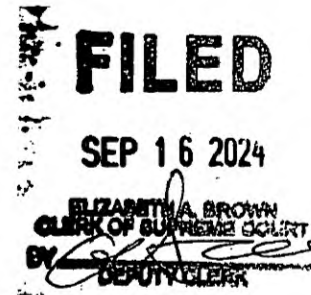


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABRIEL J. DALEY,
Appellant,
vs.
ENCORE GROUP OF
PROFESSIONALS, LLC; ENCORE
GROUP OF CALIFORNIA, LLP;
ENCORE GROUP OF NEVADA, LLC;
ENCORE GROUP OF TEXAS, LLC;
ENCORE GROUP OF HAWAII, LLC;
JOHN D. & TERRI L. JACKSON
TRUST; JOHN D. JACKSON; SYLO
MANAGEMENT; AND TERRI L.
JACKSON,
Respondents.¹

No. 87008-COA



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

Gabriel J. Daley appeals from a final order in a contract matter. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Daley agreed to work for respondent Encore Group of Professionals, LLC (Encore). To that end, Daley and Encore executed an employment agreement and a membership purchase agreement. Contained within the membership purchase agreement was a clause permitting Daley to purchase a 25 percent interest in Encore. The agreement also permitted Encore to repurchase the 25 percent interest should Daley cease working for Encore. Daley thus became a co-manager of Encore alongside respondent John D. Jackson.

¹We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

Daley eventually resigned from his employment with Encore, and he accepted employment with a competitor. Encore provided notice to Daley of its intention to repurchase his 25 percent interest in the company pursuant to the employment agreement, but Daley did not agree to sell that interest back to Encore.

Encore thereafter filed a complaint alleging several causes of action concerning Daley's decision to cease his employment with Encore and alleged violations of his employment agreement, including breach of contract and breach of the implied covenant of good faith and fair dealing. Daley answered and raised several counterclaims and named Jackson, respondent SYLO Management, and respondent Encore Group of Hawaii, LLC, as third-party defendants.

The matter ultimately proceeded to trial. However, during trial, the parties informed the district court that they had reached an agreement to settle this matter and to cease litigation of their respective claims. The parties also explained the terms of the settlement agreement to the district court on the record. The terms were as follows: (1) Daley agreed to execute a promissory note in favor of Encore in an amount equal to the attorney fees and costs that Encore and the third-party defendants incurred from the inception of the case until January 12, 2022; (2) Daley agreed to relinquish and disclaim any interest in Encore or its affiliates; (3) the parties agreed to negotiate the amount of the promissory note and its terms following the hearing; and (4) should Daley pay to Encore \$25,000 before December 31, 2022, Encore will forgive the remainder of the promissory note.

The district court noted that the terms of the settlement agreement were placed on the record, and it dismissed the jury. The district

court also set a status hearing to ensure that the settlement documents were signed by the parties. In addition, the terms of the parties' agreement were entered into the court minutes.

Encore subsequently filed a motion seeking to enforce the settlement agreement. In its motion, Encore contended that it had exchanged correspondence with Daley concerning the documentation related to the settlement agreement and informed Daley that the total attorney fees and costs amounted to \$293,923.63, and that amount would constitute the balance of the promissory note. Encore also filed a memorandum of attorney fees concerning its pre-agreement fees and costs. In addition, Encore asserted that Daley expressed concerns that he would experience a substantial tax burden stemming from the settlement agreement and that Daley thereafter repudiated the agreement and expressed his belief that the parties had not reached an actual settlement agreement. Based on the foregoing, Encore urged the district court to enforce the settlement agreement based on the terms memorialized during the trial proceedings. Encore also argued that, if the parties had not actually reached a valid settlement agreement, the district court should find that it was entitled to relief based on promissory estoppel because it relied to its detriment upon Daley's acknowledgment that they had settled this matter and had agreed to end the trial proceedings.

Daley opposed the motion and explained that he believed the settlement agreement had been contingent upon his meeting with a tax professional so that he could ascertain the tax consequences stemming from the forgiveness of the promissory note. Daley asserted that he discovered that the forgiveness of the note could cause him to incur a substantial amount of tax liability. Daley further contended that, because the parties

had not agreed to the amount of the promissory note, the settlement agreement was not enforceable because the parties had not agreed to all of the essential terms.

The district court entered several written orders concerning Encore's request to enforce the settlement agreement and noted that Daley should work toward completion of the settlement agreement in good faith. Daley appealed several of the interlocutory orders regarding these issues, but the Nevada Supreme Court dismissed those appeals for lack of jurisdiction. *Daley v. Encore Grp. of Pro. LLC*, No. 85597, 2023 WL 2799432 (Nev. Apr. 5, 2023) (Order Dismissing Appeal); *Daley v. Encore Grp. of Pro. LLC*, No. 84745, 2022 WL 2901118 (Nev. Jul. 21, 2022) (Order Dismissing Appeal).

