IN THE SUPREME COURT OF THE STATE OF NEVADA

CONTINENTAL FIRE SPRINKLER COMPANY, A NEVADA COMPANY,
Appellant,
vs.
TUTOR-SALIBA CORPORATION, A CALIFORNIA CORPORATION,
Respondent.

No. 89550

FILED

APR 15 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 district court postjudgment orders awarding attorney fees, costs, and prejudgment interest in a contract action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Respondent Tutor-Saliba Corporation (TSC) subcontracted with appellant Continental Fire Sprinkler Company to install a fire suppression sprinkler system at the Encore Hotel & Casino. The subcontract had several indemnification provisions that provided for TSC's recovery of attorney fees and costs in the event Continental's work was defective and TSC was required to take steps to cure the defects. Continental entered into an agreement with Travelers Insurance whereby Travelers issued a surety bond with respect to Continental's obligations under the subcontract. After a portion of the sprinkler system leaked, TSC hired another subcontractor to complete the inspection and remediation project, and the parties to this appeal litigated whether Continental's installation work breached the subcontract over a 48-day bench trial with

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the Honorable Judge Allf presiding. Although TSC sought roughly $5 million in damages, the district court awarded TSC only $240,000 in damages but also awarded Continental almost $1 million in fees based on a rejected offer of judgment. We reversed. *Tutor-Saliba Corp. v. Cont'l Fire Sprinkler Co.*, No 81822, 2023 WL 5762966 (Nev. Sept. 6, 2023) (Order of Reversal and Remand). On remand, the district court, presided over by the Honorable Judge Hardy, granted TSC $5 million in damages based on Continental's breach of the subcontract. We affirmed that judgment in *Continental Fire Sprinkler Co. v. Tutor-Saliba Corp.*, No. 88983, 2026 WL 89874 (Nev. Jan. 12, 2026) (Order of Affirmance).

TSC filed a verified memorandum of costs and disbursements, along with a declaration from counsel attesting that the itemized costs and disbursements were reasonable and necessary costs of the litigation. The costs requested included, in relevant part:

> (1) $9,823.02 for vendor fees for Advanced Discovery LLC;
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> (2) $111,378 for court reporting fees for Esquire Deposition Solutions;
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> (3) $1,596 for court reporting fees for Gallagher Reporting & Video;
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> (4) $147,094 for vendor fees for Holo Discovery;
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> (5) $1,183,183 for expert witness fees for Madsen, Kneppers & Associates (MKA);
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> (6) $10,918 for vendor fees for Quivx; and
>
> (7) $103,802 for expert witness fees for Southwest Consulting Group.

Continental moved to retax the costs, which the district court granted in part and denied in part. The court found that all TSC's claimed costs were reasonable and necessary except MKA's expert fees, which it reduced from

the requested $1,183,183 to $403,000, and Southwest Consulting Group's expert fees, which it reduced to $0.

TSC also filed a motion for attorney fees, seeking (1) $3,387,936.00 for fees incurred by Nida & Romyn, P.C. (trial counsel), (2) $1,541,832.85 for Bremer Whyte Brown & O'Meara, LLP (trial counsel), (3) $101,358.59 for Lemons, Grundy & Eisenberg (appellate counsel), and (4) $426,496.50 for Lewis Roca (appellate counsel). TSC also requested prejudgment interest under the subcontract and NRS 99.040, running from when the remediation project was completed through when the district court entered the post-remand judgment.

The district court granted TSC's motion for attorney fees, concluding that fees were permitted under the subcontract and that $5,457,623.94 in fees was reasonable under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). The district court also awarded TSC $4,139,197.37 in prejudgment interest on the post-remand judgment. Continental appeals each award.

The subcontract entitled TSC to recover attorney fees and costs, and Continental waived any argument to the contrary

We generally review an attorney fees award for an abuse of discretion. *Miller v. Jones*, 114 Nev. 1291, 1300, 970 P.2d 571, 577 (1998). But de novo review applies when the award "implicate[s] . . . questions of law, such as in the interpretation of a contract." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

Continental argues that the subcontract did not authorize the award and the provisions relied on by the district court were typical indemnity provisions, not prevailing party provisions. TSC answers that Continental waived any such argument by not raising it in district court, and regardless, the subcontract authorized attorney fees.

