

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG ELLIOT PELKOLA,

Appellant

v.

HEIDI MARIE PELKOLA.

Respondent

S.C. Docket No. 80763

D-13-488682-D

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Appeal from the Eighth Judicial District Court

RESPONDENT'S FAST TRACK RESPONSE

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. During the proceedings leading up to this appeal, Respondent has been represented by the following attorneys:

- a. Radford J. Smith, Esq., Gary Zernich, Esq., and Kimberly Stutzman, Esq.,
for Radford J. Smith, Chartered, attorney of record for
Respondent/Plaintiff.

Dated this 1st day of October 2020.

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I.

TABLE OF CONTENTS

TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
I. Name of party filing this fast track response:	1
II. Name, law firm, and telephone number of attorneys submitting this fast track response:	1
III. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel	1
IV. Proceedings raising same issues:	1
V. Procedural History	1
A. The November 20, 2019 Evidentiary Hearing	2
VI. Statement of Facts	5
A. Heidi's move to Hudson, Ohio	6
B. Heidi's Move did not fall under NRS 125C.006	6
C. Greg caused Heidi to incur approximately \$60,000 in attorney's fees and costs	7
VII. Issues on Appeal	8
VII. Legal Argument	8
A. Standards of Review	8
B. Greg waived his appeal of Heidi's award of attorney's fees and costs	10
C. The district court's award of attorney's fees and costs to Respondent was reasonable, fair, equitable, and supported by NRS 18.010 and EDCR 7.60	12
D. Greg waived an Evidentiary Hearing on the issue of Respondent's move to Ohio.	15
E. The language in NRS 125C.006 and NRS 125C.007's language is plain on its face and neither applies to this case	16

II.

TABLE OF AUTHORITIES

Cases:

<i>Brunzell v. Golden State Bank</i> , 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)	8, 12, 14
<i>Miller v. Wilfong</i> , 121 Nev. 619, 622-23, 119 P.3d 727, 729 (2005).	8, 12, 14
<i>Haley v. Eighth Judicial District Court</i> , 128 Nev. Adv. Rep. 16, 273 P.3d 855, (2012).	8
<i>Cnty. of Clark v. Blanchard Constr. Co.</i> , 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).	9
<i>Las Vegas Sands Corp. V. Eighth Judicial Dist. Court</i> , 130 Nev. 118, 123, 319 P.3d 618, 621 (2014).	9
<i>Taylor v. State, Dep't of Health & Human Servs.</i> , 129 Nev. 928, 930, 314 P.3d 949, 951 (2013).	9
<i>Westpark Owners' Ass'n v. Eighth Judicial Dist. Court</i> , 123 Nev. 349, 357, 167 P.3d 421, 427 (2007).	9
<i>Flynn v. Flynn</i> , 120 Nev. 436, 440, 92 P.3d 1224. 120 Nev. 436, 92 P.3d 1224, 1227 (2004).	9
<i>Ogawa v. Ogawa</i> , 125 Nev. 660, 668, 221 P.3d 699, 704. (2009).	9
<i>Rivero v. Rivero</i> , 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (quoting <i>Ellis v. Carucci</i> , 123 Nev. 145, 149, 161 P.3d 239. 242 (2007)).	9
<i>Ellis v. Carucci</i> , 123 Nev. 145, 149, 161 P.3d 239, 241-242 (2007).	9
<i>McCullough v. State</i> , 99 Nev. 72, 657 P.2d 1157 (1983).	10
<i>Krueger v. State</i> , 92 Nev. 749, 755, 557 P.2d 717, 721 (1976)	10
<i>Walker v. State</i> , 89 Nev. 568, 516 P.2d 739 (1973)	10
<i>Clark v. State</i> , 89 Nev. 392, 513 P.2d 1224 (1973).	10
<i>Cuzze v. Univ. & Cmty. Coll. Sys.</i> , 123 Nev. 598, 172 P.3d 131 (2007)	11
<i>Fick v. Fick</i> , 109 Nev. 458, 462, 851 P.2d 445, 448 (1993).	11
<i>Thomas v. City of North Las Vegas</i> , 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006).	12
<i>Leeming v. Leeming</i> , 87 Nev. 530, 532, 490 P.2d 342, 343 (1971)	13
<i>Wright v. Osburn</i> , 114 Nev. 1367, 979 P.2d 1071 (1998).	14
<i>Love v. Love</i> , 114 Nev. 572, 581, 959 P.2d 523, 529 (1998).	14
<i>Krueger v. State</i> , 92 Nev. 749, 755, 557 P.2d 717, 721 (1976)	15
<i>Walker v. State</i> , 89 Nev. 568, 516 P.2d 739 (1973)	15

