


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORIO FRANCO, JR.,
Appellant,
vs.
ARMANDO REAL,
Respondent.

No. 87761-COA

FILED
DEC 17 2024
ELIZABETH A. BROOKS
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gregorio Franco, Jr., appeals from a final judgment pursuant to a short trial jury verdict in a tort action. Eighth Judicial District Court, Clark County; Veronica M. Barisich, Judge.

On December 21, 2020, Franco backed out of a parking space striking respondent Armando Real's vehicle. The accident aggravated Real's injuries from a different accident that had occurred six months prior. Real subsequently filed a complaint alleging negligence, and the case proceeded through the court-annexed arbitration program. Before the arbitration, Real served an offer of judgment pursuant to NRCP 68 for \$14,000 with each party to bear its own attorney fees and costs. Franco countered with an offer of judgment pursuant to NRCP 68 of \$3,500 that Real did not accept. Following the arbitration, the arbitrator awarded Real \$23,834. Franco then filed a timely request for a trial de novo.

After Franco filed his request for a short trial, Real sent him a time-limited settlement offer for the global policy limit of \$25,000. Franco countered with his own offer of judgment pursuant to NRCP 68 for \$7,500.

Neither of these two offers were accepted. Real sent two more time-limited settlement offers for policy limits, which were also not accepted. Approximately one week before trial, Franco made an informal settlement offer of \$12,000, which Real rejected, and the case proceeded to short trial. The jury returned a verdict in favor of Real in the amount of \$9,834, and Real filed an application for attorney fees and costs.

In his application, Real requested \$15,000 in attorney fees and \$15,518.26 in costs, \$12,300 of which were for expert's fees. Real asserted that he was entitled to his attorney fees and costs pursuant to NRS 18.010(2)(a) and NSTR 27(b)(1) as the prevailing party who had not recovered more than \$20,000 at trial. Real argued that his requested attorney fees were reasonable pursuant to the *Brunzell* factors.¹ Real also submitted a memorandum of costs setting forth an itemized list of costs and an affidavit stating that the enumerated expenditures were correct and had been necessarily incurred in the action.

Franco opposed Real's application for fees and costs and also filed a countermotion for attorney fees, which the district court denied and is not part of this appeal. Franco specifically opposed Real's request for attorney fees and costs arguing that Real refused to accept one of his reasonable offers and instead demanded Franco's policy limits, which was unreasonable. Franco asserted the amount of Real's attorney fees was excessive and also argued his expert costs were unreasonable because Real was not required to present expert testimony at a short trial and therefore

¹*Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

he needlessly incurred expert fees in an effort to recover almost double the amount of his medical bills. In his reply, Real argued that his attorney fees were reasonable and necessary to proceed through both arbitration and short trial. He also argued that he required a medical expert at trial to explain medical causation because Franco was contesting causation at trial. He also responded that he negotiated in good faith because he beat Franco's two offers of judgment at trial, and even considering Franco's informal offer of \$12,000, Real's medical bills alone exceeded that amount, and the amount of the informal offer was less than what he received at arbitration. Moreover, Franco's informal offer was made approximately a week before trial and not pursuant to NRCP 68, and therefore the rejection of the offer did not cause Real to incur penalties under the rule.

On December 4, 2023, the short trial judge entered an order awarding Real \$15,000 in attorney fees and \$15,518.26 in costs. In the order, the short trial judge found that Real was eligible to receive attorney fees pursuant to NRS 18.010(2)(a) because he was the prevailing party at trial and recovered less than \$20,000 at trial. The short trial judge also found that Real's rejection of both Franco's informal settlement offer and formal offer of judgment² was reasonable under *Cormier v. Manke*, 108 Nev. 316, 317-18, 830 P.2d 1327, 1328 (1992), because the amount of the formal offer was insufficient to cover Real's medical bills, he obtained a trial verdict that exceeded the amount of the formal offer, and he incurred additional