We agree with TSC that Continental waived its subcontract-interpretation argument by failing to raise it in district court. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). The reasonableness of attorney fees under *Brunzell* was a separate challenge made by Continental below that did not preserve its subcontract-interpretation argument. Though Continental points to *State Board of Equalization v. Barta*, 124 Nev. 612, 188 P.3d 1092 (2008), to support its waiver-exception argument, Continental fundamentally misreads *Barta*. *Barta* observed that under certain circumstances, a court may consider purely legal and constitutional issues even when raised for the first time on appeal. But *Barta* did not actually apply that exception to the waiver doctrine much less create or endorse a general "purely legal issue" excuse for an appellant's failure to preserve an issue. 124 Nev. at 621 n.24, 188 P.3d at 1098 n.24 ("Although exceptions to the rule of waiver exist for purely legal or constitutional issues, we determine that these exceptions are inapplicable in this case."). And the cases to which *Barta* cited dealt with a constitutional issue or a purely legal issue of statutory interpretation that the courts considered in the interest of judicial economy. *See Nev. Power Co. v. Haggerty*, 115 Nev. 353, 365 n.9, 989 P.2d 870, 877 n.9 (1999) (choosing to address a statutory interpretation argument raised by an amicus curiae "in the interests of judicial economy"); *Desert Chrysler-Plymouth v. Chrysler Corp.*, 95 Nev. 640, 643-44, 600 P.2d 1189, 1190-91 (1979) (addressing a constitutional issue). Neither exception applies here.

In any event, sections 4(c), 4(f), 7.1, 7.2, and 8.5 of the subcontract obligate Continental to pay attorney fees and costs arising from

Continental's breach of the subcontract and TSC's efforts to cure that breach. Continental's breach of contract via its defective work and refusal to remediate that work—issues already litigated and resolved in Docket No. 88983—directly caused TSC's hiring of other subcontractors, necessitating this litigation to recover those costs. Thus, the district court properly concluded that the subcontract entitled TSC to attorney fees and costs arising from the remediation project.

The district court did not abuse its discretion in awarding attorney fees based on Brunzell

When determining a reasonable amount to award as attorney fees, the district court must consider:

> (1) *the qualities of the advocate:* his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) *the work actually performed by the lawyer:* the skill, time and attention given to the work; (4) *the result:* whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349, 455 P.2d at 33 (emphases added).

Continental argues that the district court failed to adequately apply the *Brunzell* factors to justify the number of attorneys whose fees are included. It contends that hiring four law firms—two for trial and two for appeal—was unnecessary, some rates were excessive, and the appellate billing records lack sufficient detail to account for the work performed.

The district court's order (1) stated that it "evaluated the [*Brunzell*] factors"; (2) set forth those factors; and (3) "conclude[d] that application of the *Brunzell* factors warrants the relief sought by TSC." At

the hearing on attorney fees, the court briefly addressed each *Brunzell* factor and adopted the reasoning set forth in TSC's motion. The court found that the second factor (character of work) and third factor (work performed) supported the award because it was a "super complex business court case" and retaining two firms for discovery and trial, and two for appeal "is not uncommon." The court determined the fourth factor (the result) was supported because TSC ultimately prevailed on its appeal. The court further found that pro hac vice counsel was appropriate, which necessitated local counsel always being present during the trial, and reviewing and editing co-counsel's work was also appropriate given the demands and complexity of the case.

