IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

Case No. 86976

PIERRE A. HASCHEFF,

Appellant/Cross-Respondent,

vs.

LYNDA HASCHEFF,

Respondent/Cross-Appellant.

Appeal From Special Order Entered After Final Judgment
Second Judicial District Court Case No. DV13-00656

RESPONDENT'S COMBINED ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL

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NRAP 26.1 DISCLOSURE STATEMENT

The following law firms have lawyers who appeared on behalf of the Respondent/Cross-Appellant Lynda Hascheff or are expected to appear on her behalf in this Court:

Leonard Law, PC
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DATED February 14, 2024

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JURISDICTIONAL STATEMENT

The Court lacks jurisdiction over the appeal to the extent it challenges the February 17, 2023 Order Regarding Indemnification Of Fees And Costs Under MSA § 40; Order Regarding Prevailing Party Under MSA § 35.1 ("Indemnity Order"), which was a special order entered after final judgment that conclusively determined: (1) the amount of Lynda's indemnity obligation to Pierre and (2) that Lynda was the prevailing party. 4AA0930-0939. Pierre failed to timely appeal the Indemnity Order. 5AA1105-1117. As a result, the Court lacks jurisdiction to review the two determinations in the Indemnity Order and must disregard Pierre's Opening Brief to the extent it seeks reversal of the Indemnity Order.

The Court has jurisdiction over Pierre's appeal under NRAP 3A(b)(8) only to the extent that it challenges the amount of attorneys' fees awarded to Lynda in the June 12, 2023 Order Awarding Attorney's Fees (5AA1105-1117, "Fee Order"). The Notice of Entry of the Fee Order was filed on June 12, 2023. 5AA1118-1134. Pierre filed his notice of appeal on July 11, 2023. 5AA1135-1136. Lynda filed her notice of cross appeal on July 17, 2023. 5AA1137-1158. The appeal and cross appeal of the Fee Order were timely filed pursuant to NRAP 4(a)(1)-(2).

ROUTING STATEMENT

This case involves an appeal and cross appeal from a post-judgment order awarding attorneys' fees in a family law case, which is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(7) and NRAP 17(b)(10).

ANSWERING BRIEF ON APPEAL

ISSUES ON APPEAL

1. Does the Court lack jurisdiction to consider Pierre's appeal of the Indemnity Order?

2. Only if the Court determines it has jurisdiction to review the Indemnity Order, did the district court properly exercise its discretion to determine that:

   a. Lynda's indemnity obligation was only $1,147.50 because the larger sums Pierre demanded were not incurred to defend against a malpractice action; and

   b. Lynda was the prevailing party where she:

      i. Obtained the declaratory relief she sought that her indemnity obligation under the parties' Marital Settlement Agreement ("MSA") extended only to fees incurred by Pierre to defend against the malpractice action, not a collateral matter in which Pierre was only a witness;

ii. Successfully defended against Pierre's motion to have her held in contempt of court; and

iii. Was ordered to pay only a fraction of what Pierre had originally demanded?

3. Did the district court properly exercise its discretion as to the amount of attorneys' fees it awarded Lynda for the district court proceedings?

STATEMENT OF THE CASE

This appeal and cross appeal arise from post-remand proceedings following the Court of Appeals' decision in Case No. 82626. The district court followed the Court of Appeals' remand instructions and, on February 17, 2023, issued the Indemnity Order in Lynda's favor. Pierre did not appeal.

The district court then issued the Fee Order on June 12, 2023 that quantified the amount of attorneys' fees Pierre must pay Lynda pursuant to the prevailing party fee provision in their MSA, amounting to $46,675 for the work of Lynda's lawyer in the district court proceedings. Pierre appealed the Fee Order. Lynda cross appealed the Fee Order because the district court: (1) failed to award her the fees she incurred on appeal and (2) allowed Pierre to pay in installments, notwithstanding having found that Pierre could afford to pay the entire fee award.

STATEMENT OF THE FACTS

A. The Parties' Marital Settlement Agreement Provided That Lynda Would Partially Indemnify Pierre In The Event He Is Sued For Malpractice

The parties were married for 23 years until Pierre filed for divorce from Lynda in 2013. 1AA0187. Pierre was a lawyer in private practice before becoming a Justice of the Peace in January 2013, less than a year before the divorce was finalized. 3AA0661. During the parties' marriage, Lynda was primarily a stay-at-home mother. 4AA0785. She has no legal training. 1AA0063.

Pierre and Lynda's MSA § 40, which was incorporated into their final divorce decree, provided: "In the event [Pierre] is sued for malpractice" related to his former law practice, Lynda would indemnify him for half the cost of the "defense and judgment." 1AA0198. The parties purchased a tail insurance policy to cover any malpractice claims. 1AA0198.

The MSA also contains a prevailing party fee and cost clause in §35.1:

> If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

1AA0197.

B. Pierre Made A Sizeable Monetary Demand For Indemnification Without Supporting Documentation To Show That Lynda Had Any Obligation To Pay It

Over six years after the parties divorced, on January 15, 2020, Lynda received an undated, handwritten letter from Pierre that demanded she pay him $5,200.90 for legal fees he claimed to be incurring in an "on-going" malpractice action. 1AA0032. He provided portions of invoices from a law firm but omitted the time entries that described the work actually performed. 1AA0032-0036.

The invoices revealed that the work for which Pierre sought indemnification had commenced nearly a year and a half earlier in 2018. *Id*. Pierre's January 15, 2020 demand was the first time Pierre had said anything to Lynda regarding any alleged malpractice claim. 1AA0032. The invoices also showed that part of the bill had been paid by Pierre's malpractice insurance carrier, but Pierre's demand to Lynda did not offset those amounts. 1AA0033-0036. In his demand letter, Pierre warned Lynda that he would be sending additional invoices as fees continued to accrue. 1AA0032; *see also* 1AA0095 ("The litigation is continuing and the[re] will be more bills").

Because Pierre is a lawyer and Lynda is not, to evaluate Pierre's demand, Lynda asked her sister, Lucy Mason, a former California lawyer, to review the demand and communicate with Pierre. 1AA0126. With Lucy's help, Lynda was able to learn that Pierre's demand was connected, in some way, with testimony he had

given in connection with a collateral probate matter ("the Collateral Action"), to which he was not a party. 1AA0094-0102. Pierre had indeed been sued for malpractice ("the Malpractice Action") by one of the parties (Todd Jaksick) to the Collateral Action. 1AA0041-0046. But the Malpractice Action was "on hold" pending the outcome of the Collateral Action, making it unclear which fees—if any—were incurred in defense of the Malpractice Action. 1AA0049; *see also* 1AA0095 (indicating that Pierre had never even responded to the complaint in the Malpractice Action). Lynda also learned that even though Pierre's January 2020 demand sought fees and costs starting in September 2018, the Malpractice Action was not even filed until December of that year. *Compare* 1AA0032-0036 *with* 1AA0041-0046.

Because Pierre's demands sought indemnity for the Collateral Action, and his evasiveness prevented Lynda from discerning which fees, if any, were actually incurred in defense of the Malpractice Action, Lynda was forced to retain lawyer Shawn Meador to assist her in assessing her indemnity obligation. 1AA0048-0053, 0061-0067. On March 2, 2020, Mr. Meador emailed Pierre requesting unredacted invoices: "I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries."

1AA0049. He also requested correspondence Pierre and his counsel had with Todd Jaksick (the former client who sued Pierre) and Mr. Jaksick's counsel. *Id*.

Pierre again refused to provide anything beyond basic, unitemized invoices, which did not include descriptions of the tasks performed by his lawyer. 1AA0032-0036, 0048. Pierre insisted that Lynda simply had to pay him the money he demanded based on his contention that MSA §40 applied. *Id.* Mr. Meador continued to seek clarification from Pierre and, later, Pierre's counsel, with no success. 1AA0048-0067. Indeed, Pierre's counsel simply asserted that the amount due had grown to $6,363.40—still without evidence. 1AA0059; *see* 1AA0058 (providing "redacted billing statements" only); *see also* 1AA0038-0039 (contending that time entries contain attorney-client privileged information and that no additional information would be produced). Pierre claimed a privilege over communications he had with Mr. Jacksick's lawyer (i.e., *opposing counsel* in the Malpractice Action). 1AA0039.

