IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SMART ADVERTISING, INC., A NEVADA CORPORATION; HAMID JALALI, INDIVIDUALLY; AND RAMIN JALALI, INDIVIDUALLY,
Appellants/Cross-Respondents,
vs.
JAN BRUNER, AN INDIVIDUAL,
Respondent/Cross-Appellant.

No. 87384-COA

ORDER OF AFFIRMANCE

Smart Advertising, Inc., Hamid Jalali, and Ramin Jalali appeal from a district court judgment and post-judgment order awarding attorney fees and costs in a breach of contract action. Jan Bruner cross-appeals from the post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Bruner owned a commercial property located in Las Vegas.[1] In October 2015, she entered into a lease agreement with Smart Advertising, a printing company owned and operated by the Jalalis. Pursuant to that lease agreement, Smart Advertising was to pay $3,200 per month in rent for a five-year term ending in October 2020, and Bruner would retain $5,600 in rent as a security deposit. The Jalalis also signed a personal guarantee associated with the tenancy that was attached as an exhibit to the lease agreement.

In late May 2020, Hamid emailed Bruner's property manager, Renea Crosta, claiming that Smart Advertising was suffering financial difficulties due to the COVID-19 pandemic. Hamid requested to use the $5,600

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

security deposit for the May and June rent, and further noted that the company would move out of the property by the end of June. Believing that Smart Advertising was going out of business, Bruner had Crosta agree via email to allow the company to use the deposit for the last months' rent. Smart Advertising interpreted these communications as releasing them from their contractual obligations, so they vacated the property by the end of June 2020. However, Smart Advertising did not go out of business and instead relocated to another office down the road.

After learning that the company had stayed in business and relocated, Bruner sued Smart Advertising for breach of the commercial lease and sued the Jalalis individually to enforce the guarantee. In their answer, Smart Advertising and the Jalalis (collectively, Smart Advertising), admitted that the lease agreement was in writing and contained the following agreed-upon terms: the five-year lease ran from October 2015 through October 2020; the monthly payment amount was $3,200; the Jalalis had personally guaranteed the lease; and Bruner was holding $5,600 in rent as a security deposit.

Smart Advertising also filed a cross-complaint against Bruner as well as a third-party complaint against Crosta. In both their cross-complaint and their third-party complaint, Smart Advertising affirmatively alleged that the lease agreement was in writing. However, Smart Advertising alleged that a "new contract" or "contract modification" had been created by the parties' subsequent email exchanges. And because Smart Advertising had fully satisfied their lease obligations under the new or modified contract, Smart

Advertising claimed Bruner was liable for breach of contract and breach of the covenant of good faith and fair dealing.[2]

In April 2023, Smart Advertising moved for summary judgment on Bruner's claims and attached to that motion a "true and correct copy" of the original lease agreement and personal guarantee. The district court denied that motion. Meanwhile, third-party defendant Crosta also moved for summary judgment. The district court granted Crosta's motion, removing her as a party from the case.

In July 2023, the district court issued an order setting a jury trial for August 14 and directing the remaining parties to submit their trial exhibits by 4:00 p.m. on August 8. However, neither Bruner nor Smart Advertising submitted timely trial exhibits as ordered. Thereafter, on the first day of trial, the district court conducted a hearing to address the parties' noncompliance with the court's order. The district court found that neither party had provided timely, compliant exhibits to the court pursuant to the court's pretrial order and, thus, neither party could use any documentary exhibits at trial.[3] Nevertheless, the court allowed the parties to present oral testimony regarding the lease agreement and the emails.

The matter then proceeded to a four-day jury trial. During their opening statement, Smart Advertising acknowledged the existence of the

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[2]In their third-party complaint, Smart Advertising alleged that Crosta falsely represented that they had been released from their contract and was thus liable for negligent misrepresentation, contribution, and indemnity.

[3]Neither party argues on appeal that this sanction was an abuse of discretion. Thus, we need not address whether this was a proper exercise of the district court's authority. *See Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

written lease agreement, asserting that Bruner "took those two months of rent of . . . May and June as a consideration for early termination of the rental lease agreement" and that "the evidence will show that the lease was terminated based on the understanding of the parties' mutual agreement."

During the evidentiary phase of the trial, both Bruner and Smart Advertising introduced testimony confirming the existence of the written lease agreement and its material terms. Bruner and Crosta both testified as to the rent and security deposit amounts contained in the written lease. While Bruner and Crosta both acknowledged that they allowed Smart Advertising to use the security deposit for the May and June 2020 rent payments, they both asserted that the lease agreement had never been terminated. In response, Smart Advertising called their treasurer, Ethan Mesbah, who testified that Smart Advertising was paying under the lease for April and May, but that Crosta's emails allowed the company to terminate the lease early.

