IN THE SUPREME COURT OF THE STATE OF NEVADA

EL CORTEZ RENO HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
PFPCO.'S NOBLE PIE PARLOR, A NEVADA CORPORATION,
Respondent.

No. 83704

EL CORTEZ RENO HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
PFPCO.'S NOBLE PIE PARLOR, A NEVADA CORPORATION,
Respondent.

No. 84173

ORDER OF AFFIRMANCE

These are consolidated appeals from a final judgment and a postjudgment award of attorney fees and costs in a landlord/tenant dispute. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant El Cortez Reno Holdings (El Cortez) owns the El Cortez Hotel building (Building I), a second adjacent building (Building II), and two vacant lots. Building I is comprised of a residential hotel and retail tenants, and Building II is comprised of retail tenants. In 2015, respondent PFPCO.'s Noble Pie Parlor (Noble Pie) executed a rental agreement with El Cortez to lease space for its pizza parlor in Building I. The parties later also executed a restroom and storage addendum.

Between 2018 and 2019, El Cortez and Noble Pie had a series of disputes that included disagreements over who was responsible for the repair work for a gas leak that occurred in Building I, whether Noble Pie was improperly disposing of grease or oil in the common areas, and whether Noble Pie was required to reimburse El Cortez for a stolen camera that El Cortez installed outside of the bathrooms that Noble Pie used. El Cortez ultimately locked Noble Pie out of the premises, alleging that Noble Pie was delinquent in paying rent because it had not paid the costs of the grease spill clean-up and replacing the stolen camera. Noble Pie filed suit against El Cortez over the lockout and gas leak. It also sought a preliminary injunction and temporary restraining order to regain possession of the unit and to prohibit El Cortez from further lockouts, both of which the district court granted. Noble Pie later amended its complaint to include claims for El Cortez's improper common area maintenance (CAM) charges in breach of the lease. Noble Pie later moved for a permanent injunction.

Prior to trial, the district court granted Noble Pie a permanent injunction regarding the lockout, determining that El Cortez did not comply with the statutory or lease requirements for notice and determining that the costs of the spills and cameras were non-rent items. The case then proceeded to a five-day bench trial, after which the court found in favor of Noble Pie on its claims for declaratory relief, breach of contract, breach of the covenant of good faith and fair dealing, and conversion, and awarded Noble Pie $58,539.80. The court found in favor of El Cortez only on its claim for the cost of cleaning up the grease spill. The district court later awarded attorney fees and costs to Noble Pie, finding that it was the prevailing party under the lease.

El Cortez now appeals the district court's final judgment and the postjudgment award of attorney fees and costs, primarily arguing that the district court improperly shifted the burden of proof at trial, misinterpreted the lease, and abused its discretion in awarding attorney fees and costs.[1]

El Cortez did not timely appeal the permanent injunction

As a preliminary matter, El Cortez challenges the merits of the district court's order granting the permanent injunction. The Nevada Rules of Appellate Procedure provide an independent basis to appeal "[a]n order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction." NRAP 3A(b)(3). The time to appeal such an order is "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." NRAP 4(a)(1). Here, the permanent injunction order was filed on January 22, 2021, and this appeal was not filed until November 1, 2021. We thus lack jurisdiction to consider El Cortez's arguments as to the permanent injunction. *See Dickerson v. State*, 114 Nev. 1084, 1085-86, 967 P.2d 1132, 1133 (1998) (explaining that "an untimely notice of appeal fails to vest jurisdiction in this court").

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[1]At the outset, we note that many of El Cortez's lengthy arguments lack legal citations or relevant authority. We caution counsel that failure to adhere to this court's rules in the future may result in sanctions. *See* NRAP 28(j) (requiring briefs to be "concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters" and that "[b]riefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions"); NRAP 28(a)(10)(A) (requiring a brief to "contain . . . citations to the authorities and parts of the record on which the appellant relies").