C. Lynda Repeatedly Informed Pierre She Wished To Honor Her Indemnity Obligation Once Pierre Demonstrated That The Money He Demanded Was Incurred To Defend The Malpractice Action And Had Not Been Covered By Insurance

Contrary to Pierre's repeated misrepresentations (AOB 7, 13-14, 17, 22), the record is clear that, at all times, Lynda was prepared to indemnify Pierre for one half the defense costs in the Malpractice Action:

> Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. ***I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold***. I cannot do that without seeing the actual bills and time entries. 1AA0049 (emphasis added).
>
> ***Lynda is prepared to honor her obligation to pay her share of the costs and fees incurred in the malpractice action that have not been covered by insurance. I do not have sufficient information on which to evaluate what she does or does not owe you at this time because you have objected to providing that information. Upon receipt of the requested documents and other information, I will evaluate your demands with Lynda and she will pay what she owes under the agreement*** your lawyer drafted. 1AA0050 (emphasis added).
>
> I have previously outlined the information I need to review in order to provide my client with thoughtful and informed advice. Judge Hascheff's insistence that my client must simply accept his demands and that she is not entitled to basic and fundamental information about the very fees he insists she must share, is not supported by the law or common sense. Upon receipt of the information I have requested I will be happy to review and evaluate Judge Hascheff's claims and demands in good faith and will respond promptly. 1AA0056.
>
> ***Ms. Hascheff remains prepared to pay her one-half of the total fees and expenses related to the malpractice action. From my review of the bills provided by Mr. Alexander, the only fees I can see that are directly related to the malpractice action come to $95***. I appreciate, although disagree with, your claim that my client is responsible for any fees and costs Judge Hascheff elects to incur that he deems to be prudent in connection with collateral lawsuits. However, ***I need to know what the fees and costs have been that are directly related to the malpractice action so that Ms. Hascheff can pay her share of the undisputed fees and costs***. 1AA0062 (emphases added).

As these portions of the record clearly show, Pierre's assertion that "Lynda argued she did not have to indemnify Pierre any of the fees he incurred in defense

of the malpractice action" is patently false. AOB 7 (changes to capitalization added). Lynda always communicated that she would pay one half the fees he incurred in defense of the Malpractice Action, but Pierre repeatedly refused to provide documentation that the amounts he demanded fell within the indemnity language of MSA §40. 1AA0049-0050, 0056, 0062. In fact, Pierre himself acknowledged under oath that Lynda's counsel had confirmed she would pay her half if Pierre demonstrated that the money he demanded was within the scope of the indemnity language. 3AA0590.

Rather than simply provide basic information to support his demand, Pierre made the tactical decision below to withhold information from Lynda and simply assert that he alone gets to determine the scope and application of MSA § 40 to the fees he chose to incur. 1AA0095-0096, 0124. According to Pierre, Lynda had to pay whatever amount he demanded, and he had no obligation to demonstrate the purpose for which the fees were incurred. 1AA0032-0036, 0038-0039, 0048, 0059, 0095, 0124. Pierre's repeated refusal to provide Lynda with the most basic information (i.e., descriptions of the work performed) needlessly drove up her attorneys' fees. 1AA0013-0067; 2AA0401-0450.

D. Pierre's Obstinacy Required Lynda To Seek Declaratory Relief Regarding Her Rights And Obligations Under MSA §40

After months of Pierre's stonewalling, on June 16, 2020, Lynda filed a Motion for Clarification or Declaratory Relief regarding Terms of MSA and Decree ("DR

Motion"). 1AA0013-0067. In the DR Motion, Lynda requested a declaration "that [she] is only responsible for fees incurred in the malpractice action and that she is not responsible for the fees or costs [Pierre] chose to incur to have personal counsel protect his interests in connection with his role as a percipient witness in the Jaksick Action." 1AA0024. In other words, she reiterated what she had already stated in her counsel's correspondence to Pierre – that she was prepared to honor her indemnity obligation and wanted the district court to clarify that the scope of that obligation extended only to the "defense and judgment" in the Malpractice Action. *Compare* 1AA0014, 0017, 0024 *to* 1AA0049-0050, 0056, 0062. Lynda further requested that Pierre pay the costs and fees she incurred in connection with her attempts to obtain information, respond to his demands and engage in motion practice to establish her rights and obligations. 1AA0025.

Although interpretation of the MSA's indemnification provision was already being briefed in Lynda's DR Motion, Pierre filed a Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders, seeking to have Lynda held in contempt of court for allegedly violating the MSA ("OSC Motion"). 1AA0103-0132. In that OSC Motion, Pierre argued that "the language [of MSA §40] is clear and unambiguous" that Lynda must simply pay all amounts Pierre demanded. 1AA0104. Pierre asked the Court to hold Lynda in contempt and order her to pay $4,924.05, without: (1) any explanation as to why that amount differed from the

$6,363.40 he had previously demanded or (2) complete descriptions of the services performed by his attorney. 1AA0112-0114.

E. The District Court Granted Lynda Declaratory Relief, Agreeing With Her That Pierre Was "Not Transparent," Failed To Provide Documentation To Support His Demand, And "Ignored" Lynda's Requests For Information

Following briefing, the district court held a hearing, at which the parties submitted documentary evidence and Pierre testified. At the hearing, the district court agreed with Lynda that Pierre had simply failed to meet his evidentiary burden of showing the purpose for which he incurred the amounts he demanded:

> [The billing] is redacted to the point we don't even know – it doesn't even – telephone call with, and the rest is redacted, the entire section of that is redacted. I mean everything from that … we have two things that [are] redacted out in totality. We don't know whether or not it's [a] telephone call, whether it was an appearance, whether it was a review, whether it was a draft, we don't even know the simplistic aspect of what the work was.

3AA0529, *citing* 2AA0339, 0346, 0348-0349, 0353.

The district court then issued an Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorney's Fees and Costs (the "Declaratory Relief Order"). 3AA0622-0636. The district court decided, without extensive analysis, that "the legal fees incurred by Judge Hascheff as a witness in the collateral trust action and the stayed malpractice lawsuit where he is sued individually are encompassed by MSA § 40." 3AA0632. Nevertheless, the district

court did not enforce the indemnification clause due to Pierre's "conscious disregard and selective enforcement" of the MSA that was "comparable to a claim for laches," an argument never made by Lynda and that the district court acknowledged that it had "raise[d] … *sua sponte*." 3AA0633-0634. The district court found that Pierre "was not transparent"; "failed to provide a complete and transparent accounting"; had "unilaterally imposed redactions… [that] obfuscat[ed] the true amount owed by Ms. Hascheff"; made shifting and inconsistent demands as to the amount Lynda allegedly owed; failed to explain discrepancies regarding his malpractice insurance coverage; was "secretive" as to the alleged work performed by his attorney; and overall, engaged in "troubling" conduct. 3AA0632-0633. Pierre does not dispute these factual findings. AOB 9.

Although Lynda had prevailed in obtaining declaratory relief, and Pierre failed in his effort to have Lynda held in contempt of court, the district court, without explanation, "decline[d] to award attorneys' fees and costs," notwithstanding the plain language of MSA §35.1 and its findings that Pierre had obstructed Lynda's ability to get basic information, thereby driving up the time her attorney needed to spend on the matter. 3AA0633-0635.

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F. The Court Of Appeals Agreed With Lynda That: (1) Her Indemnity Obligation Extended Only To Those Fees Incurred By Pierre In The Malpractice Action And (2) The District Court Must Award Attorneys' Fees To The Prevailing Party

Pierre appealed from the Declaratory Relief Order, and Lynda cross appealed from the denial of attorneys' fees. 3AA0637-4AA0784. On June 29, 2022, the Court of Appeals entered an Order Affirming in Part, Reversing in Part, and Remanding ("the COA Order"). 4AA0785-0796. Although the Court of Appeals concluded that the district court had misapplied the doctrine of laches and that Lynda was not categorically excused from her obligation to indemnify Pierre (arguments that Lynda had never made to the district court), it held—as Lynda had maintained from the outset—that in order for Pierre to be entitled to indemnification, the "legal fees and costs **must arise from the malpractice action only**." 4AA0791 (emphasis added); 4AA0793-0794. As the Court of Appeals made clear (and Lynda had argued all along), "MSA § 40 as written does not permit indemnification from Lynda for the fees and costs incurred in the collateral trust litigation." 4AA0792; *compare* 1AA0024. The Court of Appeals did not disturb any of the district court's factual findings. 4AA0789-0795.