Clark v. State, 89 Nev. 392, 513 P.2d 1224 (1973).

15

Statutes and Rules:

NRS 125C.006	3, 6, 7, 8, 16, 17, 18, 19
NRS 125C.200	5, 12
NRS 18.010	8, 15
NRS 125C.007	8, 16, 17, 19
NRS 125C.0045	9
EDCR 5.503(b)	10
EDCR 7.60	13, 15

I. Name of party filing this response: Respondent, Heidi Pelkola.

II. Name, law firm, and telephone number of attorneys submitting this response: Radford J. Smith, Esq. and Kimberly A. Stutzman, Esq. of Radford J. Smith, Chartered, (702) 990-6448.

III. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel: N/A.

IV. Proceedings raising same issues: None.

V. Procedural History:

This appeal involves a post-decree motion to modify custody filed by Appellant, Greg Pelkola¹, which resulted in an award of attorney's fees and costs in favor of Respondent, Heidi Pelkola.

The parties have three (3) minor children, SARA PELKOLA, born, December 2, 2003, (16); JUSTIN PELKOLA, born March 4, 2008, (12); and DANIEL PELKOLA, born December 9, 2011, (8). *Id.* The parties were divorced by a Decree of Divorce ("Decree") filed in the Eighth Judicial District Court. Respondent's Appendix ("RA"), Volume 1, 13-27. The district court entered the Decree on May 6, 2014. *Id.* The district court granted the parties joint legal custody but granted Heidi

¹ The parties' litigation began in 2018. It included other issues but since the orders addressing those issues are not appealed, they will not be addressed.

primary physical custody subject to Greg's specific visitations, (two months during the summer and for spring break only.) *Id.* at 14.

On June 5, 2018, Greg filed his post-decree Motion for An Order to Show Cause Why Plaintiff Should Not Be Held in Contempt and Motion to Modify Custody. *Id.* Greg sought to hold Heidi in contempt, primary physical custody, ***and sole*** legal custody of the minor children². 1RA0035-77. Heidi's sole concern is the best interests of her beloved three children. Thus, she passionately opposed Greg's motions, and the matter was scheduled for an Evidentiary Hearing on March 12, 2019 and March 18, 2019. 1RA00124, 2AA00386. Custody was heard on November 20, 2019.

Heidi zealously prepared for all of the trial dates. She also prepared to have witnesses to testify on her behalf. On October 1, 2019, Heidi filed her Pre-Trial Memorandum. 4AA00389-463. Greg did not file a Pre-Trial Memorandum. That same day, Heidi filed her Motion to Relocation. *Id.* The district court scheduled the motion for hearing on November 20, 2019. Greg filed his Opposition and Countermotion for Primary Physical Custody on October 22, 2019. 3AA00484-565.

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² Greg filed a series of motions at that time. It is no coincidence that he also filed a motion to modify custody in an effort to overwhelm Heidi and cause her to liquidate her savings.