²Although Franco served two formal offers of judgment pursuant to NRCP 68, the short trial judge's order only referred to one of them without specifying which one.

fees and costs before rejecting the informal offer. The short trial judge also found that despite Real's recovery of less than the rejected informal offer, the rejection did not unreasonably delay the litigation. Therefore, the short trial judge found that an award of attorney fees pursuant to NRS 18.010(2)(a) was appropriate, and that the fees were reasonable based on the *Brunzell* factors. The short trial judge also awarded Real his requested costs as the prevailing party under NRS 18.020 and NSTR 27(b), stating that he provided "sufficient justifying documentation" to find that the costs were "reasonable, necessary, and actually incurred" pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). Franco appealed the short trial judge's order on December 11, 2023, and the district court approved and signed the order—making it final—on December 22, 2023.³

On appeal, Franco argues that the district court abused its discretion in awarding Real his attorney fees and costs, including expert fees. He argues the district court improperly granted Real attorney fees

³We acknowledge that NSTR 3(d) provides that the short trial judge's order is not final and effective until expressly approved by the district court as evidenced by a district court judge's signature. Therefore, Franco's appeal was premature as it was not a final judgment, and no statute or court rule authorizes an appeal from a short trial judge's order awarding attorney fees and costs. NRAP 3A(b); *Peck v. Crouser*, 129 Nev. 120, 123, 295 P.3d 586, 587 (2013). However, this court has jurisdiction over Franco's appeal pursuant to NRAP 4(a)(6) because Franco's appeal was not dismissed between the time of his appeal and the time the district court filed the effective order. Franco's appeal is now considered to have been filed December 22, 2023, the same date as the district court's order.

under NRS 18.010(2)(a) and *Cormier*. Franco also argues that the expert fees included in the amount of costs awarded to Real were unreasonable, specifically because Real was not required to present an expert to support his case at a short trial.⁴

Real responds that he met the requirements to receive attorney fees under NRS 18.010(2)(a) because he was the prevailing party and did not recover more than \$20,000, and he beat Franco's offers of judgment at trial. He also argues that there was no abuse of discretion because the short trial judge did not act in clear disregard of the guiding legal principles, but instead carefully considered the necessary factors required by *Cormier* and *Brunzell* in awarding fees. With respect to costs, Real also argues that NSTR 19(a) does not prohibit expert testimony at short trial and NSTR 19(e) permits the short trial judge to grant expert witness fees for a maximum of \$15,000 per expert for up to five expert witnesses. He further maintains that his medical expert, Dr. DiMuro,⁵ was necessary to explain the significance of Real's injuries because Franco was contesting medical causation at trial.

This court reviews a district court's award of attorney fees for an abuse of discretion. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353-54, 971 P.2d 383, 386 (1998). "[W]here a district court exercises its discretion in clear disregard of the

⁴Franco is not challenging the other costs awarded to Real.

⁵Dr. DiMuro's full name and post-nominal letters do not appear in the record before this court.

guiding legal principles, this action may constitute an abuse of discretion.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 270, 724 (1993). Under both the NSTR and the NAR, attorney fees may be awarded to a prevailing party as permitted by statute or in accordance with NRCP 68. NSTR 27(b)(1); NAR 20(b)(1). In determining the amount of fees to award, the district court has discretion to use any method “rationally designed to calculate a reasonable amount,” so long as the requested amount is reviewed in light of the *Brunzell* factors. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

The supreme court in *Brunzell* identified the basic factors to be considered in determining the reasonable value of an attorney’s services. 85 Nev. at 349, 455 P.2d at 33. These factors are (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result. *Id.* Although it is preferable for a district court to expressly analyze each factor, express findings are not necessary for a court to properly exercise its discretion. *Logan*, 131 Nev. at 266, 350 P.3d at 1143.