We conclude that the district court did not abuse its discretion in applying *Brunzell*. As we have previously stated, "[w]hile it is preferable for a district court to expressly analyze each factor relating to an award of attorney fees, express findings on each factor are not necessary for a district court to properly exercise its discretion." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The district court pointed to the detailed reasoning in TSC's motion and noted that this case involved thousands of individual sprinkler couplings being inspected and repaired in an operational casino resort with voluminous documentation to track the remediation work. The attorneys' work required in-depth discovery and review of the record, extensive pretrial motion practice, a 48-day bench trial, and an appeal to this court. Substantial evidence supports that the character of the work justified TSC hiring four law firms to handle the trial and appeal.

Continental points to pro hac vice counsel Nida & Romyn's work as largely duplicative of Bremer Whyte's work, referencing billing entries

for conferences with co-counsel, strategy conversations, and revising co-counsel's work product. But the district court did not abuse its discretion in finding that those actions were reasonable, if not necessary, as part of Bremer Whyte's responsibilities under SCR 42(14). Though Continental points to *Sciara v. Campbell*, No. 2:18-cv-01700-DJA, 2021 WL 8321866 (D. Nev. Apr. 28, 2021), as an example of duplicative work warranting a fee reduction, that case found that attorney fees for drafting a motion to compel and conferencing about that motion were unnecessarily duplicative where two associates, two partners, and a paralegal collectively worked on one motion to compel that addressed "a relatively straightforward issue." *Id.* at *2-3. Moreover, *Sciara* recognized "that some duplication of effort is necessary and unavoidable in any case, *particularly when a case goes on for many years* and an attorney needs to update previous legal work product and research that may have grown stale." *Id.* at *2 (emphasis added). So *Sciara* is therefore distinguishable. *See also Moreno v. City of Sacramento*, 534 F.3d 1106, 1113 (9th Cir. 2008) (reversing reduction of attorney fees award because "necessary duplication . . . cannot be a legitimate basis for a fee reduction").

Continental likewise takes issue with alleged duplication in the appellate work of Lewis Roca and Lemons, Grundy, & Eisenberg, arguing that it was unnecessary for one firm to review the outline of an appellate brief from another attorney or to conference and exchange emails about appellate-brief drafts with co-counsel. Again, the district court did not abuse its discretion in finding that this work was reasonable and necessary given the complexity of this case and the record it produced. *See Mitchell v. Metro. Life Ins. Co.*, No. CV 05-00810 DDP (RNBx), 2008 WL 1749473, at *3 (C.D. Cal. Apr. 7, 2008) (explaining that "[i]t is not unusual for one

attorney to draft a brief, for another attorney to review and revise the brief, and then for the drafting attorney to make final edits and changes" and concluding that "the complicated legal and factual issues in this case support the need for review and revision of briefs"). Moreover, the invoices contain sufficient detail as to each attorney's task performed. *Kim v. Fujikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989) ("[T]he participation of more than one attorney does not necessarily constitute an unnecessary duplication of effort.").

As to Nida & Romyn's specific billing rates of between $575 and $735 an hour, the district court also did not abuse its discretion in finding those rates reasonable. Courts commonly look to the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (quoting *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997)). And courts have found rates of $775 to be reasonable in Nevada for experienced civil attorneys. *See, e.g., In re USA Com. Mortg. Co.*, No. 2:07-CV-892-RCJ-GWF, 2013 WL 3944184, at *19-20 (D. Nev. July 30, 2013) (finding "prevailing market rates for complex commercial litigation in Nevada" to be "between $350 and $775 an hour"); *United States ex rel. Luke v. HealthSouth Corp.*, No. 2:13-cv-01319-APG-VCF, 2020 WL 1169393, at *2 (D. Nev. March 11, 2020) ("This Court has also awarded $750 per hour as reasonable and consistent with Nevada market rates for an experienced partner at a civil litigation firm." (citation modified)). We therefore conclude that substantial evidence supports the district court's award of $5,457,623.94 in attorney fees to TSC.