On the morning of the fourth day of trial, Smart Advertising moved for a directed verdict on multiple grounds. As relevant here, Smart Advertising argued that the statute of frauds and the best evidence rule required Bruner to enter the original contract into evidence at trial, and that the failure to do so entitled Smart Advertising to judgment as a matter of law. The district court found that both parties were at fault for the lack of trial exhibits and that there were no genuine statute of frauds or best evidence rule issues because each party had equal opportunities to assert the terms of the underlying document through witness testimony. The district court further acknowledged that the parties "have agreed that the lease says what the lease says." Thus, the district court denied Smart Advertising's motion.

In closing argument, Smart Advertising made several arguments premised on the existence of the written contract, arguing again that Bruner had released them from the original agreement. Neither party noted in their closing arguments why the trial proceeded without exhibits and the jury

instructions similarly did not instruct the jury that the lack of such evidence had any legal significance to the case. After deliberating, the jury returned a verdict for Bruner and against Smart Advertising in the amount of $12,800. Based on the personal guarantee, the jury also found the Jalalis jointly and severally liable with Smart Advertising for the same amount.

Following trial, Bruner sought $115,616.50 in post-judgment attorney fees under the attorney fee provisions in the lease and guarantee and under NRS 18.010(2)(a) and (b). Bruner attached signed copies of the lease and guarantee to that motion. Although she did not include an affidavit authenticating those documents, the attorney fee provisions included in her attachments were identical to those contained elsewhere in the record, including as attached to Smart Advertising's motion for summary judgment.

Smart Advertising opposed Bruner's attorney fees motion, arguing that the contract could not support an award of attorney fees because it was not authentic and had not been admitted into evidence at trial. The district court held a hearing on the motion for attorney fees, and thereafter found that the attorney fee provisions in the lease and guarantee controlled and "narrowly circumscribe[d]" the fees that could be awarded. The court then reviewed the itemized billing statements and *Brunzell*[4] affidavit that Bruner had submitted in support of her fee request, "carefully considered the *Brunzell* factors," and ultimately awarded Bruner $56,500.50 in attorney fees.

Smart Advertising timely appealed and Bruner timely cross-appealed. On appeal, Smart Advertising contends that the district court erred in denying their motion for a directed verdict. Smart Advertising also challenges the award of attorney fees, arguing that the district court erroneously relied on the unadmitted, unauthenticated lease and guarantee to

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[4]*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

award those fees.[5] In her cross-appeal, Bruner argues that the district court erred in its calculation of attorney fees. Because the district court did not err in denying the motion for a directed verdict and granting the motion for attorney fees at the amount awarded, we affirm.

The district court did not err in denying the motion for a directed verdict

Smart Advertising argues that the district court erred in denying its motion for a directed verdict because the district court's order precluding the parties from using documentary exhibits necessarily prevented Bruner from being able to prove her case under the statute of frauds and the best evidence rule. In response, Bruner contends that she complied with the statute of frauds and that the best evidence rule was inapplicable. We agree with Bruner.

Pursuant to NRCP 50(a), judgment as a matter of law[6] may be granted on a claim or defense "[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue" and the claim cannot otherwise survive without a favorable finding on that issue. This court reviews an order under NRCP 50(a) de novo. *Nelson v. Heer*, 123 Nev. 217, 223, 163 P.3d 420, 425 (2007). "In reviewing a ruling for or against a directed verdict, this court applies the same standard as the trial court, viewing the evidence in the light most favorable to the party against whom the

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[5]Smart Advertising also appealed the district court's orders granting in part Crosta's motion to dismiss and strike and the district court's order granting Crosta's motion for summary judgment. However, the Nevada Supreme Court dismissed this portion of the appeal against respondent Crosta pursuant to the parties' settlement.

[6]Judgment as a matter of law is synonymous with a directed verdict for purposes of NRCP 50(a). *Bliss v. DePrang*, 81 Nev. 599, 601, 407 P.2d 726, 727 (1965).

motion is made." *Land Baron Invs., Inc. v. Bonnie Springs Fam. Ltd. P'ship*, 131 Nev. 686, 693, 356 P.3d 511, 517 (2015) (internal quotation marks omitted).

Both parties agree that the lease and guarantee were governed by the statute of frauds. *See* NRS 111.210(1) (stating that contracts for a lease longer than one year are void unless they are in writing); *see also* NRS 111.220(2) (stating that "[e]very special promise to answer for the debt, default or miscarriage of another" is void unless in writing). Generally, to comply with the statute of frauds, a writing must be signed by the party to be bound and state with reasonable certainty: (1) "[e]ach party to the contract," (2) the "subject matter to which the contract relates," and (3) "[t]he terms and conditions of all the promises constituting the contract and by whom the promises are made." *Wiley v. Cook*, 94 Nev. 558, 563-64, 583 P.2d 1076, 1079 (1978) (internal quotation marks omitted).