In the present case, the short trial judge awarded Real attorney fees pursuant to NRS 18.010(2)(a), which authorizes the district court to award attorney fees to a prevailing party who recovers a monetary judgment of less than \$20,000, and here the judgment was for \$9,834. Franco nevertheless contends that the attorney fees award was inappropriate because NRS 18.010(2)(a) is intended to incentivize attorneys to take small cases rather than reward attorneys who demand large judgments. Insofar as Franco thereby suggests that the district court

abused its discretion in granting Real attorney fees under NRS 18.010(2)(a) due to the amount that Real *sought* to recover rather than what he actually recovered, we disagree. The availability of attorney fees pursuant to NRS 18.010(2)(a) is based on the amount actually recovered in a verdict, not the amount a party may have wanted to recover. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 282, 890 P.2d 769, 772 (1995) (discussing the legislative history of NRS 18.010, including a series of amendments in the 1970s and 1980s that “shifted the inquiry under NRS 18.010(2)(a) from the amount ‘sought’ by the [prevailing party] to the amount actually ‘recovered’”). Since the proper measure is what Real actually recovered, and Real recovered less than \$20,000, Franco’s statutory interpretation is without merit.

Franco also contends that the award of fees was improper because Real rejected Franco’s informal settlement offer of \$12,000, and the short trial judge abused her discretion in failing to consider the reasonableness of Real’s rejection of Franco’s informal offer before awarding attorney fees. *Cormier*, 108 Nev. at 317-18, 830 P.2d at 1328. “Factors which go to reasonableness include whether the offeree eventually recovered more than the rejected offer and whether the offeree’s rejection unreasonably delayed the litigation with no hope for greater recovery.” *Id.* at 318, 830 P.2d at 1328.

Here, the short trial judge found that, although Real did not recover more than the rejected \$12,000 informal offer, his rejection did not unreasonably delay the litigation with no hope of greater recovery. *See id.* Substantial evidence supports the short trial judge’s analysis, as Franco

made the informal offer just over a week before trial, resulting in little delay in the proceedings, and he had a reasonable hope that he would recover more than \$12,000 given that he was awarded \$23,834 at arbitration. *See Id.* Accordingly, because the short trial judge considered the *Cormier* factors, and her findings were supported by substantial evidence, we conclude that the short trial judge properly determined that Real was entitled to an award of attorney fees pursuant to NRS 18.010(2)(a).

Further, although Franco asserts that the amount of attorney fees awarded was unreasonable, he makes no attempt to address the *Brunzell* factors. While the short trial judge did not make specific findings with respect to each *Brunzell* factor, the order demonstrates that the short trial judge considered Real's briefing on the matter, which included a detailed analysis of the *Brunzell* factors. *Logan*, 131 Nev. at 266-67, 350 P.3d at 1143 (providing that, if the trial court does not expressly analyze each *Brunzell* factor, its decision may still be affirmed if the court demonstrated that it analyzed the *Brunzell* factors and there was sufficient evidence to support awarding the attorney fees). And because substantial evidence supports the short trial judge's determination that awarding Real \$15,000 in attorney fees was reasonable based on the documentation submitted, we conclude that the district court did not abuse its discretion in approving the award of fees under *Brunzell*. *See Logan*, 131 Nev. at 267, 350 P.3d at 1143; *see also Bobby Berosini, Ltd.*, 114 Nev. at 1353-54, 971 P.2d at 386.

Turning to Franco's challenge to the award of costs, we also review an award of costs for an abuse of discretion. *Id.* Both the NSTR

and NAR authorize the prevailing party at a short trial to recover any costs available pursuant to statute or NRCP 68. NSTR 27(b)(1); NAR 20(b)(1). Any award of costs to the prevailing party “must be actual and reasonable rather than a reasonable estimation or calculation of such costs.” *Bobby Berosini, Ltd.*, 114 Nev. at 1352, 971 P.2d at 385-86; NRS 18.005. For the court to effectively make this determination, the party applying for costs must provide a memorandum of costs and supporting evidence that the costs were reasonable, necessary, and actually incurred. NRS 18.110(1); *Cadle*, 131 Nev. at 121, 345 P.3d at 1054.

