

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH CORRADO,
Appellant,
vs.
DCI CONSTRUCTION,
Respondent.

No. 87167-COA

FILED

MAY 15 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kenneth Corrado appeals from a district court order awarding respondent DCI Construction attorney fees and costs. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Corrado, who previously worked for his father's construction company, sought to build a custom home in Las Vegas, Nevada. Corrado entered into an agreement with Pinnacle Architectural Studio, Inc., and its principal Quinn Boesnecker, to design the home. While discussing the scope of the work, and supervision of the construction, Boesnecker introduced Corrado to Shawn Ruybal, who is the principal for DCI Construction. Corrado alleged that, following discussions, Pinnacle, DCI Construction, and himself all signed a contract for Pinnacle to provide "construction administration" services and DCI Construction would act as the general contractor for the project. In contrast, DCI Construction alleged that, while the parties discussed general contracting services, Corrado never retained it to provide such services and that the signature on the alleged contract was forged. Boesnecker claimed that the parties did initially enter into a

contract where DCI Construction would serve as the general contractor. However, during a subsequent discussion between himself and Corrado, they agreed that, given Corrado's experience in construction and Pinnacle's experience with "construction administration," it was unnecessary to hire a general contractor and that forgoing one would save hundreds of thousands of dollars. Corrado maintained this conversation did not occur and that he believed Pinnacle and DCI Construction were working as a team to oversee construction. DCI Construction maintained that Boesnecker subsequently informed Ruybal that, despite the prior discussions, Corrado no longer wished to hire a general contractor.

To build the home, Corrado required a construction loan from Nevada State Bank. Due to the size of the loan, Nevada State Bank required that a general contractor supervise the project and sign the invoices. Ruybal alleged Boesnecker again contacted him and requested permission to use DCI Construction's general contractor license to obtain the loan and, in return, Pinnacle would pay DCI Construction a small fee for using the license. Ruybal agreed and additionally signed documentation for the bank that allowed Boesnecker and/or Corrado to submit invoices for payment. It appears the bank intended to issue payment to the general contractor directly instead of issuing payments to Pinnacle or Corrado. To get around this issue, Boesnecker created a new company, DCI LLC. DCI LLC, as opposed to DCI Construction, then submitted invoices to the bank, received payment, and issued the funds to Pinnacle. Pursuant to DCI LLC's invoices, it shared the same address as Pinnacle, rather than DCI Construction. Boesnecker maintained that Ruybal and Corrado were aware

of this arrangement and that Corrado knew DCI Construction was only providing its license to obtain the loan and would not be acting as the general contractor. Corrado maintained he was unaware Pinnacle had “cut DCI Construction” out of the arrangement and did not realize DCI LLC was a different company.

Corrado then obtained permits for construction, identifying himself as the owner/builder of the property. Both Corrado and Boesnecker testified that Pinnacle would assist in identifying subcontractors to work on the home, but Corrado would ultimately select the subcontractor, sign any contracts, and issue payment. During the construction, Pinnacle’s general manager, Travis Holden, provided onsite supervision for the project. Corrado testified that he knew Holden was providing onsite supervision, but did not know if Holden worked for Pinnacle or DCI Construction or both. Holden testified that Corrado was aware that Holden worked for Pinnacle and that Corrado himself was acting as the general contractor. Specifically, if Corrado identified an issue with the construction, he would discuss it with the subcontractor and attempt to negotiate any repairs himself. Boesnecker also testified that Corrado oversaw the construction and only contacted Pinnacle if he wanted Pinnacle to exert pressure on a reluctant subcontractor.

Following completion of the project, Corrado identified several defects and sent notices to various subcontractors regarding his intent to file suit. Corrado likewise sent a notice to Pinnacle and DCI Construction. Holden testified that, once he became aware Corrado intended to sue DCI Construction for negligent supervision, he contacted Corrado to question

why he would name DCI Construction as a defendant when Corrado knew it was uninvolved in the supervision of the project. Corrado denied this conversation occurred and subsequently filed suit against Pinnacle, DCI Construction, and various other subcontractors. The complaint alleged DCI Construction entered into a contract to serve as the general contractor and failed to supervise the construction process. DCI Construction alleged that, after learning of the suit, it contacted Corrado and informed him the alleged contract was a forgery and that it had never agreed, or been retained, to provide general contractor services. Corrado maintained that he could not evaluate DCI Construction's involvement until discovery was completed and refused to dismiss his complaint.