The Court of Appeals also agreed with Lynda that MSA §35.1 required the district court to award reasonable fees to the prevailing party. 4AA0794-0795. As a result, the Court of Appeals remanded for the district court to "make specific factual findings" concerning which fees were covered by the indemnity obligation,

determine who is the prevailing party, and award reasonable fees and costs in accordance with MSA §35.1. 4AA0795-0795.

G. On Remand, Pierre Continued To Needlessly Drive-Up Lynda's Attorneys' Fees By Relitigating Issues Decided By The Court Of Appeals And Contradicting His Earlier Position That MSA §40 Was Unambiguous

Having lost before the Court of Appeals, on remand, Pierre changed tactics in two significant ways that perpetuated his strategic efforts to bury Lynda in legal fees. First, notwithstanding the plain language of the COA Order that Lynda's indemnity obligation in MSA §40 encompassed only fees from the Malpractice Action, he continued to demand reimbursement for fees he chose to incur in the Collateral Action, thereby violating the law-of-the-case doctrine. 4AA802, 0816, 0821-0822, 0824-0825, 0946-0948. Second, he asserted that the language in MSA §40 he previously insisted was clear and unambiguous when seeking to have Lynda held in contempt of court had somehow become ambiguous and should encompass the fees he incurred in the Collateral Action. *Compare* 4AA0824-0825, 0828, 0830-0831, 0833, 0838, 0895-0900 *to* 1AA0163 ("[Pierre] believes the MSA is clear regarding Ms. Hascheff's obligation to defend and indemnify"); 1AA0112 (setting forth standard for contempt that order "must be clear [and] unambiguous") *see also* 1AA0052 (Pierre's email: "The terms of the indemnity in the agreement are clear and unambiguous"). Lynda was forced to incur additional fees to respond to these

bad-faith arguments. 4AA0946-0948; *see also* 4AA0831; 5AA1113 (district court noting that Pierre took inconsistent positions).

H. The District Court Implemented The Court Of Appeals' Decision And Concluded Pierre's Evidence Supported Only A Fraction Of His Pre-Litigation Indemnity Demand

On remand, the district court ordered Pierre—at long last—to file "a copy of the unredacted invoices that reflect the fees" for which he was seeking recovery, precisely what Lynda had requested all along. 4AA0856; *compare* 1AA0049-0050, 0056, 0062. After Pierre did so, the parties filed additional briefing concerning which fees and costs came within MSA § 40's indemnity obligation, as interpreted by the Court of Appeals. 4AA0895-0905. Pierre continued to demand indemnification for fees he incurred in the Collateral Action, notwithstanding the Court of Appeals' clear direction that MSA § 40 allowed him to recover fees from "the malpractice action 'only.'" 4AA0858-0887; 4AA0897-0899.

Lynda argued that most of the fees demanded by Pierre were incurred in the Collateral Action, for which the COA Order was clear she had no obligation. 4AA0903-0904. She also contended that the malpractice carrier covered fees he purportedly paid in defense of the Malpractice Action. 4AA0903. As to other time entries, Lynda contended they were too vague or unclear to evaluate, but if deemed

to have been incurred in defense of the Malpractice Action, they amounted to $295, for which Lynda's half was only $147.50. *Id.*

On December 8, 2022, the district court issued an order that determined that MSA § 40 was not ambiguous and, as interpreted by the Court of Appeals, required indemnification for fees "'aris[ing] from the malpractice action only.'" 4AA0909-0910, *quoting* 4AA0791 (emphasis added by district court). After denying a request by Pierre for *yet more* briefing that would have further driven up Lynda's fees (4AA0920-0928), the district court entered the Indemnity Order. 4AA0930-0939. The Indemnity Order determined that Pierre's invoices included only five time entries properly chargeable to the "defense of the malpractice action." 4AA0932-0933. The district court explained that these time entries — and no others — "reference[d] either the [Malpractice Action] Complaint or the suit against [Pierre] or evaluat[ed] his potential liability and claimed damages in the malpractice suit." 4AA0933; *see id.* nn. 2-3 (explaining why certain other entries were excluded). Without crediting Lynda for any amounts paid by the malpractice carrier, the district court ordered Lynda to pay half of those fees, amounting to $1,147.50. *Id.* This was notably less than one-fifth of Pierre's earlier demands for up to $6,363.40 plus the

unquantified additional invoices he contended would be forthcoming. 1AA0032, 0059, 0095.

The district court also determined that Lynda was the prevailing party for the purpose of awarding fees under MSA § 35.1:

> Ms. Hascheff's Clarification Motion sought clarification from the Court regarding what fees she owed Judge Hascheff under MSA § 40 and asserted she is not required to indemnify fees arising from the collateral trust litigation. As the Court of Appeals held MSA § 40 only applies to fees and costs that arise from the malpractice action, this Court found herein Ms. Hascheff must indemnify Judge Hascheff for only those fees, which amount to $1,147.50. Thus, the Court finds Ms. Hascheff is the prevailing party as she received the predomina[n]t relief requested in her Clarification Motion.

4AA0935. The district court directed Lynda to file an affidavit in support of her claimed fees (4AA0938), which she did. 4AA0940-1000; 5AA1001-1019. Neither party appealed the February 17, 2023 Indemnity Order.

I. The District Court Awarded Lynda's Attorneys' Fees For The District Court Proceedings But Categorically Excluded Those She Incurred For The Appeal

On June 12, 2023, the district court entered the Fee Order in Lynda's favor. 5AA1105-1117. The district court found that Pierre had improperly sought to use the attorney fee briefing to relitigate the issue of which party had prevailed, an issue that had been decided in the Indemnity Order. 5AA1112. The district court also noted that Pierre took inconsistent positions, having argued earlier that MSA §40 was unambiguous when he sought to have Lynda held in contempt but contradicting

that stance after he lost before the Court of Appeals. 5AA1113. The district court found that Pierre's shifting legal strategies "unnecessarily increased attorney fees in this matter." *Id.*

For the purpose of quantifying fees, the district court considered each of the relevant factors in *Brunzell v. v. Golden Gate Nat'l Park*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (5AA1113-1115); omitted time entries it did not find reasonable and necessary (5AA1114); and awarded Lynda fees in the amount of $46,675 for the work of her attorney in the district court proceedings. 5AA1116. As relevant to the cross appeal, however, the district court categorically excluded all fees Lynda incurred in the first appeal without considering their reasonableness under *Brunzell*. 5AA1112. Moreover, the district court *sua sponte* – and in contravention of its finding that Pierre was capable of paying the full judgment – instituted a "minimum monthly payment of $1,500" rather than require Pierre to immediately pay the fee award. 5AA1116. Pierre appealed the Fee Order and Lynda cross-appealed. 5AA1135-1158.

SUMMARY OF THE ARGUMENT

Because Pierre never appealed the Indemnity Order, the only issue raised in Pierre's Opening Brief that the Court has jurisdiction to decide is whether the amount of attorneys' fee awarded to Lynda for the district court litigation was reasonable. Pierre has failed to identify any abuse of discretion in the district court's

application of the *Brunzell* factors to justify disturbing that award. As a result, the Fee Order should be affirmed as to its award of fees to Lynda for the district court litigation.

The Court should reject Pierre's challenges to the Indemnity Order on jurisdictional grounds. The Indemnity Order was a special order entered after final judgment that was independently appealable when entered. Because Pierre did not timely appeal, the Court lacks jurisdiction to review the Indemnity Order's two determinations: (1) Lynda's indemnity obligation was only $1,147.50 and (2) Lynda was the prevailing party.

Even if the Court were to nevertheless exercise jurisdiction, Pierre has failed to identify any abuse of discretion in the Indemnity Order. Lynda (not Pierre) prevailed because she got the exact relief she originally asked for: a declaration that only fees incurred in the Malpractice Action, and not in the Collateral Action, are properly chargeable to her under MSA § 40. She prevailed in numerical terms too: the district court correctly found Lynda owed less than one-quarter the amount that Pierre had demanded at the outset, and less than one-fifth the largest amount he had demanded during the course of the proceedings.

To overcome these plain facts, Pierre misrepresents the record and distorts the COA Order beyond recognition. The Court of Appeals clearly barred Pierre from recovering from Lynda any sums he expended on the Collateral Action. Yet Pierre

flouted the COA Order on remand and continues to do so on appeal, even though it is law of the case. By relitigating matters he already lost, Pierre caused – and continues to cause – Lynda to incur yet more attorneys' fees to respond to his bad-faith litigation tactics.

