IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN R. MCGLAMERY, Appellant, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, A PUBLIC AGENCY; AND TERESA MCGLAMERY, N/K/A TERESA BLUME, Respondents.	No. 80022-COA
JOHN R. MCGLAMERY, Appellant, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, A PUBLIC AGENCY; AND TERESA MCGLAMERY, N/K/A TERESA BLUME, Respondents.	No. 81287-COA ✓
JOHN R. MCGLAMERY, Appellant, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, A PUBLIC AGENCY; AND TERESA MCGLAMERY, N/K/A TERESA BLUME, Respondents.	No. 81636-COA ✓

FILED
MAR 05 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

In these related appeals,[1] John R. McGlamery appeals from a district court order granting summary judgment in a declaratory relief

[1]Before transfer to this court, the Nevada Supreme Court consolidated the matters in Docket Nos. 81287 and 81636. While Docket

action. Second Judicial District Court, Family Court Division, Washoe County; Bridget E. Robb, Judge.

McGlamery and respondent Teresa McGlamery (n/k/a Teresa Blume) were divorced by way of a stipulated decree of divorce entered in December 2000. Pursuant to the parties' marital settlement agreement (MSA), which was incorporated and merged into the decree of divorce, Blume was entitled to receive 50 percent of McGlamery's Public Employees' Retirement System (PERS) pension earned during the marriage, and Blume's attorney was to prepare a qualified domestic relations order (QDRO) dividing the interest. And under the subsequent QDRO, which both parties signed, upon McGlamery's retirement, PERS would pay Blume a portion of McGlamery's plan benefits. The QDRO provides that Blume's share of the plan benefits would be determined by the following formula: "FIFTY PERCENT (50%) multiplied by the length of credited service in PERS earned during the marriage divided by the length of total credited service earned by [McGlamery] at his retirement."

In 2017, McGlamery filed the instant action allegedly seeking declaratory relief pursuant to NRS 30.040.[2] McGlamery asserted that, in August 2016, he discovered that PERS would calculate Blume's share of the

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No. 80022 has not been consolidated with these other two cases, because they arise from the same underlying case, we resolve them together.

[2]McGlamery's complaint also purported to assert causes of action for violation of NRS 125.155; estoppel; improper windfall benefit; public policy violation; and unconstitutional taking, although both below and on appeal, McGlamery argues that he only sought declaratory relief.

PERS benefit at the time of McGlamery's retirement, and thereby would use his average top three years of salary in calculating the benefit pursuant to NRS 286.551. But McGlamery averred that he received significant increases in his salary based on his sole efforts after the divorce, and that Blume should only receive her share of the PERS benefit based on his average top three years of salary at the time of the parties' divorce, rather than at the time of his retirement. Thus, McGlamery sought a court order requiring PERS to interpret the QDRO to pay Blume based on his top three years of salary at the time of the divorce.

The district court subsequently granted respondents' motions for summary judgment, over McGlamery's objection, concluding that the QDRO was clear on its face and provided that Blume was entitled to 50 percent of the portion of the benefits earned during the marriage. Additionally, the court determined that the plain language of the QDRO required the calculation of the plan benefits to occur at the time of McGlamery's retirement and that there was no limiting language requiring that the QDRO be interpreted as McGlamery urged. The district court also addressed McGlamery's remaining causes of action, concluding that NRS 125.155 did not create a private right of action. The district court likewise concluded that McGlamery's remaining claims failed as a matter of law and that no genuine issues of material fact existed. McGlamery appealed the order granting summary judgment, giving rise to Docket No. 80022-COA.

PERS later moved for attorney fees pursuant to NRS 18.010(2)(b), which the district court granted over McGlamery's objection. In its order, the district court noted that McGlamery's opposition primarily

challenged the district court's order granting summary judgment and that his arguments contradicted the court's prior findings. The court went on to conclude that McGlamery's complaint lacked any factual or legal basis, as set forth in its order granting summary judgment, that McGlamery failed to set forth any novel issues, that the QDRO was clear on its face, that the deficiencies in McGlamery's legal positions were obvious, and that McGlamery failed to provide any credible evidence in support of his claims such that the complaint was groundless and fees were warranted pursuant to NRS 18.010(2)(b).