Encore thereafter filed a renewed motion to enforce the settlement agreement and reiterated its earlier arguments concerning enforcement of that agreement. Encore also sought an award of attorney fees pursuant to EDCR 7.60, as it contended that Daley's failure to work to complete the settlement agreement in good faith unreasonably and vexatiously increased Encore's expenses related to this matter. Daley opposed Encore's requests to enforce the settlement agreement and for attorney fees.

The district court ultimately entered a final order granting Encore's request to enforce the settlement agreement and dismissing all remaining claims. The court reviewed the transcript of the relevant hearing and noted the terms of the settlement agreement were announced at that hearing. The court also noted that, after the terms were announced, Daley's counsel affirmatively stated that Daley agreed with those terms. In addition, the court found that Daley did not reserve any conditions or

contingencies with respect to the settlement agreement and made no mention of time needed to consult with a tax professional concerning any tax consequences stemming from the settlement agreement. The court further found that the unagreed to information concerning the promissory note was not material to the settlement agreement, as the parties agreed that the balance of the note would be forgiven after Daley paid \$25,000 to Encore.

Based on the foregoing, the district court concluded that the parties had agreed to the material or essential terms of the settlement agreement such that the parties reached a valid and enforceable contract. The court further concluded that there was no mutual mistake such that the settlement agreement should not be enforced. Alternatively, the court concluded that Daley should be estopped from denying the settlement based on the doctrine of promissory estoppel, as Daley failed to demonstrate there were conditions missing from the agreement, his words and actions when the parties announced their settlement agreement demonstrated that he intended Encore to act, and Encore relied upon Daley's conduct to its detriment.

The district court accordingly enforced the settlement agreement and ordered dismissal of all claims, counterclaims, and third-party claims. The court also awarded Encore injunctive relief in which it enjoined Daley to execute a promissory note in favor of Encore in the amount of \$293,923.63 and directed Daley to relinquish any interest in Encore or its affiliates. The district court further concluded that any amount outstanding toward the promissory note would be forgiven should Daley provide Encore with \$25,000 within 95 days from the entry of the order. The court also awarded attorney fees in favor of Encore in the

amount of \$5,664.85 because it concluded that Daley had an obligation to follow the court's previous orders and to perform under the settlement agreement. This appeal followed.

First, Daley argues that the district court abused its discretion by concluding that the settlement agreement was enforceable. Daley asserts that the parties had not agreed to a material or essential term because they had not agreed to the amount of the promissory note.

This court reviews a district court order concerning a motion to enforce a settlement agreement for an abuse of discretion. *Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012). 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), "which is evidence that a reasonable person may accept as adequate to sustain a judgment," *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

A settlement agreement is a contract, and "its construction and enforcement are governed by principles of contract law." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). While this court reviews contract interpretation de novo, "the question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *Id.* at 672-73, 119 P.3d at 1257.

"Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *Martin v. Martin*, 138 Nev., Adv. Op. 78, 520 P.3d 813, 819 (2022) (internal quotation marks omitted); see also EDCR 7.50 ("No agreement or stipulation between the parties or their attorneys will be effective unless

the same shall, by consent, be entered in the minutes in the form of an order, or unless the same is in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney."). "In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain." *May*, 121 Nev. at 672, 119 P.3d at 1257. However, a settlement agreement is enforceable "when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later." *Id.*

"The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." Restatement (Second) of Contracts § 33 (1981). The material or essential terms of a settlement agreement "depend[] on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012) (quoting Restatement (Second) of Contracts § 131 cmt. g (1981)). Moreover, "the actions of the parties may show conclusively that they have intended to conclude a binding agreement, even though one or more terms are missing or are left to be agreed upon." Restatement (Second) of Contracts § 33 cmt. a (1981).

Here, the district court reviewed the relevant information concerning the parties' purported settlement agreement that was announced during the trial proceedings. The court noted that the terms of the settlement agreement were placed on the record, Daley acknowledged that those terms constituted the parties' agreement, and the parties made no objections to the dismissal of the jury. The court also found that Daley made no reservations regarding the agreement such as stating he needed

additional time to consult with a tax professional concerning the tax implications stemming from the agreement. *Cf. Heffern v. Vernarecci*, 92 Nev. 68, 70, 544 P.2d 1197, 1198 (1976) (“Where essential terms of a proposal are accepted with qualifications, or not at all, an agreement is not made.”).

In addition, the court found that Daley’s later expressed concerns about tax consequences stemming from the agreement amounted, at most, to a unilateral mistake, but that Daley’s mistake in this regard was insufficient for it to find that the parties failed to reach an enforceable agreement. *See Gen. Motors v. Jackson*, 111 Nev. 1026, 1032, 900 P.2d 345, 349 (1995) (“We note that under general principles of contract law, unilateral mistake is not a ground for rescission unless the other party knows or has reason to know of the mistake.”). The court also noted that the settlement agreement specifically provided for forgiveness of any remaining balance on the promissory note after Daley delivered \$25,000 to Encore. In light of the foregoing, the court concluded that any specific terms regarding the promissory note—including the specific amount of the note—were not material to the settlement agreement and that the terms announced by the parties at the trial proceeding contained the material terms of their settlement agreement. The court accordingly found that the parties reached an enforceable settlement agreement to end the litigation of this matter and to dismiss any remaining claims.

