitted). When "determin[ing] the reasonable amount of attorney fees under a statute or rule . . . the [district] court must evaluate the factors set forth in *Brunzell*." *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). Those factors are:

- (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
- (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
- (3) the work actually performed by the lawyer: the skill, time and attention given to the work;
- (4) the result: whether the attorney was successful and what benefits were derived.

²Because we decline to consider Vasey's unsupported assertions, we do not find it necessary, as Burris requests, to strike portions of Vasey's brief pursuant to NRAP 28(j).

Brunzell, 85 Nev. at 349, 455 P.2d at 33. However, “[i]n determining the amount of fees to award, the district court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the *Brunzell* factors.” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (quoting *Haley v. Eighth Jud. Dist. Ct.*, 128 Nev. 171, 178, 273 P.3d 855, 860 (2012)) (internal quotation marks and alterations omitted). While it is preferable that the district court “expressly analyze each [*Brunzell*] factor relating to an award of attorney fees,” the court “need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence.” *Id.*

NRS 18.015(2) provides that an authorized attorney fee lien “is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.” However, even when the client agrees to the amount of an attorney fee in a retainer agreement, the district court must still ensure that the agreement itself is not unreasonable under *Brunzell*. See *McDonald Carano Wilson v. Bourassa Law Grp.*, 131 Nev. 904, 908, 362 P.3d 89, 91 (2015) (providing that the district court must determine the amount of a lien for attorney fees pursuant to a retainer agreement and must also ensure the reasonableness of the fee agreement under *Brunzell*).

Here, the district court’s order adjudicating Burris’s lien found that the Burris firm was entitled to an hourly rate of \$750 pursuant to the retainer agreement for time billed by both partners and associates alike without evaluating whether the rates for the associates were also “reasonable under the circumstances.” See *LVMPD v. Yeghiazarian*, 129 Nev. 760, 770, 312 P. 3d 503, 510 (2013). Further, the court’s order did not reference the

Brunzell factors and did not find that this hourly rate or the total amount of the lien was reasonable. Though Burris addressed the *Brunzell* factors in his district court brief, he also argued in the alternative that *Brunzell* did not apply. Because the district court did not make any oral or written findings on this issue, it is unclear whether the district court even considered *Brunzell* when adjudicating Burris's lien. Thus, the district court did not "demonstrate that it considered the required factors" in its analysis. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. Accordingly, we conclude that the district court abused its discretion in failing to ensure that the retainer agreement and lien were "not unreasonable" under *Brunzell*.³ *McDonald Carano Wilson*, 131 Nev. at 908, 362 P.3d at 91.

Accordingly, we

ORDER the judgment of the district court REVERSED and REMANDED.

 _____, C.J.

Gibbons

 _____, J.
Bulla

 _____, J.
Westbrook

³Vasey also argues that reasonableness must be determined by the considerations listed in NRPC 1.5(a). However, reasonableness is determined pursuant to the factors in *Brunzell*; while the district court "is not limited to one specific approach," its analysis must review the claimed attorney fee amount in light of the *Brunzell* factors. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. Therefore, while several of the NRPC 1.5(a) factors overlap with *Brunzell*, we are not persuaded by Vasey's argument that the district court must consider all of the listed NRPC 1.5(a) factors in evaluating the reasonableness of an attorney fee.

Insofar as the parties raise other issues not specifically addressed in this decision, we conclude that they either do not present a basis for relief or need not be addressed given the disposition of this appeal.

cc: Hon. Veronica Barisich, District Judge
Law Office of Travis E. Shetler, PC
Burris & Thomas, LLC
Eighth District Court Clerk