But the court went on to conclude that it lacked sufficient information to determine whether the requested fees were reasonable, as the billing records PERS submitted were redacted. Accordingly, the district court granted PERS leave to submit supplemental billing records and gave McGlamery 14 days to object to any supplement filed. PERS filed its supplemental billing records, but McGlamery failed to file an opposition thereto. Accordingly, the district court reviewed the submissions and awarded PERS $85,165.82 in attorney fees, after reducing some of PERS' requested fees, and declined to award PERS its costs. McGlamery then appealed, giving rise to Docket No. 81287-COA.

Blume likewise moved for attorney fees and costs, and McGlamery opposed the request. The district court again concluded that, because McGlamery's complaint lacked any factual or legal basis, he did not present any novel issues, and he failed to provide any credible evidence in support of his claims, fees were warranted pursuant to NRS 18.010(2)(b). Accordingly, the district court awarded Blume attorney fees in the amount

of $17,866.00, but denied her request for costs, concluding that Blume failed to timely seek the same pursuant to NRS 18.110. McGlamery then appealed, giving rise to Docket No. 81636-COA. We address these related cases below in turn.

Docket No. 80022-COA

In his first appeal, McGlamery challenges the district court's grant of summary judgment, asserting that questions of fact remain and that the district court erred in its conclusions of law. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his claims. *Id.* at 731, 121 P.3d at 1030-31.

Here, although McGlamery contends his complaint seeks only declaratory relief, his arguments demonstrate that his underlying action actually sought to challenge, modify, and/or clarify the decree of divorce and subsequent QDRO. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 809, 312 P.3d 491, 498 (2013) (explaining that the appellate courts analyze "a claim according to its substance, rather than its label"); *State Farm Mut. Auto. Ins. Co. v. Wharton*, 88 Nev. 183, 186, 495 P.2d 359, 361 (1972) (explaining that the appellate courts look to the nature of the

grievance rather than the form of the pleadings when determining the character of the action). Indeed, McGlamery expressly challenges the validity of the QDRO in light of NRS 125.155 and the decree of divorce. Similarly, although framed as seeking a court order interpreting the QDRO, a review of McGlamery's complaint reveals that he ultimately seeks to modify the QDRO to include limiting language regarding how the PERS benefit would be calculated that does not currently appear in the QDRO. Along the same lines, he attacks the QDRO on the basis that it is purportedly vague because it does not define certain terms. But these challenges should have been raised in an appeal from the decisions entered in the divorce matter or in a post-judgment motion in that proceeding. *See Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977) (noting the district court's inherent authority to construe its judgments to remove an ambiguity). Instead, McGlamery brought the underlying action, which is, effectively, an improper collateral attack on the QDRO and divorce decree. *See* DCR 18(1) (providing that once a judge has made a ruling in a case, no other judge shall take any action in that case except upon written request by the judge who made the ruling); *Rohlfing v. Second Judicial Dist. Court*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990) ("The district courts of this state have equal and coextensive jurisdiction; therefore, the various district courts lack jurisdiction to review the acts of other district courts.").

Regardless, we note that to the extent McGlamery's claims could be construed as solely seeking a declaratory judgment regarding the QDRO or NRS 125.155, as he asserted below and maintains on appeal, his complaint was still improper. As to the QDRO, McGlamery contends that

his complaint properly sought declaratory relief pursuant to NRS 30.040. But nothing in that statute permits a party to seek a declaration of rights, in a new proceeding, regarding a district court order such as the QDRO. *See* NRS 30.040 (providing that declaratory relief actions are permitted regarding instruments, contracts, and statutes). And McGlamery has failed to offer any cogent argument or relevant authority to support his position that a district court order can be the subject of a declaratory relief action under NRS 30.040. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued or supported by relevant authority).

