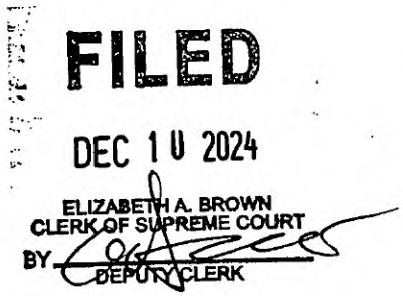
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN A. SEIBEL, AN INDIVIDUAL AND CITIZEN OF NEW YORK; AND GR BURGR LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Appellants,
vs.
PHWLV, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND GORDON RAMSAY, AN INDIVIDUAL,
Respondents.

No. 86359



CORRECTED ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

This is an appeal from post-judgment district court orders awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellants Rowen Seibel and GR Burgr LLC (GRB) entered into an agreement (the Development Agreement) with respondents PHWLV LLC (PH) and Gordon Ramsay to provide an intellectual property license for a restaurant, "BurGR Gordon Ramsay." The Development Agreement also required appellants to conduct themselves with the highest standards of honesty and integrity and to submit suitability disclosures attesting to their conduct. After Seibel pleaded guilty to tax-related criminal charges, respondents terminated the agreement and appellants sued. Respondents separately moved for summary judgment, and the district court granted each respondent's motion in separate orders. Respondents then separately moved for costs under NRS 18.020 and attorney fees under NRS 18.010(2)(b) and the Development Agreement's prevailing-party provision.

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Appellants sought to retax costs. Following a hearing, the district court awarded Ramsay $1,926,464.50 in attorney fees and $246,700.39 in costs, and PH $3,500,236.25 in attorney fees and $169,169.73 in costs. The district court held Seibel personally liable for the fees and costs based on its findings that Seibel engaged in harassing and bad-faith litigation tactics. This appeal followed.[1]

We review a district court's decision regarding attorney fees or costs for an abuse of discretion. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006) (reviewing an award of attorney fees for an abuse of discretion); *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (reviewing an award of costs for an abuse of discretion). An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law. *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

Appellants first argue the district court erred in its calculation of attorney fees because part of the award was based on vague semi-redacted invoices.[2] When determining the amount of attorney fees to

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[1]This court's disposition in *Seibel v. PHWLV, LLC*, No. 84934, 2024 WL 1500665 (Nev. April 5, 2024) (Order of Affirmance) addresses appellants' arguments regarding the propriety of summary judgment being entered in respondents' favor. As a result, and because this appeal is limited to the post-judgment orders, we decline to consider appellants' arguments regarding the district court's basis for entering summary judgment.

[2]Because appellants provide conclusory statements without pointing to specific evidence from the record, appellants' arguments do not demonstrate error concerning billed tasks involving basic administration, other related cases, overstaffed personnel, and intra-office conferences. *See*,

award, a district court is not limited in its approach in calculating a reasonable amount, but it must analyze the *Brunzell* factors, "namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result." *Albios*, 122 Nev. at 427, 132 P.3d at 1034 (quoting *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)). "[T]he district court need only demonstrate that it considered the [*Brunzell*] factors, and the award must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

The district court considered the parties' filings, briefings, sufficiently detailed invoices, and conduct over a five-year span to determine the reasonableness of the attorney fees requested. Contrary to appellants' assertions, the billing entries that were considered for calculating the awards are only partially redacted and the unredacted portions of the entries are sufficient to show that billing for the time was reasonable. *See Democratic Party of Wash. v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) (noting a court need not reject redacted time entries where the "redactions do not impair the ability of the court to judge whether the work was an appropriate basis for fees"). As to Ramsay, the district court considered each *Brunzell* factor in detail when it concluded that Ramsay's fees were reasonable. *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 246 n.7, 416 P.3d 249, 259 n.7 (2018) (concluding that

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e.g., McGrath v. Cty. of Nevada, 67 F.3d 248, 255 (9th Cir. 1995) ("[T]he trial court need not expressly rule on each of the [appellants'] objections" without specific evidence as to the unreasonableness of the hours worked based on purported overstaffing, duplication of effort, and the inclusion of hours billed to other cases); *see also Love v. Sanctuary Records Grp., Ltd.*, 386 F. App'x 686, 689 (9th Cir. 2010) (affirming costs award that included allegedly "excessive" intra-office meetings absent specific evidence).

attorney invoices provided the district court sufficient documentation in properly considering the *Brunzell* factors). As to PH, the district court explicitly acknowledged and considered *Brunzell* in its analysis. PH's attorney attached an affidavit to the motion for fees in which counsel provided information as to each of the four *Brunzell* factors, and the motion included fee award alternatives and numerous billing statements that the district court evaluated. Thus, we conclude the district court did not abuse its discretion in awarding attorney fees to respondents after it considered substantial evidence, differing fee formulas, and the *Brunzell* factors. *See A Cab, LLC v. Murray*, 137 Nev. 805, 819, 501 P.3d 961, 975 (2021) (determining no abuse of discretion when *Brunzell* factors and various fee formulations were considered).

