IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY BARONE, AN INDIVIDUAL, Appellant, vs. CLARK COUNTY PUBLIC GUARDIAN; MATTHEW CARLINGTON; UNKNOWN VALENCIA; NEVADA GUARDIANSHIP SERVICES, LLC; KIM BOYER AND SUSAN HOY, Respondents.	No. 89305-COA
ANTHONY BARONE, AN INDIVIDUAL, Appellant, vs. CLARK COUNTY PUBLIC GUARDIAN; MATTHEW CARLINGTON; UNKNOWN VALENCIA; NEVADA GUARDIANSHIP SERVICES, LLC; KIM BOYER AND SUSAN HOY, Respondents.	No. 89366-COA
ANTHONY BARONE, AN INDIVIDUAL, Appellant, vs. CLARK COUNTY PUBLIC GUARDIAN; MATTHEW CARLINGTON; UNKNOWN VALENCIA; NEVADA GUARDIANSHIP SERVICES, LLC; KIM BOYER; AND SUSAN HOY, Respondents.	No. 89628-COA

ORDER OF AFFIRMANCE

26-17510

Anthony Barone appeals from several district court orders dismissing his complaint in a defamation action (No. 89305-COA) and awarding attorney fees and costs (Nos. 89366-COA & 89628-COA). These cases were consolidated on appeal. *See* NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Barone was previously guardian of the estate for his nephew, Nicolas Sarnelli. Due to accounting issues with Sarnelli's estate, a guardianship court removed Barone as guardian of the estate and appointed respondent Nevada Guardian Services, LLC (NGS) as successor guardian.

Following his removal, Barone filed a complaint against the Clark County Public Guardian (CCPG); Matthew Carling, a representative of the CCGP (mistakenly listed as Matthew Carlington in the caption of the district court case); NGS (mistakenly listed as Nevada Guardianship Services, LLC in the caption of the district court case); Sunny Valencia, a "representative" for NGS; Susan Hoy, a registered guardian and the manager of NGS; and Kim Boyer (collectively respondents), alleging claims of defamation and civil conspiracy arising from statements made during a hearing in the guardianship proceedings. At some point, Barone filed an application for a clerk's default with the district court with respect to Carling, but the default was not signed by the clerk.

Respondents thereafter filed various motions to dismiss the complaint, arguing the litigation privilege precluded Barone's defamation claim and his civil conspiracy claim could not survive without the defamation claim. Barone opposed the motions to dismiss, but ultimately the court granted the motions and dismissed Barone's complaint with prejudice. Barone subsequently filed a motion for reconsideration pursuant to EDCR 2.24, which the district court denied.

Following the dismissal, respondents filed motions for attorney fees and costs, which Barone also opposed. After hearings on the motions, the district court entered orders awarding Carling $3,701.85 in attorney fees and costs and Valencia's counsel Boyer $6,200 in attorney fees and $283.23 in costs. The district court subsequently entered an order awarding NGS and Hoy $8,605.50 in attorney fees and $255.69 in costs. These appeals followed.

Docket No. 89305-COA

On appeal, Barone first challenges the district court order dismissing his complaint. We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff's factual allegations as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Buzz Stew, L.L.C. v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.* at 228, 181 P.3d at 672. We review de novo the district court's legal conclusions. *Id.* We also review de novo the applicability of an absolute privilege. *Jacobs v. Adelson*, 130 Nev. 408, 412, 325 P.3d 1282, 1285 (2014). Whether a statement is sufficiently relevant to the judicial proceedings to fall within the absolute privilege is a question of law for the court. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983).

Our supreme court has recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings. *See, e.g., Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc. (VESI)*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009); *Fink v.*

Oshins, 118 Nev. 428, 432-33, 49 P.3d 640, 643-44 (2002); *Circus Circus Hotels*, 99 Nev. at 60, 657 P.2d at 104. The litigation privilege acts as a complete bar to defamation claims based on privileged statements and recognizes that "[c]ertain communications, although defamatory, should not serve as a basis for liability in a defamation action and are entitled to an absolute privilege because 'the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements.'" *Cucinotta v. Deloitte & Touche, LLP*, 129 Nev. 322, 325, 302 P.3d 1099, 1101 (2013) (quoting *Circus Circus Hotels*, 99 Nev. at 61, 657 P.2d at 104); *see also Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002), *overruled on other grounds by Buzz Stew*, L.L.C., 124 Nev. at 228 n.6, 181 P.3d at 672 n.6. An absolute privilege constitutes "an immunity, which protects against even the threat that a court or jury will inquire into a communication." *Hampe*, 118 Nev. at 409, 47 P.3d at 440.

