


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FIDELIS HOLDINGS, LLC, D/B/A
PISOS DISPENSARY, A DOMESTIC
LIMITED-LIABILITY COMPANY,
Appellant,
vs.
BENJAMIN CRUMEDY, AN
INDIVIDUAL,
Respondent.

No. 85512-COA

FILED

AUG 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Fidelis Holdings, LLC, appeals from post-judgment district court orders denying a motion for an award of attorney fees and denying a motion to alter and amend and/or alternatively for reconsideration in a tort action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.¹

In March 2018, Crumedy was punched by an off-duty Fidelis security guard. The incident occurred just off of Fidelis's premises.² Crumedy sued Fidelis alleging five causes of action. Fidelis filed a motion for summary judgment that was granted by the district court.³

¹The Honorable Jim Crockett, Senior Judge, orally denied the motion for attorney fees at a hearing and the Honorable Linda Marie Bell, then-Judge and now Justice, signed the order. Judge Bell also signed the order denying the motion to alter and amend and/or alternatively for reconsideration in a tort action.

²We recount the facts only as necessary for our disposition.

³Crumedy appealed this order in Docket No. 84733-COA.

Following the order granting summary judgment, Fidelis filed a motion seeking attorney fees under NRS 18.010(2)(b).⁴ Fidelis argued that Crumedy unreasonably brought and maintained the lawsuit because the district court found in the summary judgment order that he lacked any credible evidence to support any of his claims. Crumedy opposed the motion and argued that the lawsuit was not brought unreasonably even though he was not able to support his claims with evidence. The district court denied Fidelis's motion solely because it found that the prior order granting summary judgment did not find that Crumedy's "lawsuit was vexatious, spurious, done with the apparent intent to vex, harass, or annoy."

Fidelis filed a motion to alter or amend and/or alternatively for reconsideration of the order denying its motion for attorney fees.⁵ Crumedy opposed the motion and argued that Fidelis failed to submit any new evidence or show that the district court clearly erred in denying the motion for attorney fees. The district court denied Fidelis's motion.

Fidelis now appeals and argues that the district court abused its discretion when it denied Fidelis's request because Crumedy's action was frivolous since he had no evidence to support it yet continued to maintain it. Fidelis also argues that the district court imposed new requirements on NRS 18.010(2)(b) by denying the request for attorney fees because the order granting summary judgment did not state that Crumedy's lawsuit was

⁴NRS 18.010(2)(b) provides that attorney fees may be awarded when a lawsuit "was brought or maintained without reasonable ground or to harass the prevailing party."

⁵Fidelis also asked for costs in this motion. Crumedy did not oppose the request and costs were awarded to Fidelis. The award of costs is not challenged on appeal.

intended to “vex, harass, or annoy.” Crumedy responds that his claims were reasonably brought and maintained.⁶

Attorney fees may be awarded when the opposing party brings or maintains a lawsuit without a reasonable ground. NRS 18.010(2)(b). Further, “[t]he court shall liberally construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate situations,” as “[i]t is the intent of the Legislature that the court award attorney’s fees pursuant to this paragraph and impose sanctions . . . in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses.” *Id.* A claim is groundless if there is no evidence to support it. *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 580, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995)).

This court reviews the decision to grant or deny attorney fees for an abuse of discretion. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967, 194 P.3d 96, 106 (2008). A district court abuses its discretion when it applies an incorrect legal standard. *See In re Halverson*, 123 Nev. 493,

⁶While Crumedy is correct that granting a motion for summary judgment does not necessarily mean that a lawsuit was brought or maintained on unreasonable grounds, the supreme court has indicated that, unless a lawsuit relies upon a novel legal issue or seeks to argue for a clarification or modification in existing law, maintaining a lawsuit without evidence and law to support the suit is grounds for an award of attorney fees to the opposing party. *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 581, 427 P.3d 104, 113 (2018). In its order granting summary judgment, the district court found that Crumedy had no evidence to support any of his claims, and neither the district court nor Crumedy claim that he relied upon a novel legal issue or sought to clarify or modify existing law. Accordingly, his lawsuit could have been found to have been brought or maintained groundlessly, and attorney fees could have been awarded. *See id.* at 580-81, 427 P.3d at 112-13.

510, 169 P.3d 1161, 1173 (2007). Additionally, a district court abuses its discretion when it fails to conduct a full and proper legal analysis. *Venetian Casino Resort, LLC v. Eight Judicial Dist. Court*, 136 Nev. 221, 229, 467 P.3d 1, 8 (Ct. App. 2020). “The district court has wide discretion [in awarding] attorney fees when, but only when, it calls the game by the right rules.” *Las Vegas Review-Journal v. Clark Cty. Office of the Corner/Med. Exam’r*, 138 Nev., Adv. Op. 80, 521 P.3d 1169, 1175 (2022) (internal quotations omitted) (vacating the discounted award of attorney fees since the district court did not adequately explain why it was not awarding the Las Vegas Review-Journal the full attorney fees it requested after it prevailed in a proceeding under the Nevada Public Records Act).

Here, the district court denied Fidelis’s motion solely because the order granting summary judgment did not find that Crumedy’s “lawsuit was vexatious, spurious, done with the apparent intent to vex, harass, or annoy.” However, a summary judgment order is not required to contain such findings, nor any findings under NRS 18.010(2)(b). See NRCP 56. Because the district court relied solely upon the absence of a finding in the summary judgment order that was not required to be in the order (that the lawsuit was intended to vex, harass, or annoy), it applied an incorrect legal standard and abused its discretion.

The district court was required to make findings to determine if Crumedy’s lawsuit was brought or maintained without reasonable ground or to harass the prevailing party. Thus, the district court should have made the proper findings in deciding the motion for attorney fees in the first instance and should not have based its decision solely upon a non finding in the summary judgment order. We cannot conclude that the district court would have reached the same result had it not made this mistake, so we

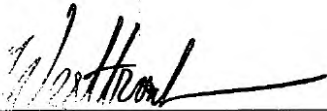
remand for a new hearing. *In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (stating that when it is unclear if the district court would have reached the same result had it applied the proper standard, we must reverse and remand).⁷

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth District Court
Patrick Chapin, Settlement Judge
Clark Hill PLLC
Eric Blank Injury Attorneys
Eighth District Court Clerk

⁷In light of our decision, we need not consider the argument raised by Fidelis that the district court abused its discretion when it denied Fidelis's motion to alter or amend and/or in the alternative a motion for reconsideration. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 315 n.1, 774 P.2d 1047, 1048 n.1 (1989) (declining to resolve an issue in light of the court's disposition).