Appellants next argue the district court erred in holding Seibel personally liable for attorney fees incurred before March 17, 2021, which was the date a Delaware court assigned GRB's claims to Seibel to pursue at his own cost. But aside from arguing that he was not a party to the Development Agreement before March 17, 2021, Seibel does not cogently argue how the Delaware assignment order insulates him from personal liability for attorney fees under NRS 18.010(2)(b). Nor does Seibel address the district court's reliance on *Weinfeld v. Minor*, No. 3:14-cv-00513-RJC-WGC, 2019 WL 1173349, at *4 (D. Nev. Mar. 11, 2019), in which the federal district court awarded fees and costs to the prevailing party against plaintiffs in a derivative action where the plaintiffs filed their lawsuit without reasonable grounds. Here, the district court explicitly found that Seibel pursued the claims without reasonable ground and to harass respondents because Seibel's criminal conviction indisputably rendered him an "Unsuitable Person" under the Development Agreement, such that

respondents were entitled to terminate the Agreement. Thus, absent any cogent argument from Seibel as to why the district court abused its discretion, NRS 18.010(2)(b) served as a sufficient basis to hold Seibel personally liable for attorney fees and costs throughout the entirety of proceedings, including while Seibel was litigating the claims derivatively. *See Weinfeld*, 2019 WL 1173349, at *4; *cf. Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (recognizing that failure to respond to an argument can be treated as a confession that the argument is meritorious); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party's responsibility to support arguments with salient authority).

Appellants next argue the district court erred in awarding costs to Ramsay because Ramsay's memorandum of costs was not timely filed, or, alternatively, did not include sufficient justifying documentation. Costs are properly awarded when the party files with the clerk a memorandum of costs "within 5 days after the entry of judgment, or such further time as the court or judge may grant," NRS 18.110(1), and the party demonstrates that the costs are "reasonable, necessary, and actually incurred," *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). Here, Ramsay timely filed his memorandum of costs. Ramsay's initial memorandum of costs also included numerous invoices sufficiently detailing the incurred costs alongside a declaration of counsel demonstrating how those costs were necessary. Thus, the district court did not err in awarding costs to Ramsay. *Cf. Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 385-86 (1998) (partially reversing a cost award where the party's "fail[ure] to provide sufficient justifying documentation beyond the

date of each photocopy and the total photocopying charge" prevented the court from determining the reasonableness of the charges).

Appellants finally argue the district court erred in awarding PH's costs because it failed to apportion costs between the instant action and other related actions. We agree.

In an action in which a plaintiff pursues claims based on the same factual circumstance against multiple defendants, it is within the district court's discretion to determine whether apportionment is rendered impracticable by the interrelationship of the claims against the multiple defendants. *Mayfield v. Koroghli*, 124 Nev. 343, 353-54, 184 P.3d 362, 369 (2008). "The district court must, however, attempt to apportion the costs before determining that apportionment is impracticable." *Id.* at 354, 184 P.3d at 369. "When attempting to apportion costs, the district court must make specific findings, either on the record during oral proceedings or in its order, regarding the circumstances of the case before it that render apportionment impracticable." *Id.* at 353-54, 184 P.3d at 369.

Appellants sought to retax PH's costs, in part, on the basis that their claims against PH were not so intertwined with the other actions as to make apportionment impracticable. Although the consolidated matters involve claims based on overlapping facts that may make apportionment impractical, the record does not reflect that the district court made specific findings in its order, or on the record at the corresponding hearing, that apportionment was impracticable. We therefore vacate the award of costs

to PH and remand this matter to the district court for it to consider the practicability of apportioning costs.[3] Accordingly, 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: Hon. Timothy C. Williams, District Judge
Bailey Kennedy
Pisanelli Bice, PLLC
Fennemore Craig P.C./Reno
Eighth District Court Clerk

[3]We express no opinion as to whether apportionment would be impracticable.