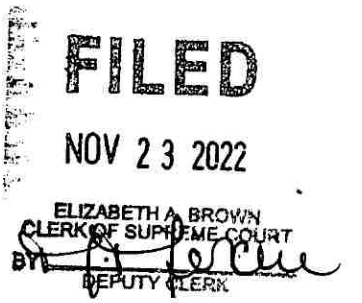
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CINDY L. ARMENTROUT; AND ROBERT KAUFFMAN,
Appellants,
vs.
PATRICK MEAD; KATHIE MEAD; THE MEAD FAMILY TRUST; AND KENNETH R. CARMAN,
Respondents.

No. 83858-COA



ORDER OF AFFIRMANCE

Cindy L. Armentrout and Robert Kauffman (collectively Armentrout) appeal a judgment in a real property and tort case in favor of Patrick Mead, Kathie Mead, and the Mead Family Trust (collectively the Meads) and a separate order for attorney fees in favor of Kenneth R. Carman. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

In 1975, Carman owned three adjacent parcels of land on Warrior Lane in Reno that were approximately one acre each.[1] He built a house on one parcel (house parcel), a barn on the middle parcel (barn parcel), and left the last parcel vacant (vacant parcel). When he built his house, he installed a septic system that included an underground leach field in the vacant parcel. This means that there was a hardline pipe running from the tank located on the house parcel, through the barn parcel to the vacant parcel where it ended in an underground leach field.

In 1982, Carman and his wife, Louise, divorced, and Carman quitclaimed the vacant parcel to her subject to an easement for the

[1]We recount the facts only as necessary for our disposition.

maintenance of the septic system. The deed was recorded but was silent as to the location of the septic system on the vacant parcel. In 1985, Carman recorded a document that generally described the location of the septic system as beginning in the northwest portion of the vacant parcel and continuing along the north of the property until it curved into the leach field on the northeast portion of the vacant parcel.

The Meads later purchased both the house and barn parcels from Carman. In 2015, Armentrout purchased the vacant parcel from the Waldo family, who had previously purchased the property from Louise. Armentrout had knowledge of the easement for the septic system when they purchased the property. While it is disputed exactly when Armentrout gained knowledge that there was an active and functioning septic system on the vacant parcel and who informed Armentrout of the system, the district court found that Armentrout had knowledge of the septic system when they purchased the property. In August 2017, Armentrout, acting on instructions from the Washoe County Health District, excavated the vacant parcel to determine the location of the septic system. During the excavation, the hardline pipe was damaged.

The health district instructed Armentrout to repair the pipe, but Armentrout capped the system instead, thus stopping flow of wastewater from the septic tank to the leach field and preventing the septic system from functioning as designed. All waste, solid and liquid, now collected in the Meads' septic tank. The Meads had to drastically reduce their water usage and have their septic tank pumped frequently to prevent the septic tank from leaking sewage into the ground or backing up into their house. In order to reduce their water usage, the Meads took shorter showers, refrained from flushing the toilets as often as possible, washed

their clothes at a laundromat, and washed their dishes in a bucket outside the house. They also had to carefully wash fruits and vegetables with a hose outside the house to ensure cleanliness and to protect Mr. Mead from disease, as he was immunocompromised following a liver transplant. The Meads attempted to repair the hardline pipe, but they were denied access to the vacant parcel by Armentrout. Eventually the Meads felt the conditions were intolerable, so they relocated by renting temporary housing in a furnished home.

In November 2017, Armentrout filed a complaint for declaratory judgment asking the district court to declare that the septic system easement was invalid and unenforceable. The Meads filed their answer and counterclaim in December, along with a demand for a jury trial filed in January 2018. In March 2018, the Meads also filed a motion for a preliminary injunction and asked the court to order Armentrout to uncap the septic system. Six months later the district court granted the Meads' motion over Armentrout's opposition. Armentrout uncapped and repaired the septic system immediately after the district court issued its order. By the time the Meads septic system was uncapped, they had spent $6,185 pumping the septic tank and $11,000 on temporary living expenses.

