

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER FALCONI,
Appellant,
vs.
MONICA ANN FARRAR,
Respondent.

No. 69341

FILED

MAR 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order awarding attorney fees in a child custody matter. Second Judicial District Court, Washoe County; Bridget E. Robb, Judge.

After receiving a judgment against respondent for child support arrears, appellant moved for a judgment debtor exam of respondent. See NRS 21.270(1) (providing that a judgment creditor is entitled to an order allowing a judgment debtor exam "at any time after the judgment is entered"). Respondent opposed the motion and requested attorney fees, asserting that appellant filed the motion to annoy or harass her. Over appellant's opposition, the district court denied the request for a judgment debtor exam and awarded respondent attorney fees under NRS 18.010(2)(b), which permits a district court to award attorney fees when it finds that a claim "was brought or maintained without reasonable ground or to harass the prevailing party." This appeal followed.¹

¹On appeal, appellant does not challenge the district court's denial of the motion for a judgment debtor exam, and thus, we do not address that decision in this order.

An award of attorney fees under NRS 18.010(2)(b) requires “[t]he district court to determine if there was any credible evidence or reasonable basis for the claim at the time of filing.” *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009). “Although a district court has discretion to award attorney fees as a sanction, there must be evidence supporting the district court’s finding that the claim . . . was unreasonable or brought to harass.” *Id.*

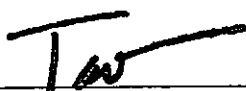
Here, the district court found that respondent was forced to oppose an unnecessary motion because appellant had no need for the information he would obtain from a judgment debtor exam and the request was filed only a week after the judgment was entered. But NRS 21.270(1) does not require the judgment creditor to establish a specific need for the judgment debtor exam or contain any restrictions on when a motion under that statute may be filed, instead providing that the creditor is entitled to the exam “at any time after the judgment is entered.” Moreover, neither respondent nor the district court pointed to any authority limiting the circumstances under which a judgment creditor could obtain a judgment debtor exam. Thus, as the district court’s findings do not show that appellant failed to meet any established requirements of NRS 21.270(1), we cannot conclude that the findings demonstrate that there was no reasonable basis for filing the motion under that statute.

Moreover, to the extent the district court may have concluded that the motion was filed to harass respondent, the court did not make any findings or point to any evidence to support such a conclusion. *See Rivero*, 125 Nev. at 441, 216 P.3d at 234 (requiring evidentiary support for a district court’s conclusion that a claim was brought to harass). Without such findings, we cannot determine whether the district court properly

exercised its discretion in awarding respondent attorney fees on this basis. *See id.* at 440, 216 P.3d at 234 (reviewing an award of attorney fees for an abuse of discretion). Accordingly, we reverse the award of attorney fees to respondent under NRS 18.010(2)(b) and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Bridget E. Robb, District Judge
Alexander Falconi
Monica Ann Farrar
Washoe District Court Clerk

²We have considered appellant's argument that respondent prematurely requested attorney fees because she was not yet the prevailing party and conclude that argument lacks merit.