The district court did not abuse its discretion in awarding prejudgment interest under NRS 99.040

We review a district court's ruling on prejudgment interest for an abuse of discretion. *City of Las Vegas v. 180 Land Co., LLC*, 140 Nev., Adv. Op. 29, 546 P.3d 1239, 1256 (2024). NRS 99.040(1) sets the default interest rate when a contract does not specify a rate. The accrual of prejudgment interest begins when the amount due is ascertainable. *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 116, 127 P.3d 1082, 1086 (2006) (explaining that "NRS 99.040(1) applies to the calculation of interest when the amount is due on an ascertainable date"). When awarding prejudgment interest, the district court must determine "(1) the rate of interest; (2) the time when it commences to run; and (3) the amount of money to which the rate of interest must be applied." *Paradise Homes, Inc. v. Cent. Sur. & Ins. Corp.*, 84 Nev. 109, 116, 437 P.2d 78, 83 (1968).

Because the subcontract called for Continental's performance, the district court determined that the sum of money due to TSC became certain and ascertainable no later than August 30, 2016, when the remediation project was completed. *See id.* (stating that interest applies to the value of the performance required by the contract as stated or as can be determined by mathematical calculation from the contract or market prices). We conclude that the district court did not abuse its discretion when it awarded prejudgment interest running from that date. Though Continental argues that sum was not certain at that time because those amounts were "heavily disputed" during the bench trial, we ultimately reversed Judge Allf's judgment and then affirmed Judge Hardy's determination that TSC could recover all of its remediation costs as explicitly provided for under the subcontract. So, the sum of money owed by Continental under the subcontract became "ascertainable by

mathematical calculation from a standard fixed in the contract" when the remediation project was completed on August 30, 2016. *Id.* That the parties disputed the extent of TSC's damages at trial does not preclude a prejudgment interest award because the relevant inquiry centers on the "due date" for performance under the subcontract. *Cf. BHY Trucking, Inc. v. Hicks*, 102 Nev. 331, 333, 720 P.2d 1229, 1231 (1986) (refusing to apply NRS 99.040 because plaintiff's damages did not relate to any sum due pursuant to a promise of performance under the contract); *see also Westgate Planet Hollywood Las Vegas, LLC v. Tutor-Saliba Corp.*, No. 75033, 2019 WL 4786884, at *3 (Nev. Sept. 27, 2019) (Order Affirming in Part, Reversing in Part and Remanding) (explaining that "the amount of money due [under the contract] could be ascertained by a mathematical calculation even if the amounts changed during the course of litigation due to offsets or other external factors"). Therefore, the district court did not abuse its discretion in awarding $4,139,197.37 in prejudgment interest consistent with the contract and statutory formula.

The district court abused its discretion by denying Continental's motion to retax costs as to MKA and the deposition transcripts and videos

Continental argues that the district court abused its discretion on three bases: (1) by accepting TSC's conclusory attorney declaration that the claimed costs were reasonably and necessarily incurred; (2) by allowing expert costs beyond the statutory maximum of $15,000 per expert without adequate documentation from TSC and without properly applying the relevant factors used to determine whether fees should be awarded beyond that cap; and (3) by awarding costs for deposition transcripts, discovery fees, and document copying services.

We review an award of costs for an abuse of discretion. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054

(2015). Any awarded costs must be "reasonable, necessary, and actually incurred." *Id.* Generally, this requires a party to submit itemized memoranda, along with justifying documentation showing that the costs were actually incurred and demonstrating how they were necessary to the action. *Bobby Berosini, Ltd., v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998). "Justifying documentation means something more than a memorandum of costs." *In re DISH Network Derivative Litig.*, 133 Nev. 438, 452, 401 P.3d 1081, 1093 (2017) (citation modified).[1]

Expert fees

NRS 18.005(5) includes as recoverable costs "reasonable fees of not more than five expert witnesses" not in excess of $15,000 for each expert witness, "unless the court allows a larger fee after determining that the circumstances surrounding the testimony of the expert witness were of such necessity as to require the larger fee." To evaluate whether awarding expert fees in excess of the statutory cap is appropriate, courts apply the factors set forth in *Frazier v. Drake*, which include

> [(1)] the importance of the expert's testimony to the party's case; [(2)] the degree to which the expert's opinion aided the trier of fact in deciding the case;

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[1]TSC's argument that NRS 18.020 and NRS 18.005's limitations on recoverable costs do not apply based on the subcontract's provisions for the recovery of costs lacks merit. Continental agreed to indemnify TSC against "any and all" costs and "expenses" that TSC "may suffer or incur" that "arise by reason of or relating directly or indirectly to" Continental's failure to comply with the subcontract. But TSC has not pointed to any authority to support that the award of costs need not be necessary, reasonable, and actually incurred per *Cadle* and its progeny. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we may decline to consider issues not supported by pertinent authority).