Similarly, as to McGlamery's claim that his complaint sought declaratory relief regarding NRS 125.155, the district court correctly concluded that NRS 125.155 does not create a private right of action. And declaratory relief is not available to remedy an alleged statutory violation when no private right of action under the statute exists. *See Richardson Constr., Inc. v. Clark Cty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007) (explaining "that when a statute does not expressly provide for a private cause of action, the absence of such a provision suggests that the Legislature did not intend for the statute to be enforced through a private cause of action"); *Builders Ass'n of N. Nev. v. City of Reno*, 105 Nev. 368, 369, 776 P.2d 1234, 1234 (1989) (explaining that the Uniform Declaratory Judgments Act—codified in NRS Chapter 30—"does not establish a new cause of action or grant jurisdiction to the court when it would not otherwise exist"); *see also Cabral v. Caesars Entm't Corp.*, Docket No. 78580 (Order of

Affirmance, July 29, 2020) (concluding that the appellate courts "will not allow a party to overcome the lack of a private right of action by repackaging an alleged statutory violation as a declaratory relief action" (citing *Builders Ass'n*, 105 Nev. at 369-70, 776 P.2d at 1234-35)). Thus, we discern no error in the district court's conclusion that McGlamery's complaint was improper such that respondents were entitled to judgment as a matter of law. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. And because McGlamery's remaining alleged claims are derivative of his unviable claim for an alleged violation of NRS 125.155, those claims likewise fail. *Id.* Thus, for the reasons articulated above, we affirm the district court's grant of summary judgment to respondents.

Docket Nos. 81287-COA and 81636-COA

In these consolidated appeals, McGlamery challenges the district court's award of attorney fees to PERS and Blume. But in so doing, McGlamery primarily challenges the district court's grant of summary judgment, arguing that the district court improperly determined the QDRO was clear on its face; that the court improperly concluded that NRS 125.155(1) was clear on its face; that the court improperly refused to hold a hearing; and that the district court's findings of fact and conclusions of law were erroneous, demonstrating bias. In light of these alleged errors, McGlamery contends that, because summary judgment was improper, the award of fees was likewise improper, and that the district court's analysis of the *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), factors was insincere.

The district court generally may not award attorney fees absent authority allowing it to do so under a statute, rule, or contract. *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 878 (2014). After determining that an award of attorney fees is warranted, the district court must then consider the factors set forth in *Brunzell* to determine a reasonable amount of fees. 85 Nev. at 349, 455 P.2d at 33. 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. 235, 245, 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). This court reviews an award of attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev.*, 129 Nev. at 805, 312 P.3d at 496.

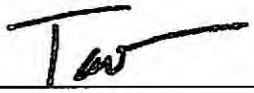
Here, the district court determined that attorney fees were warranted pursuant to NRS 18.010(2)(b) because McGlamery's complaint was filed without reasonable grounds as it lacked any factual or legal basis. In light of our conclusion above, that the district court properly determined that there was no legal basis for the complaint, we cannot conclude that the district court abused its discretion in determining attorney fees were warranted pursuant to NRS 18.010(2)(b). *See Gunderson*, 130 Nev. at 80, 319 P.3d at 615. With regard to the reasonableness of attorney fees awarded, in the underlying case, McGlamery failed to challenge the

reasonableness of the requested fees and failed to raise any arguments relating to *Brunzell*. Thus, those arguments have been waived and we need not consider them on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Regardless, we note that the district court made specific findings as to each of the *Brunzell* factors in both orders awarding attorney fees. And based on our review of the record, substantial evidence supports the district court's findings. Indeed, we note that the district court first concluded that the supporting documentation was insufficient and directed that these materials be supplemented, and then it ultimately determined that some of the requested fees were not warranted. We therefore affirm the district court's awards of attorney fees.

Accordingly, for the reasons articulated above, we

ORDER the judgments of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



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[3]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. Bridget E. Robb, District Judge
John R. McGlamery
McDonald Carano LLP/Reno
Todd L. Torvinen
Washoe District Court Clerk