In order for the litigation privilege to apply to defamatory statements made in the context of a judicial or quasi-judicial proceeding, "(1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation." *VESI*, 125 Nev. at 383, 213 P.3d at 503. Therefore, the privilege applies to communications made by either an attorney or a nonattorney that are related to ongoing litigation or future litigation contemplated in good faith. *Id.* at 383, 213 P.3d at 502. When the communications are made in this type of litigation setting and are in some way pertinent to the subject of the controversy, the absolute privilege protects them even when the motives behind them are malicious and they are made with knowledge of

the communications' falsity. *Id.* at 382, 213 P.3d at 502; *Circus Circus Hotels*, 99 Nev. at 60, 657 P.2d at 104.

Here, Barone alleged that respondents made various defamatory statements about him in an effort to prejudice the guardianship court against him. However, accepting Barone's allegations as true, he cannot state a claim for relief for defamation due to the litigation privilege. Transcripts of the guardianship proceedings are not included in our record on appeal, but the parties agree that respondents' statements were made during the guardianship proceedings at the hearing on NGS's petition to resign as guardian and, therefore, were related to those proceedings. *See VESI*, 125 Nev. at 383, 213 P.3d at 503. Barone fails to demonstrate that NGS did not pursue the resignation proceedings in good faith. *See id.* As such, even if the statements were malicious and defamatory, the litigation privilege acts as an absolute bar. *See id.* at 382, 213 P.3d at 502; *Circus Circus Hotels*, 99 Nev. at 60, 657 P.2d at 104. Moreover, contrary to Barone's contentions, the fact that certain respondents were not attorneys does not preclude application of the litigation privilege, which applies to both attorneys and nonattorneys alike. *See VESI*, 125 Nev. at 383, 213 P.3d at 503 (explaining that the privilege applies to communications made by either an attorney or a nonattorney that are related to ongoing litigation or future litigation contemplated in good faith).

Next, Barone challenges the dismissal of his civil conspiracy claim. As noted previously, Barone's civil conspiracy was based on the allegedly defamatory statements made by respondents before the guardianship court. An actionable civil conspiracy "consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and

damage results from the act or acts." *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993) (quoting *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989)).

In this case, because the defamation claim fails, Barone's claim for civil conspiracy claim also necessarily fails. *See Goldman v. Clark Cnty. Sch. Dist.*, Nos. 78282, 78822, 2020 WL 5633065, at *3 (Nev. Sept. 18, 2020) (Order Affirming in Part, Reversing in Part and Remanding) (explaining where appellant alleged that respondents committed civil conspiracy by acting in concert to defame him, portray him in a false light, and intentionally inflict emotional distress on him and those claims lacked merit, appellant's civil conspiracy claim was properly dismissed).

In reaching these conclusions, we are unpersuaded by Barone's contention that he is entitled to relief because the district court failed to include its reasoning for dismissing his complaint and denying his motion for reconsideration. Pursuant to NRCP 52(a)(3), "[t]he court is not required to state findings or conclusions when ruling on a motion under Rule 12 . . . or, unless these rules provide otherwise, on any other motion." While we acknowledge that NRCP 52(a)(3) further provides that the court "should, however, state on the record the reasons for granting or denying a motion," we are unable to determine whether the district court stated its reasons on the record because Barone did not request transcripts and argued on appeal that they were unnecessary. As such, this court must necessarily presume that the missing transcripts support the district court's decisions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the

record, we necessarily presume that the missing portion supports the district court's decision.").[1]

Next, Barone argues that his due process and equal protection rights were violated when the district court clerk failed to enter a default against Carling and when the district court granted respondents' motion to stay discovery but failed to address several of his motions. He further contends the district court's failure to address his motions demonstrated bias against him.

"[P]rocedural due process requires notice and an opportunity to be heard." *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (internal quotation marks omitted). A party's due process rights may be violated if the parties are not provided notice that the court will be considering a specific issue. *Martinez v. Martinez*, 140 Nev., Adv. Op. 73, 559 P.3d 863, 868 (2024). In addition, "[t]he Equal Protection Clause of the Fourteenth Amendment mandates that all persons similarly situated receive like treatment under the law." *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). With respect to the district court clerk's failure to enter a default upon Barone's application for default, we conclude Barone has failed to demonstrate he was deprived of due process. Barone has not demonstrated he was deprived of notice or an opportunity to be heard in this respect, nor has he demonstrated that he was entitled to a clerk's default against Carling because Carling filed an appearance, answer, and

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[1]We are also unpersuaded by Barone's contention that respondents admitted the allegations contained in his complaint by failing to file answers. NRCP 12(b) provides that a motion asserting any of the enumerated defenses "must be made before pleading if a responsive pleading is allowed." Thus, the rule expressly provides that the motions to dismiss were to be filed prior to an answer.

various motions, in addition to appearing at hearings throughout the proceedings, and the record does not show that Barone filed an accompanying affidavit as required by NRCP 55(a). *See* NRCP 55(a) (providing that the clerk must enter a default when a party against whom a judgment for affirmative relief has been sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise).