The district court faithfully implemented the COA Order, and Pierre has failed to identify any abuse of discretion by the district court's rejection of sums he incurred for the Collateral Action. To the extent the Court exercises jurisdiction to review it, the Indemnity Order should be affirmed. The district court also properly evaluated the relevant factors and exercised its discretion to award Lynda's reasonable fees for the district court proceedings. That aspect of the Fee Order should be affirmed.

ARGUMENT

A. Standard Of Review

An award of attorney's fees is reviewed for an abuse of discretion. *Pub. Emp. Ret. Sys. of Nev. v. Gitter*, 133 Nev. 126, 133, 393 P.3d 673, 680, 682 (2017). The district court's "determination of who is the prevailing party" is part of the decision on attorney's fees, and so is likewise reviewed for abuse of discretion. *201 N. 3rd St. LV, LLC v. Hogs & Heifers of Las Vegas, Inc.*, No. 83907, slip op. at 3, 2023 WL 6780351 (Oct. 12, 2023) (unpublished order) (citing *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89-90, 343 P.3d 608, 614-15 (2015)); *see*

also Oregon Env't Council v. Kunzman, 817 F.2d 484, 496 (9th Cir. 1987) (holding that "[a] finding that a party is not a prevailing party is one of fact that will be set aside if clearly erroneous or if based on an incorrect legal standard").

The district court's determination of whether the law-of-the-case doctrine applies is reviewed de novo. *Estate of Adams v. Fallini*, 132 Nev. 814, 818, 386 P.3d 621, 624 (2016). Contract interpretation and, specifically, the interpretation of a contractual indemnity clause, is a question of law that is reviewed *de novo*. *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 481, 376 P.3d 151, 155 (2016); *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 339, 255 P.3d 268, 274 (2011).

B. The Court Lacks Jurisdiction To Review The February 17, 2023 Indemnity Order Because Pierre Failed To Timely Appeal

Because Pierre failed to timely appeal the Indemnity Order, he cannot now belatedly contest the district court's determinations that (1) Lynda's indemnity obligation was only $1,147.50; and (2) Lynda was the prevailing party. This Court has "emphasize[d] that an appeal must be taken from an appealable order when first entered." *Campos-Garcia v. Johnson*, 130 Nev. 610, 611, 331 P.3d 890, 890 (2014). An order is appealable as a "special order after final judgment" if it "affects the rights of a party to the action, growing out of the previously entered judgment." *TRP Int'l, Inc. v. Proimtu MMI LLC*, 133 Nev. 84, 85, 391 P.3d 763, 764 (2017) (citing *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002)). A notice of appeal from

any such order must be filed "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." NRAP 4(a)(1). "[T]he proper and timely filing of a notice of appeal is jurisdictional. Jurisdictional rules go to the very power of this court to act," so if this Court lacks jurisdiction, it cannot review the district court decision. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (citation omitted).

Here, the parties' entire post-judgment dispute related to the scope of Lynda's indemnity obligation in MSA § 40. The amount of Lynda's indemnity obligation and the determination that she was the prevailing party were finally decided in the February 17, 2023 Indemnity Order. 4AA0930-0939. That was an appealable special order entered after final judgment because it finally determined – and thereby affected – the parties' respective rights and obligations growing out of the final judgment – i.e., the divorce decree – which incorporated the MSA. *See TRP Int'l*, 133 Nev. at 85, 391 P.3d at 764. As a result, to have the Indemnity Order reviewed by this Court, Pierre had to appeal the Indemnity Order within 30 days. *See Campos-Garcia*, 130 Nev. at 611, 331 P.3d at 891. His failure to do so created a jurisdictional bar. *See Rust*, 103 Nev. at 688, 747 P.2d at 1382.

Notably, Lynda filed her *Wilfong* affidavit seeking attorneys' fees on March 10, 2023, more than a week before the deadline to appeal the Indemnity Order. 4AA0940-1000; 5AA1001-1019. Pierre was on notice as of that date that Lynda was

seeking significant fees based on the Indemnity Order. 4AA0948. Pierre could have filed a motion for reconsideration or notice of appeal but chose not to. *See* 5AA1112. Thus, "the determinations in [the Indemnity Order] became final thirty days after the entry of the order and are no longer subject to attack by appeal or otherwise." *See Cole v. Shafer*, 111 Nev. 1, 3 n.1, 888 P.2d 433, 433 n.1 (1995).

The fact that Pierre appealed the district court's subsequently entered June 12, 2023 Fee Order did not resurrect his right to appeal the determinations made in the Indemnity Order. *See Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987). Rather, this Court's "review of the appeal" of the Fee Order is "limited to the propriety of [that] order." *Id.*; *see also Cole*, 111 Nev. at 3 n.1, 888 P.2d at 433 n.1 (because appellant "did not appeal from the district court's [earlier] order … the determinations in that order became final thirty days after the entry of the order and are no longer subject to attack by appeal or otherwise"). As these authorities make clear, the Court has no jurisdiction to consider issues other than whether the district court abused its discretion regarding the amount of fees awarded. *See Holiday Inn*, 103 Nev. at 63, 732 P.2d at 1379.

C. To The Extent The Court Considers It, The Indemnity Order Should Be Affirmed

Even if this Court concludes it has jurisdiction to review the Indemnity Order, it should affirm because the district court: (1) faithfully applied the COA Order; (2) did not abuse its discretion when determining the amount of fees that Pierre could

contend were incurred in defense of the Malpractice Action; and (3) correctly concluded that Lynda, not Pierre, was the prevailing party.

1. The District Court Properly Applied The Court of Appeals' Binding Order In Determining The Amount Of The Indemnity Obligation

Pierre disingenuously contends that the district court erred by "[r]eading a limitation into MSA ¶ 40 that no fees incurred in the Collateral Litigation are recoverable." AOB 29. But the district court did not "read" any "limitation" into the MSA; it faithfully implemented the remand instructions from the Court of Appeals. 4AA0932-0933. As the Court of Appeals clearly instructed, "the first part of the 'Indemnification and Hold Harmless' provision in MSA § 40 as written **does not permit indemnification from Lynda for the fees and costs incurred in the collateral trust litigation.**" 4AA0792 (emphasis added). Indemnifiable "legal fees and costs must arise from the malpractice action **only**." 4AA0792 (emphasis added). The district court correctly applied this language and reviewed the evidence submitted by Pierre to quantify the amount of the indemnity required by MSA § 40. 4AA0932-0933.

By revisiting this issue now, Pierre violates the law-of-the-case doctrine and seeks to relitigate matters that that he lost in his earlier appeal. "[W]hen an appellate court decides a rule of law, that decision governs the same issues in subsequent proceedings." *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d

1258, 1262 (2003); *see Recontrust Co., N.A. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014); *Hsu v. Cnty. of Clark*, 123 Nev. 625, 629–30, 173 P.3d 724, 728 (2007). Pierre cannot circumvent these authorities by faulting the district court for doing exactly what the Court of Appeals "specifically instructed" it to do. *See Wheeler Springs Plaza*, 119 Nev. at 266, 71 P.3d at 1262. His arguments that Lynda's indemnity obligation should include fees that Pierre chose to incur for the Collateral Action contravenes the law of the case. 4AA0792.

Pierre also misrepresents the facts—as well as the contents of the district court's order—when he states that the district court should have ordered Lynda to indemnify him for the February 21, 2019 and February 22, 2019 entries. AOB 32. The district court did not say that "any time spent reviewing *a* complaint was compensable." *Id.* (emphasis added). Rather, it counted entries referencing "*the* [Malpractice] Complaint"—not a complaint in a different case—and found that the February 21 entry did not clearly refer to *that* Complaint. 4AA0933:2-4, :26-28. Moreover, the February 22 entry did not reference *any* "complaint." 4AA0873-0874. Pierre has offered no other reason that entry should have been included, thereby "neglect[ing] his responsibility to cogently argue, and present relevant authority, in support of his appellate concerns." *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); *see* AOB 32. It was well within the district court's discretion to decide which entries met the rule established by the

Court of Appeals, and Pierre has failed to provide a basis for the Court to second guess those determinations.

