

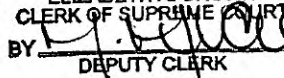
IN THE SUPREME COURT OF THE STATE OF NEVADA

FORE STARS, LTD., A NEVADA
LIMITED LIABILITY COMPANY; 180
LAND CO., LLC, A NEVADA LIMITED
LIABILITY COMPANY; AND SEVENTY
ACRES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellants,
vs.
DANIEL OMERZA; DARREN BRESEE;
AND STEVE CARIA,
Respondents.

No. 87354

FILED

NOV 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court orders awarding attorney fees. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Respondents filed an anti-SLAPP special motion to dismiss appellants' complaint, which was eventually granted by the district court, affirmed by this court, and forms the basis for the fee awards at issue. *See Fore Stars, Ltd. v. Omerza*, Case Nos. 82338, 82880, 2022 WL 1301754 (Nev. April 29, 2022) (affirming dismissal of complaint under anti-SLAPP statutes but vacating and remanding attorney fees award with instructions to re-analyze under *Brunzell*). The district court awarded respondents \$363,244 in attorney fees under NRS 41.670(1) and NRS 18.010(2) after performing a *Brunzell* analysis. After denying appellants' motion to reconsider, the district court granted respondents' motion for \$43,620.50 in supplemental fees related to appellate and reconsideration proceedings. Appellants now argue the district court abused its discretion in awarding attorney fees because it failed to consider (1) whether NRS 41.670(1) permits an attorney fee award where respondents did not directly incur any

such fees, (2) whether the absence of a written contingency fee agreement prevents recovery, and (3) the reasonableness of the award under *Brunzell*.

We review anti-SLAPP attorney fees and costs awards for an abuse of discretion. *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021). “An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law.” *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

Appellants argue the district court abused its discretion in awarding attorney fees because respondents did not directly incur attorney fees under NRS 41.670 or their unwritten contingency fee agreement. If the court grants an anti-SLAPP motion to dismiss, “[t]he court *shall* award reasonable costs and attorney’s fees to the person against whom the action was brought.” NRS 41.670(1)(a); *see also Otak Nevada, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 593, 598, 260 P.3d 408, 411 (2011) (“[T]he Legislature’s use of ‘shall’ . . . demonstrates its intent to prohibit judicial discretion . . .”), *abrogated on other grounds by Reif ex rel. Reif v. Aries Consultants, Inc.*, 135 Nev. 389, 391, 449 P.3d 1253, 1255 (2019).

Because respondents prevailed on their anti-SLAPP special motion to dismiss, they are entitled to their attorney fees and costs. NRS 41.670(1)(a). Appellants’ arguments to the contrary are unavailing. First, NRS 41.670(2) applies when the district court denies a special motion to dismiss, whereas here, the court granted the motion. *See* NRS 41.670(2) (stating that if a district court denies an NRS 41.660 special motion to dismiss as “frivolous or vexatious” it “shall award to the prevailing party . . . attorney fees incurred in responding to the motion”). Second, contrary to appellants’ assertions, Frank Schreck is not a party to this

action, and respondents are entitled to recover their attorney fees through their attorney-client relationship with Schreck's law firm. See *Ketchum v. Moses*, 17 P.3d 735, 747 (Cal. 2001) (holding that a defendant represented on a contingency basis is entitled to recover fees for a successful anti-SLAPP motion); *Rosenaur v. Scherer*, 105 Cal. Rptr. 2d 674, 690 (Ct. App. 2001) (holding that anti-SLAPP statutes permit recovery of attorney fees that are accrued by outside counsel representing a party on partial pro bono basis); cf. *Rudisill v. California Coastal Com.*, 247 Cal. Rptr. 3d 840, 850 (Ct. App. 2019) (observing that anti-SLAPP attorney fees may be awarded against real parties in interest who actively participated in the litigation and had a direct interest in the proceedings, the furtherance of which was at least partly responsible for the policy or practice that gave rise to the litigation). In this, we note that Schreck billed only 22.6 hours out of the roughly 600 hours of fees that were awarded, which casts serious doubt on appellants' speculation that Shreck did not charge respondents for his law firm's services. And in any event, we have recognized that a court may award attorney fees "regardless of counsel's service in a pro bono capacity." *Miller v. Wilfong*, 121 Nev. 619, 622-23, 626, 119 P.3d 727, 730, 732 (2005).

As to the unwritten contingency agreement issue, the district court applied the lodestar method in determining the amount of the attorney fee awards. *Smith*, 137 Nev. at 73, 481 P.3d at 1231 ("In determining the amount of fees to award, the district court can follow *any* rational method so long as it applies the *Brunzell* factors." (emphasis added)). Aside from arguing that an unwritten contingency agreement precludes recovery, appellants do not cogently argue how this precludes recovery under the lodestar method. See *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557-58, 429 P.3d 664, 670 (Ct. App. 2018) (recognizing

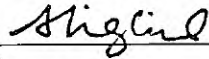
that any method rationally designed to calculate a reasonable amount includes those based on a lodestar amount or a contingency fee). Thus, absent any cogent argument from appellants as to why the district court abused its discretion, the lodestar method served as a sufficient basis to award attorney fees and costs. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued).

Appellants next argue the district court abused its discretion in applying the *Brunzell* factors. To determine whether attorney fees are reasonable, the district court must use the *Brunzell* factors. *Smith*, 137 Nev. at 73-74, 481 P.3d at 1231; *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (listing four factors for courts to consider when determining the reasonable value of attorney fees: "the qualities of the advocate[,] . . . the character of the work[,] . . . the work actually performed[,] . . . [and] the result"). So long as the district court considers the *Brunzell* factors, "its award of attorney fees will be upheld if it is supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266-67, 350 P.3d 1139, 1143 (2015).

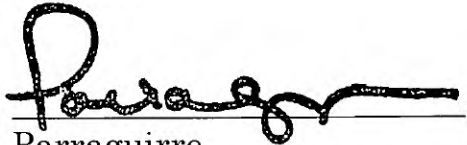
Respondents supported their request with proper documentation and the district court considered each of the *Brunzell* factors in determining the reasonableness of the request. While appellants challenge the hourly rate as excessive, respondents' counsel had extensive expertise in First Amendment litigation and secured a successful dismissal of the prolonged action. Such evidence supports the district court's finding that the time spent and fees incurred were reasonable, further

demonstrating the appropriateness of the award. Accordingly, the district court acted within its sound discretion in awarding attorney fees, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Herndon


_____, J.
Parraguirre

cc: Hon. Crystal Eller, District Judge
The Law Office of Kristina Wildeveld & Associates
McLetchie Law
Sklar Williams PLLC
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Eighth District Court Clerk