

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DI KUNKLE SECOND FAMILY
LIMITED PARTNERSHIP, A NEVADA
LIMITED PARTNERSHIP; RAKESH
PATEL, AN INDIVIDUAL; AND REENA
PATEL, AN INDIVIDUAL,
Appellants,
vs.
CENTURYLINK COMMUNICATIONS
LLC, A LIMITED LIABILITY
COMPANY; LUMEN TECHNOLOGIES
INC., A CORPORATION; AND ZAYO
GROUP LLC, A LIMITED LIABILITY
COMPANY,
Respondents.

No. 85463-COA

FILED

APR 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

DI Kunkle Second Family Limited Partnership, Rakesh Patel, and Reena Patel (DI Kunkle) appeal from a final order and awards of attorney fees in a civil matter. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

DI Kunkle filed a civil action in which it alleged that it was an owner of a five-acre parcel of real property. DI Kunkle further alleged respondents CenturyLink Communications LLC (CenturyLink), Lumen Technologies Inc. (Lumen), and Zayo Group LLC (Zayo) (collectively referred to as respondents) placed cable pull boxes on that property and failed to pay reasonable compensation for entry onto the property and use of the property for those boxes. DI Kunkle therefore sought injunctive relief concerning those allegations and contended that respondents were liable for money damages based upon trespass and breach of the covenant of good

faith and fair dealing. Respondents answered and denied DI Kunkle's allegations.

DI Kunkle moved for a preliminary injunction and respondents opposed that motion. During the litigation of the request for a preliminary injunction, a question arose as to whether DI Kunkle actually had an ownership interest in the property. A third party, the Arts District, disputed DI Kunkle's contention that it held the ownership interest in that property. The district court therefore found that the Arts District was a necessary party, and ordered DI Kunkle to cause the Arts District to be joined as a party.

DI Kunkle failed to join the Arts District as a party and instead renewed its motion for a preliminary injunction without first attempting to resolve the dispute as to the ownership interest. Respondents opposed the renewed motion for a preliminary injunction and the district court denied the motion.

Due to DI Kunkle's failure to follow the district court's orders and join a necessary party, and its efforts to seek injunctive relief without first establishing its authority to do so, respondents moved for sanctions pursuant to NRCP 11(c)(2) because DI Kunkle failed to conduct a reasonable inquiry into the validity of its claims and the veracity of its factual contentions as required by NRCP 11(b). Respondents also stated that DI Kunkle had no recorded ownership interest in the property and produced evidence in support of that contention. DI Kunkle opposed the motion. The district court thereafter entered an order dismissing DI Kunkle's complaint without prejudice based on its failure to complete joinder of a necessary party. DI Kunkle's counsel also moved to withdraw from this case and the court granted counsel's motion.

Respondents moved for an award of costs and sought attorney fees because DI Kunkle maintained its claims without reasonable grounds. DI Kunkle retained substitute counsel and filed an opposition to the motions for attorney fees. The district court ultimately granted respondents' motions and concluded awards of attorney fees were appropriate pursuant to NRS 18.010(2)(b). In so doing, the district court found that respondents were the prevailing parties and that DI Kunkle maintained its grounds without a reasonable basis because it lacked standing to maintain this action as it did not have a recorded ownership interest in the relevant property. The court also found that attorney fees were warranted after consideration of the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). The district court accordingly awarded costs to respondents in the amount of \$288.14. The district court also awarded attorney fees to CenturyLink and Lumen in the amount of \$22,419.50, and awarded attorney fees to Zayo in the amount of \$9,513.

DI Kunkle moved for reconsideration of the district court's fees awards and contended that its former counsel was to blame for errors leading to the dismissal of the case. Respondents opposed the motion. The district court denied the motion, finding that DI Kunkle's contentions concerning former counsel were not newly discovered evidence and were not properly raised in a motion for reconsideration. In addition, the court noted that CenturyLink and Lumen filed a supplemental motion requesting additional attorney fees in the amount of \$5,926 and that DI Kunkle did not oppose the motion. The court accordingly granted CenturyLink's and

Lumen's unopposed supplemental motion awarding them the additional fees. This appeal followed.¹

DI Kunkle argues that the district court abused its discretion in granting respondents' motions for attorney fees.² DI Kunkle contends that the fees award pursuant to NRS 18.010(2)(b) was unwarranted because it did not bring or maintain a claim without reasonable grounds as it believed it had an ownership interest in the property. DI Kunkle also asserts that the district court abused its discretion by requiring it to pay attorney fees as a sanction pursuant to NRCP 11 and should have instead ordered its former counsel to pay the fees awards pursuant to NRCP 11(c)(1) because any errors were caused by former counsel.³