Pierre also misrepresents the law when he suggests that inclusion of these two entries would have automatically "entitled [him] to fees under NRCP 68." AOB 32. The Supreme Court has consistently held that "the district court is vested with discretion to consider… the propriety of granting attorney fees" under NRCP 68, and the district court may decline to do so. *N. Las Vegas Infrastructure Inv. & Constr., LLC v. City of N. Las Vegas*, 139 Nev. Adv. Op. 5, 525 P.3d 836, 841 (2023); *see Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). As a result, not only are these entries clearly outside the scope of MSA § 40 determined by the Court of Appeals, but Pierre cannot use them to shoehorn his failed tactics into an offer-of-judgment win.

2. Lynda Prevailed Because She Obtained The Relief She Sought

Pierre has failed to identify any abuse of discretion in the district court's determination that Lynda was the prevailing party because she got the relief she sought. "A party prevails 'if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615 (emphasis in the original). "To be a prevailing party, a party need not succeed on every issue." *Id.* The same standard applies under a contractual attorney fee provision as under a statutory one. *See Pardee Homes v. Wolfram*, 135

Nev. 173, 179, 444 P.3d 423, 427 (2019) (citing *Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615).

Here, Lynda filed the DR Motion for the express purpose of obtaining a declaration "that [she] is only responsible for fees incurred in the malpractice action and that she is not responsible for the fees or costs [Pierre] chose to incur to have personal counsel protect his interests in connection with his role as a percipient witness in the [Collateral] Action."1AA0024. Lynda obtained exactly that relief with the Court of Appeals holding that the "legal fees and costs must arise from the malpractice action only…[and] MSA § 40 as written does not permit indemnification from Lynda for the fees and costs incurred in the collateral trust litigation." 4AA0791-0792. In applying that standard, the district court recognized that MSA § 40 is not ambiguous (4AA0909-0911), required Lynda to indemnify Pierre only for those fees "arising from the malpractice action only," and excluded "fees charged for representation in the collateral trust litigation." 4AA0932-0933. Because Lynda achieved the benefits she sought by seeking declaratory relief, the district court correctly deemed her the prevailing party. *See Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615.

a. Lynda Has Consistently Agreed She Is Responsible For Half The Fees To Defend Against The Malpractice Action

In the face of this clear result, Pierre resorts to numerous misrepresentations and a strawman argument that fabricates the record regarding the relief sought by

Lynda. First, Pierre deceitfully states that Lynda sought "declaratory relief that [she] was not obligated to pay Pierre **any** fees related to the Malpractice Action…" AOB 8 (emphasis in the original). That is simply false—no matter how many times Pierre repeats it – and Pierre fails to cite a single place in the record that supports this falsehood. *See* AOB 10, 14-15, 18, 23-25.

The record is clear that Lynda sought a declaration to clarify that she *was* responsible for fees that Pierre could demonstrate he incurred to defend against the Malpractice Action, but not *other* fees. 1AA0024 (requesting "an Order clarifying that Ms. Hascheff is only responsible for fees incurred in the malpractice action"); 1AA0134 (stating that "if [Pierre] is sued for malpractice, his former wife is responsible for one-half of the costs specifically incurred in the defense of that malpractice lawsuit. Period."); 1AA0062 ("Ms. Hascheff remains prepared to pay her one-half of the total fees and expenses related to the malpractice action"). The district court correctly summarized the relief sought by Lynda:

> Ms. Hascheff asks this Court to enter an Order clarifying MSA § 40 that she is only responsible for fees incurred in a malpractice action against Judge Hascheff, and that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his interests in connection with his role as a percipient witness in a collateral trust action.

3AA0623:9-12. The fact that Lynda may have raised multiple *grounds* for this relief does not alter the conclusion that Lynda prevailed in obtaining the relief she sought. 4AA0791-0792, 0932-0933.

b. Pierre Refused – Until After Remand – To Provide The Information Necessary To Verify What Lynda Owed

Importantly, until the district court on remand finally ordered Pierre to produce unredacted invoices, Lynda had no idea which, if any, fees were incurred in the Malpractice Action because Pierre would not provide the relevant documentation. As confirmed by the Court of Appeals, Lynda had no obligation to blindly pay any and all sums that Pierre demanded. 4AA0790-0792, 0795. She always stood ready to pay her fair share of properly documented fees and filed the DR Motion *precisely to force Pierre to provide that documentation.* 1AA0024 ("[Lynda] never took the position that she would not pay her half of the fees… She has repeatedly asked [Pierre] to share with her what those fees are."). As a result of her DR Motion, Pierre *was* eventually forced to provide relevant documentation, and Lynda got the clarification she sought. 4AA0855-0857.

Only after Lynda obtained that information was she finally able to argue, as she did, that few (if any) of his fees actually qualified for indemnity as determined by the Court of Appeals. 4AA0903-0904. Before that, she had been forced to argue only that Pierre "never disclosed descriptions" sufficient to tell whether or not the fees qualified. 3AA0668; *see also* 2AA0491:8-9 ("Ms. Hascheff should not have to blindly trust her former husband's word…"); 3AA0526 ("So it's our position that it is true that [Lynda] has an obligation to indemnify Pierre Hascheff for the expenses he incurred in defense of [the] malpractice action. I just simply have no evidence

that any of the fees for which he seeks indemnity were in defense of that action…"). Moreover, she successfully persuaded the district court to exclude certain substantial fees that Pierre was still seeking. *Compare* 4AA0903:16-19 *with* 4AA0933 n.3.

The fact that, after the COA Order barring fees for the Collateral Action and the district court's order requiring Pierre to disclose the descriptions of his attorney's work, Lynda did not persuade the district court to exclude *each and every fee* does not alter her prevailing party status. *See* AOB 22-25. Setting aside that Lynda never took the position that she was not responsible for any fees, Pierre's position is inconsistent with this Court's binding precedent that "[a] party prevails 'if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit… [and] need not succeed on every issue." *Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615 (emphasis in the original) (quotation omitted). Lynda filed the DR Motion to force Pierre to provide evidence substantiating that the fees he demanded were in fact incurred in the Malpractice Action, and to obtain a judicial declaration that only fees incurred in the Malpractice Action were properly chargeable to her. 1AA0014-0067. She got that relief. 4AA0790-0792, 0909-0910, 0932-0933. The fact that she did not win on every theory or every line item of Pierre's bills does not mean she did not prevail.

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c. The District Court Found Lynda Owed A Fraction Of What Pierre Had Demanded Before She Sought Relief

But even turning to those specific entries, Lynda's status as the prevailing party is further underscored by the hard numbers. Before Lynda filed the DR Motion on June 16, 2020, Pierre demanded that she pay him over six thousand dollars plus unspecified amounts in "any additional invoices" that would be forthcoming. 1AA0032 (Pierre's handwritten letter); *see* 1AA0059 (May 26, 2020 letter from Pierre's counsel); 3AA0643 (stating that original demand had been for $4,675.90, and that demand as of May 26, 2020 was $6,363.40). She was ultimately ordered to pay only $1,147.50—less than one-fifth of Pierre's pre-litigation demand. 4AA0933. That is not a "technical de minimis victory," as Pierre contends. AOB 17, 24. It is a quantifiable result that directly benefited Lynda by fixing her payment obligation far lower than Pierre had wrongly demanded. 1AA0032, 0059; 3AA0643. The ultimate result she obtained not only provided the clarity she sought by moving for declaratory relief, but it put an end to Pierre's unsubstantiated demands for thousands more dollars to take advantage of her lack of legal training. 1AA0032.

Pierre's insistence that he prevailed simply because Lynda was required to pay *something* (at AOB 24) is frivolous. Lynda's DR Motion did not take the position that she pay nothing. 1AA0014-0067. As occurred here, parties frequently bring actions for declaratory relief when they acknowledge they owe (or may owe) *something* but dispute the amount demanded by the other party. *See*, *e.g.*,

Gershenhorn v. Walter R. Stutz Enters., 72 Nev. 293, 300, 304 P.2d 395, 398 (1956) (reviewing action for declaratory relief to determine rights, obligations, and amounts owed under lease); *City of Colton v. Am. Promotional Events, Inc.-W.*, 614 F.3d 998, 1007 (9th Cir. 2010) (describing declaratory relief available to determine liability for clean-up costs under CERCLA); *Gray Line Co. v. Goodyear Tire & Rubber Co.*, 280 F.2d 294, 303 (9th Cir. 1960) (seeking declaratory judgment related to "expenditures which [plaintiff] might in the future be compelled to pay or incur"). Again, Lynda always acknowledged she was responsible for half the fees incurred in the Malpractice Action; she simply disputed which fees, if any, counted. 1AA0014-0067. Therefore, the district court did not abuse its discretion in determining that Lynda was the prevailing party.

