IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FIDELIS HOLDINGS, LLC, D/B/A PISOS DISPENSARY, A DOMESTIC LIMITED-LIABILITY COMPANY,
Appellant,
vs.
BENJAMIN CRUMEDY, AN INDIVIDUAL,
Respondent.

No. 88117-COA

ORDER OF AFFIRMANCE

Fidelis Holdings, LLC, dba Pisos Dispensary (Fidelis), appeals from an order denying an award of attorney fees. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

In 2018, an off-duty security guard left Pisos Dispensary and became involved in a dispute with respondent Benjamin Crumedy, who had left the store about a half hour prior.[1] The security guard then punched Crumedy in the face. Crumedy sued Fidelis asserting five causes of action: Fidelis (1) failed to properly maintain the premises; (2) failed to warn of the dangerous conditions that existed on the premises; (3) failed to provide proper and adequate security on the premises; (4) negligently hired, trained, and supervised the security guard; and (5) was liable under a respondeat superior theory of liability.

Fidelis revealed in discovery that the security guard had left his shift approximately five minutes before he punched Crumedy and the battery happened just off of dispensary property. Using that information and other disclosures produced during discovery, Fidelis moved for

[1]We recount the facts only as necessary for our disposition.

summary judgment. The district court granted the motion, finding that Crumedy presented no evidence to support his claims. Crumedy appealed that order, and this court affirmed. *See Crumedy v. Fidelis Holdings, LLC*, No. 84733-COA, 2023 WL 5286971 (Nev. Ct. App. Aug. 16, 2023) (Order of Affirmance).

Fidelis also moved for attorney fees under NRS 18.010(2)(b). The district court held a hearing and denied the motion because in granting summary judgment, the court did not make a finding that the lawsuit was vexatious.[2] Fidelis sought rehearing, and again, the district court denied the motion for attorney fees because the original summary judgment order did not find the lawsuit vexatious. The district court did not make any factual findings in either order as to whether Crumedy unreasonably brought or maintained the lawsuit or had a harassing intent.

Fidelis appealed that denial to this court, and we reversed and remanded because the district court applied the incorrect legal standard, so we could not determine whether the lawsuit was unreasonably brought or maintained. *Fidelis Holdings, LLC v. Crumedy*, No. 85512-COA, 2023 WL 5287152, *2 (Nev. Ct. App. Aug. 16, 2023) (Order of Reversal and Remand). We remanded and the district court subsequently found that there was substantial evidence that Crumedy reasonably brought and maintained his lawsuit, and thus, Fidelis was not entitled to attorney fees under NRS 18.010(2)(b).

Fidelis now appeals from that order asserting that the district court abused its discretion when it erroneously found that Crumedy reasonably brought and maintained his lawsuit. Fidelis presents two

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[2]Senior Judge Crockett denied the motion for attorney fees but he was not the author of the original order granting summary judgment.

arguments. First, it contends that discovery revealed that the security guard was not on duty during the battery and the incident happened off dispensary property, leaving no possibility for respondeat superior liability—meaning that Crumedy unreasonably maintained the lawsuit. Second, Fidelis argues that the district court violated the law-of-the-case doctrine by denying attorney fees after this court affirmed the order granting summary judgment, which concluded that Crumedy presented no evidence to support his respondeat superior liability claim.

Crumedy responds that despite summary judgment, he did not unreasonably bring or maintain his lawsuit because a security guard from the dispensary battered him on or near the dispensary's property, and that there were alternative theories that could still establish a triable issue as to respondeat superior liability. Further, he counters that the law-of-the-case doctrine does not apply here because this court did not resolve the issue of whether NRS 18.010(2)(b) supported an award of attorney fees.

