IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HALCYON SILVER, LLC D/B/A METROPOLITAN AUTO BODY & PAINT, A NEVADA CORPORATION; AND CHARLES FOX, AN INDIVIDUAL,
Appellants,
vs.
HOLLIS EVELYNMOE,
Respondent.

No. 88631-COA

FILED

JUN 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

Halcyon Silver, LLC, d/b/a Metropolitan Auto Body & Paint (Halcyon), and Charles Fox appeal from a district court order awarding attorney fees. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

The underlying case was for a breach of contract in relation to the repair of respondent Hollis Evelynmoe's vehicle. Judgment was entered in favor of Evelynmoe and against Halcyon and Fox on February 3, 2022. Halcyon and Fox appealed that judgment, and this court entered an order that affirmed in part the district court's judgment in favor of Evelynmoe but reversed in part and remanded the matter to the district court to recalculate damages. *See Halcyon Silver, LLC v. Evelynmoe*, No. 84299-COA, 2023 WL 2661524 (Nev. Ct. App. Mar. 24, 2023) (Order Affirming in Part, Reversing in Part, and Remanding).

On remand, the district court instructed the parties to meet and confer and agree on the amount of the recalculated damages. Subsequently, the court entered a new order on August 8, 2023, that recalculated the

damages, and the total judgment entered in favor of Evelynmoe was $66,832.90.

Thereafter, Evelynmoe moved for attorney fees in the amount of $86,820 for the underlying litigation pursuant to NRCP 11 and NRS 18.010(2)(b), arguing that Halcyon and Fox had maintained a frivolous counterclaim. In opposition, Halcyon and Fox asserted that the motion was not timely filed, as Evelynmoe failed to file a motion for fees within 21 days of service of the notice of entry of the initial judgment. Halcyon and Fox argued, among other things, that the August 8, 2023, order entered on remand did not alter liability and merely corrected the calculation of damages per this court's directive, and thus the time for Evelynmoe to seek attorney fees ran from service of the notice of entry of the initial judgment.

The district court ultimately awarded Evelynmoe attorney fees in the total amount of $85,542.50, with $40,431.25 awarded against Fox, and $45,111.25 against Halcyon. To the extent Halcyon and Fox argued that Evelynmoe's motion was untimely, the court rejected this argument, concluding that the August 8, 2023, order was a final judgment and Evelynmoe timely filed his motion for attorney fees within 21 days of service of the notice of entry of that order. This appeal followed.

"Although the award of attorney fees is generally entrusted to the sound discretion of the district court, when a party's eligibility for a fee award is a matter of statutory interpretation, as is the case here, a question of law is presented, which we review de novo." *In re Estate & Living Tr. of Miller*, 125 Nev. 550, 552-53, 216 P.3d 239, 241 (2009) (citation omitted).

On appeal, Halcyon and Fox first assert that the district court improperly awarded attorney fees to Evelynmoe because his motion was filed beyond NRCP 54(d)(2)(B)(i)'s 21-day deadline after service of notice of entry for the initial February 3, 2022, judgment. They argue the new order and judgment entered upon remand did not restart the 21-day period as it only recalculated damages and did not alter matters of liability, which were already resolved by the initial judgment. Under these circumstances, they contend the motion for fees should have been filed within 21 days from service of notice of entry of the initial judgment, not the judgment entered on remand. Conversely, Evelynmoe contends that a new judgment was required to be entered by the district court following the remand from the prior appeal, and thus, the motion for attorney fees was timely filed from service of notice of entry of the new judgment. Thus, the parties dispute centers on whether the order entering judgment on the recalculated damages amount entered after remand restarted the 21-day period to file a motion for fees. We agree with Halcyon and Fox.

"Because the rules of statutory interpretation apply to Nevada's Rules of Civil Procedure, we interpret unambiguous statutes, including rules of civil procedure, by their plain meaning." *Logan v. Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141-42 (2015) (internal quotations and citations omitted). Under NRCP 54, "[a] claim for attorney fees must be made by motion," and "filed no later than 21 days after written notice of entry of judgment is served . . . . The time for filing the motion may not be extended by the court after it has expired." NRCP 54(d)(2)(A), (B)(i). NRCP 54(a)

provides that judgment, as used in that rule, is defined as "includ[ing] a decree and any order from which an appeal lies."