> [(3)] whether the expert's reports or testimony were repetitive of other expert witnesses; [(4)] the extent and nature of the work performed by the expert; [(5)] whether the expert had to conduct independent investigations or testing; [(6)] the amount of time the expert spent in court, preparing a report, and preparing for trial; [(7)] the expert's area of expertise; [(8)] the expert's education and training; [(9)] the fee actually charged to the party who retained the expert; [(10)] the fees traditionally charged by the expert on related matters; [(11)] comparable experts' fees charged in similar cases; and, [(12)] if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.

131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015) (citation modified). The factors are nonexhaustive and some may not be "pertinent to every request for expert witness fees in excess of [the statutory cap]." *Id.* at 651, 357 P.3d at 378.

As the district court found, some of the *Frazier* factors support an award of costs for MKA. MKA was TSC's leading expert, and TSC submitted documentation showing that MKA associates observed the remediation project until its completion, prepared expert reports, and were deposed and testified at trial. Their testimony addressed fire sprinkler installation issues, defective couplings, and various repair work. A substantial portion of MKA's expert fees were reasonable and necessary because the record indicates MKA's testimony assisted the trier of fact to determine important issues with respect to the defective installation of the fire sprinkler system and costs incurred in the remediation project. The district court also concluded, however, that TSC "fail[ed] to distinguish between the amounts MKA charged for expert services and other unknown amounts for things like photographs, printing, lodging and meals." Indeed,

MKA's invoices list many of these miscellaneous costs in a separate category, and TSC did not address how those costs were reasonable and necessary. So the district court's exclusion of those costs was appropriate. The district court did not, however, explain how it arrived at awarding $403,000, a number that arbitrarily matches what Continental purportedly paid its expert. Awarding $403,000 thus does not accurately reflect MKA's fees without the miscellaneous costs. *See Bobby Berosini, Ltd.*, 114 Nev. at 1352, 971 P.2d at 385-86 ("[R]easonable costs must be actual and reasonable, *rather than a reasonable estimate or calculation of such costs* . . . ." (citation modified) (emphasis added)). So, the district court abused its discretion in awarding $403,000 in costs for MKA, warranting reversal and remand. We observe that MKA's invoices contain sufficient detail to permit the district court to make an appropriate determination as to whether each miscellaneous cost was reasonably incurred. On remand, the district court must review MKA's invoices and TSC's memorandum of costs and subtract any specific costs that the court concludes were not shown to be reasonable, necessary, or actually incurred.

Discovery costs

NRS 18.005(2) allows for the recovery of "[r]eporters' fees for depositions, including a reporter's fee for one copy of each deposition." And NRS 18.005(17) provides for "[a]ny other reasonable and necessary expense incurred in connection with the action."

The district court abused its discretion in awarding the costs for additional copies of the deposition transcripts because NRS 18.005(2) explicitly provides for the recovery of reporters' fees for only one copy of each deposition, and TSC did not show why more than one copy was necessary. The district court also abused its discretion in awarding the costs for

