

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LYNN E. WELLS,  
Appellant,  
vs.  
ERIC WELLS,  
Respondent.

No. 72889-COA

FILED

JAN 25 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Lynn Wells appeals from a district court order awarding attorney fees in post-decree divorce proceedings. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

Following Lynn's appeal from a previous award of attorney fees to her ex-husband, Eric Wells, this court remanded the matter for the district court to consider the *Brunzell*<sup>1</sup> factors and the disparity in the parties' income when determining whether to award fees.<sup>2</sup> *Wells v. Wells*, Docket No. 69070 (Order of Reversal and Remand, Ct. App., November 2, 2016). On remand, the district court again awarded fees to Eric, this time in a detailed written order addressing *Brunzell* and income disparity. On appeal, Lynn argues that the district court abused its discretion because it considered only Lynn's financial condition and not Eric's.<sup>3</sup> We agree.

<sup>1</sup>*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

<sup>3</sup>Lynn filed this appeal pro se and first submitted an informal brief under NRAP 28(k) asserting numerous issues. She later retained counsel and sought relief from the supreme court to file a supplemental opening brief that would provide a "more detailed, focused, and cogent" argument. The supreme court granted relief and ordered a new round of briefing, and Lynn

We review awards of attorney fees in divorce proceedings for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). We affirm such awards if they are supported by substantial evidence in the record. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

In addition to the *Brunzell* factors that courts must consider when deciding whether to award attorney fees, “family law trial courts must also consider the disparity in income of the parties.” *Miller*, 121 Nev. at 623, 119 P.3d at 730 (citing *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)). Accordingly, “parties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in *Brunzell* and *Wright*.” *Id.* at 623-24, 119 P.3d at 730. Moreover, the versions of the Eighth Judicial District Court Rules in effect at all relevant times in this case require that a party moving for attorney fees—as well as a party opposing such a request—support his or her filing with some type of financial disclosure. See EDCR 5.506(a)-(b) (requiring that all motions and oppositions regarding “any matter involving money to be paid by a party” be supported by a “General Financial Disclosure Form (GFDF)”); EDCR 5.32(a)-(b) (2013) (requiring that all motions and oppositions regarding “any . . . matter involving the issue of money to be paid by a party” be supported by “an affidavit of financial condition describing the financial condition and needs of the movant [or opponent]”).

Here, Eric failed to support his request for fees with a financial disclosure as required by the rules. Further, the most recent financial disclosure from Eric that the district court had previously been given dated

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submitted a supplemental opening brief asserting only the income-disparity issue. Because we conclude that reversal and remand are warranted on that issue, we decline to consider any other issues asserted.

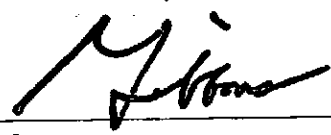
from 2011, five years before Eric requested fees. We also note that in responding to Eric's request for fees, Lynn also failed to submit a financial disclosure, and Lynn's most recent disclosure predated the district court's order award of fees by three years. The district court was thus deprived of the information necessary to consider any actual disparity in income between Lynn and Eric that existed when the fee request was made. *See Disparity, Black's Law Dictionary* (10th ed. 2014) (defining "disparity" as "[i]nequality; a difference in quantity or quality between two or more things"). Consequently, Eric has not yet properly shown that he is entitled to the fees he requests, and the district court's decision was not adequately supported by substantial evidence relating to the parties' current financial condition.

Based on the foregoing, we reverse the district court's order awarding attorney fees to Eric and remand this matter to the district court for proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Bryce C. Duckworth, Presiding Judge, Eighth  
Judicial District Court, Family Division  
Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District  
Court  
Alex B. Ghibauda, PC.  
The Abrams & Mayo Law Firm  
Eighth District Court Clerk