In October 2018, Armentrout filed motions for leave to amend the complaint and to continue the trial date. Both were granted. The Meads filed multiple motions in December 2018 and January 2019. These included a motion to withdraw jury trial demand, or in the alternative to bifurcate trial; a motion for partial summary judgment; and motions in limine to exclude evidence and references related to the legality of the septic system and to exclude a lay witness from offering expert opinions. These motions were all opposed by Armentrout.

In January 2019, Armentrout filed the amended complaint which raised two new causes of action. The first was a negligence claim against the Washoe County Health District, and the second was a negligence claim against Carman. The health district filed a motion to dismiss the claim against it, arguing that the claim was barred by the statute of limitations. This was opposed by Armentrout.

In March 2019, the district court held oral argument on the motions filed by the Meads and the Washoe County Health District. After the hearing, the district court granted each motion before it. The Nevada Supreme Court affirmed the order granting dismissal on the grounds that the claim against the health district was barred by the statute of limitations.[2]

In December 2020, Carman filed a motion for summary judgment and argued that the claim against him was barred by the statute of limitations. After the district court granted his motion, he filed a motion for attorney fees and argued that the claim against him was brought and maintained unreasonably. The attorney fees motion was not resolved by the district court until after the bench trial.

In 2021, the district court conducted a two-day bench trial on the remaining claims. Following the bench trial, the district court found in favor of the Meads on all claims and granted them $17,185 in actual damages, with additional general damages of $100 per day and per person for 357 days (the number of days the septic system was capped) for a total award of $88,585 in general damages. The district court also awarded the

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[2]*See Armentrout v. Washoe Cty. Health Dist.*, No. 79382, 2020 WL 5634163 (Nev. Sept. 18, 2020).

Meads $146,853.50 in attorney fees as special damages. The district court awarded Carman $10,723 in attorney fees under NRS 18.010(2)(b).

On appeal, Armentrout raises seven arguments: that the district court (1) abused its discretion when it granted the Meads' motion to withdraw the jury trial demand; (2) abused its discretion when it granted the Meads' motions in limine; (3) erred when it granted the Meads' motion for partial summary judgment; (4) erred when it found in the Meads' favor on each cause of action following the bench trial; (5) abused its discretion when it awarded the Meads general damages for each day the septic system was capped; (6) erred when it awarded the Meads attorney fees as special damages; and (7) abused its discretion when it awarded Carman attorney fees. We disagree and address each argument in turn.

The district court did not abuse its discretion when it granted the motion to withdraw the demand for a jury trial

Armentrout argues that the district court abused its discretion when it granted the Meads' motion to withdraw their demand for a jury trial because Armentrout had relied on this demand in good faith for nearly a year. The Meads respond that the district court did not abuse its discretion, and an order granting a party's motion to withdraw its own jury trial demand is not an enumerated appealable judgment under NRAP 3A, and therefore, the order is not appealable.[3]

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[3]NRAP 3A provides an enumerated list of appealable orders. While a motion to withdraw a jury trial demand is not included, final judgments are appealable. NRAP 3A. A final judgment is "one that disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). The Findings of Fact, Conclusions of Law, and Judgment after the bench trial dispose of the issues, determine all costs, and leave no matter for the future consideration of the court. Therefore, the

The district court did not abuse its discretion when it granted the motion. The standard of review for denying a demand for a jury trial is abuse of discretion. *See Westgate Planet Hollywood Las Vegas, LLC v. Tutor-Saliba Corp.*, No. 65130, 2017 WL 1855006, at *2 (Nev. May 5, 2017) (unpublished disposition). Additionally, NRCP 38(d)(2) provides that a demand for a jury trial may be withdrawn "by court order for good cause upon such terms and conditions as the court may fix." Together, *Westgate* and NRCP 38(d)(2) indicate that abuse of discretion is the proper standard of review to use in this instance. The parties do not argue otherwise.

