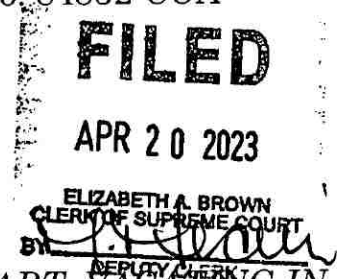
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADAM MICHAEL SOLINGER,
Appellant,
vs.
CHALESE MARIE SOLINGER,
Respondent.

No. 84832-COA



ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART AND REMANDING

Adam Michael Solinger appeals from a decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Adam and Chalese Marie Solinger were married in May 2012.[1] They had two minor children, M.S., age five when trial began, and M.S., age three when trial began in 2021. Adam filed a complaint for divorce in January 2019. In his complaint, he sought an equal division of the property acquired during the marriage, joint legal custody of the children, primary physical custody of the children, child support, and equal division of all the children's medical expenses.

In February 2019, Chalese filed an answer and counterclaim. In her counterclaim, she sought joint legal and physical custody of the children. She also asked that Adam provide health insurance for the children, but that all unreimbursed health care expenses be split equally between the parties. Finally, she requested that the district court fairly and equitably divide the community property and assets between the parties,

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

and that she be awarded spousal support along with $5,000 in preliminary attorney fees.

Throughout the nearly three-and-a-half years that it took for the parties to get divorced, both parties filed a variety of motions seeking spousal support, temporary primary physical custody, child support, attorney fees, and trial continuations. Before trial began, the district court ordered that a neutral custody evaluation be conducted, and that a report of the evaluator's findings be prepared for the parties and the court's review. However, Chalese disagreed with portions of the report, so she retained a rebuttal expert who prepared his own report. Trial was held over five nonconsecutive days beginning in May 2021 and ending in March 2022. During trial, eight witnesses testified, including the custody evaluator, rebuttal expert, a private investigator hired by Adam to surveil Chalese, Adam's father, Adam's girlfriend, Adam, Chalese's boyfriend (Josh), and Chalese.

After trial concluded, but before the district court entered the decree of divorce, Chalese's boyfriend began acting irrationally at the residence he shared with Chalese while she had parenting time with the children. He broke a television and threatened to prevent Chalese from leaving the residence. She was able to take the children and leave. Once she was outside the residence, she called the police. The boyfriend was arrested for domestic violence, and Chalese obtained a temporary protection order. Chalese filed a motion asking for the opportunity to present testimony about the domestic violence incident, which Adam did not oppose. During a hearing held following her motion, Chalese testified that she would be willing to rekindle a relationship with her boyfriend if she knew

that the children would be safe around him. The district court took this testimony and the incident into consideration when deciding child custody.

The court entered a decree of divorce in May 2022, ordering the following: joint legal custody; joint physical custody; a week-on/week-off parenting time schedule; for Adam to pay Chalese child support; for Adam to pay all of the children's health insurance costs and also pay 65 percent of the children's other medical, educational, and extracurricular costs; a division of the assets and debts of the parties; and an award of attorney fees to Chalese.

On appeal, Adam argues that the district court abused its discretion or erred by: (1) awarding joint physical custody; (2) miscalculating child support; (3) ordering Adam to pay 65 percent of the children's medical, educational, and extracurricular costs; (4) requiring Adam to use his separate property to pay Chalese's attorney fees; (5) awarding Chalese the survivorship interest in Adam's possible future Nevada state pension (PERS); (6) awarding Chalese all of her attorney fees and awarding her more than $1,500 in expert witness fees; and (7) ordering the law firm representing Adam to distribute Adam's funds in its client trust account to one of Chalese's prior attorneys. Adam also argues that this court should require a different judge to handle this case if remanded.

We agree that the district court abused its discretion when it calculated child support; ordered Adam to pay 65 percent of the children's medical, educational, and extracurricular costs; awarded Chalese a survivorship interest in Adam's PERS; and awarded more than $1,500 in expert fees. We also necessarily vacate the award of attorney fees. But we disagree with Adam's remaining arguments. We address each argument in turn.

