



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN RE THE MARRIAGE OF: CASEY
CARNEY AND KRISTINA PROBST

No. 91350-COA

KRISTINA PROBST,
Appellant,
vs.
CASEY CARNEY,
Respondent.

ORDER OF AFFIRMANCE

Kristina Probst appeals from a post-divorce decree order awarding attorney fees in a family law matter. Second Judicial District Court, Washoe County; Hon. Sandra A. Unsworth, Judge.

Probst and respondent Casey Carney were previously married but divorced in 2011. The parties share two minor children. The parties previously exercised a custody arrangement that included joint legal custody but for Carney to have primary physical custody of the children, with Probst exercising parenting time with the children. Concerns arose due to sexual contact between Probst's stepson and the parties' younger child. The district court later issued an order modifying Probst's parenting time and directing her to have supervised parenting time.

The parties subsequently agreed to a safety plan and to engage in reunification therapy. In furtherance of that agreement, the district court appointed a therapist and a parenting coordinator to work on this matter. In

its order appointing a parenting coordinator, the district court directed the parties to follow the decisions of the parenting coordinator but explained that either party could file a motion with the court should they have a dispute with a decision made by the parenting coordinator. Based on recommendations from the therapist, the district court later modified the parenting time arrangement and permitted Probst to exercise unsupervised parenting time with the children.

Disputes arose between Probst and the parenting coordinator concerning the safety plan and involving Probst's parenting time. Following those disputes, Probst filed a motion in January 2024 seeking the removal of the therapist and the parenting coordinator from their roles as she alleged they were biased against her. Probst also alleged her parenting time had been improperly withheld by Carney. Carney opposed the motion and Probst filed a reply.

The district court held an evidentiary hearing concerning the outstanding issues and later issued a written order denying Probst's motion. The court found that the evidence demonstrated safety issues occurred while the children were in Probst's home. The court also found that the therapist and the parenting coordinator were not biased against Probst but determined that they could no longer work with Probst. In addition, the court determined that the parties should continue to have joint legal custody of the children but that it was in the children's best interest for Carney to retain primary physical custody. Finally, the district court awarded Probst unsupervised parenting time but explained that the parenting time must occur in the Reno/Sparks area

and not in California where Probst resides and declined to award Probst with additional parenting time to compensate her for any loss of time with the children.

Probst appealed from entry of the district court's order, challenging the aforementioned decisions. However, this court affirmed the district court's order. *Probst v. Carney*, No. 89437-COA, 2025 WL 1778842 (Nev. Ct. App. June 26, 2025) (Order of Affirmance).

In addition, Carney moved the district court for an award of attorney fees pursuant to NRS 18.010(2)(b) and NRS 125C.250. Carney sought fees because Probst's motion for modification of the parenting time arrangement lacked merit. Carney also addressed the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), discussed the disparity in income between the parties, and provided billing records in support of his request for fees. Probst opposed the motion.

The district court thereafter entered a written order granting Carney's motion, awarding attorney fees in favor of Carney pursuant to NRS 18.010(2)(b). The court explained that fees were warranted under NRS 18.010(2)(b) because Probst's parenting time had been suspended due to her own actions and issues following the safety plan. While the court noted that it was permitted to award reasonable attorney fees pursuant to NRS 125C.250, it did not expressly award fees under that statute. Nevertheless, the court evaluated the reasonableness of the requested fees using the appropriate *Brunzell* factors, considered the disparity in income between the parties, and found that Carney was entitled to an award of fees in the amount of \$18,300.

In light of the disparity of income, the district court directed Probst to pay \$250 per month toward the award of attorney fees until it is paid in full. This appeal followed.

Preliminarily, Probst challenges the district court's decisions made when denying her January 2024 motion seeking modification of the parenting time arrangement and this court's order affirming the district court's decisions. However, the decisions contained within this court's order of affirmance constitute the law of the case. *See Probst*, No. 89437-COA, 2025 WL 1778842, at *3-*6. "Under the law-of-the-case doctrine, a legal decision made at one stage of a criminal or civil proceeding should remain the law of that case throughout the litigation, unless and until the decision is modified or overruled by a higher court." *Litchfield v. Tucson Ridge Homeowners Ass'n*, 140 Nev., Adv. Op. 57, 555 P.3d 267, 270 (2024). Moreover, "[t]he doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Thus, Probst's arguments concerning the district court's prior order and this court's order of affirmance are barred by the law of the case doctrine, and she does not demonstrate that an exception to that doctrine applies in this matter. *See Litchfield*, 140 Nev., Adv. Op. 57, 555 P.3d at 270-71 (discussing exceptions to the doctrine of the law of the case). Accordingly, Probst is not entitled to relief based upon these arguments.