videotaping the depositions because "[t]he costs of videotaping depositions . . . are not allowed when no statute or any uniform course of procedure authorizes the taxation of such costs." *N. Las Vegas Infrastructure Inv. and Constr., LLC v. City of N. Las Vegas*, 139 Nev. 46, 52, 525 P.3d 836, 842 (2023) (quoting 20 Am. Jur. 2d *Costs* § 43 (2022)); *see also Armstrong v. Onufrock*, 75 Nev. 342, 349, 341 P.2d 105, 108-09 (1959) (explaining that a party who chooses to take a deposition must bear the expense of the copies they order, "without the right of reimbursement from the losing party"). Further, TSC did not demonstrate that the costs for videotaping depositions were necessarily incurred where it did not use them at trial and "the district court did not order the parties to record their depositions on video." *N. Las Vegas Infrastructure Inv. and Constr.*, 139 Nev. at 843, 525 P.3d at 52. Though the district court acknowledged that "it's typical, super common" to incur such costs, it did not explain why those costs were *necessarily* incurred. Therefore, it abused its discretion in awarding the full costs for Deposition Solutions and Gallagher Reporting & Video, warranting reversal of these awards.

As to the electronic-discovery-management costs for Holo and Quivx, the district court did not abuse its discretion in finding that those costs were reasonably and necessarily incurred because this litigation involved a 48-day bench trial with thousands of pages of documents such that a third-party technician was necessary to manage the exhibits throughout trial. While "[j]ustifying documentation means something more than a memorandum of costs," *In re DISH Network Derivative Litig.*, 133 Nev. at 452, 401 P.3d at 1093, TSC also submitted detailed invoices and a sworn attorney declaration describing the purpose of each cost. *See Zamora v. Klein*, No. 87026-COA, 2024 WL 2747828, at *5 (Nev. Ct. App. May 28,

2024) (Order of Affirmance) (affirming an award of costs where the prevailing party "included an itemized memorandum of costs and extensive documentation, consisting of nearly 100 pages of invoices and receipts, demonstrating how the costs were actually incurred and necessary to the litigation"). We held in *In re DISH Network Derivative Litigation* that electronic discovery expenses could be taxed to the losing party under NRS 18.005(17) where those expenses were incurred to respond to that party's NRCP 56(f) discovery requests. 133 Nev. at 451, 401 P.3d at 1093. And here, the district court found and the record supports that Continental contributed to TSC's increased litigation costs by involving third parties and refusing to participate in the remediation project that in turn produced voluminous documentation and occasioned the need for electronic discovery management. We therefore conclude that the district court did not abuse its discretion in awarding TSC costs for Holo and Quivx's electronic discovery services under NRS 18.005(17).

The district court did not err by rejecting Continental's request to apportion costs between TSC and Travelers

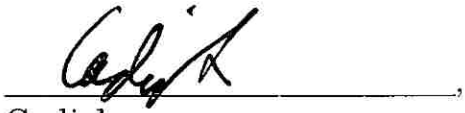
We review the district court's failure to apportion costs for an abuse of discretion. *Mayfield v. Koroghli*, 124 Nev. 343, 353, 184 P.3d 362, 369 (2008). Under NRS 18.050, prevailing party costs may be apportioned between parties. In *Mayfield*, we held that "in an action in which a plaintiff pursues 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." 124 Nev. at 353, 184 P.3d at 369. We further held that the district court must at least attempt to apportion costs, which requires "specific findings, either on the record during oral proceedings or in its order, with regard to the circumstances of the case

before it that render apportionment impracticable." *Id.* at 353-54, 184 P.3d at 369.

Here, the district court did not make any findings as to whether apportionment between Continental and Travelers was impracticable. But unlike *Mayfield* in which the plaintiff sued several parties who repudiated a contract, TSC did not sue multiple defendants for their individual breaches of the subcontract. Rather, TSC only sued Travelers because it entered into a surety performance bond with Continental—meaning Travelers' obligation to pay TSC was entirely derivative of Continental's breach of the subcontract. TSC would have incurred the same costs if it had pursued only Continental, only Travelers, or both, rendering *Mayfield* inapposite. We therefore conclude that under these circumstances, the district court was not required to make any additional factual findings that apportionment was impracticable before denying Continental's request. Accordingly, 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.


Stiglich, J.


Cadish, J.


Lee, J.

cc: Hon. Joseph Hardy, Jr., District Judge
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