The district court acted within its discretion when it awarded joint physical custody

Adam argues that the district court made sweeping findings that are not supported by the record, erroneously found that the neutral expert's custody evaluation report was incomplete, and failed to consider Chalese's boyfriend's behavior when it applied the best interest of the child factors in NRS 125C.0035(4). Chalese responds that the district court did not abuse its discretion when it awarded joint physical custody.

Child custody decisions are reviewed for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). A district court abuses its discretion when its decision is clearly erroneous. *See Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). Additionally, we will not set aside child custody determinations if they are supported by substantial evidence. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Evidence is substantial if a reasonable person would accept it as adequate to sustain a judgment. *Id.* We will not disturb a district court's findings of fact if they are supported by substantial evidence. *Bedore v. Familian*, 122 Nev. 5, 9-10, 125 P.3d 1168, 1171 (2006).

First, Adam's main argument appears to be that the district court was prejudiced against him, and therefore made sweeping findings that are not supported by the record. We disagree. The decree of divorce reveals that the court fully considered the testimony and other evidence in the record. Thus, most of the arguments raised by Adam challenge the district court's credibility determinations and weighing of evidence. Additionally, although Adam states that the court failed to consider various actions by Chalese, a careful review of the decree reveals that the court either found her account to be more credible than Adam's or found that Chalese had done nothing wrong. Appellate courts do not determine the

credibility of witnesses on appeal or reweigh the evidence. *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004). Accordingly, we conclude that there is sufficient evidence in the record to support the district court's findings of fact.[2]

Second, Adam argues that the district court erroneously found that the expert's report was incomplete because it did not address gatekeeping. But Adam failed to provide a copy of the expert's report for this court to review. *See* NRAP 30(b)(3). This court presumes that the missing portion of the record supports the district court's ruling. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Therefore, we conclude that the district court did not abuse its discretion when it found that the expert's report was incomplete.

Adam also argues that the district court erred in finding that Chalese's rebuttal expert claimed that the initial expert failed to cover numerous subjects and facts. Adam mainly relies on the rebuttal expert's report to support his argument; however, Adam failed to provide the report on appeal. *See* NRAP 30(b)(3). Thus, we presume that the report supports

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[2]We do note that of the eight findings that Adam specifically challenges, we agree that the findings regarding Adam's alleged domestic violence and purported lack of financial support of Chalese were clearly erroneous. However, the district court conducted a thorough analysis of the best interest of the child factors and, unrelated to these two errors, found that several of the factors favored Chalese yet still awarded Adam joint physical custody. *Cf.* NRCP 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every state of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Therefore, we conclude that the two erroneous findings did not affect Adam's substantial rights, and we affirm the court's decision to award joint physical custody.

the district court's findings. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Additionally, a careful review reveals that the expert's testimony is properly reflected in the decree of divorce. Therefore, we conclude that the district court did not abuse its discretion.

Further, Adam is correct that the district court did not consider Chalese's boyfriend's abusive conduct when applying NRS 125C.0035(4)(k). That section of the statute, however, requires the court to look at the parents or another person seeking custody of the child. Chalese's boyfriend is not the parent nor was he seeking custody of the children. Therefore, the district court did not err in its analysis and application of NRS 125C.0035(4)(k).[3]

Adam also argues that the district court abused its discretion by not extending the trial to hear evidence about the television incident that led to the arrest of Chalese's boyfriend for domestic violence. The record reveals that the district court held a hearing about the incident, Chalese's response to the incident, and Adam's concerns. The district court found that Chalese acted appropriately and removed the children from the situation and then called the police. Adam fails to cite any authority that required

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[3]We also note that the district court did consider Josh's concerning behavior after trial as part of its overall analysis of the best interest of the children, which is appropriate because NRS 125C.0035(4) does not create an exclusive list of considerations when addressing the best interest of the children. *See Snyder v. Walker*, No. 85088-COA, 2023 WL 2658074, at *6 (Nev. Ct. App. Mar. 24, 2023) (Order of Affirmance) (stating that "[t]he district court was still required to consider all information implicating the children's best interest, and the existence of domestic violence . . . is certainly relevant to the children's safety as a general matter, even if it did not fit withing factor (k)."). Here, the evidence of domestic violence in the household was addressed, and the court found that Chalese handled the situation "properly and appropriately."

the district court to hear additional post-trial testimony. Therefore, we need not further consider his argument. *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 an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Below, the district court applied the best interest of the child factors and found that seven factors were neutral, one factor favored Adam, and four factors favored Chalese. Even if the domestic violence factor was considered neutral or in Adam's favor, a majority of the factors still favor Chalese, and the district court's determinations regarding those factors were supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. The district court properly considered the best interest of the children, determined that joint physical custody was in the best interest of the children, and rejected Adam's request that Chalese only have parenting time with the children every other weekend. Further, Adam has not demonstrated that any error would have changed the result had it not been made. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached."). Accordingly, we affirm the district court's decision awarding joint physical custody.

