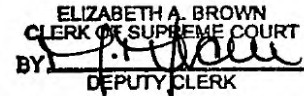
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 85039-COA



JUL 31 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew C. Carlson appeals from a district court order granting a motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.[1]

Following entry of the 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 requesting relief on issues related to the custody and support of the minor children, including a request to change the school that the parties' two minor children attended.[2] Chelsea opposed that motion and presented her own requests for relief related to their children, including reimbursement for certain medical expenses. Matthew did not file a reply or opposition to Chelsea's countermotion. At a September 2018 hearing, Matthew represented to the court that the only issue he would be presenting at an evidentiary hearing would be his request to change the minor children's school. Despite this representation, Matthew continued to propound discovery on issues no longer relevant.

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[1]The Honorable Deborah L. Westbrook, Judge, did not participate in the decision of this matter.

[2]We recite the facts only as necessary for our disposition.

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Chelsea eventually moved for summary judgment on all 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 failed to timely withdraw them, requiring Chelsea to incur the additional expense of filing a summary judgment motion to obtain a dismissal. The court specifically noted that Matthew's conduct had unnecessarily increased Chelsea's litigation costs. But, with respect to the school selection issue for which Matthew opposed summary judgment, the district court decided to let this issue proceed to the evidentiary hearing set by the court.

On the second day of the evidentiary hearing, the parties reached a settlement that was placed on the record in open 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). The district court awarded Chelsea fees and costs in the amount of $45,503.17. Matthew initially appealed the court's award of attorney fees and costs, and this court determined that the basis for the district court's award of fees and costs was unclear as the award did not appear proportionate to the conduct under EDCR 7.60(b)(3), and it was unclear if the district court believed that the timing of Matthew's withdrawals were frivolous or the requests themselves were inherently meritless.[3] On remand, the district court issued further findings in support of its decision and order in June 2022, and again awarded attorney fees and costs in the amount of $45,503.17. This appeal followed.

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[3]*See Carlson v. Carlson*, No. 81460-COA, 2022 WL 92098 (Nev. Ct. App. Jan. 7, 2022) (Order of Reversal and Remand).

On appeal, Matthew argues that the district court erred in awarding Chelsea attorney fees and costs. Specifically, he argues the district court erroneously equated Chelsea prevailing on summary judgment with the conclusion that his requests for relief in his motion were frivolous. He also contends that the district court erred when it awarded attorney fees to Chelsea as the prevailing party, as that is only permissible in cases involving money judgments, where the matters here were collateral to child custody. Additionally, Matthew argues that the district court falsely equated the late withdrawal of his requests with engaging in frivolous litigation. Matthew further argues that the affidavit in support of Chelsea's request for attorney fees was deficient as it did not claim that the attorney fees were actually and necessarily incurred and that they were reasonable, and that this court should not look to the updated affidavit Chelsea filed after remand to cure the defects contained in her initial request. In response, Chelsea argues that the district court properly found that Matthew's failure to withdraw five of his claims during discovery and prior to the filing of her motion for summary judgment, resulted in frivolous and unnecessary multiplication of litigation. Chelsea further argues that the district court properly found that she was the prevailing party on all contested issues to suggest that Matthew's claims lacked merit.

This court reviews a district court's award of attorney fees and costs for an abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 266-67, 350 P.3d 1143-44 (2015). However, when eligibility for an attorney fee award depends on interpretation of a statute or court rule, the district court's decision is reviewed de novo. *Id.* at 263, 350 P.3d at 1141. NRS 18.010(2)(b) allows a prevailing party to recover attorney fees and costs but requires the district court to first find that "the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the

prevailing party." Additionally, EDCR 7.60(b)(3) allows a district court to order sanctions, including an award of attorney fees and costs, if a party, "without just cause," "multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