The parties proceeded to discovery and deposed Corrado, Boesnecker, Ruynal, and Holden, who testified to the above facts. Boesnecker was deposed last. During Boesnecker's deposition, he testified that DCI Construction did not serve as the general contractor and confirmed he created DCI LLC to obtain payment from Nevada State Bank for "construction administration" fees. However, he maintained Corrado was aware of the arrangement and Corrado agreed that a general contractor was unnecessary given his experience and Pinnacle's assistance. Further, Boesnecker testified that Corrado understood that he was saving hundreds of thousands of dollars by not hiring a general contractor. Shortly after Boesnecker's deposition, Pinnacle settled the claims against it. Corrado then filed a motion to voluntarily dismiss the complaint against DCI Construction with prejudice. DCI Construction opposed and argued it wanted an adjudication on the merits so it could be declared the prevailing

party and seek its attorney fees and costs. The district court granted the motion and dismissed DCI Construction with prejudice. However, the district court invited DCI Construction to file a motion for attorney fees and costs and brief why it believed it was a prevailing party under NRS 18.010(2) and NRS 18.020.

DCI Construction subsequently filed a motion for fees and costs, arguing that it was the prevailing party because Corrado dismissed his case with prejudice. DCI Construction argued that, because it was the prevailing party, it was entitled to costs pursuant to NRS 18.020. DCI Construction further argued it was entitled to attorney fees pursuant to NRS 18.010(2) because it was a prevailing party and because Corrado brought and/or maintained this action without a reasonable basis. Specifically, DCI Construction cited to the depositions of Corrado, Holden, and Ruybal to support its position that Corrado knew prior to the litigation that DCI Construction had provided only its general contractor's license to obtain the construction loan but had not otherwise served as the general contractor. Corrado opposed the motion, arguing that DCI Construction was not a prevailing party "under the circumstances of the case" because Corrado reasonably believed it was involved in the construction supervision, and it was not until Boesnecker's deposition that he learned DCI Construction had been "cut out" of the project. Corrado denied knowing Boesnecker created a new shell company to receive payment and further argued he believed Pinnacle and DCI Construction were working as a team to supervise the project. Corrado also filed a motion to re-tax costs, arguing mediation costs,

which DCI Construction sought reimbursement for, are not litigation costs pursuant to NRS 18.005.

The district court held a hearing at which it heard extensive argument and questioned the parties regarding the deposition transcripts, bank invoices, and other exhibits. The district court found that, pursuant to *145 E. Harmon 11 Trust v. Residences at MGM Grand Towers*, DCI Construction was the prevailing party because Corrado voluntarily dismissed the case with prejudice. 136 Nev. 115, 460 P.3d 455 (2020). Further, the district court found that Corrado brought or maintained his claim against DCI Construction without a reasonable basis. Specifically, the district court found Corrado had experience building houses and was familiar with the role of a general contractor. The district court also cited Corrado's own deposition transcript, which it found suggested Corrado knew DCI Construction was providing its general contractor license to obtain the loan and would not actually provide onsite supervision or general contractor services. Indeed, the district court found the deposition testimony demonstrated Corrado acted as the general contractor because he, and not DCI Construction, selected the subcontractors, signed the contracts, oversaw the work, and ensured the subcontractors were paid. The district court then evaluated the necessary *Brunzell*¹ factors and awarded DCI Construction \$80,494.09 in attorney fees pursuant to NRS 18.010(2)(b). The district court further granted Corrado's motion to re-tax costs and awarded DCI Construction \$2,204.73 in costs pursuant to NRS

¹*Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

18.020, which did not include the requested mediation costs. Corrado now appeals.