D. The District Court Properly Exercised Its Discretion To Award Lynda The Fees She Incurred In The District Court Proceedings

"A district court enjoys wide discretion in determining what fees are reasonable to award." *L.V. Review-Journal v. Clark Cty. Off. of the Coroner/Med. Exam'r*, 138 Nev. Adv. Op. 80, 521 P.3d 1169, 1174 (2022). "[P]arties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in *Brunzell* [*v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969)] and *Wright* [*v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998)]." *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). In analyzing that evidence, the district court "should show its work and provide a

'concise but clear explanation' of the reasoning behind its award amount." *L.V. Review-Journal*, 138 Nev. at _, 521 P.3d at 1174 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). When awarding attorney's fees in family law cases, district courts consider five factors: "[1] the qualities of the advocate, [2] the character and difficulty of the work performed, [3] the work actually performed by the attorney… [4] the result obtained… [and 5] the disparity in income of the parties…" *Wilfong*, 121 Nev. at 623, 119 P.3d at 730.

Here, when determining the amount of fees to award Lynda regarding the lower court proceedings, the district court carefully considered each of these factors and showed its work. 5AA1113-1115; *see L.V. Review-Journal*, 521 P.3d at 1174. Pierre does not challenge the award based on the "qualities of the advocate, the character and difficulty of the work performed, [or] … the disparity in income of the parties." *See* AOB 25-28. Rather, he contends that Lynda did not obtain results justifying the fees charged (which is simply repackaging his challenge to the prevailing party determination) and that the district court awarded fees for work that should not have counted. Both points are wrong.

1. The District Court Properly Awarded Lynda Her District Court Fees Based On Lynda's Successful Declaratory Relief Motion

Under Nevada law, where a plaintiff "obtained all the relief [they] hoped to obtain… '[they] should not have [their] attorney's fee reduced simply because the district court did not adopt each contention raised.'" *Tarkanian v. Nat'l Collegiate*

Athletic Ass'n, 103 Nev. 331, 342, 741 P.2d 1345, 1352 (1987) (quoting *Hensley*, 461 U.S. at 440); *see also Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 596, 879 P.2d 1180, 1189 (1994) ("'If a plaintiff ultimately wins on a particular claim, she [or he] is entitled to all attorney's fees reasonably expended in pursuing that claim—even though she may have suffered some adverse rulings'") (alteration in original) (quoting *Corder v. Gates*, 947 F.2d 374, 379 n.5 (9th Cir. 1991)). "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters." *Hensley*, 461 U.S. at 435. A fee should be reduced for "limited success" only if "the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims." *See id.* at 440. Pierre acknowledges that "[a] prevailing party does not need to succeed on every issue." AOB 23.

Here, Lynda's DR Motion sought one form of relief: "an Order clarifying that Ms. Hascheff is only responsible for fees incurred in the malpractice action and that she is not responsible for the fees or costs [Pierre] chose to incur to have personal counsel protect his interests in connection with his role as a percipient witness in the [Collateral] Action." 1AA0024. She obtained that relief. 4AA0791-0792 (Court of Appeals Order); 4AA0909-0910 (December 8, 2022 Order); 4AA0932-0933 (Indemnity Order). Lynda need not have won every single alternative legal argument

she presented: "[T]he court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." *Hensley*, 461 U.S. at 435. Therefore, contrary to Pierre's contentions, the district court did not abuse its discretion by declining to analyze Lynda's briefing line-by-line to "separate out the fees for time spent litigating Lynda's unsuccessful theories." AOB 26.

As the Supreme Courts of the United States and Nevada have made clear, "[t]he result is what matters." *Hensley*, 461 U.S. at 435; *Tarkanian*, 103 Nev. at 342, 741 P.2d at 1352. Pierre conflates "claims" and the "legal theories" supporting those claims and, in so doing, directly contradicts the holding of *Hensley* that he urges this Court to adopt. 461 U.S. at 435. The district court properly followed the law and awarded fees for Lynda's successful request for declaratory relief.

The district court also correctly rejected Pierre's assertion that it was unreasonable to incur a five-figure fee in what he views as a four-figure case. *See* AOB at 27-28; 5AA1031, 1131-1132. This Court has recognized that attorney fees can, and often do, exceed the amount in controversy. *E.g.*, *U.S. Design & Constr. Corp. v. I.B.E.W. Local 357 Joint Tr. Funds*, 118 Nev. 458, 464, 50 P.3d 170, 174 (2002) ("We note that the costs and attorney fees awards in total exceeded the amount of benefits awarded. There is no indication, however, that the awards were unreasonable under the circumstances."); *see also, e.g.*, *Nev. Direct Ins. Co. v. Torres*, No. 71918, 134 Nev. 988, 422 P.3d 1234 (Table), 2018 WL 3629934 at *3

(July 26, 2018) (unpublished disposition) (affirming award of $109,281.25 in fees and costs based on judgment of $19,681.18). Indeed, Pierre is well aware of this fact, as he had paid his *own* attorneys a total of $63,979 as of April 18, 2023, despite claiming that the case was "worth, at best, $4500." *Compare* 5AA1109 n.1 *with* 5AA1031.

Lynda complained all along that Pierre's refusal to give her basic information was needlessly driving up her fees. 1AA0023-0024, 0133; 4AA0821-0823. The district court found, from the outset, that Pierre engaged in "secretive" and "obfuscating" tactics (3AA0633). These buried Lynda in legal fees. 4AA0952-1000; 5AA1001-1016. As a lawyer and judge, Pierre knew Lynda – who had no legal training – would need to rely on counsel to prevent Pierre from simply railroading her with his unsupported monetary demands. 3AA0501. Pierre engaged in needless motion practice and offered ever-shifting demands and legal theories that compounded the work necessary for Lynda's counsel to respond. 1AA0103-0114; 4AA0801-0804, 0809-0812, 0895-0900, 0912-0915; 5AA1113.

The district court underscored these points in the Fee Order:

> The Court further finds there is support in the record for Ms. Hascheff's assertion that Judge Hascheff unnecessarily increased attorney fees in this matter, particularly with Judge Hascheff's inconsistent stances regarding ambiguity in MSA § 40. Judge Hascheff could only prevail on his OSC Motion and have Ms. Hascheff found in contempt if the language of MSA § 40 is clear and unambiguous, yet at the September 28, 2022 status hearing, Judge Hascheff's counsel asserted MSA § 40 is ambiguous. Given these clearly inconsistent assertions and the fact

> that no ambiguity was pointed to in Judge Hascheff's Brief Statement filed October 31, 2022, the requested briefing on the issue of ambiguity unnecessarily increased fees.
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> * * *
>
> [T]he work [of Lynda's counsel] was made more difficult and time consuming by the lack of transparency concerning Judge Hascheff's requested malpractices fees; by unnecessary filings, such as Judge Hascheff's brief regarding ambiguity in MSA § 40 that did not point to any ambiguity and Judge Hascheff's motion requesting briefing on the prevailing party issue that did not cite legal authority in support….

5AA1113-1114. Pierre's opening brief does not dispute these findings. The amount of fees that the district court ultimately awarded Lynda was directly proportionate to Pierre's bad-faith tactics. 4AA0952-0991; 5AA1114-1115. In large part, they could have readily been avoided had Pierre simply produced the unredacted billing entries at the outset that the district court ultimately ordered him to provide after remand. 1AA0048-0053, 0061-0067; 4AA0946-0948; 5AA1113-1114.

Moreover, it is not true that the case was "worth, at best, $4500," as Pierre asserted. 5AA1031. Pierre's initial demand was open ended, seeking immediate payment of $5,200 but indicating that "additional invoices" would be forthcoming. 1AA0032. Pierre's unsubstantiated demands went as high as $6,363.40—still without evidence. 1AA0059. Pierre represented that "[t]he litigation is continuing and the[re] will be more bills." 1AA0095.

Had Lynda simply capitulated to Pierre's demands, Lynda would have paid Pierre thousands of dollars that the Court of Appeals later determined he could not

recover under MSA § 40. 4AA0791-0792. She also had no idea how much Pierre's demands would ultimately be because Pierre refused to be forthcoming about the basis under which his attorney believed he was "clearly at risk" of malpractice exposure. 1AA0092. As Pierre told her, she should expect the amount of his demands to rise over time. 1AA0032, 0059. Based on this uncertainty, it was reasonable for Lynda to expend resources — which by no fault of her own became significant as this litigation wore on — to prevent both present and future abuses by Pierre.

