

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE SHERIDAN, AN INDIVIDUAL,
Appellant,
vs.
JOSEPH A. GUTIERREZ, ESQ.;
STEVEN G. KNAUSS, ESQ.; JASON R.
MAIER, ESQ.; AND MAIER
GUTIERREZ & ASSOCIATES,
Respondents.

No. 82104-COA

FILED

DEC 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK 0

ORDER OF AFFIRMANCE

Rene Sheridan appeals from a post-judgment district court order awarding attorney fees and costs in a legal malpractice action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Sheridan filed a complaint against respondents for, among other things, legal malpractice in connection with their representation of her in a prior matter. Upon respondents' motion and over Sheridan's opposition, the district court entered an order summarily concluding that Sheridan "d[id] not plead any factual assertions that would support any cognizable claim for relief against [respondents]," and it dismissed the complaint under NRCP 12(b)(5) without prejudice and without leave to amend. Respondents subsequently filed a motion for attorney fees and costs, arguing that Sheridan brought her claims without reasonable ground and to harass respondents. The district court agreed and, considering all of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), for determining a reasonable amount of fees, entered an order awarding respondents \$4,426.00 in attorney fees under

NRS 18.010(2)(b), in addition to \$329.39 in costs. Sheridan now appeals from that order.

We review a district court's award of attorney fees and costs for an abuse of discretion.¹ *Frazier v. Drake*, 131 Nev. 632, 637, 357 P.3d 365, 369 (Ct. App. 2015). A district court may award attorney fees to a prevailing defendant when it finds that the plaintiff "brought or maintained [her claims] without reasonable ground or to harass the prevailing party."² NRS 18.010(2)(b).

On appeal, Sheridan essentially argues that the district court abused its discretion in awarding fees under NRS 18.010(2)(b) for two reasons: (1) our supreme court supposedly acknowledged that Sheridan has a viable claim for legal malpractice against respondents in its order resolving an appeal in that prior matter, and (2) Sheridan refiled her claims in the Second Judicial District Court after the underlying dismissal, and

¹The district court's order did not set forth any grounds in support of the costs award, but respondents argued for costs under NRS 18.020(3), which allows costs as a matter of course to the prevailing party "[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500," and Sheridan sought in excess of \$50,000 in her complaint. Moreover, because Sheridan fails to challenge the district court's decision on this point, the issue is waived, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived), and we necessarily affirm the costs award.

²We note that neither this court nor our supreme court has specifically determined whether a defendant may be a prevailing party entitled to attorney fees under a fee-shifting statute where, as here, the plaintiff's complaint was dismissed without prejudice. But because Sheridan fails to set forth any argument on this point, the issue is waived, *see Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3, and we assume for purposes of our disposition that respondents were prevailing parties below.

the judge in that case refused to dismiss them under NRCP 12(b)(5) or find that they were brought without reasonable ground.

With respect to the former, Sheridan misconstrues the supreme court's order. She contends the order shows that respondents committed actionable malpractice by violating a confidentiality provision in the settlement agreement she reached with the defendants in that case. But in the order, the supreme court simply concluded that respondents' breach of that provision did not excuse Sheridan from any obligation under the agreement and that "[t]he appropriate relief for *any harm caused by that breach*, therefore, is a malpractice action against [respondents], not for the district court to invalidate the settlement agreement." *Sheridan v. Sedlak*, Nos. 76132, 78631, 2020 WL 1357978, at *2 (Nev. Mar. 18, 2020) (Order of Affirmance) (emphasis added). And in this matter, respondents successfully argued to the district court that Sheridan failed to sufficiently allege that respondents proximately caused her to suffer any actual harm as a result of the breach. *See Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 667-68, 765 P.2d 184, 185 (1988) (providing that a plaintiff must show that the attorney's breach proximately caused her to incur damages). Thus, contrary to Sheridan's arguments on appeal, the supreme court's statement in the prior matter cannot provide a reasonable basis for a complaint that otherwise failed to sufficiently plead all essential elements of her claims.

With respect to the Second Judicial District Court's refusal to dismiss Sheridan's new complaint in a separate case under NRCP 12(b)(5), we are not persuaded that the district court's fee award in this case amounted to an abuse of discretion simply because another district court judge declined to dismiss an action raising similar claims. "An abuse of discretion occurs when *no reasonable judge* could reach a similar conclusion

under the same circumstances,” *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014), not when a judge in a later matter merely reaches a different conclusion under materially similar circumstances.³

Because Sheridan fails to demonstrate that the district court abused its discretion in determining that her complaint in this matter was brought without reasonable ground, we affirm the award of attorney fees and costs.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 24
Rene Sheridan
Lipson Neilson P.C.
Eighth District Court Clerk

³Although unnecessary to our disposition, we further note that a copy of Sheridan’s complaint in the Second Judicial District Court does not appear in the record on appeal, and we therefore cannot even discern the extent to which the complaint in that matter asserts the same or similar allegations to those raised in this action.