On appeal, Corrado argues DCI Construction is not a prevailing party pursuant to NRS 18.010(2) or NRS 18.020(2)(b) because Corrado had a reasonable basis to bring and maintain the litigation. Corrado further argues that substantial evidence does not support the district court's conclusion that DCI Construction was the prevailing party. Corrado reasons that, because both NRS 18.010 and NRS 18.020(2)(b) only allow a court to award fees or costs to the prevailing party, and DCI Construction was not a prevailing party, this court must reverse the district court's order. Finally, Corrado argues that, even if DCI Construction was the prevailing party pursuant to NRS 18.010(2), the circumstances of this case do not warrant attorney fees because he had a reasonable basis to bring or maintain the action. *See* NRS 18.010(2)(b) (permitting a district court to award the prevailing party attorney fees if the claim was brought or maintained without reasonable basis).

The question of whether a litigant is a "prevailing party" under NRS 18.010(2) and NRS 18.020 is a question of law reviewed de novo. *E. Harmon*, 136 Nev. at 118, 460 P.3d at 457; *Franchise Tax Bd. v. Hyatt*, No. 80884, 2021 WL 1609315, at *2 (Nev. Apr. 23, 2021) (Order Affirming in Part, Reversing in Part and Remanding) ("The district court's denial of FTB's statutory costs is subject to de novo review because it implicates a question of law—whether FTB fits the definition of 'prevailing party' under NRS 18.020."). In *Valley Electric Assoc. v. Overfield*, the Nevada Supreme Court held that a party prevails in an action "if it succeeds on any

significant issue in [the] litigation.” 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotation marks omitted). Subsequently, in *East Harmon*, the supreme court addressed whether a defendant who successfully obtains a voluntary dismissal with prejudice could be considered the prevailing party in order to seek attorney fees and costs under NRS 18.010(2) and NRS 18.020. 136 Nev. at 119, 460 P.3d at 458. The court held that, generally, a voluntary dismissal with prejudice equates to a judgment on the merits sufficient to confer prevailing party status upon the defendant. *Id.* However, the court acknowledged this rule is not absolute and recognized an exception for circumstances where the voluntary dismissal would not equate to a judgment on the merits. *Id.* at 120, 460 P.3d at 459. Specifically, the court recognized that an exception exists where, for example, the party seeking the voluntary dismissal had a strong case but nonetheless sought to dismiss the case for reasons unrelated to the merits. *See id.* (providing an example where the plaintiff dismissed an action because they lacked the funds to pursue litigation).

Here, Corrado argues DCI Construction was not the prevailing party under NRS 18.010(2) or NRS 18.020 because Corrado reasonably believed he had a meritorious claim until Boesnecker’s deposition. Although this argument is relevant to whether fees are permissible under NRS 18.010(2)(b), which permits attorney fees to a prevailing party if a claim is brought or maintained without reasonable basis, it does not address whether DCI Construction is a prevailing party under the holding in *East Harmon*. The question presented when determining whether DCI Construction is the prevailing party for purposes of NRS 18.010(2) is not

whether Corrado had a reasonable basis for the claim, but whether the reason for the voluntary dismissal with prejudice was unrelated to the merits of the claim such that the *East Harmon* exception would apply. And here, it is undisputed that Corrado voluntarily dismissed his claim against DCI Construction because he knew it lacked merit. Although Corrado disputes when he first learned the claim lacked merit, he nonetheless conceded that, in light of Boesnecker's deposition, his negligent supervision claim lacked merit. Under these circumstances, the exception to the general rule announced in *East Harmon* does not apply, and thus, the district court properly determined that Corrado's voluntary dismissal of his claim against DCI Construction, with prejudice, rendered DCI Construction the prevailing party in the underlying case for purposes of NRS 18.010(2) and NRS 18.020.²

We next turn to the district court's conclusion that Corrado brought or maintained this action without a reasonable basis such that an award of attorney fees was warranted under NRS 18.010(2)(b). An award of attorney fees is reviewed for an abuse of discretion. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353-54, 971 P.2d 383, 386 (1998). And an abuse of discretion occurs when the court's

²Corrado's sole argument challenging the award of costs under NRS 18.020 on appeal is that DCI Construction was not a prevailing party. As we conclude that DCI Construction was the prevailing party, and Corrado failed to challenge the amount of the awarded costs, we affirm the district court's order awarding DCI Construction's litigation costs.

decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013).