A trial court commits an abuse of discretion when "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Sims*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). Armentrout was not reasonably relying on a jury trial because they never joined in the jury trial demand, and shortly before the Meads' withdrawal motion was filed, Armentrout filed a motion for leave to amend the complaint and a motion to continue the trial date. The amended complaint did not indicate that Armentrout wanted a jury trial, nor was a demand ever filed even though they were now also seeking legal relief, not just equitable relief, as they originally requested. A reasonable judge could

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Findings of Fact are a final judgment. Interlocutory orders entered prior to the final judgment, like the order granting the motion to withdraw the jury trial demand, can be appealed as part of the appeal from a final judgment. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (citing *Summerfield v. Coca Cola Bottling Co.*, 113 Nev. 1291, 1293-94, 948 P.2d 704, 705 (1997)). Therefore, the interlocutory order allowing the jury demand to be withdrawn, while not independently appealable, may be challenged in this appeal from a final judgment.

conclude that Armentrout was not relying on a rapidly approaching jury trial and thus grant the motion.

Regardless, the district court had good cause to grant the Meads' motion. The district court granted the motion to conserve judicial resources because separate questions of law and equity remained, which likely would have required a separate jury and bench trial if the Meads' motion was not granted. We discern no abuse of discretion.

The district court did not abuse its discretion by granting the Meads' motions in limine

First, Armentrout argues that evidence regarding the legality of the septic system should not have been excluded and that they should have been allowed to refer to the septic system as illegal because this evidence was relevant to determine the validity of the easement.

The district court gave two independent and alternative grounds to support its ruling. First, the district court found that the septic system at issue complied with the 1975 Washoe County Health District regulations that were in effect at the time the septic system was installed. Armentrout does not challenge this finding on appeal. Since Armentrout has failed to challenge the independent and alternative ground that the district court used to support its decision, we affirm the order on the unchallenged grounds. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1289 (Ct. App. 2022) (holding that when a district court provides independent and alternative grounds to support its ruling the appellant must properly challenge all of the grounds, otherwise the ruling will be affirmed).

Even if we considered this order, we review district court rulings on motions in limine for abuse of discretion. *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005). A trial court commits an abuse of

discretion "when no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5. The claims before the district court when it issued its order were "(1) Quiet Title-Easement by Necessity; (2) Nuisance; (3) Trespass; (4) Tortious Interference with Easement; and (5) Attorney's Fees." Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination more or less probable than it would be without the evidence." NRS 48.015. The district court correctly determined that the legality of the Meads' septic system does not make any fact related to the above causes of action more or less probable because the legality of the septic system does not determine if there is a valid easement or if a property right has been interfered with.

Second, Armentrout argues that the district court abused its discretion when granting this motion because the district court precluded a lay witness from testifying to matters within his personal knowledge that did not require expert testimony. The district court's order relies on NRS 50.265 (prohibiting the introduction of expert testimony from a lay witness), NRCP 16.1(a)(2) (requiring the disclosure of expert witnesses), and NRCP 37(c)(1) (allowing witnesses to be prevented from testifying at trial if they were not disclosed). The order in this case does not exclude any witnesses; rather, it excluded improper testimony if it was offered during trial.

Armentrout does not challenge the provisions that the district court relied on to reach its conclusion. Instead, Armentrout argues that this order prevented them from calling a witness who had "technical percipient witness testimony" that was excluded by the district court. Armentrout provides no support that their witness was prevented from testifying by the district court's order or that, had the witness testified, the result of the trial

would have been different. The excerpts of proposed testimony from Armentrout indicates that their proposed witness would have been able to testify under the district court's order, at least in part, but was never called. Armentrout cites no relevant authority nor provides a cogent argument that supports the contention that the district court abused its discretion. Accordingly, we need not further consider the argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); *see also* NRS 47.040(1) (providing error may not be predicated on a ruling excluding evidence unless a substantial right is affected). Accordingly, we conclude that the district court did not abuse its discretion.

The district court did not err in its order granting partial summary judgment

Armentrout argues that the district court erred in granting the motion for summary judgment when it found that a valid easement existed because it relied on gross misstatements of fact and ignored genuine disputes of fact. The Meads contend that Armentrout's argument is waived because the now-challenged facts were not raised in Armentrout's opposition to the motion for summary judgment, and additionally, the facts do not change the result.