The district court’s factual findings as to these determinations are supported by substantial evidence in the record, *see Otak Nev., LLC*, 129 Nev. at 805, 312 P.3d at 496, and this court will not second guess a district court’s resolution of factual issues involving conflicting evidence, *see Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080

(2009). Accordingly, we discern no abuse of discretion by the district court in concluding that the parties reached an enforceable settlement agreement.² *See Grisham*, 128 Nev. at 686, 289 P.3d at 235.

Second, Daley asserts that the district court should not have enforced the agreement against him because the district court minutes are not sufficient evidence of a valid contract between the parties. Daley also asserts that the court should not have enjoined him to sign a promissory note in favor of Encore. In addition, Daley argues that the district court's grant of injunctive relief did not comply with NRCP 65(d) because the court did not state the reason why it afforded Encore injunctive relief.

We review a district court's exercise of its power to enforce a settlement agreement for an abuse of discretion, *Grisham*, 128 Nev. at 686, 289 P.3d at 235, and an abuse of discretion occurs when the court's decision is not supported by substantial evidence, *Otak Nev., LLC*, 129 Nev. at 805, 312 P.3d at 496. In addition, pursuant to NRCP 65(d), an order granting an injunction must "state the reasons why it issued," "state its terms specifically," and explain "the act or acts restrained or required."

Here, because the parties agreed to the material terms of the settlement, the terms were announced on the record, and those terms were entered into the court minutes following the parties' announcement of their agreement, the district court had the authority to enforce the settlement agreement pursuant to EDCR 7.50. *See Grisham*, 128 Nev. at 683, 289 P.3d at 233 ("An agreement to settle pending litigation can be enforced by motion

²In light of our conclusion that the district court did not abuse its discretion by finding that the parties reached an enforceable settlement, we need not consider whether the doctrine of promissory estoppel precluded Daley from denying the settlement agreement.

in the case being settled if the agreement is either . . . reduced to a signed writing or . . . entered in the court minutes following a stipulation.” (internal quotation marks omitted)). The district court further found that Daley agreed to sign a promissory note in favor of Encore for the pre-agreement fees and costs and that Encore’s memorandum of fees and costs demonstrated that it incurred \$293,923.63 in pre-agreement fees and costs. Based on that information, the court enjoined Daley to sign a promissory note in favor of Encore in the amount of \$293,923.63, but explained that any outstanding amount of the note would be forgiven following Daley’s timely payment of \$25,000 to Encore. The court further directed Daley to relinquish any interest in Encore or its affiliates.

The district court’s findings on these points are supported by substantial evidence. *See Otak Nev., LLC*, 129 Nev. at 805, 312 P.3d at 496. Moreover, the district court expressly explained that it enjoined Daley so as to enforce the settlement agreement, it specifically enjoined Daley to sign the promissory note and to relinquish any interest in Encore or its affiliates, and it explained in reasonable detail the acts Daley was required to perform. Thus, the district court’s order complied with NRCP 65(d). In light of our deferential review of the court’s exercise of its authority to enforce a settlement agreement, we conclude Daley fails to demonstrate the district court abused its discretion by enforcing the terms of the parties’ settlement agreement. *See Grisham*, 128 Nev. at 686, 289 P.3d at 235.

Based on the forgoing analysis, we discern no abuse of discretion in the district court’s decision to enforce the parties’ settlement agreement against Daley. We therefore affirm the district court’s order enforcing the settlement agreement.

Finally, turning to the district court's interlocutory award of attorney fees, Daley argues the district court abused its discretion by awarding attorney fees in the amount of \$5,664.85. This court reviews awards of attorney fees for an abuse of discretion. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485, 851 P.2d 459, 464 (1993). An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC*, 129 Nev. at 805, 312 P.3d at 496. 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). 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). The four *Brunzell* factors include "the qualities of the advocate . . . the character of the work to be done . . . the work actually performed by the lawyer . . . [and] the result." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). 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." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).


Here, the district court made an award of attorney fees, but it failed to specify the statute or rule under which it awarded such fees. See *Henry Prod. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998)

("The failure of a district court to state a basis for the award of attorney fees is an arbitrary and capricious action and, thus, is an abuse of discretion."). Moreover, the court's order failed to make findings regarding the *Brunzell* factors or otherwise indicate that it considered the *Brunzell* factors in reaching its decision to award Encore attorney fees. In light of the lack of clarity regarding the basis of the court's attorney fee award and its failure to demonstrate that it considered the *Brunzell* factors, we reverse the award of attorney fees and remand this matter to the court for additional proceedings regarding those issues. See *Chowdhry*, 109 Nev. at 485, 851 P.2d at 464.

Accordingly, for the reasons set forth above, 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

³Insofar as Daley 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. Veronica Barisich, District Judge
Gabriel J. Daley
Law Office of Kent P. Woods LLC
Emerson Law Group
Eighth District Court Clerk