2. The District Court Properly Awarded Fees For Attorney Time Spent Communicating With Lynda's Sister

Pierre fails to identify any abuse of discretion by the district court in rejecting his contention that Lynda's counsel could not properly bill Lynda for communications that involved Lynda's sister, Lucy (including communications where both Lynda and Lucy were copied). AOB 28. Nevada law permits an attorney to communicate with third parties "in furtherance of the rendition of professional legal services to the client." NRS 49.055. Lynda expressly authorized her lawyer to communicate with her sister to help her navigate Pierre's demands and the morass of arguments he presented. 5AA1098. Lynda's sister is a former attorney, and Lynda has no legal training to prepare her for the tactics used by her ex-husband, who is a lawyer and judge. 5AA1098-1099.

The district court properly exercised its discretion to reject Pierre's assertion that Lynda must forego the recovery of her fees simply because her sister supported her through the litigation. 5AA1113-1115. Having witnessed Pierre's tactics first-hand, the district court was in the best position to understand what fees were reasonable, particularly given Pierre's utterly fictitious accusation that "Lynda is essentially billing for the work of [Lucy,] an un-licensed attorney." *See* 5AA1043:4-9. As the record clearly shows, Mr. Meador billed for *his own time* communicating with Lynda and her sister, not *Lucy's* time. 4AA0952-0991.[1] The district court properly awarded Lynda the fees for her counsel's time. 5AA1113-1115.

3. NRS 18.010 Does Not Apply Here

The Court should summarily reject Pierre's erroneous and misleading statement that he is "statutorily entitled to an award of [his] attorney fees and costs" because he recovered less than $20,000. AOB 25. NRS 18.010(2)(a) provides that "the court *may* make an allowance of attorneys' fees *to a prevailing party*… [who] has not recovered more than $20,000." (emphases added). This statute does nothing for Pierre, for three reasons.

[1] Pierre also falsely states that "the district court awarded fees to Lynda for advice given to her concerning alimony." AOB 28 (citing his own brief below). The record clear shows that Lynda explained she was not requesting an award of such fees (5AA1102:3-6), and the district court stated it "omitted any billing entries unrelated to this matter (such as entries related to alimony)." 5AA1114:18-19.

First, the statute only authorizes an award of fees "to a prevailing party," and the district court correctly determined Pierre was not the prevailing party, a determination that is now final and unreviewable. 4AA0930-0938; *see supra* §B. "The problem with [Pierre's] contention [regarding NRS 18.010(2)(a)] is that it assumes that he was the prevailing party." *See Sack v. Tomlin*, 110 Nev. 204, 214, 871 P.2d 298, 305 (1994). Because Pierre lost both his attempt to have Lynda held in contempt and his opposition to Lynda's request for declaratory relief, Pierre was not the prevailing party, so he could not have obtained fees under NRS 18.010(2)(a). *See Sack*, 110 Nev. at 214, 871 P.2d at 305.

Second, while Pierre asserts he "*intended*" to address this argument below (AOB 14), he did not *actually* raise it. As a result, the argument is "deemed to have been waived and will not be considered on appeal." *In re Guardianship of Jones*, 139 Nev. Adv. Op. 57, 539 P.3d 1178, 1183 (2023) (quoting *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)).

Last, NRS 18.010(2) is "discretionary." *Sack*, 110 Nev. at 214 & n.17, 871 P.2d at 305 & n.17. Because "'may' is permissive," "the statute merely gives [the court] the discretion to award fees; it is not a requirement to do so." *See WPH Arch., Inc. v. Vegas VP, LP*, 131 Nev. 884, 890, 360 P.3d 1145, 1148 (2015) (interpreting similar language in NRS 38.238). As a result, Pierre would not be "entitled" to an "offset" under NRS 18.010, even had he prevailed on the merits and timely raised

the argument below—which he did not. *See id.* For the foregoing reasons, the district court did not abuse its discretion in determining a reasonable fee to award Lynda for the district court litigation.

CONCLUSION

Because the district court did not abuse its discretion in awarding Lynda fees for the district court litigation, the Court should affirm. No other issue is properly before this Court on appeal, but if the Court finds otherwise, the Court should still affirm. Lynda prevailed because she obtained the declaratory relief she sought, resulting in her owing a fraction of what Pierre demanded, and Pierre has not shown any abuse of discretion in the district court's determinations of which fees were covered by the indemnity provision.

OPENING BRIEF ON CROSS APPEAL

ISSUES ON CROSS APPEAL

1. After correctly concluding Lynda was the prevailing party and awarding fees she incurred in the district court proceedings, did the district court abuse its discretion by categorically denying her the attorneys' fees she incurred in connection with the first appeal, on which she also prevailed?

2. Did the district court err by *sua sponte* allowing Pierre to pay the attorneys' fee award in $1,500 monthly installments—thereby providing him over two-and-a-half years to pay off the principal amount awarded—when it cited no

statutory or contractual authority for an installment judgment, provided no justification, and had made a finding that he was able to pay the judgment in full?

SUMMARY OF THE ARGUMENT

Although the district court properly awarded Lynda the fees she incurred *in the district court litigation*, the district court abused its discretion by refusing to award Lynda any of her *appellate* fees. The district court recognized that Lynda "prevailed on a significant issue on appeal in that the Court of Appeals found she was not required to indemnify [Pierre] for fees incurred in the collateral trust litigation, which was the clarification sought by her Clarification Motion." 5AA1112. But it declined to award any appellate fees simply because the Court of Appeals reversed *the district court's* faulty reasoning on the laches argument. *See id.* Because the Court of Appeals granted the relief Lynda sought, she should be awarded her appellate fees as a prevailing party.

The district court also abused its discretion by authorizing Pierre to pay the judgment over the course of more than two-and-a-half years, notwithstanding having found that he had the ability to pay the judgment in full. The district court lacked statutory or contractual authority to deprive Lynda of the benefit of the judgment. Moreover, Pierre did not request an installment plan; the record is devoid of evidence suggesting that immediate payment would pose any hardship; and the district court gave no notice it was considering such an installment plan before announcing it.

Under these circumstances, and absent any justification, the district court abused its discretion to authorize an installment plan *sua sponte*.

ARGUMENT

A. Standard Of Review

To the extent a party's eligibility for attorneys' fees under a contract involves contract interpretation, it is reviewed de novo. *Golden Rd. Motor Inn*, 132 Nev. at 481, 376 P.3d at 155. A district court's failure to provide a rationale for denying a fee award, in whole or in part, is an abuse of discretion. *Lyon v. Walker Boudwin Constr. Co.*, 88 Nev. 646, 651, 503 P.2d 1219, 1221-22 (1972).

B. Lynda Is Entitled To Her Appellate Fees

The district court abused its discretion by categorically excluding all of Lynda's appellate fees from its award. 5AA1112:14-21. The district court had just correctly found Lynda was "entitled to an award of her reasonable attorney fees" because she "was the prevailing party under MSA § 35.1 and complied with MSA § 35.2." 5AA1112:6-10. Nevada law required the district court to award Lynda her appellate fees.

1. Having Correctly Determined That Lynda Prevailed, The District Court Was Required To Award Her All Of Her Reasonable Fees—Not To Break Them Apart By Phase Of Litigation

In general, "an attorney fees award includes fees incurred on appeal." *In re Estate of Miller*, 125 Nev. 550, 555, 216 P.3d 239, 243 (2009) (citing *Musso v.*

Binick, 104 Nev. 613, 614, 764 P.2d 477, 477-78 (1988)). "The purpose of such contractual [attorney's fee] provisions, to indemnify the prevailing party for the full amount of the obligation, is defeated and a party's contract rights are diminished if the party is forced to defend its rights on appeal at its own expense." *Musso*, 104 Nev. at 614, 764 P.2d at 477.

Moreover, "[t]he trial and appellate stages are naturally related.…" *Miller*, 125 Nev. at 553, 216 P.3d at 242. Thus, once a court has determined which party has prevailed in the litigation, the court's role is simply to determine whether the fees charged are reasonable. *See id.* The court does not separately analyze each "related" phase of the litigation to redetermine which party prevailed in that phase. *See id.* "The result is what matters." *See Hensley*, 461 U.S. at 435.