Here, on remand, the district court found that an award of attorney fees was warranted, pursuant to EDCR 7.60(b), because Matthew multiplied the proceedings so as to increase the costs unreasonably. Specifically, the court found that Matthew continued to propound discovery on the issues concerning the minor children's church and boy scouts, even though Matthew intended to withdraw these claims. Based on the record before us, we cannot conclude that the district court erred in awarding Chelsea her attorney fees and costs based on Matthew's conduct of unreasonably multiplying the proceedings thereby unreasonably increasing litigation expenses. Additionally, the district court noted that Matthew's requests to change the location of the children's church records, request for an accounting of previously disclosed Social Security Disability payments, request to modify child support, and the issue of a "first right of refusal" were inherently meritless and should never have been brought in the first place. *See Navratil v. Navratil*, No. 72956-COA, 2018 WL 3227321, at *2 (Nev. Ct. App. May 16, 2018) (Order Affirming in Part, Reversing in Part, and Remanding) (concluding that the district court did not abuse its discretion in awarding attorney fees where the court found that a motion was meritless).[4] We note that the district court was in the best position to weigh

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[4]*Cf. Bynan v. Bynan*, No. 81775-COA, 2021 WL 2177067, at *2 (Nev. Ct. App. May 27, 2021) (Order of Reversal and Remand) (reversing the award of attorney fees where the district court did not make findings as to which party was the prevailing party and whether the court believed the appellant's motion was brought to harass the respondent).

the evidence presented on Mathew's claims and based on the record we cannot conclude that the court abused its discretion in making its determinations. *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (noting that the appellate court is not at liberty to reweigh evidence on appeal).

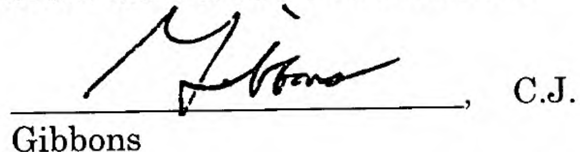
Although Matthew attempts to argue that the district court erred in finding his claims frivolous because it awarded Chelsea summary judgment, this is belied by the record. In actuality, the court found that Chelsea prevailed on four of the five claims in her motion for summary judgment, so the results were favorable to Chelsea. *See Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (defining a prevailing party as one that "succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit" (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)). As to remaining claims, the district court allowed the school choice issue to be addressed at the evidentiary hearing and eventually Matthew agreed to the choice of school requested by Chelsea.

Matthew also argues that the district court erroneously awarded attorney fees to Chelsea as the prevailing party, under NRS 18.010(2)(a), which requires a money judgment of less than $20,000. We disagree. Although the court included the entire section of 18.010(2) in its order, the court specifically found that Matthew's requests were brought without reasonable grounds and solely to harass Chelsea—relying on NRS 18.010(2)(b). Thus, Matthew's argument, although perhaps applicable under other circumstances, is not relevant here as the court did not award fees based on NRS 18.010(2)(a). Further, the district court made sufficient findings regarding Matthew's specific conduct to properly award fees and costs under NRS 18.010(2)(b). *See Roe v. Roe*, 139 Nev., Adv. Op. 21, ___

P.3d ___, ___ (Ct. App. 2023). Additionally, because the district court's decision complied with the requirements of EDCR 7.60(b) and properly analyzed the *Brunzell* factors, we affirm the district court's order awarding attorney fees and costs to Chelsea. *See Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (stating that a district court has discretion to award attorney fees and costs under EDCR 7.60(b) if a party brings an unreasonable or frivolous claim), *overruled on separate grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 985 (2022); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969).[5]

Therefore, we

ORDER the judgment of the district court AFFIRMED.[6]



_______________________________, C.J.
Gibbons

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[5]To the extent Matthew argues that Chelsea's affidavit did not comply with the requirements of NRCP 54(d)(2)(B)(v), a review of the record reveals that Chelsea expressly averred that her attorney fees and costs were reasonable and warranted in her subsequent affidavit. Although Matthew also argues that Chelsea should not have been granted the opportunity to file a proper NRCP 54 affidavit after remand, we disagree since we reversed and remanded the matter in Docket No. 81460-COA, noting that Chelsea "had yet" to file an affidavit. Nothing in our prior order prohibited either party from submitting a subsequent affidavit to the district court on remand to assist the court in resolving the fee issue.

[6]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.

cc: Hon. Rhonda Kay Forsberg, District Judge
Law Offices of F. Peter James, Esq.
Rocheleau Law Group/Right Lawyers
Eighth District Court Clerk