

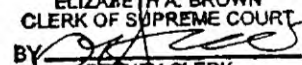
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PIERRE A. HASCHEFF,
Appellant/Cross-Respondent,
vs.
LYNDA HASCHEFF,
Respondent/Cross-Appellant.

No. 86976-COA

FILED

OCT 11 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Pierre A. Hascheff appeals and Lynda Hascheff cross-appeals from a district court order awarding attorney fees. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

The parties were married, and throughout the marriage Pierre was an attorney. In September 2013, the parties reached a Marital Settlement Agreement (MSA) that resolved the issues of their divorce and was ratified, merged, and incorporated in the decree of divorce. The MSA included an indemnification provision that stated that, in the event Pierre was sued for malpractice, Lynda would indemnify him for one half of his attorney fees and costs that arise from the malpractice action. The MSA also included a provision that if enforcement of the decree was necessary, the prevailing party in the lawsuit would be entitled to reasonable attorney fees and costs. In July 2018, Pierre was subpoenaed as a witness in a trust litigation dispute to testify regarding legal work he had previously performed as an attorney, and he was subsequently sued for legal malpractice. The malpractice case was stayed pending resolution of the collateral trust litigation.

In 2020, Pierre notified Lynda that he was seeking the reimbursement of attorney fees and costs associated with his participation as a witness in the collateral trust litigation as well as the attorney fees and costs that he had incurred as a party in the stayed legal malpractice case. Subsequently, Lynda filed a motion for clarification or declaratory relief, requesting that the district court enter an order clarifying that she is not responsible for the attorney fees and costs incurred in the collateral trust litigation. Pierre filed an opposition and a motion for an order to show cause, or in the alternative, to enforce the divorce decree. Both parties requested attorney fees and costs necessarily incurred to resolve the dispute. The district court entered an order finding that while the fees and costs incurred by Pierre in both the collateral trust litigation and his legal malpractice case were covered by the indemnification provision of the MSA, Pierre was barred from recovering his attorney fees and costs incurred in the actions based on the doctrine of laches. The district court denied both parties' requests for attorney fees and costs after resolving the matter.

Subsequently, Pierre filed an appeal and Lynda cross-appealed, and this court held, with respect to the collateral trust action, that the indemnification provision required that "those legal fees and costs must arise from the malpractice action only." *See Hascheff v. Hascheff*, No. 82626-COA, 2022 WL 2354990, *3 (Nev. Ct. App June 29, 2022) (Order Affirming in Part, Reversing in Part, and Remanding). Thus, Pierre could not recover fees and costs associated with his witness testimony in the collateral trust action. This court also concluded that the district court abused its discretion in applying laches and denying Pierre's request for indemnification for the attorney fees and costs incurred in the malpractice

action, and that on remand, the district court would necessarily need to determine whether the fees and costs incurred in the malpractice action were covered by the indemnification provision, determine who was the prevailing party, and consider an award of reasonable attorney fees and costs to the prevailing party.

On remand, the district court issued a February 2023, order regarding indemnification of fees and costs. The court noted that it had reviewed the invoices Pierre provided and determined that, pursuant to the MSA, Lynda must indemnify Pierre for one-half of the fees incurred in the malpractice action. Thus, the district court ordered Lynda to pay half of those fees, amounting to \$1,147.50. The district court also determined that Lynda was the prevailing party for the purpose of awarding attorney fees because she sought clarification from the court regarding what fees she owed and asserted that she was not required to indemnify Pierre for any fees and costs arising from the collateral trust litigation. Thus, the court found that Lynda was the prevailing party “as she received the predominate relief requested” and was thus entitled to an award of her reasonable attorney fees. Subsequently, in June 2023, district court entered an award of \$46,675 in attorney fees for Lynda for the work of her attorney in the district court proceedings. However, the district court excluded all attorney fees Lynda incurred in the first appeal because each party prevailed on an issue in the appeal. The court ordered Pierre to pay a minimum monthly payment of \$1,500 toward the attorney fees award. Pierre now appeals and Lynda cross-appeals from that decision.

Pierre's appeal

On appeal, Pierre argues that the district court erred in granting Lynda attorney fees, arguing that Lynda was not the prevailing party because she had to indemnify him for the fees incurred in the malpractice action.¹ Pierre further argues that, in the event Lynda was entitled to recover attorney fees, the district court abused its discretion in awarding Lynda an unreasonable amount of attorney fees, arguing that the amount of fees in relation to the amount at issue was not reasonable, that the district court should have excluded entries for Lynda's counsel's communications with her sister, and that Lynda incurred attorney fees for various unsuccessful theories that she raised before the district court.² Conversely, Lynda asserts that the district court properly exercised its

¹To the extent Pierre challenges the district court's order regarding indemnification on appeal, Pierre did not initiate this appeal until July 2023, and he is time-barred from challenging the February 2023 order, which was the order finally resolving the merits of the underlying action, and for which notice of entry was served on February 21, 2023. *See* NRAP 3(a)(1) (requiring the timely filing of a notice of appeal for appeals permitted by law); NRAP 4(a)(1) (providing a notice of appeal must be filed no later than 30 days after the date written notice of entry of the order appealed from is served). Therefore, our review is confined to the district court's June 12, 2023, post-judgment order awarding Lynda attorney fees.

²Alternatively, Pierre argues that he was entitled to an award of attorney fees, pursuant to NRS 18.010(2)(a), which should have then been offset against any award of attorney fees to Lynda. We decline to address this argument as it was raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that we need not address arguments raised for the first time on appeal).

discretion in awarding her attorney fees because she succeeded on her motion, and the court made sufficient findings with respect to the attorney fees award.