The district court abused its discretion when it calculated Adam's child support obligation

Adam argues that the district court incorrectly found that his gross monthly income was $9,799. Chalese responds that Adam has a gross annual income of $94,078.40 and that the district court properly applied the formula set forth in NAC 425.140.

This court reviews child support orders for an abuse of discretion. *Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 985 (2022). An abuse of discretion occurs when a district court makes an obvious error of law. *See Franklin v. Bartsas Reality, Inc.*, 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979). Additionally, a district court abuses its discretion when its decision is clearly erroneous. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159. A trial court abuses its discretion when it makes a factual finding or order which is not supported by substantial evidence. *See Real Estate Div. v. Jones*, 98 Nev. 260, 264, 645 P.2d 1371, 1373 (1982).

Adam filed his financial disclosure form the day after the trial ended and reported that his gross monthly income as a state employee is $7,839.86. Additionally, at trial, Adam testified that he earns approximately $94,000 per year. These two figures match. The district court stated that it determined Adam's gross monthly income through his financial disclosure form and his representations, but the record does not support the amount of gross monthly income stated by the district court ($9,799). We note that Chalese appears to agree with the figures Adam states regarding his income. Accordingly, we conclude that the district court abused its discretion when it determined Adam's gross monthly income. Therefore, Adam's child support obligation must be recalculated upon remand, with offsets given for any overpayments.

The district court abused its discretion when it ordered Adam to pay 65 percent of the children's medical, educational, and extracurricular costs

At the outset, we note that both parties treat this requirement as a form of child support, but neither provide any legal reason for such

treatment.[4] Adam argues that the district court increased his child support obligation without making specific findings of fact as required by NAC 425.150(1) and, therefore, abused its discretion. Chalese responds that the district court did not abuse its discretion because it found that Adam earns substantially more than her.

The Nevada Supreme Court has concluded that separately ordering a parent to pay costs related to childcare, extracurricular activities, and health insurance removes these costs from consideration of child support for the purposes of NAC 425.150(1). *Matkulak v. Davis*, 138 Nev., Adv. Op. 61, 516 P.3d 667, 671 (2022). Here, while child support and the payment of these other expenses are all within the same decree of divorce, the expenses, excluding medical expenses, were addressed in a separate and distinct portion of the decree of divorce. The medical expenses were addressed separately from Adam's monthly child support obligation, even though they were addressed under the same heading in the decree ("Child Support, Tax Allocation & Medical Expenses"). Accordingly, we conclude that these costs are not part of Adam's child support obligation. Therefore, the district court was not required to make specific findings under NAC 425.150(1).[5]

The district court was, however, required to make more than conclusory findings regarding its allocation of the children's medical,

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[4]Comparatively, we have concluded that a requirement to pay travel costs is not child support. *See, e.g., Martinez v. Martinez*, No. 84148-COA, 2023 WL 2622100 (Nev. Ct. App. Mar. 23, 2023) (Order of Affirmance).

[5]NAC 425.150(1) provides eight factors that must be considered by the district court and supported by specific findings of fact, which is more comprehensive than typical findings.

educational, and extracurricular costs. Here, Adam is paying 100 percent of the healthcare insurance and the parties requested in their pleadings that they equally share all unreimbursed medical expenses. Without providing an adequate explanation or findings, however, the district court ordered Adam to pay 65 percent of the children's medical, educational, and extracurricular costs. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (stating that a court may not make a finding so conclusory that it masks legal error); *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). Therefore, we cannot conduct meaningful appellate review and must reverse and remand the district court's ruling for further proceedings. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143.