Next, Probst challenges the district court's decision to award Carney attorney fees pursuant to NRS 18.010(2)(b). Probst contends that she,

and not Carney, was the prevailing party and that the district court did not make findings that her motion was frivolous or that she sought to harass Carney.

This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). However, we will affirm a district court's order if it reached the correct result, even if it did so for a different reason. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

The district court may only award attorney fees where a statute, rule, or contract allows it. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006). Under NRS 18.010(2)(b), the district court may award attorney fees to a "prevailing party" when "the court finds that the claim . . . of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." "A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (internal quotation marks and emphasis omitted) (reviewing a district court's determination of who is the prevailing party for an abuse of discretion). "To be a prevailing party, a party need not succeed on every issue." *Id.*

Here, Probst fails to demonstrate that Carney was not the prevailing party concerning the January 2024 motion. In evaluating that

motion, the district court made findings concerning safety issues that occurred in Probst's home, found that the therapist and the parenting coordinator were not biased against Probst, and concluded that it was in the children's best interest for Carney to retain primary physical custody while Probst's parenting time could occur only in Nevada and not at her residence in California. The court also denied Probst's request for additional parenting time. In light of the foregoing, Carney succeeded on significant issues that were raised as a result of Probst's motion. *See id.* Probst accordingly fails to demonstrate the district court abused its discretion by determining that Carney was entitled to an award of attorney fees as the prevailing party.

Turning to Probst's challenge to the district court's findings in support of its decision to award attorney fees under NRS 18.010(2)(b), we note that "[f]or purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). However, the fact that a party pursued a course of action that ultimately proved to be unsuccessful is not sufficient to support a fee award under NRS 18.010(2)(b). *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) ("Although [appellant] did not prevail on the motion, and it may have been without merit, that alone is insufficient for a determination that the motion was frivolous, warranting sanctions."), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023); *see also In re Execution of Search Warrants for: 12067 Oakland Hills, Las Vegas, Nev. 89141*, 134 Nev.

799, 807, 435 P.3d 672, 679 (Ct. App. 2018) (“Merely losing a motion on the merits does not mean that the losing defense was utterly without reasonable ground for purposes of awarding attorney fees.” (internal quotation marks omitted)).

In its written order, the district court stated it found “an award of attorney fees is warranted in this matter under NRS 18.010(2)(b) as Ms. Probst’s [parenting time] was suspended due to her failure to comply with the safety plan and take accountability for her actions which resulted in her [parenting time] being suspended.” To award Carney attorney fees under NRS 18.010(2)(b), the district court’s decision must have been supported by findings that Probst’s motion was either brought or maintained without reasonable ground or pursued to harass Carney. *See Rodriguez*, 125 Nev. at 588, 216 P.3d at 800. However, the district court did not make such findings in awarding attorney fees to Carney as the court’s findings simply focused on the fact that Probst’s parenting time was suspended before she filed the motion. *See Rivero*, 125 Nev. at 441, 216 P.3d at 234. In the absence of such findings, the district court did not make the findings necessary to support an award of attorney fees under NRS 18.010(2)(b). *See Roe v. Roe*, 139 Nev. 163, 183-84, 535 P.3d 274 294 (Ct. App. 2023) (stating that an award of attorney fees under NRS 18.010(2)(b) is unsupportable when a district court fails to make findings that a party’s “claims or defenses were either unreasonable or meant to harass”).

However, we note NRS 125C.250 provides that, “in an action to determine legal custody, physical custody or visitation with respect to a child, the district court may order reasonable fees of counsel and experts and other

costs of the proceeding to be paid in proportions and at times determined by the court.” As our supreme court has recognized, “NRS 125C.250 gives the district court broad discretion in a child custody action to order reasonable attorney fees and costs as determined by the court.” *Matkulak v. Davis*, 138 Nev. 647, 651, 516 P.3d 667, 671-72 (2022).