NRS 18.010(2)(b) permits a district court to award attorney fees to a prevailing party “when the court finds that the claim . . . was brought or maintained without reasonable ground.” “[A] claim is frivolous or groundless if there is no credible evidence to support it.” *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (internal quotation marks omitted). The fact that a party pursued a course of action that ultimately proved to be unsuccessful is not sufficient to support a fee award under NRS 18.010(2)(b). *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (“Although [appellant] did not prevail on the motion, and it may have been without merit, that alone is insufficient for a determination that the motion was frivolous, warranting sanctions.”), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Instead, “there must be evidence supporting [a] finding that the claim or defense was unreasonable or brought to harass.” *Rivero*, 125 Nev. at 441, 216 P.3d at 234.

Corrado contends that he had a reasonable basis to bring the action against DCI Construction because he believed DCI Construction entered into a contract with him to provide general contractor services. Corrado argues this belief was bolstered by the fact that DCI Construction informed Nevada State Bank it would serve as the general contractor and he was unaware Boesnecker created a second company, DCI LLC, to obtain payment from the bank. Corrado further argues he reasonably maintained

the action because he could not truly evaluate DCI Construction's allegation that it was uninvolved with the construction project until Boesnecker's deposition, which confirmed DCI Construction's defense. Corrado maintains that awarding attorney fees under these circumstances punishes him for litigating a claim he reasonably believed had merit.

In contrast, DCI Construction argues Corrado knew from the outset that DCI Construction was not supervising construction of the home because Corrado admitted in his deposition that he understood DCI Construction was only providing its general contractor license to obtain the loan. Further, DCI Construction argued Corrado had prior experience managing a residential construction company and knew that he, not DCI Construction, was completing the tasks the general contractor typically would. Furthermore, DCI Construction points to the deposition testimony of Holden and Boesnecker who both stated that Corrado knew DCI Construction was uninvolved with the construction project to support its position.

We conclude substantial evidence supports the district court's finding that Corrado brought or maintained this action without a reasonable basis. As Corrado acknowledged during the hearing, there was conflicting evidence regarding his knowledge of DCI Construction's involvement, or lack thereof in the construction project. And ultimately, in reaching its conclusion on this point, the district court credited Holden and Boesnecker's testimony over Corrado's own denials and this court does not engage in credibility determinations nor does it reweigh the evidence. See *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to


reweigh the district court's credibility determinations on appeal). Moreover, in determining that the complaint was brought without reasonable grounds, the district court further relied upon Corrado's own deposition testimony, which stated he understood DCI Construction was only providing its license to obtain the loan and that it had no onsite role.

Under these circumstances, we discern no abuse of discretion in the district court's determination that Corrado brought his claim against DCI Construction without reasonable grounds such that DCI Construction was entitled to an award of attorney fees under NRS 18.010(2)(b). See *Bobby Berosini, Ltd.*, 114 Nev. at 1353-54, 971 P.2d at 386. Further, as Corrado makes no argument on appeal challenging the amount of fees awarded, he has presented no other basis to disturb the district court's attorney fees award. Accordingly, we affirm the district court's grant of DCI Construction's motion for attorney fees.³

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³In its answering brief, DCI Construction argues this court should sanction Corrado pursuant to NRAP 38 for bringing a frivolous appeal. Although we conclude that Corrado's appeal ultimately lacked merit, we do not find that it was frivolous and thus conclude sanctions are not warranted. See NRAP 38 (permitting this court to impose monetary sanctions if it determines an appeal is frivolous).

cc: Hon. Susan Johnson, District Judge
Newmeyer & Dillion, LLP
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Eighth District Court Clerk