The district court did not abuse its discretion in denying an award of attorney fees

The district court's decision of whether to award attorney fees is within its discretion and will not be disturbed on appeal absent a manifest abuse of discretion. *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018). NRS 18.010(2)(b) allows the district court to award attorney fees to a prevailing party "when the court finds that the claim, counterclaim . . . or defense of the opposing party was brought or maintained without reasonable grounds or to harass the prevailing party." "For the purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Capanna*, 134 Nev. at 895, 432 P.3d at 734 (internal quotation marks omitted). If the court awards attorney fees under NRS 18.010(2)(b), then it must make specific findings that the litigation was

unreasonable or meant to harass. *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 294 (Ct. App. 2023). However, a district court need not make specific findings when it denies a motion for attorney fees. *Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P.3d 326, 330 n.1 (2013).

Generally, unreasonable[3] grounds require extreme conditions or bad faith. *See, e.g., Capanna*, 134 Nev. at 895-96, 432 P.3d at 734 (finding unreasonable grounds where a party's own witness contradicted its case, and the party still presented that witness during trial); *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995-96, 860 P.2d 720, 724-25 (1993) (concluding that the party provided no support for its allegations and also made intentionally false allegations during litigation). Further, a successful summary judgment motion does not necessarily entail an award of attorney fees under NRS 18.010(2)(b). *See Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 580-81, 427 P.3d 104, 112-13 (2018) (holding that a party that wins a summary judgment motion is not automatically awarded attorney fees but rather there must be additional facts showing that the suit was brought or maintained upon unreasonable grounds).

Here, although the district court did not make detailed findings,[4] there is evidence in the record showing that Crumedy did not

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[3]The caselaw uses the terms "frivolous" and "unreasonable" interchangeably for the purposes of NRS 18.010(2)(b). *See Capanna*, 134 Nev. at 895, 432 P.3d at 734 (using the term "frivolous"); *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 294 (using the term "unreasonable").

[4]Because a denial of attorney fees under NRS 18.010(2)(b) need not require the district court to make any specific findings, *Stubbs*, 129 Nev. at 152 n.1, 297 P.3d at 330 n.1, the findings in the district court's order are sufficient.

unreasonably bring or maintain his lawsuit against Fidelis. Crumedy had a reasonable basis to bring suit after a security guard from the dispensary punched him on what appeared to be dispensary property during an argument that was initiated by the security guard about an issue involving the dispensary. Although discovery revealed that the security guard was not on duty and was off-property, Crumedy argued that a trier of fact could find that the security guard was working in Fidelis's interest, which could be the basis for finding respondeat superior liability despite the guard being off duty. That theory conforms with Nevada caselaw. *See Evans v. Sw. Gas Corp.*, 108 Nev. 1002, 1006, 842 P.2d 719, 721 (1992) *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (affirming a finding of respondeat superior liability because an off-shift technician was still promoting his employer's interest by being on call); *see also Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996) (affirming respondeat superior liability could exist where a security guard would respond to emergencies despite being off shift). Thus, the district court did not abuse its discretion when it found that Crumedy reasonably brought and maintained his lawsuit.

The law-of-the-case doctrine is inapplicable in this appeal

The law-of-the-case doctrine prevents a party from relitigating an issue already decided by a prior court. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (explaining that, under the law-of-the-case doctrine, a court generally cannot reconsider questions decided by the court in an earlier phase); *see also Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.").

Our order affirming summary judgment did not consider whether Crumedy unreasonably brought or maintained his lawsuit for the purposes of NRS 18.010(2)(b). *See Crumedy*, No. 84733-COA, 2023 WL 5286971, *3. Further, our order reversing and remanding the denial of attorney fees was based upon the district court's failure to apply the correct standard under NRS 18.010(2)(b). *Fidelis Holdings, LLC*, No. 85512-COA, 2023 WL 5287152, *2. Thus, we have not previously decided whether the district court abused its discretion when determining Crumedy did not unreasonably bring or maintain his lawsuit. Therefore, the law-of-the-case doctrine does not apply in this instance and neither of Fidelis's arguments warrant relief.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Clark Hill PLLC
Eric Blank Injury Attorneys
Eighth District Court Clerk