The district court did not improperly shift the burden of proof at trial

El Cortez contends that the district court improperly shifted the burden of proof at trial by requiring El Cortez to disprove Noble Pie's claims. We disagree.

Following a bench trial, we review a district court's legal conclusions de novo but will not disturb the district court's factual findings unless they are unsupported by substantial evidence or are clearly erroneous. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). "The term 'burden of proof' is an umbrella phrase that describes two related, but separate, burdens." *Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 190, 209 P.3d 271, 274 (2009). First, the burden of production requires the party carrying it to establish a prima facie case. *Id.* at 190-91, 209 P.3d at 274. Second, "[t]he burden of persuasion rests with one party throughout the case and determines which party must produce sufficient evidence to convince a judge that a fact has been established." *Id.* at 191, 209 P.3d at 275 (internal quotation marks omitted). In a civil case, preponderance of evidence is the general standard for the burden of proof. *Irving v. Irving*, 122 Nev. 494, 496-97, 134 P.3d 718, 720 (2006). "[P]reponderance of the evidence merely refers to the greater weight of the evidence." *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 925, 34 P.3d 573, 576 (2001) (alteration and internal quotation marks omitted).

Here, Noble Pie established a prima facie case that El Cortez breached the lease.[2] *See Richardson v. Jones & Denton*, 1 Nev. 405, 408

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[2] El Cortez argues that there was no evidence that Noble Pie paid the CAM charges, and that the voluntary payment doctrine prohibits Noble Pie from disputing the CAM charges. However, these arguments were not raised in the district court, and they are thus deemed waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not

(1865) (stating that to prove a breach of contract, the plaintiff must prove that a valid contract exists, there was a breach of the contract, and that damages occurred). Noble Pie provided the CAM budget and witness testimony, from which the district court determined that El Cortez was improperly including costs that were associated with the entire property and not allocating costs between the buildings as required by the lease. At that point, it was El Cortez's burden to provide evidence in its defense that it was allocating costs—to which it did not. *See* 23 Richard A. Lord, *Williston on Contracts* § 63:14 (4th ed. 2018) ("Once the facts of breach are established, the defendant has the burden of pleading and proving any affirmative defense that legally excuses performance.").

Moreover, El Cortez seemingly ignores that it made several counterclaims against Noble Pie, including an allegation that Noble Pie "fail[ed] to pay CAM charges as required by the Lease." In making these claims, El Cortez bore the burden of proof for its claims and was required to demonstrate that the CAM charges it was charging were permissible under the lease. Accordingly, we conclude that the district court did not improperly shift the burden of proof at trial.

The district court did not misinterpret the lease or addendum

El Cortez argues that the district court misinterpreted the lease in several ways. "Contract interpretation is subject to a de novo standard of review." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). When interpreting a contract, this court "look[s] to the language of the agreement and the surrounding circumstances," *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (internal

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urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

quotation marks omitted), and enforces the contract as written if "the language of the contract is clear and unambiguous." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

El Cortez first contends that the district court erred in determining that Noble Pie was responsible for 19.86 percent of the CAM charges, rather than 22.59 percent. The pertinent provision of the lease states that "[i]n the event that the size of the Premises and/or Project are modified during the term of this Lease, Lessor shall recalculate the Lessee's Share to reflect such modification." The district court determined that El Cortez breached the lease because there was no evidence of the modification. Thus, we conclude that the district court did not err in determining that Noble Pie was responsible for 19.86 percent of the CAM charges.[3] *See Wells Fargo Bank*, 134 Nev. at 621, 426 P.3d at 596 (stating that this court will not disturb the district court's factual findings unless they are unsupported by substantial evidence or are clearly erroneous).

