

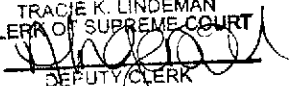
IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE J. LEVENTHAL,
Appellant,
vs.
AUDIE G. LEVENTHAL,
Respondent.

No. 63280

FILED

FEB 05 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


*ORDER DENYING REQUEST FOR ATTORNEY FEES AND COSTS
AND DISMISSING APPEAL*

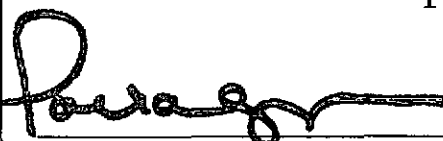
On December 4, 2013, appellant filed a motion to voluntarily dismiss this appeal with each party bearing their own costs and attorney fees. Appellant then filed a notice of withdrawal of the appeal on December 6, 2013. Respondent filed a response to the motion to dismiss the appeal, consenting to the dismissal of the appeal, but requesting the right to pursue costs and attorney fees associated with this appeal in the district court. As respondent argued that attorney fees and costs were appropriate because the appeal was frivolous, we ordered respondent to file a supplemental response that contained either an unqualified consent to the dismissal or an opposition and a properly supported request for attorney fees under NRAP 38(b), which provides that this court may award attorney fees and costs when an appeal has been frivolously taken or maintained in a frivolous manner. On January 2, 2014, respondent filed a supplemental response requesting this court to either remand the fees issue to the district court or award him attorney fees and costs under NRAP 38(b). Appellant has filed a reply to the supplemental response.


Having considered the parties arguments, we conclude that respondent has failed to demonstrate that this appeal was frivolous or

maintained in a frivolous manner, and we deny his request for an award of attorney fees and costs. See NRAP 38(b); see also *Works v. Kuhn*, 103 Nev. 65, 69, 732 P.2d 1373, 1376 (1987) (explaining that an appeal that lacks any merit constitutes a misuse of the appellate process and is a frivolous appeal), *disapproved on other grounds by Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 35 P.3d 964 (2001); *Contrail Leasing Partners, Ltd. v. Exec. Serv. Corp.*, 100 Nev. 545, 551, 688 P.2d 765, 768 (1984) (providing that this court will not consider a request for attorney fees that lacks relevant authority). We further deny respondent's request that the attorney fees and costs issue be remanded to the district court. While the district court may determine the reasonableness of attorney fees as a matter of fact, see *Musso v. Binick*, 104 Nev. 613, 615, 764 P.2d 477, 478 (1988), only this court may award fees for a frivolous appeal under NRAP 38(b). See *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000). Accordingly, we grant appellant's motion and dismiss this appeal with the parties to bear their own costs and fees. NRAP 42(b).

It is so ORDERED.¹

 _____, J.
Pickering

 _____, J.
Parraguirre

 _____, J.
Saitta

¹In light of this order, we deny appellant's December 5, 2013, motion for an extension of time to file the opening brief as moot.

cc: Chief Judge, The Eighth Judicial District Court
Hon. Gerald W. Hardcastle, Senior Judge
M. Nelson Segel, Settlement Judge
Abrams Law Firm, LLC
Escobar & Associates Law Firm, Ltd.
Eighth District Court Clerk