We review 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 should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029. And "[i]n evaluating the propriety of a summary judgment, we review the evidence in

the light most favorable to the party against whom judgment was rendered." *Epperson v. Roloff*, 102 Nev. 206, 208, 719 P.2d 799, 801 (1986).

Armentrout argues that the district court improperly relied on four facts in its order. We conclude that Armentrout did not oppose these facts in their motion opposing summary judgment. Since Armentrout is raising these facts for the first time on appeal, essentially creating a new issue, we do not need to address them. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436-38, 245 P.3d 542, 544-45 (2010) (concluding that when a party points to specific passages in the record, not cited in a motion opposing summary judgment, to support its argument for the first time on appeal, these arguments are new arguments that are considered waived on appeal) (citing *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal")).

Second, Armentrout argues that the district court erred as a matter of law when it found that a valid easement existed, and Louise's signature was unnecessary to satisfy the statute of frauds. An interest in land cannot be "created, granted, assigned, surrendered or declared" unless the conveyance has been signed by the party "creating, granting, assigning, surrendering, or declaring the same." NRS 111.205. It is undisputed that Carman properly signed the quitclaim deed which transferred the vacant parcel to Louise and purportedly created the easement at issue. Armentrout claims in their opening brief, without support, that Carman and Louise jointly owned the vacant parcel, which means her signature was required on the quitclaim deed establishing the easement. Armentrout's motion opposing partial summary judgment contains no claim that the parcel was jointly owned, nor do they identify in the supporting material

within the record that the parcel was ever jointly owned by Carman and Louise. Accordingly, we conclude there was no error of law in the determination that the easement did not violate the statute of frauds and partial summary judgment was appropriate.

The district court did not err when it ruled in the Meads' favor on all issues remaining at the bench trial

First, Armentrout argues that the district court erred as a matter of law when it ruled in the Meads' favor on the trespass claim because it was legally impossible to rule in their favor. We review a district court's legal conclusions following a bench trial de novo. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). A trespass occurs when a property right has been invaded. *Lied v. Clark County*, 94 Nev. 275, 279, 579 P.2d 171, 173-74 (1978). Additionally, "[a]ny misuse of the land or deviation from the intended use of the land is a trespass for which the owner may seek relief." *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 409, 23 P.3d 243, 247 (2001).

The scope of an easement is fixed by the language creating it. *See Brooks v. Bonnet*, 124 Nev. 372, 375, 185 P.3d 346, 348 (2008) ("The scope of an express easement is determined by the terms used to create it. As with any other contract, courts must interpret the specific language of the instrument creating the easement to identify the easement's scope."); *S.O.C., Inc.*, 117 Nev. at 408, 23 P.3d at 246 ("The extent of an easement, like any other conveyance of rights in real property, is fixed by the language of the instrument granting the right."). The language creating the easement is found in the quitclaim deed that gave Louise the vacant parcel "subject to" the easement for the septic system. *See City of Las Vegas v. Cliff Shadows Prof'l Plaza, LLC*, 129 Nev. 1, 7, 293 P.3d 860, 864 (2013) (stating that the language "subject to" suffices to create an easement).

Therefore, the quitclaim deed created a property right in the maintenance and use of the septic system and any interference with the maintenance of the septic system would be a "misuse" and a trespass. Armentrout capped the septic system, which impeded its intended use. Armentrout then prevented the Meads from accessing the septic system to repair it. Both of these actions demonstrate an invasion of the Meads' property right that was established in the easement. Accordingly, we conclude that the district court did not err.