El Cortez next contends that the district court misinterpreted the lease in determining that El Cortez was responsible for the gas line repair.[4] El Cortez argues that Noble Pie was required to notify it in writing of the repairs pursuant to paragraph 7.3(b) of the lease, which states that

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[3]Although unclear, to the extent El Cortez also challenges the district court's determination for the CAM charges in the declaratory relief cause of action, we conclude this argument is without merit. Likewise, El Cortez's argument that CAM charges were permissible under the lease fails because it ignores that CAM charges are only permissible if allocated properly.

[4]We also conclude that El Cortez's argument that Noble Pie's recovery for the gas line leak is limited to an amount equal to the greater of one month's rent or the security deposit by the lease fails because the lease specifically provides that Noble Pie's right to reimbursement "for any such expense in excess of such offset" is reserved.

the "Lessee shall not make any Alterations or Utility installations to the Premises without Lessor's prior written consent." We conclude this argument is without merit. The lease defines the premises as Noble Pie's restaurant space. The gas line repairs did not take place in Noble Pie's restaurant space, but rather, in the basement of the El Cortez Hotel. Accordingly, Noble Pie did not make any alterations to the premises that would have required written notification to El Cortez.

Finally, El Cortez contends that the district court misinterpreted the restroom addendum by finding that El Cortez was required to maintain the restrooms. However, the addendum clearly states that "[m]aintenance of the Restrooms will be the responsibility of Lessor." *See Davis*, 128 Nev. at 321, 278 P.3d at 515 (stating that this court enforces a contract as written when the language is clear and unambiguous). And, to the extent that El Cortez challenges witness credibility regarding the restroom maintenance, we conclude this argument is without merit. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (noting that this court does not reassess witness credibility on appeal). Accordingly, we conclude that the district court did not err in determining El Cortez was responsible for maintenance of the restrooms.

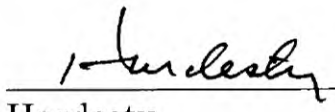
The district court did not abuse its discretion in awarding attorney fees and costs

El Cortez argues that Noble Pie failed to demonstrate that the attorney fees and costs that it sought were reasonable or incurred solely in the district court case. We disagree. The decision to award attorney fees and costs is within the sound discretion of the district court and will not be overturned "absent a manifest abuse of discretion." *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (internal quotation marks omitted).

Here, the district court made express findings on the *Brunzell* factors, including reducing Noble Pie's award based on the work performed. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Likewise, the district court determined that Noble Pie sufficiently distinguished between work done in the district court case and justice court case. As such, we conclude that the district court did not manifestly abuse its discretion in awarding Noble Pie attorney fees and costs.[5]

For the reasons set forth above, we affirm the judgment of the district court as well as the court's postjudgment order awarding Noble Pie attorney fees and costs.

It is so ORDERED.



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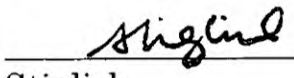

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[5]We further conclude that El Cortez's argument that Noble Pie impermissibly block billed is without merit. *See Mendez v. County of San Bernardino*, 540 F.3d 1109, 1129 (9th Cir. 2008) (recognizing block billing as an acceptable billing practice and stating that "such billing practices are legitimate grounds for reducing or eliminating certain claimed hours, but not for denying all fees"), *overruled on other grounds by Arizona v. ASARCO LLC*, 773 F.3d 1050, 1058 n.1 (9th Cir. 2014); *see also In re Margaret Mary Adams 2006 Trust*, No. 61710, 2015 WL 1423378 at *2 (Nev. Mar. 26, 2015) (Order Affirming in Part, Reversing in Part and Remanding) (stating that "a district court must consider block-billed time entries when awarding attorney fees"). Likewise, El Cortez's argument that Noble Pie was not the prevailing party who "substantially obtained" the relief sought as defined by the lease also fails because Noble Pie was successful at almost every point during the litigation.

cc: Hon. Connie J. Steinheimer, District Judge
Melissa Mangiaracina, Settlement Judge
The Siegel Group
Matuska Law Offices, Ltd.
Washoe District Court Clerk