Here, the existence of a written contract and the material terms of that contract were not in dispute at trial because Smart Advertising conceded in their answer and affirmatively alleged in both their cross-complaint and third-party complaint that they "entered into a *written lease*" and that the lease was guaranteed by the Jalalis. (Emphasis added.) Additionally, the plain language of the statute of frauds does not require that the writings be produced at trial, only that the contract be in writing, which it undisputedly was. *See* NRS 111.210(1); NRS 111.220(2). In addition to the concessions in the pleadings that the contract was in writing, the testimony offered by both parties at trial confirmed the same. The simple fact that the lease and guarantee were not admitted into evidence at trial did not alone render those documents non-compliant with the statute of frauds or preclude testimonial evidence about the existence of those documents. *See Khan v. Bakhsh*, 129 Nev. 554, 557, 306 P.3d 411, 413 (2013) (concluding that where a written contract was lost or destroyed prior to trial, the document's "loss or

destruction [did] not render it 'unwritten' and the evidence of its existence and terms barred by the statute of frauds").

The material terms of the contract were also undisputedly in writing. In their answer, Smart Advertising admitted the lease was for a five-year term that expired in October 2020, the lease was personally guaranteed by the Jalalis, the lease required monthly rent payments of $3,200, and that Bruner was holding a $5,600 security deposit. Further, at trial, the witnesses' testimonies provided a basis from which the jury could find that a written agreement existed between the parties, and that Smart Advertising had agreed to pay Bruner $3,200 a month in rent for five years, without the need to admit those documents into evidence. Thus, the district court did not err in denying Smart Advertising's motion for a directed verdict pursuant to the statute of frauds.

Smart Advertising's arguments concerning the best evidence rule are similarly unpersuasive. The best evidence rule states, "[t]o prove the content of a writing, . . . the original writing . . . is required, except as otherwise provided in this title." NRS 52.235. The supreme court has held that "[t]he best evidence rule requires production of an original document where the actual contents of that document are at issue and sought to be proved." *Young v. Nev. Title Co.*, 103 Nev. 436, 440, 744 P.2d 902, 904 (1987); *see also* 2 *McCormick on Evidence* § 243.1 (8th ed. 2020) (stating "the purpose [of the best evidence rule] is to secure the most reliable information as to the contents of documents, *when those terms are disputed*" (emphasis added)).

Here, the material terms of the written lease agreement and guarantee were not at issue because those terms were not in dispute. Rather, the parties' disagreement involved whether Crosta's subsequent emails released Smart Advertising from their obligations under the written lease agreement and guarantee. Because the material terms of the lease and guarantee were not in dispute, Bruner was not required to introduce the

original lease agreement and guarantee into evidence. Thus, the district court did not err in denying Smart Advertising's motion for a directed verdict pursuant to the best evidence rule.[7]

The district court did not err in granting Bruner's motion for attorney fees pursuant to the lease

Smart Advertising next argues that the district court's exclusion of the lease and guarantee at trial precluded the use of those documents for all purposes, including as a basis for awarding Bruner post-judgment attorney fees. Smart Advertising further argues that the lease attached to Bruner's motion was not authenticated and that there are inconsistencies between the copies of the lease elsewhere in the record. Bruner responds that the lease was authenticated in prior motions before the district court and that the only differences in the "versions" of the lease were minor. We conclude that the district court could properly rely on the lease and guarantee as a basis to award attorney fees and that any potential error in doing so was harmless.

This court reviews an award of attorney fees for an abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *LVMPD v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015). The district court generally may not award attorney fees absent authority

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[7]Smart Advertising also raises a question regarding the lease's authenticity because "several versions" of the lease appear in the record. However, Smart Advertising does not argue or demonstrate that these versions differ in any meaningful way. Further, Smart Advertising never argued in their motion for a directed verdict that the lease was inauthentic, and this argument is inconsistent with their motion for summary judgment where they authenticated a copy of the lease. Thus, we reject this argument. *See Dermody v. City of Reno*, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997) ("Parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks omitted)).

under a statute, rule, or contract. *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 878 (2014); *see also* NRS 18.010(1) ("The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.").

Here, Smart Advertising points to no authority to support its argument that when the court sanctioned the parties by excluding the lease and guarantee from trial, the court could not subsequently consider those documents for a different purpose after the trial. To the contrary, a district court has discretion in tailoring a sanction and did so in this case by restricting the parties from using the documents only "*for purposes of trial.*" (Emphasis added.) *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (finding that district courts have "inherent equitable powers" to issue sanctions for abusive litigation practices (internal quotation marks omitted)); *see also* EDCR 2.69(c)(5) (providing that counsel's failure to submit exhibits to the court at calendar call "shall result in . . . [a]ny other appropriate remedy or sanction").

