

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JILL FRIEDRICH,
Appellant,
vs.
CHRISTOPHER ROUSSET,
Respondent.

No. 83503-COA

FILED

AUG 24 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Jill Friedrich appeals from a post-judgment order awarding attorney fees and costs in a child custody matter. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Jill and respondent Christopher Rousset share custody of their minor child, R.F. (born in 2019), which was set forth in a custody decree entered in January 2021. The parties subsequently disagreed over a provision in the custody decree providing that they would each have parenting time with R.F. “during the Clark County School District Spring Break” on alternating years, with Christopher having odd years and Jill having even years. In April 2021, Christopher filed a motion for an order to show cause; for make up parenting time; for orders resolving parent child issues; and for attorney fees and costs, in which he alleged that Jill improperly withheld R.F. during Christopher’s designated parenting time for spring break in 2021. Christopher sought to have Jill held in contempt for violating the spring break provision of the order and sanctioned pursuant to NRS 22.100 and EDCR 7.60(b) to ensure future compliance

with the custody decree. He also requested attorney fees and costs under NRS 18.010(2)(b). Jill opposed the motion, arguing she reasonably interpreted the spring break provision as beginning only once R.F. began school.

Following a hearing, the court entered a written order declining to treat Jill's withholding of R.F. during spring break as contempt. Rather, the court modified the custody decree to allow Christopher to have R.F. for spring break during even years and Jill would have odd years to make up for the 2021 spring break when Christopher lost parenting time.

At the direction of the court, Christopher's counsel filed an affidavit relating to attorney fees and costs analyzing the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and averred that the court should award Christopher \$4,852.25 (\$4,800 in attorney fees and \$52.25 in costs), which Jill opposed. In pertinent part, Jill, who was an unemployed single mother, argued that the disparity in income between the parties further supported her position that fees were not appropriate.

The district court thereafter entered a written order awarding Christopher \$2,000 in attorney fees and costs. It found that Christopher was the prevailing party, and Jill's opposition was brought or maintained without reasonable ground and with the intent to harass. The court further found that Christopher made attempts to resolve the issues between the parties and his motion for an order to show cause would not have been necessary if not for Jill's bad faith interpretation of the custody decree. The order analyzed the *Brunzell* factors and specified that it was awarding fees

to deter frivolous filings “as embodied in the policies behind NRS 18.010, EDCR 7.60, and [NRCF] 11.” This appeal followed.

On appeal, Jill challenges the district court’s award of attorney fees, arguing that (1) Christopher was not the prevailing party within the meaning of NRS 18.010 and, therefore, was not entitled to attorney fees; and (2) the court abused its discretion in awarding attorney fees because its order failed to articulate specific findings regarding Jill’s bad faith or intent to harass.

An award or denial of attorney fees is reviewed for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). When a district court orders an award of attorney fees in a family law case, it must consider the factors set forth in *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, along with any disparity in the parties’ income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623, 119 P.3d at 730.

In this case, the district court determined that Jill’s interpretation of the spring break provision of the decree was in bad faith, and that her opposition to the motion for an order to show cause was maintained without reasonable basis and with the intent to harass. However, the court did not make specific factual findings to support those conclusions or explain why it determined that Jill’s interpretation of the spring break provision was in bad faith. Consequently, we cannot conclude with any assurance that the district court’s determinations in this regard were “made for appropriate reasons.” *See Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015) (providing that, while the appellate

courts review “a district court’s discretionary determinations deferentially, deference is not owed to legal error . . . or to findings so conclusory they may mask legal error” (internal citations omitted)).

Additionally, the district court’s order does not comply with the well-established requirement that it consider the disparity in the parties’ income, as mandated by *Wright*. See *Miller*, 121 Nev. at 623, 119 P.3d at 730; see also *Arzola v. Estrada*, No. 83251-COA, No. 83941-COA, 2022 WL 19692319 (Nev. Ct. App. Dec. 22, 2022) (Order Affirming in Part and Reversing in Part (Docket No. 83251-COA), Reversing (Docket No. 83941-COA) and Remanding) (reversing and remanding an attorney fee award in part where the district court failed to consider income disparity). Although the district court considered the *Brunzell* factors, it did not cite to *Wright*, and it failed to make any findings or otherwise demonstrate that it considered any disparity in the parties’ incomes, despite Jill raising this issue in her opposition. See *Miller*, 121 Nev. at 623, 119 P.3d at 730.

Based on the foregoing analysis, we conclude the district court abused its discretion in awarding attorney fees and costs to Christopher. See *Miller*, 121 Nev. at 622, 119 P.3d at 729; see also *In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (reversing and remanding for further proceedings where the district court did not apply the correct legal standard, and it was unclear whether the court would have reached the same conclusion had it applied the correct standard); *Davis*, 131 Nev. at 450-51, 352 P.3d at 1142-43. We therefore reverse the

district court's decision to award attorney fees and costs and remand this matter for further proceedings consistent with this order.¹

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹We also note that the district court's order awards Christopher \$2,000 in attorney fees and costs, but does not delineate what portion of the award is for attorney fees as opposed to costs. Therefore, notwithstanding the district court's failure to consider the disparity in income, it would be impossible for this court to determine whether the amount of fees was reasonable as it is not clear what amount the district court awarded in attorney fees. As such, on remand, if the district court still finds the awards of fees and costs are warranted, the court should clarify its order to indicate the amount awarded for attorney fees and the amount awarded for costs.

Insofar as the parties have raised any other 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. T. Arthur Ritchie, Jr., District Judge, Family Division
Larry J. Cohen, Settlement Judge
The Grigsby Law Group
Jones & LoBello
Eighth District Court Clerk