

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAWN ARLENE DRIGGERS, A/K/A
DAWN ARLENE DRIGGERS
ANDREWS,
Appellant,
vs.
MICHAEL ANDREWS,
Respondent.

No. 86258-COA

FILED
AUG 02 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Dawn Arlene Driggers appeals from a post-judgment order awarding attorney fees. Eighth Judicial District Court, Family Division, Clark County; Lisa Brown, Senior Judge, and William O. Voy, Senior Judge.

Driggers and respondent Michael Andrews were married. They filed a joint complaint for divorce and asserted in the complaint that any community property had already been divided. The district court subsequently entered a decree of divorce, which noted the parties had reached an agreement concerning the division of community property, and it incorporated the parties' agreement into the decree.

Driggers later filed a notice of lis pendens concerning a residential property. Andrews thereafter moved to expunge the notice of lis pendens, arguing that it was improperly filed in this matter. Andrews also moved for an award of attorney fees pursuant to NRS 18.010(2)(b) because he contended the notice of lis pendens was brought without reasonable grounds. Driggers opposed the motion. The district court ultimately granted the motion and ordered the expungement of the notice of lis pendens. The district court also concluded that Andrews was entitled to an award of attorney fees pursuant to NRS 18.010(2)(b) and directed Andrews

to submit additional information in support of his request for such fees. Andrews later filed a memorandum addressing the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969), and providing his billing records.

Driggers subsequently filed a motion for reconsideration of the district court's order and Andrews opposed. The district court then entered a written order denying the motion for reconsideration. In addition, after noting it considered the appropriate *Brunzell* factors, the district court awarded Andrews attorney fees in the amount of \$6,500. This appeal followed.

Driggers challenges the district court's award of attorney fees. She contends that the court did not make sufficient findings to support an award of fees pursuant to NRS 18.010(2)(b), as the court did not find that she acted without reasonable grounds or to harass Andrews.

This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). However, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

The district court may only award attorney fees where a statute, rule, or contract allows it. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006). Under NRS 18.010(2)(b), the district court may award attorney fees to a "prevailing party" when "the court finds that the claim . . . of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

“For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it.” *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). The fact that a party pursued a course of action that ultimately proved to be unsuccessful is not sufficient to support a fee award under NRS 18.010(2)(b). *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (“Although [appellant] did not prevail on the motion, and it may have been without merit, that alone is insufficient for a determination that the motion was frivolous, warranting sanctions.”), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Instead, “there must be evidence supporting [a] finding that the claim or defense was unreasonable or brought to harass.” *Id.*

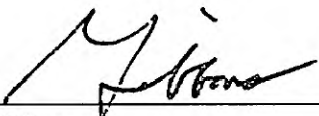
Here, Andrews sought an award of attorney fees under NRS 18.010(2)(b). The district court thereafter issued a written order noting there were no claims currently before it upon which a lis pendens could be based and that there was no basis for Driggers to file a notice of lis pendens in this case. The district court nonetheless also noted that Driggers had a claim to the real property but it declined to evaluate the merits of that claim. And in that same order, the district court concluded that an award of attorney fees to Andrews was warranted pursuant to NRS 18.010(2)(b).

The district court’s findings are insufficient to support a fee award under NRS 18.010(2)(b), as its finding concerning Driggers’ notice of lis pendens alone is insufficient to support an award of attorney fees under NRS 18.010(2)(b). *See Rivero*, 125 Nev. at 441, 216 P.3d at 234. Instead, to award Andrews attorney fees under that statute, such an award must have been supported by findings concluding that Driggers’ filing of the lis pendens was either unreasonable or done to harass Andrews. *See id.*

However, the district court did not make such findings in awarding attorney fees to Andrews. And in the absence of such findings, the district court did not make the findings necessary to support an award of attorney fees under NRS 18.010(2)(b). *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 294 (Ct. App. 2023) (stating that an award of attorney fees under NRS 18.010(2)(b) is unsupportable when a district court fails to make findings that a party's "claims or defenses were either unreasonable or meant to harass").

Accordingly, we reverse the award of attorney fees and remand this matter to the district court for additional findings concerning an award of such fees under NRS 18.010(2)(b).¹ Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹Moreover, when awarding attorney fees in a family law case, the district court must consider the disparity in income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730. We therefore remind the district court to evaluate any disparity in income between Driggers and Andrews when reconsidering whether an award of attorney fees is warranted in this matter.

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Family Division, Eighth Judicial District Court
Hon. Lisa Brown, Senior Judge
Cory Reade Dows & Shafer
Michael Andrews
Eighth District Court Clerk