

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DUHAMEL,
Appellant,
vs.
MECHELE DUHAMEL,
Respondent.

No. 75592-COA

FILED

JAN 25 2019

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

ORDER OF AFFIRMANCE

Michael Duhamel appeals from an award of attorney fees in a post-decree child custody matter. Second Judicial District Court, Washoe County; Linda M. Gardner, Judge.

In the proceedings below, respondent Mechele Duhamel moved to modify custody, seeking primary physical custody of the parties' two minor children and attorney fees and costs, based on Michael's refusal to negotiate with Mechele and unnecessarily prolonging the litigation. The parties attempted, but were unable to resolve the matter prior to the filing of the motion or prior to the hearing on the motion. After an evidentiary hearing, the district court granted Mechele's motion to modify and granted her attorney fees and costs, concluding that Michael's conduct forced Mechele to bring the motion unnecessarily, that his conduct was unreasonable, and that he unnecessarily impacted the children's stability. While Mechele requested \$13,950.00 in attorney fees and costs, the district court awarded her only \$8,500.00. This appeal followed.

On appeal, Michael asserts that the district court abused its discretion in awarding Mechele attorney fees. Specifically, Michael contends that the district court erred in concluding Mechele was the prevailing party, that Mechele unnecessarily increased litigation, and that the district court failed to consider the disparity between the parties' incomes. The district court generally may not award attorney fees absent authority under a statute, rule, or contract. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006); *see also Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 878 (2014). 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).

Although the district court did not expressly cite which rule it relied upon in granting the request for attorney fees, Michael's argument presumes the award was made based on NRS 18.010 and attacks the propriety of an award under the statute. But regardless of whether an award would have been proper under NRS 18.010, the district court has discretion to award attorney fees in custody matters pursuant to NRS 125C.250. And given the district court's findings, which are supported by substantial evidence in the record, that Michael's conduct forced the matter to proceed to litigation and negatively impacted the stability of the children, we cannot conclude that the district court abused its discretion in determining an award of attorney fees was warranted. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

After determining that an award of attorney fees is warranted, the district court must then consider the factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969), to determine a

reasonable amount of fees. *Miller*, 121 Nev. at 623, 119 P.3d at 730. In family law matters, the district court must also consider the disparity in the parties' incomes when awarding attorney fees. *Id.* at 623-24, 119 P.3d at 730. While the district court should make explicit findings as to the required factors, the failure to do so is not a per se abuse of discretion. *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. ___, ___, 416 P.3d 249, 258-59 (2018). "Instead, the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Additionally, we note that no one factor should be given undue weight. *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.


Here, the district court made explicit findings regarding each of the *Brunzell* factors, but did not make explicit findings as to the parties' relative incomes. However, in the district court's order, the court made findings as to Michael's employment status; took judicial notice of the court's order adopting the child support hearing master's report and recommendation, which also considered Michael's financial status; and made specific provisions for a repayment schedule to pay the attorney fee award, taking into account Michael's financial status. Additionally, the district court significantly reduced the award of fees from that requested by Mechele, all of which indicates that the district court did consider the relevant factors in determining a reasonable amount of fees to award. Based on these facts, the district court's award of attorney fees is supported by substantial evidence. *See MEI-GSR Holdings, LLC*, 134 Nev. at ___, 416 P.3d at 259 (concluding that substantial evidence supported the district court's award when support for an implicit ruling on one or more of the

factors was clear from the record). Therefore, we cannot conclude that the district court abused its discretion in awarding Mechele attorney fees in the amount of \$8,500.00. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Scott Freeman, Chief Judge, Second Judicial District Court
Hon. Linda M. Gardner, Senior Judge
Michael Duhamel
Aaron M. Bushur
Washoe District Court Clerk