Second, Armentrout argues that the district court erred as a matter of law when deciding the nuisance claim because the capping of the septic system was not substantial interference and was not unreasonable. This court reviews a district court's legal conclusions following a bench trial de novo. *Radecki*, 134 Nev. at 621, 426 P.3d at 596. And "[t]he district court's factual findings will be left undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Id.*

A nuisance is "[a]nything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." NRS 40.140(1)(a). A nuisance action will be sustained if there is substantial and unreasonable interference with the use and enjoyment of land. *Lied*, 94 Nev. at 278, 579 P.2d at 173. "Interference is substantial '[i]f normal persons living in the community would regard the [alleged nuisance] as definitively offensive, seriously annoying or intolerable.'" *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 106, 294 P.3d 427, 432 (2013) (alterations in original) (quoting *Rattigan v. Wile*, 841 N.E.2d 680, 688 (Mass. 2006)). "Interference is unreasonable when 'the gravity of the harm outweighs the social value of the activity alleged to cause the harm.'" *Id.*

(quoting *Burch v. Nedpower Mount Storm, LLC*, 647 S.E.2d 879, 887 (W. Va. 2007)).

The Meads had a property right to the septic system and a property right to maintain the septic system. Once the septic system was capped, the Meads were no longer able to flush their toilets after each use, were forced to take shorter showers, and limited the use of the dishwasher and other appliances. Therefore, the interference with the septic system was both substantial and unreasonable because a normal person in the community would find the nuisance "seriously annoying or intolerable" and the harm of capping the septic system outweighs any harm caused by operating an undamaged septic system. Accordingly, we conclude there was no error.

Finally, Armentrout argues that Nevada does not recognize tortious interference with an easement as a claim, so the district court erred as a matter of law by finding in the Meads' favor. However, Armentrout did not raise this argument below, and we need not consider it. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983 (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"); *see also 9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 495 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve). If we did consider this argument, Armentrout has correctly argued that Nevada has never explicitly recognized a claim for "tortious interference with an easement." This is a legal conclusion following a bench trial, so we review it de novo. *Radecki*, 134 Nev. at 621, 426 P.3d at 596.

At the outset, we note that Nevada has recognized actions to enjoin interference with an easement. *See All Am. Van & Storage, Inc. v.*

DeLuca Realty, Inc., 95 Nev. 253, 254, 592 P.2d 951, 951-52 (1979). Turning to *Black's Law Dictionary*, the cause of action recognized in *All American Van and Storage* is similar to a cause of action for tortious interference with an easement. Tortious is defined as "[c]onstituting a tort" or "[i]n the nature of a tort" such as "tortious cause of action." *Tortious, Black's Law Dictionary* (11th ed. 2019). Interference is defined as "[t]he act or process of obstructing normal operations or intervening or meddling in the affairs of others." *Interference, Black's Law Dictionary* (11th ed. 2019).

Additionally, Montana, like several other states, has recognized that tortious interference with an easement requires one to intentionally interfere with an existing easement right. *Stokes v. State ex rel. Mont. Dept. of Transp.*, 162 P.3d 865, 868 (Mont. 2007).[4] The elements required by Montana to succeed on a cause of action for tortious interference with an easement are similar to Nevada's requirement to succeed on a claim for tortious interference with contractual relations.

Nevada recognizes a similar cause of action for tortious interference with contractual relations and requires a plaintiff to establish: "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 126, 1267 (2003).

Following the examples found in Montana and other jurisdictions, and Nevada's requirements for a similar cause of action, the

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[4]*See Ortiz v. Flattery*, No. 181641, 2003 WL 22785031 (Va. Cir. Oct. 17, 2003); *Sabatino v. First Am. Title Ins. Co.*, 721 N.E.2d 693, 696-97 (Ill. App. 1999).

district court did not err when it found in the Meads' favor because: (1) a valid easement exists; (2) Armentrout had knowledge of the easement; (3) Armentrout intentionally disrupted the easement; (4) the easement was actually disrupted; and (5) the Meads were damaged. Armentrout has provided no authority that such a cause of action is ill advised or groundless in this case. Therefore, the district court properly found in the Meads' favor and did not err.[5]

The district court did not abuse its discretion when it awarded the Meads general damages

Armentrout argues that the district court abused its discretion when it awarded general damages for nuisance because it included the six-month delay while the court scheduled a hearing to rule on the preliminary injunction in its calculations and had no basis to award both of the Meads $100 per day for the 357 days the septic system was capped. At the outset, we note that Armentrout provides no support for their argument and only makes the conclusory statement that the award of damages was arbitrary and capricious. Therefore, we do not need to consider Armentrout's argument and affirm the district court's decision. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Regardless, the district court did not abuse its discretion. A "district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of