Further, NRCP 54(d)(2), which governs motions for attorney fees, does not require the movant to authenticate a contract when the agreement is used as authority to award attorney fees. Rather, a motion for attorney fees must be supported by: counsel's affidavit that the fees were "actually and necessarily incurred" and "reasonable," documentation concerning the amount of fees claimed, and points and authorities addressing the relevant factors. NRCP 54(d)(2)(B)(v). Smart Advertising does not challenge Bruner's compliance with these requirements on appeal. In any event, we note that the lease and guarantee were authenticated elsewhere in the record by Smart Advertising and that the relevant attorney fee provisions in all copies of those documents were identical. Therefore, Smart Advertising cannot establish that the district court abused its discretion when it relied on the lease and guarantee as a basis to award attorney fees.

The district court did not abuse its discretion in its calculation of attorney fees

In her cross-appeal, Bruner argues that the district court abused its discretion in awarding $56,500.50 in attorney fees rather than $115,616.50 as requested. Additionally, Bruner contends that the district court erroneously "eliminated" fees incurred, that it did not "show [its] work," and that it *sua sponte* denied fees that were unchallenged by Smart Advertising.[8] In response, Smart Advertising argues that the district court reduced the requested fees by determining what fees were unreasonable or unrelated to the contract. Under the circumstances of this case, we cannot say that the district court abused its discretion in determining the amount of Bruner's attorney fee award.

This court "review[s] an award of attorney fees for an abuse of discretion and will affirm an award that is supported by substantial evidence." *Logan*, 131 Nev. at 266, 350 P.3d at 1143 (internal citation omitted). "An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). As Bruner acknowledges in her cross-appeal, Article 25 of the lease agreement and Section 9 of the personal guarantee both require that an award of attorney fees be "reasonable." In *Brunzell v. Golden Gate National Bank*, 85

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[8]Bruner also argues that the district court erred in determining that the attorney fee provisions in the lease and guarantee "narrowly circumscribed" what may be awarded. However, Bruner does not explain how the district court's determination was erroneous or how this interpretation of the contracts affected the amount of the award. Thus, Bruner is not entitled to relief on this claim. *See Senjab*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021).

To the extent Bruner suggests the court failed to award her fees relating to Smart Advertising's third-party claims against Crosta due to its erroneously narrow interpretation of the contracts, Bruner is not entitled to relief on this claim. Even if these fees were awardable, substantial evidence supports the district court's factual finding that the third-party claims did not involve Bruner and were not directly related to the claims between Bruner and Smart Advertising, and therefore were not reasonable.

Nev. 345, 349, 455 P.2d 31, 33 (1969), the supreme court identified four factors "to be considered in determining the reasonable value of an attorney's services." Those factors include (1) the quality of the advocate; (2) the character of the work; (3) the work actually performed; and (4) the result. *Id.*

Here, the district court indicated that it "carefully considered the *Brunzell* factors" and made specific findings as to the work performed. No party challenges the district court using *Brunzell* to assess reasonableness. Additionally, we note that Bruner did not provide a transcript of the hearing on the motion for attorney fees to this court on appeal, and thus we presume that the arguments at the hearing supported the district court's order. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that when a party "fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Accordingly, we cannot say that the district court abused its discretion in the manner in which it assessed the reasonableness of the attorney fees incurred and reducing the award accordingly.

Although Bruner contends that the district court did not "show [its] work," the district court sufficiently explained its calculation of attorney fees. While the court's explanation was not elaborate, it was comprehensible. *Cf. Las Vegas Review-Journal*, 138 Nev., Adv. Op. 80, 521 P.3d at 1174 (holding a district court's statement that its award was based on its "review of the documentation" and its "experience in insurance litigation" was insufficient to explain its nearly 40% reduction); *see also Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P.3d 326, 330 n.1 (2013) (noting that the district court is not required to "articulate [specific] findings as to why attorney fees are not warranted").

Bruner's contention that the district court abused its discretion by *sua sponte* addressing the reasonableness of the fees sought is also without merit. As noted above, the attorney fee provisions in the lease and guarantee

both contained a reasonableness requirement. A district court is not limited to reviewing only those fees challenged when determining a reasonable fee award; rather, "[t]he value to be placed on the services rendered by counsel lies in the exercise of sound discretion by the trier of the facts," *Brunzell*, 85 Nev. at 350, 455 P.2d at 33-34, and a district court's discretion in determining a reasonable fee "is tempered only by reason and fairness," *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005) (internal quotation marks omitted).

While other courts might have reached a different conclusion in evaluating the reasonableness of an attorney fee award, we cannot say that the district court abused its discretion when it calculated attorney fees in this case.[9] Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Joanna Kishner, District Judge
Black & Wadhams
Heidari Law Group, PC
Brian K. Berman
Eighth District Court Clerk

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[9]Insofar as the parties have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.