

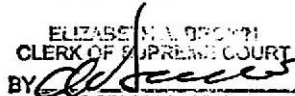
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMIRA J. TAMULES,  
Appellant,  
vs.  
CHRISTOPHER A. KNIGHT,  
Respondent.

No. 81452-COA

FILED

DEC 04 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Samira J. Tamules appeals from a district court order awarding attorney fees in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Bill Henderson, Judge.

In the proceedings below, the parties entered a stipulated decree of custody, whereby they share joint legal and joint physical custody of their minor child. In April 2020, Samira filed a motion for temporary custody based on concerns relating to COVID-19 exposure. Respondent Christopher Knight filed an opposition and counter-motion, seeking attorney fees and costs arguing that he was entitled to the same pursuant to NRS 18.010 and EDCR 5.501. The district court ultimately denied Samira's motion and directed Christopher's counsel to file a memorandum of fees and costs, including a discussion of the *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), factors.

Christopher's counsel filed a memorandum of fees and costs, discussing the *Brunzell* factors, and requesting \$5,053.75 in fees and costs. Samira filed an opposition to the memorandum, arguing that Christopher was not entitled to an award of fees and costs as neither party had filed a financial disclosure form pursuant to EDCR 5.507; that Christopher's

memorandum failed to meet the requirements of NRCP 54; and that no fees should be awarded based on the parties' disparity in income, pursuant to *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998). The district court entered an order awarding Christopher \$3,054 in attorney fees and costs, concluding that based on a totality of the circumstances, he was entitled to 60 percent of his requested fees. The district court noted that it considered the discussion in Christopher's memorandum of fees and costs and stressed that Samira's opposition discussed rules that were not relevant to a change of custody request. This appeal followed.

On appeal, Samira challenges the district court's order awarding Christopher attorney fees and costs, reasserting the same arguments she made in her opposition to Christopher's memorandum of fees and costs below. 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). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-43 (2015) (internal citations omitted). When awarding attorney fees in a family law case, the district court must consider the factors set forth in *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, and must also consider the disparity in the parties' income pursuant to *Wright*, 114 Nev. at 1370, 970 P.2d at 1073. *Miller*, 121 Nev. at 623, 119 P.3d at 730.

As an initial matter, we note that it is not clear which rule the district court relied upon in awarding attorney fees. Although Christopher

sought an award of fees pursuant to NRS 18.010 and EDCR 5.501, NRS 18.010(2)(a) is inapplicable here and the district court did not make any findings relating to an award of fees pursuant to NRS 18.010(2)(b) or EDCR 5.501. *See Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998) (explaining that the district court's failure to state a basis for an attorney fee award is an abuse of discretion); *but cf. Panicaro v. Robertson*, 113 Nev. 667, 668, 941 P.2d 485, 485-86 (1997) (concluding that although the district court is required to cite the relevant authority for awarding attorney fees, reversal is not required when the basis of the court's award is readily apparent).

Regardless of the rule upon which the award was based, from our review of the record, it is not clear that the district court properly considered *Wright* in determining a reasonable award of attorney fees. Specifically, although the district court's order cites to *Brunzell*, it did not cite to *Wright* and it failed to make any findings or otherwise demonstrate that it considered the disparity in the parties' income in making the award.<sup>1</sup> *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245,

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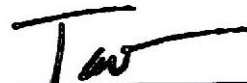
<sup>1</sup>We note that Christopher contends that despite the district court's lack of findings, it indicated that it considered the parties' respective positions in their briefing and that substantial evidence in the record supports the district court's decision such that affirmance is warranted. But Christopher's memorandum of fees and costs did not address the parties' incomes or *Wright* at all, and Samira asserted that there was a disparity in income such that an award of fees was not warranted. And based on our review, there is no evidence in the record regarding the parties' relative incomes and, therefore, there is no evidence upon which the district court could have relied in considering the parties' incomes for purposes of *Wright*. *See Otak*, 129 Nev. at 805, 312 P.3d at 496; *see also Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (noting that arguments of counsel are not evidence and do not establish the facts of the case).

416 P.3d 249, 258-59 (2018) (explaining that while the failure to make explicit findings as to the *Brunzell* factors is not a per se abuse of discretion, the district court must demonstrate that it considered the required factors and the award must be supported by substantial evidence). Thus, we are unable to discern from the record whether the district court actually considered the required factors, and we necessarily reverse and remand the award of attorney fees to the district court for additional findings. See *Miller*, 121 Nev. at 622-23, 119 P.3d at 729-30.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

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

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

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

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<sup>2</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Bill Henderson, District Judge, Family Court Division  
Samira J. Tamules  
Mills & Anderson Law Group  
Nevada Justice Group, Ltd.  
Eighth District Court Clerk