

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW C. CARLSON,  
Appellant,  
vs.  
CHELSEA B. CARLSON,  
Respondent.

No. 81460-COA

FILED

JAN 07 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Matthew C. Carlson appeals from a post-divorce decree order granting a motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.

Following entry of the stipulated divorce decree that terminated the marriage between Matthew and respondent Chelsea B. Carlson, disputes arose between the parties, which prompted Matthew to file a motion wherein he presented several requests for relief, including a request to change the school that the parties' two minor children attended. Chelsea opposed that motion and presented her own requests for relief, including, among other things, reimbursement of certain of the children's medical expenses.

Chelsea eventually moved for summary judgment on all of the claims raised in the parties' motion practice. Although Matthew then sought to withdraw several of his requests for relief, the district court granted summary judgment in Chelsea's favor as to those requests, reasoning that Matthew did not timely withdraw them and that Chelsea should not have had to move for summary judgment. But with respect to the school selection and medical expenses issues for which Matthew

opposed summary judgment, the district court decided to let them proceed to an evidentiary hearing that the court had previously scheduled.

On the second day of the evidentiary hearing, the parties reached a settlement that was read into the record in open court, which provided that, among other things, the children would remain in the school zone where they had been attending school and that Matthew would pay Chelsea \$700 to resolve the medical expenses issue. The parties subsequently endeavored to prepare a stipulation and order effecting the terms of the settlement agreement, however, there were disagreements and extensive delays in this process. As a result, Chelsea eventually moved for the stipulation and order to be entered without Matthew's signature, which the district court did without objection from Matthew. Because the stipulation and order reserved the issue of the parties' respective attorney fees and costs for later resolution by the district court, Chelsea subsequently moved for an award of \$54,098.69 in attorney fees and costs under NRS 18.010(2), NRS 125.141(4), and EDCR 7.60(b).

Over Matthew's opposition, the district court awarded Chelsea \$45,503.17 in attorney fees and costs. To support that award, the district court cited to NRS 18.010(2)(a) and (b), and found that Chelsea was the prevailing party because the summary judgment and settlement on the school selection issue were in her favor. The district court also cited to EDCR 7.60(b)(1), (3), and (4), and found that Matthew's behavior in the case, including his attempt to withdraw several of his requests only after Chelsea moved for summary judgment, multiplied the proceedings in a manner that increased costs unreasonably and vexatiously. This appeal followed.

This court reviews an award of attorney fees and costs for an abuse of discretion. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (reviewing an award of attorney fees for an abuse of discretion);

see also *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) (reviewing an award of costs for an abuse of discretion). The district court ordinarily may not award attorney fees or costs absent authority under a statute, rule, or contract. *U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002); see also *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 878 (2014). And generally, the district court abuses its discretion when it awards attorney fees without stating a basis for the decision. *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). But even when the district court fails to cite relevant authority for an award of attorney fees, reversal is not required when the basis for the court's award is readily apparent. *Panicaro v. Robertson*, 113 Nev. 667, 668, 941 P.2d 485, 485-86 (1997) (concluding that although the district court failed to cite the relevant authority for awarding attorney fees, reversal was not required as the basis of the court's award was readily apparent). Nevertheless, "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 (2015) (internal citations omitted).

On appeal, the parties present several arguments that call into question the basis for the district court's award of attorney fees and costs to Chelsea.<sup>1</sup> In making the award, the district court cited to NRS 18.010(2)(a)

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<sup>1</sup>Although Chelsea contends that Matthew waived certain of his arguments concerning the basis for the district court's award of attorney fees and costs by failing to present them below, *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."), Matthew's opposition addressed the specific arguments presented in Chelsea's motion, and his arguments on appeal are properly before us insofar as they address the clarity of the district court's order and matters therein that were not specifically argued in Chelsea's motion.



and (b) as well as EDCR 7.60(b)(1), (3), and (4). However, aside from finding that Chelsea was the prevailing party on the issues that were resolved via summary judgment and the school selection issue that was settled, the only finding that the district court made relevant to any of these provisions concerned EDCR 7.60(b)(3), which authorizes the district court to sanction a party who "[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." In particular, the district court found that Matthew's behavior in this case multiplied the litigation, including when he attempted to withdraw several of his requests for relief only after Chelsea moved for summary judgment.