With respect to Barone's claim regarding the failure to rule on his motions, we conclude he fails to demonstrate that relief is warranted as he does not demonstrate he was deprived of notice or the opportunity to be heard in this respect. Barone fails to identify which motions the district court did not address, but the record reveals that he filed a motion to strike Carling's joinder to Hoy and Valencia's motion to dismiss, which the clerk notified him was a nonconforming document, and which Barone failed to cure. Moreover, to the extent the district court did not specifically rule on any validly-filed motions, it is well-established that where the court does not make a formal ruling, it is treated as an implicit denial of the motion. *See Bd. of Gallery of Hist., Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (explaining that the absence of a ruling by the district court on a motion constitutes a denial of the motion). Barone also fails to demonstrate he was treated differently than other similarly situated persons, and thus, he does not demonstrate he is entitled to relief pursuant to the Equal Protection Clause. *See Gaines*, 116 Nev. at 371, 998 P.2d at 173.

We likewise conclude relief is unwarranted with regard to Barone's allegation that the district court was biased against him for failing to rule on his motions because he has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside

of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 535 P.3d 1167 (2023).

Docket Nos. 89366-COA and 89628-COA

Barone next challenges the district court's orders awarding attorney fees and costs to respondents. We review an award of attorney fees and costs for an abuse of discretion, *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006); *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005), and will affirm an award that is supported by substantial evidence, *see Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995), *superseded by statute on other grounds as discussed in RTTC Commc'ns,*

LLC v. Saratoga Flier, Inc., 121 Nev. 34, 41-42 & n.20, 110 P.3d 24, 29 & n.20 (2005).

Barone argues Carling was not entitled to an award of fees and costs because Carling should have been in default pursuant to NRCP 55(a). As discussed above, Barone failed to demonstrate he was entitled to a clerk's default with respect to Carling, and his contention on this basis does not demonstrate that the district court abused its discretion in awarding Carling attorney fees and costs. *See Albios*, 122 Nev. at 417, 132 P.3d at 1027-28; *Sheehan & Sheehan*, 121 Nev. at 493, 117 P.3d at 227.

With respect to NGS, Barone contends he named "Nevada Guardianship Services," which he claims is a "non-existent entity," in the caption of his complaint rather than NGS, and therefore NGS was not entitled to fees as it was not a named party to this matter. The order awarding fees and costs to NGS specifically found that Barone's actions in the proceedings were consistent with an intent and desire to include NGS as a defendant. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) ("The district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence."). The record supports this finding as it demonstrates that NGS was involved in the guardianship proceedings and appeared and defended against Barone's allegations in this matter. Moreover, NGS filed a motion for fees and costs, a memorandum of costs and disbursements, and an affidavit pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and those filings demonstrated that the award

was supported by substantial evidence. *See Albios*, 122 Nev. at 417, 132 P.3d at 1027-28.[2]

Finally, Barone argues the respondents generally artificially inflated their attorney fees and costs in order to collect from Sarnelli's estate. However, we conclude he has failed to demonstrate relief is warranted. "In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the *Brunzell* factors." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (internal quotation marks omitted). While 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. *Id.* Instead, the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence. *Id.* Moreover, "[o]nly reasonable costs may be awarded." *Sheehan & Sheehan*, 121 Nev. at 493, 117 P.3d at 227.

The respective motions for attorney fees included memoranda of costs and disbursements, itemized lists of work performed, and *Brunzell* affidavits. The district court's order with respect to Carling and Valencia specifically stated that it considered the *Brunzell* factors, and the Valencia

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[2]Barone does not specifically challenge the propriety of the attorney fee and cost award to Valencia. As such, he has failed to cogently argue that matter and we need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev, 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed [forfeited].").

order further found that the fees and costs were "just, necessary, and reasonable." The order with respect to NGS and Hoy stated that the court considered the papers and pleadings submitted by the parties, heard oral argument on the motion for fees, and found the requested fees and costs were reasonable, necessary, customary, and the work was actually performed. As such, we conclude the record demonstrates the court considered the required factors before awarding respondents attorney fees and costs. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143; *Sheehan & Sheehan,* 121 Nev. at 493, 117 P.3d at 227. We therefore conclude the district court did not abuse its discretion. *See Albios*, 122 Nev. at 417, 132 P.3d at 1027-28.[3]

Having considered the foregoing, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[3]Barone acknowledges in his reply brief that express findings on each *Brunzell* factor are not required and then argues that the district court's orders generally failed to include findings of fact and conclusions of law and "none of the factors outlined in NRS 18.010(2)(b) were present in this case." To the extent this can be construed as a challenge to the court's orders and any failure to make specific findings concerning its decision to award attorney fees pursuant to NRS 18.010(2)(b), that argument is improperly raised for the first time in Barone's reply brief and we need not consider it. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (citing NRAP 28(c) and concluding that an issue raised for the first time in an appellant's reply brief was forfeited).

cc: Hon. Timothy C. Williams, District Judge
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