Here, Carney requested attorney fees under NRS 125C.250 and, as noted previously, the district court recognized in its written order that an award of attorney fees may be warranted in a custody matter pursuant to that statute. The plain language of NRS 125C.250 provides that, to award fees under that statute, a district court must make findings supporting the conclusion that its fee award is reasonable. *See Roe*, 139 Nev. at 184, 535 P.3d at 294 (observing that “[a]dequate findings of reasonableness are necessary” to support an award of attorney fees under NRS 125C.250); *cf. O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 560, 429 P.3d 664, 672 (Ct. App. 2019) (holding that the amount of attorney fees awarded can be based upon any sensible or logical method as long as the court weighs the *Brunzell* factors when determining reasonableness). It is well established that, in assessing the reasonableness of requested attorney fees in family law matters, the district court must consider the factors set forth in *Brunzell* and the disparity in the parties’ income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *See Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

In considering Carney’s request for attorney fees, the district court made repeated references to its authority to award reasonable attorney fees, including the authority provided by NRS 125C.250. The court also made

specific findings with regard to each of the four *Brunzell* factors, explaining that Carney’s counsel had been practicing family law for over a decade, finding counsel was well prepared and submitted information that established Probst’s motion lacked merit, stating counsel spent significant time working on this matter and that time included many hours preparing for and attending the evidentiary hearing, and noting counsel obtained a favorable result for Carney. In addition, the district court considered the disparity in incomes between Probst and Carney, found that Carney’s household earned more per month than Probst, and the court noted that disparity when evaluating the award of attorney fees and in directing Probst to make monthly payments in the amount of \$250 toward the overall total of \$18,300 of fees.¹

Our review of the record demonstrates that the district court’s findings regarding the *Brunzell* factors and the disparity of incomes are supported by substantial evidence. And because the court recognized that it could only award reasonable attorney fees and properly examined the reasonableness of the requested fees under *Brunzell* and *Wright*, we conclude that the award of attorney fees can be affirmed under NRS 125C.250. *See Rosenstein*, 103 Nev. at 575, 747 P.2d at 233; *Pelz v. Perea*, No. 90584-COA, 2026 WL 1017534, at *2-3 (Nev. Ct. App. Apr. 14, 2026) (Order of Affirmance) (affirming an award of attorney fees where the mother sought fees pursuant to

¹Probst also argues the district court erroneously failed to consider the *Brunzell* factors and the disparity in income between the parties. However, this argument lacks merit as the district court made specific findings under the *Brunzell* factors and also specifically considered the disparity in income between the parties. *See Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

NRS 125C.250 and substantial evidence supported the award under that statute, even though the award was made on other grounds, and thus the father failed to show that awarding fees on the other grounds was not harmless).

In light of the foregoing, we conclude that Probst is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²



Bulla, C.J.



Gibbons, J.



Westbrook, J.

²We also determine that Probst fails to demonstrate this is one of the exceedingly rare cases where reassignment of this matter to a different district court judge is necessary to preserve public confidence and trust in the fairness of a judicial proceeding. *See Williams v. Second Jud. Dist. Ct.*, 142 Nev., Adv. Op. 5, 583 P.3d 223, 230 (2026). Moreover, insofar as Probst raises arguments that are not specifically addressed in this order, we conclude that they either do not present a basis for relief or need not be addressed.

In addition, Carney requests an award of attorney fees on appeal as he contends that Probst's appeal is frivolous. However, we decline to award attorney fees as he does not demonstrate that this appeal was frivolous or was brought or maintained without reasonable grounds. *See Woods v. Label Inv. Corp.*, 107 Nev. 419, 427, 812 P.2d 1293, 1299 (1991) (rejecting a request for attorney fees on appeal when the appellant did not raise frivolous arguments), *disapproved of on other grounds by Hanneman v. Downer*, 110 Nev. 167, 871 P.2d 279 (1994).

cc: Hon. Sandra A. Unsworth, District Judge
Surratt Law Practice, PC/Reno
Kristina Probst
Washoe District Court Clerk