

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEVADA CORPORATE  
HEADQUARTERS, INC.; AND AJ  
VALLE,  
Appellants,  
vs.  
M. PAUL WEINSTEIN,  
Respondent.

No. 75794-COA

**FILED**

MAR 14 2019

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

*ORDER OF AFFIRMANCE*

Nevada Corporate Headquarters, Inc., and AJ Valle appeal from a post-judgment order denying attorney fees and costs. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Respondent M. Paul Weinstein filed suit against appellants and the matter proceeded in court-annexed arbitration. The arbitrator ruled in favor of appellants and Weinstein filed a request for trial de novo and a demand for removal from the short trial program. The matter then proceeded to trial and the jury ruled in favor of appellants. Thereafter appellants filed a motion seeking attorney fees and costs. Weinstein opposed the motion and moved to retax costs. The district court denied the motion for fees and costs and this appeal followed.

Orders denying attorney fees or costs are reviewed for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). On appeal, while appellants cite to various rules and statutes pursuant to which they argue the district court was required to award them fees and costs, they largely fail to address their failure to support their motion for fees and costs with an affidavit or declaration, which was the

basis for the district court's denial of the motion. And our review of the record supports the district court's denial of fees and costs on this basis.

Specifically, EDCR 2.21 provides that factual contentions in motions must be presented upon, as relevant here, affidavit or unsworn declaration under the penalty of perjury. *See also* NRC 54(d)(2)(B) (requiring motions for attorney fees to be supported by counsel's affidavit swearing that the fees were reasonable and actually and necessarily incurred); *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (indicating that requests for attorney fees must be supported with affidavits or other evidence that meet the *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) factors). And here, the documents before us on appeal do not show that appellants supported their motion with an affidavit or declaration. Instead, appellants assert that counsel's signature pursuant to NRC 11 verified the information in the motion. But these affidavit requirements are separate from the NRC 11 signature requirement and appellants provide no support for the implicit contention that counsel's signature per NRC 11 fulfills the affidavit requirement. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument or relevant authority). As appellants failed to support the *Brunzell* factor arguments and factual contentions in their motion for fees and costs with an affidavit or declaration, the district court did not abuse its discretion in denying the motion.

Further, regarding attorney fees, the motion for fees and costs included in the appendix on appeal does not include any supporting documentation. And while there is a billing statement from appellants' counsel included in the appendix, this document is not file stamped and was


included by itself rather than attached to any file-stamped motion or document to demonstrate it was actually filed in the district court. Moreover, because the record does not demonstrate that appellants provided an affidavit or declaration of counsel to substantiate their claimed fees, there is nothing before us to show that they provided any evidence, let alone substantial evidence, to support their request for fees. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (providing that an award of attorney fees must be supported by substantial evidence). As such, while appellants argue that an award of attorney fees was mandatory, given that the record does not demonstrate that they provided any evidence to the district court to support their fee request, we cannot say that the district court abused its discretion in denying appellants' request for attorney fees. *See Gunderson*, 130 Nev. at 80, 319 P.3d at 615.

Next, as to costs, "a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred" and without such evidence, it may not award costs. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). Some justifying documentation, which is more than the memorandum of costs, is required. *Id.* Here, the record on appeal does not demonstrate that any documentation was properly provided to the district court to show that the costs claimed were actually incurred.

Specifically, as noted above, if any supporting documentation was attached to the motion for attorney fees and costs submitted below, it was not attached to that motion in the appendix on appeal. Further, the memorandum of costs is not file stamped and thus, there is nothing in the record to demonstrate that this is the actual memorandum that was filed in district court. Regardless, the only document attached to this memorandum

is a spreadsheet listing alleged compensation for two people and some travel expenses, which does nothing to show that those purported costs were actually incurred. Indeed, the only documents that the record shows were provided during briefing on the motion, were the spreadsheet noted above and a generic printout of Southwest Airlines flight costs, which again, does not show that any such costs were actually incurred.<sup>1</sup> Given appellants' failure to demonstrate on appeal that they provided sufficient justifying documentation to the district court to establish that the requested costs were actually incurred, we cannot say that the district court abused its discretion in denying costs. *See id.*; *Gunderson*, 130 Nev. at 80, 319 P.3d at 615.

Accordingly, for the reasons set forth above, we  
ORDER the judgment of the district court AFFIRMED.



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



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



\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>We note that appellants filed an amended memorandum of costs after briefing had been completed on the motion for fees and costs and motion to retax costs, which attached various documents in support of the costs claimed. It does not appear that the district court considered this additional documentation and, if that is the case, we discern no abuse of discretion in the decision not to consider this late attempt to provide information that should have been included with the original memorandum of costs and/or the briefing on the motion for fees and costs and motion to retax costs.

cc: Hon. James Crockett, District Judge  
Harris Law Office  
M. Paul Weinstein  
Eighth District Court Clerk