Here, the initial judgment in Evelynmoe's favor was entered on February 3, 2022, with notice of entry of that judgment served by mail on the same day. Halcyon and Fox appealed that decision, and on appeal, we affirmed the district court's decision to enter judgment in Evelynmoe's favor and only reversed and remanded the initial judgment for the very limited purpose of partially recalculating the damages awarded to Evelynmoe. *See Halcyon Silver*, 2023 WL 2661524, at *9. Critically, the limited nature of our remand did not alter liability or change which party prevailed in the action. *See, e.g., Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) ("A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." (internal quotation marks omitted)); *Dimick v. Dimick*, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996) (stating that generally, an action must have proceeded to final judgment for a party to have prevailed). Under these circumstances, we conclude that the time for Evelynmoe to seek its attorney fees ran from service of notice of entry of the initial, February 3, 2022, judgment, and that the subsequent August 8, 2023, district court decision—which simply entered judgment on the recalculated damages award—did not restart the 21-day period for seeking attorney fees under 54(d). Indeed, this result is required by the plain language of NRCP 54(d), which does not contain any carve out provision that would restart the running of the 21-day time period based on our

limited remand of the February 3 judgment for the partial recalculation of damages.[1]

Here, it is undisputed that Evelynmoe's motion for attorney fees was filed well beyond 21 days from service of notice of entry of the February 3 judgment. And because NRCP 54(d)(2)(A) provides that a district court may decide a motion [for attorney fees] even if an appeal from the final judgment is pending, the fact that Halcyon and Fox appealed the February 3 judgment did not toll or otherwise have any effect on the running of this deadline. *See Lytle v. Sept. Tr. Dated March 23, 1972*, Nos. 76198, 77007, 2020 WL 1033050, at *3 (Nev. Mar. 2, 2020) (Order of Affirmance) (2020) ("NRCP 54(d)(2)(A) allows the court to decide attorney fees under the known facts and despite any pending appeal."). As a result, the time for seeking attorney fees for work performed up to the filing of the appeal from the February 3 judgment had long since expired at the time Evelynmoe filed its August 30, 2023, motion for attorney fees, rendering his motion untimely under NRCP 54(d). We therefore reverse the district court's decision

[1]On this point, NRCP 54 differs from its federal counterpart, Fed.R.Civ.P. 54, as the Advisory Committee Notes to the federal rule anticipate the filing of a new "judgment" following a reversal on appeal and expressly indicates that the entry of such a judgment triggers the running (for a second time) of the time for requesting attorney fees. *See* Fed.R.Civ.P. 54, Advisory Committee Notes, 1993 Amendments ("A new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court or the granting of a motion under Rule 59."). In contrast, neither NRCP 54 or the Advisory Committee Notes to that rule contain any such language.

awarding these fees. *See In re Estate of Miller*, 125 Nev. at 552-53, 216 P.3d at 241.[2]

With regard to the fees awarded against Fox, the district court awarded those fees based on NRS 18.010(2)(a), which allows for the award of attorney fees "[w]hen the prevailing party has not recovered more than $20,000." Here, because Evelynmoe was only awarded $6,750 in damages against Fox, he argues that he should be entitled to those fees. However, this application of the statute was in error because NRS 18.010(2)(a) only contemplates applying the $20,000 threshold against the total amount a prevailing party recovers, not against the amount recovered from each individual party, and Evelynmoe received a total judgment of $66,832.90. Thus, attorney fees could not be awarded pursuant to NRS 18.010(2)(a) since the total judgment against Fox and Halcyon exceeded $20,000. *See Parodi v. Budetti*, 115 Nev. 236, 241-42, 984 P.2d 172, 175-76 (1999) (providing that the total value of a judgment determines the applicability of NRS 18.010(2)(a), and calculating that figure by subtracting the sum of the damages in favor of defendants on their counterclaims from the sum of the

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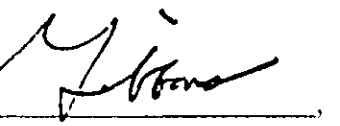
[2]To the extent that the district court awarded Evelynmoe attorney fees after remand, this was also error. Our remand was limited to requiring the district court to recalculate damages; therefore, any post-appeal filings by the parties to comport with this court's order were not frivolous. *Cf.* NRS 18.010(2)(b) (explaining that "[i]t is the intent of the Legislature that the court award attorney fees pursuant to this paragraph . . . to punish for and deter frivolous or vexatious claims and defenses"). Thus, to the extent any post-appeal fees were somehow included in the award of attorney fees to Evelynmoe, the district court also abused its discretion by including those fees. *See In re Estate of Miller*, 125 Nev. at 552-53, 216 P.3d at 241.

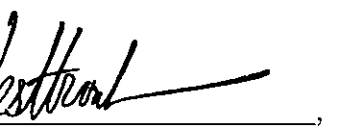
damages in favor of plaintiff on his claims); *Peterson v. Freeman*, 86 Nev. 850, 880, 477 P.2d 876, 855-56 (1970) (reasoning that NRS 18.010(2)(a) was inapplicable because the plaintiffs' joint recovery on their claim exceeded the statutory amount). Therefore, we also reverse the attorney fee award against Fox.

Accordingly, based on the reasoning set forth above, we ORDER the judgment of the district court REVERSED.[3]

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
McAvoy Amaya & Revero, Attorneys
Law Office of S. Don Bennion
Eighth District Court Clerk

[3]Insofar as the parties raise arguments not specifically addressed in this order, we have considered them and conclude they need not be reached given our disposition in this appeal.