The district court abused its discretion when it gave Chalese the survivorship interest in Adam's PERS without making adequate findings

Adam argues that the district court erred because his PERS account was created after he filed for divorce, Nevada does not consider a survivorship interest to be community property, and because the district court unequally distributed community property since Adam must give Chalese a survivorship interest but he will pay the premiums post-divorce. Chalese contends that Adam failed to make an argument supported by legal authority, so this court need not address his argument, and that the PERS account was started during the marriage, so it is community property including the survivorship interest.[6]

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[6]Chalese is correct that Adam did not support this argument in his opening brief with legal authority and we note the vast majority of Adam's argument is made in his reply brief. Nevertheless, we will consider this argument because the issue was not litigated below and the district court plainly erred in its award of the survivor benefit. *See, e.g., City of Las Vegas v. Eighth Judicial Dist. Court*, 133 Nev. 658, 660, 405 P.3d 110, 112 (2017) (explaining that "[t]he plain error rule affords an appellate court discretion

At the outset, this court reviews district court decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Additionally, this court reviews a district court's disposition of community property for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). This court also reviews a district court's handling of separate property for an abuse of discretion. *Smith v. Smith*, 94 Nev. 249, 252, 578 P.2d 319, 320 (1978). A district court abuses its discretion when its decision is clearly erroneous. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159. This court, however, will not disturb the district court's decisions on appeal when they are supported by substantial evidence, which is evidence that "a sensible person may accept as adequate to sustain a judgment." *Williams*, 120 Nev. at 566, 97 P.3d at 1129.

In Nevada, all property acquired after marriage by either spouse is considered community property unless a written agreement specifies otherwise. NRS 123.220(1). Additionally, it is presumed that all property acquired during marriage is community property. *Pryor v. Pryor*, 103 Nev. 148, 150, 734 P.2d 718, 719 (1987). This presumption can be rebutted by clear and convincing evidence by the party claiming the property is separate property. *Id.* Here, the district court found that Chalese is entitled to her community property share of the PERS account from the time Adam began his employment at the Nevada Attorney General's Office, which was during the marriage (albeit after he filed for

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to consider an issue raised for the first time on appeal"); *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established.").

divorce), until November 2021, which was when the community ended pursuant to the district court's order. Adam has failed to rebut the presumption by clear and convincing evidence or otherwise cogently argue why there is not a community interest in the PERS benefit. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

The district court awarded Chalese the survivor beneficiary interest and required Adam to select "Option 2" when filing his PERS form assuming he vests and will receive a pension.[7] The Nevada Supreme Court, when describing PERS benefits, has stated that "unless specifically set forth in the divorce decree, an allocation of a community property interest in the employee spouse's pension plan does not also entitle the nonemployee spouse to survivor benefits." *Henson v. Henson*, 130 Nev. 814, 815-16, 334 P.3d 933, 934 (2014). The district court specified that Chalese was entitled to the survivor benefit. However, the district court was required to make factual findings before Chalese was given this benefit because it is an unequal distribution of property since Adam will continue paying into the account for years after November 2021 while Chalese will contribute nothing. *See Holguin v. Holguin*, No. 81373, 2021 WL 3140576, at *1 (Nev. July 23, 2021) (Order Affirming in Part, Reversing in Part and Remanding) (stating that the survivorship interest is not community property, and a district court is required to make factual findings when its final division is not an equal distribution of property); *cf.* NRS 125.150(1)(b) (requiring a

[7]Option 2 "[p]rovides an actuarially reduced allowance for" the lifetime of the recipient and the allowance continues for the lifetime of the beneficiary after the recipient's death. PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) GUIDE, https://www.unr.edu/bcn-nshe/benefits/retirement/guide/pers (last visited Apr. 14, 2023).

compelling reason and written findings when a district court makes an unequal disposition of community property).