¹CenturyLink and Lumen argue that this appeal should be dismissed for lack of jurisdiction because the notice of appeal was not timely filed. However, this argument lacks merit as DI Kunkle filed a motion for reconsideration within 28 days from service of the written notice of entry of the district court's order granting the motion for attorney fees, stated the grounds for the motion with particularity, and requested substantive alteration of that order. Accordingly, DI Kunkle's motion for reconsideration had "NRCP 59(e) status, with tolling effect under NRAP 4(a)(4)(C)," *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010). DI Kunkle subsequently timely filed the notice of appeal following denial of its motion for reconsideration.

²DI Kunkle identified the order of dismissal without prejudice in its notice of appeal but does not provide argument concerning the district court's decision to dismiss its complaint without prejudice. Therefore, to the extent DI Kunkle seeks to challenge the district court's decision to dismiss this matter, we decline to consider any such challenge. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

³To the extent DI Kunkle also challenges the district court's award of costs, DI Kunkle fails to provide cogent argument or relevant authority regarding the district court's award of costs, and therefore, we decline to

This court reviews awards of attorney fees for an abuse of discretion. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485, 851 P.2d 459, 464 (1993). A district court abuses its discretion when its findings are not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). Under NRS 18.010(2)(b), the district court may award attorney fees to a “prevailing party” when “the court finds that the claim . . . of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party.” There must be evidence in the record supporting the proposition that a claim was brought or maintained without reasonable grounds. *Chowdhry*, 109 Nev. at 486, 851 P.2d at 464. “For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it.” *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). Moreover, “NRCP 11 and NRS 18.010(2)(b) are independent bases” for an award of attorney fees and carry different requirements for an award of such fees. *Lamont’s Wild W. Buffalo, LLC v. Terry*, 140 Nev., Adv. Op. 11, 544 P.3d 248, 252-53 (2024).

Here, the district court awarded respondents attorney fees pursuant to NRS 18.010(2)(b). The court found that respondents were the prevailing parties because DI Kunkle’s complaint was dismissed. The district court also found DI Kunkle maintained its claims despite evidence demonstrating that it did not have a recorded interest in the relevant property and therefore could not advance claims stemming from such an

consider this issue on appeal. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument and relevant authority).

interest. And based on this finding, which is supported by evidence in the record, the district court found that DI Kunkle's claims were maintained without reasonable grounds. We conclude that the district court did not abuse its discretion in this determination, as DI Kunkle was made aware of facts that made its decision to maintain its claims unreasonable yet continued to maintain those claims.⁴ See *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (explaining that an analysis under NRS 18.010(2)(b) "depends upon the actual circumstances of the case rather than a hypothetical set of facts favoring plaintiff's averments"), *superseded by statute on other grounds as recognized in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017).

In addition, DI Kunkle contends that the district court abused its discretion by requiring it to pay attorney fees pursuant to NRCP 11 as the sanctionable conduct was committed by their former counsel. But this argument is misplaced as the court did not award attorney fees as a sanction pursuant to NRCP 11 but instead only awarded attorney fees pursuant to NRS 18.010(2)(b). Accordingly, we conclude DI Kunkle fails to demonstrate it is entitled to relief based on this claim.

Based on the foregoing analysis, and because DI Kunkle does not challenge the reasonableness of the amount of the fees awards under


⁴DI Kunkle contends that the district court should have limited the fees awards to the time period following its order to join the Arts District as a party. However, DI Kunkle does not provide relevant authority in support of this argument. DI Kunkle also does not provide cogent argument as to why the fees awards should run only from the time period following the district court's order to join the Arts District. Because DI Kunkle fails to provide cogent argument or relevant authority regarding this issue, we decline to consider it on appeal. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

the *Brunzell* factors, see *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 (providing that arguments not raised on appeal are deemed waived), we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Law Offices of Mitchell S. Bisson
Bremer Whyte Brown & O'Meara, LLP/Las Vegas
McDonald Carano LLP/Reno
Parsons Behle & Latimer/Reno
Eighth District Court Clerk

⁵Respondents' request that this court award them attorney fees pursuant to NRAP 38 on the ground that that this appeal is frivolous is denied.