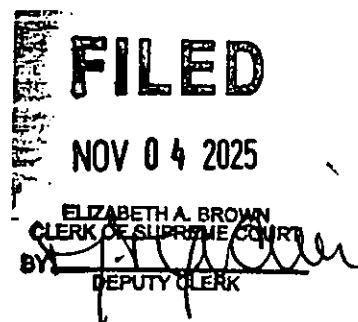


IN THE SUPREME COURT OF THE STATE OF NEVADA

FORTUNET, INC., A NEVADA
CORPORATION,
Appellant,
vs.
JULI ROSTEN, AN INDIVIDUAL,
Respondent.

No. 89395



*ORDER AFFIRMING IN PART, REVERSING IN PART,
VACATING IN PART AND REMANDING*

This is an appeal from a district court order recalculating attorney fees and costs on remand. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Fortunet, Inc.¹ sued multiple defendants, including a former Fortunet employee, Jack Coronel; Coronel's related entities (the Playbook entities); and later Coronel's wife, respondent Juli Rosten, for various tort and contract-based claims. Coronel and the Playbook entities countersued Fortunet. As it relates to this appeal, the district court ultimately granted summary judgment for Rosten, and later awarded Rosten attorney fees incurred from the date Fortunet first involved Rosten in the case.

On appeal, we upheld the district court's conclusion that attorney fees were awardable to Rosten under NRS 18.010(2)(b). *Fortunet*,

¹To maintain consistency with the conventions used in our prior orders in related cases, we refer to FortuNet as "Fortunet" in this order.

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Inc. v. Rosten (Fortunet II), No. 85618, 2024 WL 390133, at *6 (Nev. Jan. 31, 2024) (Order Affirming in Part, Reversing in Part, Vacating in Part, and Remanding). But we reversed as to several categories of attorney fees, costs, and interest awarded by the district court. *Id.* at *4-5. We also concluded that the district court abused its discretion by failing to attempt to apportion the attorney fees and costs among the multiple defendants without adequate findings, and therefore vacated the award and remanded for the district court to make apportionment findings. *Id.* at *5.

On remand, following supplemental briefing and a hearing, the district court entered a revised attorney fees award. In doing so, the district court: (1) subtracted Rosten's bankruptcy attorney fees, appellate attorney fees, interest charged by Rosten's prior attorneys for unpaid attorney fees, and undocumented costs; (2) made findings on why any apportionment other than a 50-50 division between Rosten and Coronel would be impracticable; and (3) applied prejudgment interest under NRS 17.130 to the entire recalculated fees and costs award, commencing from the date when Rosten was first added as a defendant. Fortunet appeals, challenging the district court's apportionment findings and its application of prejudgment interest.

We review awards of attorney fees, costs, and interest for abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015) (costs); *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 916, 193 P.3d 536, 546 (2008) (prejudgment interest); *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353-54, 971 P.2d 383, 386 (1998) (attorney fees). When the interest award raises a legal question, we review the legal question de novo. *Aguilar v. Lucky Cab Co.*, 140 Nev., Adv. Op. 1, 540 P.3d 1064, 1066 (2024).

As to Fortunet's challenge to the district court's apportionment determinations, we conclude that the district court acted within its discretion in concluding that apportionment was impracticable due to the interrelationship of the claims against Rosten and the Coronel defendants. *Mayfield v. Koroghli*, 124 Nev. 343, 353, 184 P.3d 362, 369 (2008) ("[I]n an action in which a plaintiff pursues claims based on the same factual circumstance against multiple defendants, it is within the district court's discretion to determine whether apportionment is rendered impracticable by the interrelationship of the claims against the multiple defendants."). And before reaching that conclusion on remand, the district court made specific findings on why apportionment other than an equal division between Rosten and Coronel, during the time range in which Rosten was a defendant, would be impracticable. *Id.* at 353-54, 184 P.3d at 369 (explaining that the district court must "attempt to apportion the [fees and] costs before determining that apportionment is impracticable," and when so attempting, "the district court must make specific findings . . . with regard to the circumstances of the case before it that render apportionment impracticable").

The district court found, among other things, that Fortunet's claims against Coronel and Rosten were interrelated, and that Fortunet's discovery activities and trial presentation of its evidence were common to all Coronel defendants. It also opined on the practical considerations militating against a more specific apportionment, including the 12-year history of the case, the fact that several law firms or lawyers previously representing Rosten were either no longer in business or practicing with the same law firm, and that because Coronel and Rosten were husband and wife, the precise allocation of the fees to which Coronel and Rosten were

collectively entitled was inconsequential. The district court explained that it had made a reasonable attempt to make a particularized calculation, but could not do so without unreasonable burden. Substantial evidence supports the district court's findings, and we therefore affirm this part of the district court's order.

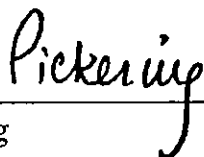
As to Fortunet's challenge to the prejudgment interest, we agree that the district court erred in applying NRS 17.130 to the attorney fee award under NRS 18.010(2)(b). "Prejudgment interest is viewed as compensation for use by defendant of money to which plaintiff is entitled from the time the cause of action accrues until the time of judgment; it is not designed as a penalty." *Ramada Inns, Inc. v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985). Prejudgment interest therefore does not apply to attorney fees awarded under NRS 18.010(2)(b), given that the purpose of such an award is to "punish for . . . frivolous or vexatious claims." Additionally, we have prohibited application of prejudgment interest to awards not ascertainable or calculable until entry of judgment. *See, e.g., M.C. Multi-Fam. Dev., L.L.C.*, 124 Nev. at 917, 193 P.3d at 547; *Jeaness v. Besnilian*, 101 Nev. 536, 541, 706 P.2d 143, 147 (1985). Rosten's entitlement to any attorney fees under NRS 18.010(2)(b), and the amount or reasonableness thereof, was not ascertainable before the entry of judgment. *See, e.g.,* NRS 18.010(2) (stating that a district court "may make an allowance" of NRS 18.010(2)(b) attorney fees to a prevailing party). The district court therefore erred in applying prejudgment interest to the attorney fees awarded to Rosten under NRS 18.010(2)(b), and we reverse this part of the district court's order.

Finally, as to the district court's award of prejudgment interest on the recalculated award of costs, the court erred in awarding prejudgment

interest on the entire cost award beginning from the date Rosten was added as a defendant. Although NRS 17.130 permits prejudgment interest on an award of costs, that “interest runs . . . from the time when the costs were incurred.” *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006). Accordingly, “the recovering party must prove when the costs were incurred and, if the party fails to do so, interest on the costs is awarded only from date of the judgment.” *Id.* The district court instead awarded interest on the costs from the date that Rosten was first added as a defendant. We therefore vacate the part of the order applying prejudgment interest on the cost award and remand for the district court to determine whether Rosten proved when the costs were incurred, and to recalculate prejudgment interest on the costs accordingly.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, and VACATED IN PART, and we REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Pickering


_____, J.
Cadish


_____, J.
Lee

²Insofar as the parties raised arguments not specifically addressed in this order, we have considered them and conclude that they either do not warrant relief or need not be reached given the disposition.

cc: Hon. Timothy C. Williams, District Judge
Hartwell Thalacker, Ltd.
Lex Domus Law
Eighth District Court Clerk