

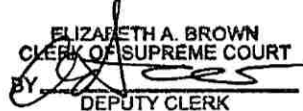
IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN BUSTAMANTE,  
Appellant,  
vs.  
MARVIN OSVALDO MARTIN,  
Respondent.

No. 88862

FILED

FEB 20 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

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

This is an appeal from a district court order awarding attorney fees. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Respondent Marvin O. Martin sued appellant Jonathan Bustamante for damages arising from a head-on car crash. Bustamante made a \$25,000 pretrial offer of judgment. Martin did not accept the offer but offered to accept \$100,000 instead. Though Martin's \$100,000 offer of judgment incorrectly listed nonparties Jeffrey and Herminia Razon as defendants in the text on the second page, the caption on the first page of the offer correctly named Bustamante and included the correct case number, and the first line of the offer stated that the offer was made to Bustamante—the only defendant in the case. Bustamante did not accept the offer. The case proceeded to trial, resulting in a judgment in Martin's favor for \$130,000 in past pain and suffering, \$100,000 in future pain and suffering, and \$42,066.67 in medical specials. The district court also awarded \$57,055.42 in prejudgment interest, making the total judgment \$329,122.09.

Martin moved for attorney fees under NRCP 68(f), which provides for the recovery of fees and costs when an offeree rejects an offer of judgment and fails to obtain a more favorable judgment. When Martin retained his attorneys, he agreed to a 40-percent contingency fee as payment for their services based on the amount recovered at trial. In line with the contingency agreement, the district court awarded Martin \$131,648.84 in attorney fees, which equates to 40 percent of the judgment, inclusive of the already-accrued prejudgment interest of \$57,055.42.

Bustamante appeals from the attorney fee award, first arguing that the offer was ambiguous and open to different interpretations, including that Martin could accept payment in return for a judgment against the Razons. Bustamante thus asserts that Martin is not entitled to fees because his offer of judgment for \$100,000 was invalid or not applicable to Bustamante.

We are not persuaded that the district court erred in concluding that the offer was valid and thus provided a basis on which to award attorney fees. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014) (observing that where an attorney fee “decision implicates a question of law, the appropriate standard of review is *de novo*”). Although Bustamante claims that Martin’s offer was invalid for failing to meet formal requirements aimed at facilitating predictability and fairness, the district court properly determined that the offer satisfied the required formalities because it was unconditional and clearly countered Bustamante’s \$25,000 offer with an unambiguous proposal to accept a \$100,000 judgment. *See Quinlan v. Camden USA, Inc.*, 126 Nev. 311, 314-15, 236 P.3d 613, 615 (2010) (recognizing that because NRCP 68’s fee-shifting mechanism departs from the common law, it is subject to formal requirements aimed at

predictability and fairness, including the requirement that an offer be unconditional and for a sum certain).

In rejecting Bustamante's invalidity argument, the district court reasoned that the offer's language proposing to resolve the case for \$100,000 was not contradictory and the reference to the Razons appeared to be "a typo where [Martin] didn't correct the Defendant's name." We agree that including the nonparties' names was akin to a scrivener's error, which occurs when "the intention of the parties [was] identical at the time of the transaction but the written agreement d[id] not express that intention because of that error." 27 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 70:93 (4th ed. 2020 & Supp. 2025); cf. *Sinha v. Bradley Univ.*, 995 F.3d 568, 575 (7th Cir. 2021) (recognizing that a scrivener's error resembles a clerical error that courts may correct "if it is [an error] of transcription, not of legal knowledge or analysis" (internal quotation marks omitted)); *Desert Valley Contracting, Inc. v. In-Lo Props.*, No. 79751, 2021 WL 818191, at \*2 (March 3, 2021) (Order of Reversal and Remand) (holding that an obvious scrivener's error did not render a contractual provision ambiguous where "[s]trictly construing this language as written would lead to a nonsensical result"). Accordingly, we perceive no reversible error in the district court's conclusion that the offer of judgment was valid because it was apparent on the offer's face that it was directed to Bustamante, the only named defendant in this case.

Bustamante next contends that the district court abused its discretion by awarding an unreasonable amount of fees without articulating its *Beattie*- and *Brunzell*-factor analyses. *Valley Health Sys., LLC v. Murray*, 140 Nev., Adv. Op. 14, 544 P.3d 904, 912 (2024) (reviewing a district court's decision to award attorney fees for an abuse of discretion).