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[5]We note that even if the district court improperly found in the Meads' favor, reversal is not warranted. The district court did not impose an additional recovery or any penalty on Armentrout for this cause of action, so their substantial rights were not affected, and reversal is not warranted. *Cf.* NRCP 61 ("[T]he court must disregard all errors and defects that do not affect any party's substantial rights.").

discretion." *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997) (citing *Flamingo Realty, Inc. v. Midwest Dev. Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994)). A trial court commits an abuse of discretion "when no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5.

"[D]amages for nuisance include personal inconvenience, discomfort, annoyance, anguish, or sickness[;] an occupant need not show physical harm to recover." *Land Baron Invs., Inc. v. Bonnie Springs Family Ltd. P'ship*, 131 Nev. 686, 700, 356 P.3d 511, 521 (2015). The district court found that the Meads were forced to drastically reduce their water usage for almost a year and were forced to move out and live in a temporary residence. This demonstrates personal inconvenience, discomfort, annoyance, and unnecessary health and safety concerns. While the district court did not rule on the preliminary injunction for six months, a reasonable judge could find that Armentrout was responsible for the Meads' discomfort during this time because Armentrout capped the system, rather than repairing it, before waiting for a resolution on their complaint seeking declaratory relief. Therefore, the decision to award damages due to the nuisance was not an abuse of discretion.

The district court did not err when it awarded the Meads attorney fees as special damages

Armentrout argues that the district court erred when it awarded the Meads attorney fees as special damages because the Meads did not recover real property, the action was not compelled by Armentrout's bad faith, and the fees the Meads sought to recover were contained in heavily redacted bills that were disclosed shortly before the trial.

The issue of attorney fees as special damages is subject to de novo review because it involves a question of law. *Pardee Homes of Nev. v.*

Wolfram, 135 Nev. 173, 176, 444 P.3d 423, 426 (2019) (citing *Thomas v. City of North Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006)). Attorney fees cannot be awarded "unless there is a statute, rule, or contract providing for such an award." *Id.* at 174, 444 P.3d at 424. Attorney fees as special damages may be recovered in three instances: (1) as "an element of damage in cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant"; (2) when a party incurs fees while recovering real or personal property taken because of the wrongful conduct of the defendant or when clarifying or removing a cloud upon the title of the property; and (3) in actions for declaratory or injunctive relief when "the actions were necessitated by the opposing party's bad faith conduct." *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001).[6] Additionally, attorney fees may only be recovered when they are pleaded according to NRCP 9(g). *Id.* at 956, 35 P.3d at 969.

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[6]We note that *Sandy Valley*'s holding has been modified and a party may not receive attorney fees unless a claim for slander of title has been alleged in addition to raising a claim to remove a cloud upon title. *Horgan v. Felton*, 123 Nev. 577, 585-86, 170 P.3d 982, 988 (2007). The district court did not award attorney fees under the theory that the Meads were trying to remove a cloud upon title, nor do the parties argue that this option should have been considered by the district court, so this modification does not affect our analysis of the issues on appeal. *See Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) ("The district court did not address this issue. Therefore, we need not reach the issue."); *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("[I]n both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present."). We do note, however, that Armentrout sought a declaration that the easement was invalid.

As a threshold matter, the Meads specifically stated their claim for attorney fees as special damages in their answer and counterclaim. NRCP 9(g). We now consider if the Meads recovered property that was wrongfully taken.

A party may recover attorney fees as special damages when it recovers property that was wrongfully taken. *Sandy Valley Assocs.*, 117 Nev. at 957, 35 P.3d at 970. The Meads had a property right to their easement and Armentrout denied the Meads access to that easement, thereby depriving them of their property right. "The term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006). An easement gives the right to enjoy the land. *Boyd v. McDonald*, 81 Nev. 642, 647, 408 P.2d 717, 720 (1965). The Meads' easement gives them the right to maintain the septic system on the vacant lot. This property right was taken away by Armentrout when Armentrout capped the system and prevented access to repair it. Therefore, the Meads may recover attorney fees as special damages because they incurred the fees while recovering property that was wrongfully taken.