Additionally, Adam had been a state employee for only about 21 months when the community ended, and the benefits including survivorship had not yet vested. Adam and Chalese are relatively young, and Adam presumably has a long career ahead of him. The parties did not litigate this issue below and the district court did not make any findings. Further, the court did not explain why Chalese should have preference to be named as the survivor of Adam over a future spouse or other potential beneficiary such as a child. These omissions are noteworthy in light of the very short time Chalese and Adam were married, but separated, while he was a state employee. Detailed findings are critical in a circumstance like this for an appellate court to determine if the district court abused its discretion. *See Davis*, 131 Nev. at 450, 452, 352 P.3d at 1142, 1143 (stating that a court may not make a finding so conclusory that it masks legal error and hinders meaningful appellate review). Further, we do not make those findings in the first instance. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well suited to make factual determinations in the first instance."). Therefore, we conclude that the district court abused its discretion when it awarded Chalese Adam's survivor benefit from PERS without substantial evidence nor adequate findings justifying an unequal distribution that gives Chalese preference over a future beneficiary chosen by Adam.

The award of attorney fees is vacated and to be reconsidered on remand

Because portions of the divorce decree must be reversed, and the district court characterized Chalese as the prevailing party when awarding her attorney fees in the amount of $200,875, the award

necessarily must be vacated and reconsidered on remand after proper findings are made. *See Iliescu v. Reg'l Transp. Comm'n of Washoe Cty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 462 (Ct. App. 2022) (vacating an award of attorney fees because the underlying judgment was reversed in part); *Halbrook v. Halbrook*, 114 Nev. 1455, 1460, 971 P.2d 1262, 1266 (1998) (reversing an award of attorney fees because the district court's order was reversed).

Nevertheless, we briefly address one of the arguments raised by Adam because his argument challenges the authority of the district court to award fees and will likely be presented again upon remand. In particular, Adam argues that Chalese's requests for attorney fees and costs did not comply with NRCP 54, which provides that a claim for attorney fees must be made by motion and specifies the requisite contents of such a motion. A district court, however, "may pronounce its decision on the fees at the conclusion of the trial . . . without written motion and with or without presentation of additional evidence." NRS 18.010(3). The record reveals that both of the firms that represented Chalese filed memorandums of fees and costs before the final judgment was entered. Accordingly, we conclude that the requests for attorney fees and costs were not made in violation of NRCP 54.[8]

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[8]Adam also argues that the district court (1) failed to thoroughly consider the *Brunzell* factors, especially the "results achieved" factor, *see Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); (2) failed to specify which provisions of EDCR 7.60(b) apply to this case; (3) failed to make findings explaining how Chalese prevailed on a majority of the issues and how Adam maintained his position without reasonable grounds; (4) failed to consider the effect of Adam's child support obligation on his income and the fact that Chalese's mother paid Chalese's attorney fees when it based the award of attorney fees on the disparity of

The district court abused its discretion when it awarded expert witness fees

A prevailing party may recover the reasonable fees of up to five expert witnesses "in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require a larger fee." NRS 18.005(5). "A district court's decision to award more than $1,500 in expert witness fees is reviewed for an abuse of discretion." *Frazier v. Drake*, 131 Nev. 632, 644, 357 P.3d 365, 373 (Ct. App. 2015). This court has identified 12 nonexhaustive factors that the district court must consider when evaluating a request for expert fees that exceeds $1,500 per expert. *Id.* at 650-51, 357 P.3d at 377-78. Here, the district court awarded Chalese $4,750 in expert witness fees for her rebuttal expert. But the district court failed to properly address all the requisite factors, especially considering the fact that a neutral expert was already appointed by the court; therefore, we reverse and remand this portion of the order for further consideration.

We do not direct that another judge be assigned to this case on remand

Adam argues that this case should be remanded with the direction that it be heard by a different judge because he claims that some of the errors made by the district court could not have been made by accident. The "rulings and actions of a judge during the course of official

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income on the parties; (5) was not permitted under Nevada law to award his separate property to pay Chalese's attorney fees; and (6) erred when it instructed Adam's attorney to distribute funds in the client trust account to a non-party, Chalese's prior attorney, without any legal authority to support this action. Chalese disagrees with all of Adam's positions but does not respond to this final argument and states she takes no position on this issue. As mentioned, this court does not address these arguments at this time.

judicial proceedings do not establish legally cognizable grounds for disqualification." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Therefore, we conclude that there is an insufficient basis at this time to direct another judge to hear the matter.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[9]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Mary D. Perry, District Judge, Family Court Division
The Abrams & Mayo Law Firm
Alex B. Ghibaudo, PC
Eighth District Court Clerk

[9]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.