The district court did not abuse its discretion in finding Lynda to be the prevailing party entitled to attorney fees

The district court may only award attorney fees where a statute, rule, or contract allows it, and we review such an award for an abuse of discretion. *Albios v. Horizon Cmities., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006). 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 party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (reviewing a district court's determination of who is the prevailing party for an abuse of discretion) (internal quotation marks omitted). "To be a prevailing party, a party need not succeed on every issue." *Id.*

Here, Lynda moved for attorney fees pursuant to MSA § 35.1. This provision provided for an award of attorney fees to the prevailing party

If either party brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

Below, Lynda filed a motion for clarification which primarily asserted that she was not required to indemnify Pierre for attorney fees he incurred in the collateral trust litigation, and, as the district court recognized, she ultimately prevailed on this argument following this court's decision in the prior appeal. Additionally, the district court correctly found that Pierre did not prevail as the court did not grant an order to show cause or an order for enforcement pursuant to Pierre's motion requesting such relief. Under these circumstances, the district court did not abuse its discretion in finding that Lynda, rather than Pierre, was the prevailing party. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence).

The district court did not abuse its discretion in awarding Lynda attorney fees

Before awarding attorney fees, a district court must consider the four factors articulated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (directing district courts, in determining a reasonable fee, to consider the quality of the advocate, the character of the work needed to be done, the work performed, and the result). Express findings on the *Brunzell* factors are preferred but are not required where the record demonstrates the court considered those factors and the award is supported by substantial evidence. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

Here, the record demonstrates that the district court considered the factors set forth in *Brunzell* and provided sufficient findings regarding the fees awarded. Specifically, the court made detailed findings noting that it omitted any billing entries unrelated to the action and that the court

found the attorney fee award to be reasonable “given the length of the documents prepared, the need to review roughly three years of billing invoices, and the amount of [counsel’s] hourly fee.” Given these detailed findings, and the deferential standard of review on appeal, we conclude that Pierre’s argument as to the overall amount of attorney fees awarded in comparison to the amount he recovered does not provide a basis for relief. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143.

To the extent Pierre argues that billing entries for counsel’s communications with Lynda’s sister, a California attorney, should have been excluded, the record indicates that Lynda requested her sister’s assistance with the matter when Pierre initially sought indemnification in an attempt to resolve the dispute without litigation. And the majority of the billing entries which Pierre points to were entries where Lynda’s sister was simply copied on emails and included on calls with Lynda. Although there are some billing entries where counsel only communicated with Lynda’s sister, Pierre cites no authority to support that the district court should have excluded any of these billing entries given the sister’s prior involvement in the case. As a result, we decline to consider this argument. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the appellate courts need not consider claims that are not cogently argued). We further reject Pierre’s argument that the district court should have reduced Lynda’s attorney fees for time spent on addressing alternative theories as to why Lynda did not need to indemnify Pierre for all or some of the fees he claimed. *See Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) (“Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his

attorney's fee reduced simply because the district court did not adopt each contention raised."); *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 596, 879 P.2d 1180, 1189 (1994) ("If a plaintiff ultimately wins on a particular claim, she [or he] is entitled to all attorney's fees reasonably expended in pursuing that claim—even though she may have suffered some adverse rulings." (quoting *Corder v. Gates*, 947 F.2d 374, 379 n.5 (9th Cir. 1991))).

Given the foregoing, and because the record demonstrates that the district court considered Lynda's billing records and the *Brunzell* factors when reaching its decision to award Lynda attorney fees in the amount of \$46,675 pursuant to MSA § 35.1, we conclude Pierre fails to demonstrate the district court abused its discretion in awarding Lynda her requested attorney fees. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143.

Lynda's cross-appeal

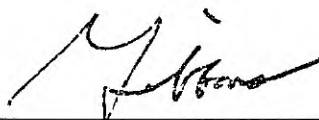
Turning to Lynda's appellate challenges on cross-appeal, Lynda argues that she was entitled to her appellate fees and that the district court abused its discretion by giving Pierre a payment plan for her attorney fees when he never requested it. In response, Pierre argues that the court was within its discretion to make a determination as to what fees were reasonable and in reducing the award of attorney fees granted to Lynda and denying fees she incurred for the prior appeal. He further argues that Nevada law does not prohibit a district court from requiring judgments be paid in installments.

We reject Lynda's argument that the district court should have awarded her attorney fees that she incurred from the prior appeal. Although the district court may award attorney fees incurred on appeal, *see In re Estate & Living Trust of Miller*, 125 Nev. 550, 555, 216 P.3d 239, 243

(2009), the court provided sufficient findings to support its decision, as it expressly noted that “each party had prevailed on a significant issue in the appeal.” Thus, we conclude the district court made sufficient findings to support its decision not to award Lynda her attorney fees incurred in the prior appeal. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Furthermore, we discern no abuse of discretion in the court ordering Pierre to make monthly payments toward the attorney fees award as opposed to paying the entire fee award at once. *See Reed v. Reed*, 88 Nev. 329, 331, 497 P.2d 896, 897 (1972) (noting that the district court has discretion to schedule payments of a judgment “in any manner the district court deems proper under the circumstances”).

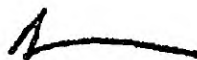
Thus, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.³



Gibbons

C.J.



Bulla

J.



Westbrook

J.

³Insofar as the parties raise 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. Sandra A. Unsworth, District Judge, Family Division
Lansford W. Levitt, Settlement Judge
Fennemore Craig P.C./Reno
Leonard Law, PC
Woodburn & Wedge
Washoe District Court Clerk