In the alternative, the Meads incurred the fees for actions of declaratory relief when "the actions were necessitated by the opposing party's bad faith conduct." *See Sandy Valley Assocs.*, 117 Nev. at 958, 35 P.3d at 970. This court defers to a district court's assessment of credibility. *DeLee v. Roggen*, 111 Nev. 1453, 1456, 907 P.2d 168, 169 (1995). And this court will not disturb a district court's factual findings unless they "are clearly erroneous and not based on substantial evidence." *Id.* (quoting *Nev. Ins. Guar. Ass'n v. Sierra Auto Ctr.*, 108 Nev. 1123, 1126, 844 P.2d 126, 128 (1992)). The district court found that Armentrout acted in bad faith and

intended to have the septic system removed. A careful review of the record reveals that this finding is not clearly erroneous and is based on substantial evidence. Therefore, there was no error.

Finally, Armentrout cites no authority to support the argument that the Meads' attorney fee bills were not competent evidence upon which an award of attorney fees could be based. Therefore, we do not need to consider this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Accordingly, we conclude that the district court did not err in awarding special damages.

The district court did not abuse its discretion when it awarded attorney fees to Carman

Armentrout argues that the district court abused its discretion in awarding Carman attorney fees because the claim against Carman was not brought or maintained unreasonably.

We review an award of attorney fees for abuse of discretion. *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) (citing *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006)). A trial court commits an abuse of discretion "when no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5. The award of attorney fees to the prevailing party is controlled by NRS 18.010. The prevailing party may recover attorney fees when the opposing party brought or maintained a claim without a reasonable ground or if the claim was brought to harass the prevailing party. NRS 18.010(2)(b).

"[A] claim is frivolous or groundless if there is no credible evidence to support it." *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 580, 437 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095,

901 P.2d 684, 687-88 (1995)). Additionally, evidence must support the district court's finding that the claim was unreasonable. *Id.* at 580-81, 437 P.3d at 113 (citing *Bower v. Harrah's Laughlin, Inc.*, 125 Nev 470, 493, 215 P.3d 709, 726 (2009)).

First, Armentrout argues that the claim brought against Carman was not brought unreasonably because the district court granted Armentrout leave to amend the complaint to assert the claim against Carman. An action for negligence must be brought within two years. NRS 11.190(4)(e). The district court found that Armentrout had knowledge of the septic system in 2015 when they purchased the property. This means that the statute of limitations expired in 2017, but the amended complaint was not filed until 2019. This finding is supported by a careful review of the record. Armentrout should have known that the claim was barred by the statute of limitations. Therefore, the district court could properly conclude that bringing the claim against Carman was unreasonable.

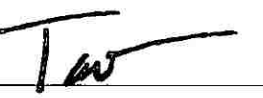
Second, Armentrout argues that the claim was not maintained unreasonably because Carman did not assert a statute of limitations defense until 2021. The claim against Carman was essentially the same claim raised against the Washoe County Health District, which was dismissed by the court because of the statute of limitations. Even after the Nevada Supreme Court affirmed the dismissal of the claim against the health district, Armentrout did not drop their claim against Carman. Additionally, Carman's attorney sent a letter to Armentrout offering to stipulate to a dismissal of the claim because of the dismissal of the claim against the health district. The letter also states that Carman would seek attorney fees if he had to continue to litigate the claim. Armentrout was made aware of the statute of limitations defense and did not respond to the

letter; therefore, the district court did not abuse its discretion when it found that the claim was brought or maintained unreasonably, and it did not abuse its discretion when it awarded attorney fees.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Scott N. Freeman, District Judge
Debbie Leonard, Settlement Judge
Maupin, Cox & LeGoy
Viloria, Oliphant, Oster & Aman L.L.P.
Washoe District Court Clerk

[7]Insofar as the parties have raised 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.