While the district court's order did not expressly address the *Beattie* and *Brunzell* factors, such express findings on each factor, while preferable, are not always necessary. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (*Brunzell*); *Schwartz v. Est. of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642-43 (1994) (*Beattie*). Here, the record shows that, while not expressly outlined in the order, the district court explicitly determined at the hearing that (1) Martin made a valid offer to settle the case for \$100,000; (2) Martin was the prevailing party and received a more favorable judgment than that offered to Bustamante; and (3) the *Beattie* and *Brunzell* factors, after each was addressed by the court, supported an award of attorney fees consistent with the contingency fee agreement. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (listing factors a district court must consider regarding a potential award of attorney fees based on an offer of judgment); *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (listing relevant factors in evaluating whether the amount of fees requested is reasonable); see *Capriati Constr. Corp. v. Yahyavi*, 137 Nev. 675, 680, 498 P.3d 226, 231 (2021) (clarifying that "a district court may award the entire contingency fee as post-offer attorney fees under NRCP 68"). We conclude that substantial evidence supports these determinations, and thus the district court did not abuse its discretion in awarding Martin attorney fees equivalent to 40 percent of the judgment. *Logan*, 131 Nev. at 266-67, 350 P.3d at 1143 (observing that if the district court's exercise of discretion is neither arbitrary nor capricious, we will not disturb an award of attorney fees under NRCP 68 on appeal).

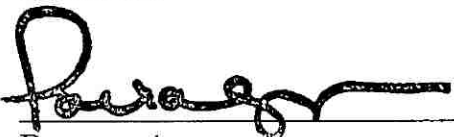
Bustamante also argues, however, that including prejudgment interest in the attorney fee calculus was an abuse of discretion. Martin


conceded as much here by failing to meaningfully dispute Bustamante's argument that the award should have been based on 40 percent of the damages award alone exclusive of the prejudgment interest added to the judgment. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (recognizing that failure to substantively dispute an argument may be treated as a confession that the argument is meritorious). Thus, we reverse the portion of the district court's order awarding 40 percent of the \$57,055.42 in accrued prejudgment interest.


Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Lee

PICKERING, J., with whom STIGLICH, J. agrees, dissenting:

This is a simple case. Martin made a defective offer of judgment, which Bustamante did not accept. Under NRCP 68(e), unaccepted offers are deemed “rejected by the offeree and [ ] withdrawn by the offeror.” Rule 68 imposes a penalty against a party who rejects a more favorable offer of judgment. NRCP 68(f); *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 419, 132 P.3d 1022, 1028 (2006). Rule 68 also derogates the common law because it provides a mechanism for shifting attorney fees to the opponent—something the common law does not allow. *See Quinlan v. Camden USA, Inc.*, 126 Nev. 311, 314, 236 P.3d 613, 615 (2010).

The law narrowly construes statutes that impose penalties or that derogate the common law, and Rule 68 does both. *See Coleman v. State*, 134 Nev. 218, 221, 416 P.3d 238, 241 (2018); *Albios*, 122 Nev. at 431, 132 P.3d at 1036-37. In addition, Rule 68 was meant to encourage an early end to litigation, not to perpetuate its continuation through years of post-judgment litigation below and on appeal over shifting attorney fees and costs. *See Schwartz v. Est. of Greenspun*, 110 Nev. 1042, 1048, 881 P.2d 638, 642 (1994). Consistent with these well-established principles, I would hold that an offeror cannot enforce Rule 68’s penalty of attorney fees for rejecting an offer of judgment unless that offer was in the proper form. *Cf. Quinlan*, 126 Nev. at 314, 236 P.3d at 615.

Here, Martin’s offer named two individuals who were not a party to this case, and though the offer was served on Bustamante’s attorney, it is uncertain whether that service was procedurally compliant. Martin nevertheless argues, and the district court found, that it was a valid offer because the parties understood its intended recipient and it was properly served on Bustamante’s attorney. As support, Martin cites



cc: Hon. Anna C. Albertson, Judge  
Stephen E. Haberfeld, Settlement Judge  
Barron & Pruitt, LLP  
De Castroverde Law Group  
Eighth District Court Clerk