While the district court generally referred to Matthew's behavior in this case, its finding suggests that it was primarily concerned with Matthew's attempt to withdraw several of his requests for relief after Chelsea moved for summary judgment. But notably, Chelsea sought \$54,098.69 in attorney fees and costs for her counsel's efforts over an approximately 10-month period in connection with discovery, the motion for summary judgment, the subsequent evidentiary hearing on the issues that survived summary judgment, and preparation of the settlement agreement that resulted from the evidentiary hearing. And although the district court only awarded Chelsea \$45,503.17—approximately 84 percent of the amount Chelsea sought—absent any explanation of the basis for the reduction, it does not appear that the award is proportionate to the conduct specifically identified by the district court as justifying the award under EDCR 7.60(b)(3). See *Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 681-82, 263 P.3d 224, 230 (2011) (concluding that awarding attorney fees as a sanction is appropriate where the amount of the award is proportionate to the misconduct).

The question then is whether the district court's concern was merely with the timing of Matthew's decision to withdraw his claims, or

whether the court's concern was that the requests that Matthew sought to withdraw were inherently meritless and should never have been brought. Given that the court also cited to EDCR 7.60(b)(1), which authorizes attorney fees and costs as a sanction for "frivolous, unnecessary or unwarranted" motions and oppositions, as well as NRS 18.010(2)(b), which authorizes awards of attorney fees when a party brings or maintains a claim or defense "without reasonable ground or to harass the prevailing party," the relative merit of Matthew's requests and defenses may have factored into the district court's decision. However, the district court made no findings to this effect. *See Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (providing that, when the district court awards attorney fees as a sanction under NRS 18.010(2)(b) or EDCR 7.60(b)(1), it "must determine if there was any credible evidence or reasonable basis for the claim at the time of filing").

Thus, despite the citations in the district court's order,<sup>2</sup> we are unable to discern the precise basis for the attorney fees and costs awarded,<sup>3</sup>

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<sup>2</sup>As indicated above, the district court's order also cited to NRS 18.010(2)(a) and EDCR 7.60(b)(4). However, the district court did not find that Chelsea prevailed on any issue to which the provision could be applicable. Nor did the district court find that Matthew violated any specific provision of the EDCR, which is the conduct for which a sanction of attorney fees and costs is authorized under EDCR 7.60(b)(4).

<sup>3</sup>We recognize that Matthew's decision to settle the school selection issue during the evidentiary hearing may have factored into the district court's decision to award attorney fees and costs, given that the court had previously orally cautioned Matthew to settle the matter to avoid being subject to an attorney fees award to Chelsea. *See Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970) ("[E]ven in the absence of express findings, if the record is clear and will support the judgment, findings may be implied."). However, this again suggests a concern with the timing of the settlement, and implicates the same issues concerning the lack of clarity regarding the basis for the district court's decision that we identified above.

see *Henry Prods.*, 114 Nev. at 1020, 967 P.2d at 446, and given this lack of clarity, we necessarily reverse and remand for additional findings.<sup>4</sup> See *Davis*, 131 Nev. at 450, 352 P.3d at 1140.

It is so ORDERED.<sup>5</sup>

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

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

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

cc: Hon. Rhonda Kay Forsberg, District Judge  
Law Offices of F. Peter James, Esq.  
Nevada Family Law Group  
Eighth District Court Clerk

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<sup>4</sup>In reversing and remanding for additional findings, we note that Chelsea has yet to support her motion for attorney fees and costs with an affidavit from her counsel attesting that his attorney fees were actually and necessarily incurred and were reasonable. See NRCP 54(d)(2)(B)(v).

<sup>5</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.