On appeal, Franco challenges the short trial judge’s award of costs only as it relates to Real’s expert fees. NSTR 19(e) governs expert testimony and the recovery of associated costs for cases in the short trial program. NSTR 19(a) encourages the use of written expert reports in lieu of oral testimony at short trial, but it does not prohibit expert testimony at trial. Expert testimony may be considered necessary if a party can demonstrate why such testimony was needed. *See Cadle*, 131 Nev. at 121, 345 P.3d at 1054. NSTR 19(e) also permits the short trial judge to award expert witness fees consistent with NRS 18.005(5). As of July 1, 2023, NRS 18.005(5) permits a maximum of \$15,000 for each expert for up to five expert witnesses.

Here, Real requested an award of \$12,300 in expert fees to specifically cover Dr. DiMuro’s expert report and his half-day fee for being

present and testifying at trial.⁶ Because the requested amount is less than \$15,000, the expert fees were within the scope of NRS 18.005. Thus, the short trial judge could properly find that Real's expert fees were reasonable so long as Real submitted a memorandum of costs and sufficient documentation to support his request. *See Cadle*, 131 Nev. at 121, 345 P.3d at 1054.

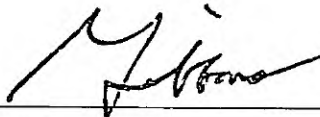
Sufficient evidence to support expert fees may include an explanation of how the expert fees were necessary to the case, documentation of those fees, or invoices and proper itemization. *See id.* Here, Real attached a sworn memorandum of costs to his application for costs as required by NRS 18.110(1). In the sworn declaration, Real stated that the expert's report was reasonable and necessary because Franco continued to deny medical causation following arbitration and the expert's testimony was required to explain medical causation to the jury.⁷ Real also attached itemized invoices from Dr. DiMuro with a list of Dr. DiMuro's standard fees. Thus, the short trial judge was provided with sufficient

⁶In 2023, the Nevada Legislature enacted A.B. 76, which increased the reasonable fees for expert witnesses from \$1,500 for each witness to \$15,000 for each expert witness, effective July 1, 2023. 2023 Nev. Stat., ch. 70, § 1, at 342. This fee increase is applicable to the present case because the short trial took place on November 3, 2023.


⁷Real supported the contention that an expert was required to explain medical causation to a jury by explaining his attorney held a legal focus group in which participants shared they would only feel comfortable awarding Real damages if they heard a medical doctor explain how his injuries were caused. Real attached a flier for the focus group to his reply in support of his application for costs.

evidence pursuant to *Cadle* to determine that Real's costs were reasonable, necessary, and actually incurred. Therefore, we conclude the district court did not abuse its discretion in approving the award of costs to Real, including his expert fees.⁸ See *Bobby Berosini, Ltd.*, 114 Nev. at 1352, 971 P.2d at 385-86. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁸We recognize that Franco contends it was unreasonable for Real to receive an award of attorney fees and costs that was more than three times the damages he recovered at the short trial, when Franco successfully had the arbitrator's damages award reduced by more than 50 percent through his request for a trial de novo. However, nothing in the NSTR or NAR precludes Real from recovering attorney fees and costs pursuant to NRS 18.010(2)(a) and NRS 18.020 under these circumstances. And although the short trial rules include a fee-shifting provision similar to NRCP 68(f)(1)(B), it was inapplicable under the circumstances presented here because Franco and not Real requested the trial de novo, and therefore, the fee shifting provision would not have prevented an award of attorney fees and costs in favor of Real given that he was the non-requesting party. See NSTR 27(b)(2); NAR 20(b)(2).

⁹Insofar as Franco 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: Veronica M. Barisich, District Judge
Eleissa C. Lavelle, Settlement Judge
Hansen & Hansen, LLC
Price Beckstrom, PLLC
Eighth District Court Clerk