Here, the district court correctly determined that Lynda "is the prevailing party in this matter"—indeed, largely because of the Court of Appeals' ruling. 4AA0935:10-16. As the district court noted, "[the COA Order] was clear that although the court said that I got there the wrong way, that I was right, that what he incurred related to the collateral matter, was not part of the malpractice." 4AA0835:16-20. The district court also correctly determined that Pierre "has not prevailed on any significant issue in his OSC Motion" (4AA0936:1) in that the Court of Appeals did not disturb the denial of his OSC Motion. 4AA0785-0796. The Court of Appeals also did not disturb any of the district court's factual findings. *See id.*

Nevertheless, the district court excluded all appellate fees from Lynda's award simply because the Court of Appeals rejected the district court's laches rationale, an argument that Lynda never made in her DR Motion. 5AA1112:18-21. That was error. Where a party "obtained all the relief [they] hoped to obtain… '[they] should not have [their] attorney's fee reduced simply because the … court did not adopt each contention raised.'" *Tarkanian*, 103 Nev. at 342, 741 P.2d at 1352 (quoting *Hensley*, 461 U.S. at 440). Indeed, the district court itself noted that "[a] party does not need to succeed on every issue to be the prevailing party." 4AA0933:19-20.

On appeal, Lynda relied largely on the plain language of MSA § 40, noting the appellate court "need not even reach the issue of laches." 3AA0666. The Court of Appeals interpreted MSA § 40 in her favor. 4AA0791-0795. Lynda did not need to persuade the Court of Appeals to affirm the portion of the district court order in which it *sua sponte* invoked the laches doctrine because the Court of Appeals agreed with her that MSA § 40's indemnity obligation did not include fees that Pierre incurred in the Collateral Action. 4AA0790-0791. The Court of Appeals also agreed with her that the district court must award fees to the prevailing party under MSA § 35.1. 4AA0795-0796.

More importantly, Lynda prevailed in the "judgment that determined the final outcome in the case" — the Indemnity Order — and therefore is entitled to all fees she reasonably expended in obtaining that judgment. *See Miller*, 125 Nev. at 553,

216 P.3d at 243. To do otherwise would "diminish" her "contract rights." *Musso*, 104 Nev. at 614, 764 P.2d at 477. Therefore, the district court abused its discretion by categorically excluding all of Lynda's appellate fees. *See id.* Rather, it should have determined — as it did with the attorneys' fees incurred in the district court proceedings (*see* 5AA1113-1115) – whether the appellate fees were reasonable under the *Brunzell/Wilfong* factors.

2. This Court Should Award Lynda Her Appellate Fees In Total Because Pierre Did Not Object To The Reasonableness Of Any Time Entries

Lynda requested appellate fees for the first appeal in the amount of $38,840. *See* 4AA0993-1019. Pierre did not dispute the qualifications or quality of Lynda's appellate counsel or the character and difficulty of the work performed in the appeal. 5AA1020-1032. He likewise did not object to a single time entry of appellate counsel as being unreasonable. *See id.* Because Pierre waived any such objection by failing to raise it below, and the record shows that she prevailed, Lynda respectfully requests that the Court award her appellate fees in total. Lynda also respectfully requests that, should she likewise prevail now, the Court direct the district court to award Lynda her reasonable fees incurred for this appeal and cross-appeal.

C. The District Court Abused Its Discretion By Giving Pierre A Multi-Year Payment Plan He Never Justified Or Even Requested

In addition, the district court's *sua sponte* decision to allow Pierre to "make a minimum monthly payment of $1,500 to Ms. Hascheff until the award of fees is paid

in full" was an abuse of discretion. 5AA1116. Absent a stay supported by adequate security, Lynda was entitled to recover the full amount of the $46,675 in fees awarded to her without further delay. *Cf. Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006).

1. The District Court Failed To Identify Any Legal Authority That Authorized A Payment Plan For An Attorneys' Fee Award

In *sua sponte* allowing Pierre to pay the judgment for Lynda's attorneys' fees in installments, the district court did not reference a single provision from the MSA or cite any statutory authority. The enforcement of judgments in Nevada is governed by statute. Under the statutory framework, payment is ordinarily due immediately upon entry of judgment; the statutory form of the judgment does not typically allow for installment payments. *See* NRS 21.025. Thus, if a party refuses to pay, "the party in whose favor judgment is given may, *at any time* before the judgment expires, obtain the issuance of a writ of execution for its enforcement…" NRS 21.010 (emphasis added). A party that does not comply with the judgment therefore faces the prospect that the sheriff may levy upon and sell his property—strongly incentivizing prompt payment. *See* NRS 21.110.

Where Nevada law authorizes installment plans as an exception to the general rule, it does so expressly, and with safeguards for the judgment creditor. *See, e.g.*, NRS 485.305(1) (judgment debtor in uninsured motorist cases may regain driving privileges by adhering to court-approved installment plan). The law in other

jurisdictions supports the proposition that installment plans are available only in particular circumstances authorized by statute. *See, e.g.*, *Edwards v. City of Colfax*, 2011 WL 572171 at *10 (E.D. Cal. Feb. 15, 2011) (citing Cal. Gov. Code § 970.6); *Harrington v. Harrington*, 759 S.W.2d 664, 667-68 (Tenn. 1988) (citing Tenn. Code § 26-2-16); Mich. Comp. Laws § 600.6201. The district court failed to identify any statutory authority that would apply here.

Moreover, the parties' MSA § 35.1, which allows the prevailing party to recover fees, does not authorize a payment plan. 1AA0197. Courts may "not rewrite contract provisions that are otherwise unambiguous." *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006). The attorneys' fees in this matter have already been incurred, and Lynda has the contractual right to recover her fees without delay. 1AA0197; 4AA0952-0991. To receive the benefit of her bargain, Lynda is entitled to prompt payment of the fees she was awarded, without limitation.

2. Even If the District Court Had Discretion To Order Installments Payments, It Abused That Discretion By Failing To Consider Any Factors At All And Contravening Its Finding That Pierre Had The Ability To Pay

Even had the district court pointed to some authority for allowing Pierre to pay in installments, its failure to give any reason at all justifies reversal. *See Lyon*, 88 Nev. at 651, 503 P.2d at 1221-22 ("failure to state a reason constitute[s] an abuse of discretion"); *see also Bolden v. State*, 139 Nev. Adv. Op. 46, 538 P.3d 1161, 1169

(Nev. App. 2023) (concluding that district court's failure to make findings regarding ability to pay was an abuse of discretion).

Indeed, statutes that authorize installment payments in other contexts require consideration of a number of factors in determining an appropriate monthly installment amount, including "financial condition." *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 69, 439 P.3d 397, 402 (2019) (citing NRS 125.150).

> The court entering [a "slow pay"] order, of course, should consider all of the circumstances of the parties, including the amount of the judgment, other debts owed by and judgments against the debtor, the amount of wages earned by the debtor, other funds receivable by the debtor, and the exemptions granted by the statutes. No such installment payments are to be ordered unless the debtor has filed an affidavit stating that no other assets are available for payment of the judgment except the wages or salary of the debtor and that any other funds receivable by the debtor are so limited that installment payments are appropriate.

Harrington, 759 S.W.2d at 668. At a minimum, a hearing or other notice to the judgment creditor, along with a finding that the judgment debtor is unable to pay the full amount immediately without undue hardship, is warranted. *See id.*

Here, the district court simply instituted the payment plan with no notice to either party or explanation of its reasoning. 5AA1116. Pierre never contended he did not have the ability to pay. 5AA1020-1091. To the contrary, the district court explicitly found that he did "have the ability to pay substantial attorney fees." 5AA1115:22. Because the *sua sponte* installment plan directly contravened the only finding as to ability to pay, it constituted an abuse of discretion.

CONCLUSION

The Court should reverse the Fee Order to the extent it declined to award Lynda attorneys' fees for the first appeal and instituted a payment plan without any justification in contravention of the finding that Pierre had the ability to pay. Because Pierre did not object to the reasonableness of any particular time entry for the appeal, or appellate counsel's qualification or quality of work, Lynda respectfully asks the Court to enter an order that Pierre must pay all of Lynda's appellate fees, as well as the fees already awarded, immediately and to remand for the district court to determine the reasonable fees for the instant appeal and cross appeal.

DATED February 14, 2024

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 28.1(e)(2)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 12,135 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on February 14, 2024, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). The following participants who are registered as E-Flex users will be served by the EFlex system upon filing. All others will be served by first-class mail.

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