A. The November 20, 2019 Evidentiary Hearing

The morning of the November 20, 2019 evidentiary hearing, Greg arrived late, failed to prepare for his presentation, and abruptly withdrew his motion to modify custody ostensibly agreeing it was in the children's best interests that Heidi maintain primary physical custody. 4AA00698-0711.

Subsequent to Greg's withdrawal, the court addressed Heidi's Motion to Relocate from Arizona to Ohio. Greg waived an Evidentiary Hearing on the issue of Heidi's move, but argued that the move would substantially impede his ability to maintain a relationship with the children. 4AA00714. Greg, however, tacitly admitted it is in the children's best interests that they remain in Heidi's primary care as a result of his withdrawal to modify custody.

The district court ordered that "pursuant to NRS 125C.006, the statute refers to this state, meaning the State of Nevada. Furthermore, the language in NRS 125C.006 is plain on its face, and the Court disagrees with Greg's interpretation on the law." *Id.* at 715-16.

In consideration of the totality of the circumstances, the district court further found and ordered that Heidi did not need permission to relocate from Arizona to Ohio because the district court previously granted her request to relocate outside of the State of Nevada. 4AA00712-718. The district court ordered that Heidi's move to Ohio would not substantially impede the current timeshare, that Heidi shall ensure

Greg's visitation remains as Ordered, and that it believed Greg's could still exercise his current timeshare. *Id.* at 716. Heidi's request to move was granted by the Order After the November 20, 2019 Evidentiary Hearing.

Furthermore, the district court found that Heidi was the prevailing party. *Id.* at 691-92. The district court found that Greg unnecessarily multiplied the proceedings pursuant to EDCR 7.60. *Id.* at 692. It directed Heidi to file a Memorandum of Fees and Costs and that Greg must object within ten days. *Id.* at 714. Heidi timely submitted her Memorandum and *Brunzell* analysis on November 26, 2019. 4AA00647. Heidi could not afford litigation. Heidi, a part-time Licensed Practicing Nurse ("LPN"), earned \$1,838.72 each month. 1RA00184. Greg earned \$5,009.33 per month, more than two times Heidi's income. 1RA00104. She borrowed money and incurred almost \$60,000 in fees. Greg failed to timely object. The district court executed the Order Regarding Plaintiff's Memorandum of Fees, Costs, and Disbursements filed November 26, 2019 on December 17, 2019. 4AA00685.

The Notice of Entry of Order was filed December 19, 2019, and the Notice of Entry of the November 20, 2019 Evidentiary Hearing was filed on February 4, 2020. Greg filed his Notice of Appeal on March 4, 2020. 4AA00735-743.

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VI. Statement of Facts

Greg appeals two post-decree orders. He appeals the Order Regarding Plaintiff's Memorandum of Fees, Costs, and Disbursements filed November 26, 2019 ("Fee Order"), which awarded Heidi attorney's fees and costs in the amount of \$59,699.25. 4AA00696. He also appeals the Order After the November 20, 2019 Evidentiary Hearing, which granted Heidi permission to move from Arizona to Ohio. Greg, however, caused Heidi to litigate the issue of custody for approximately 18 months before he shockingly withdrew his motion the morning of trial.

Historically, Heidi was the primary caregiver. The district court granted Heidi primary physical custody in the parties' 2014 decree. 1RA00012. On

Heidi properly filed her motion to relocate to Florida pursuant to NRS 125C.200 in January 2014. 1RA00031, 1RA00237. On June 26, 2014, the district court granted Heidi's unopposed motion to relocate to Florida. *Id.* beginning at 30. Heidi later moved to Arizona, and Greg did not object. 1RA00029.

As discussed above, Greg's motion filed June 5, 2018 requested primary physical custody *and* sole legal custody. Though there are three children, Greg based his motion to modify around his relationship with Sara. 1RA00134. Greg blamed Heidi for his relationship with Sara. *Id.* Despite his admission that Sara is in a "catatonic state" when Sara visits, Greg insisted that it would be in Sara's best interest for her to reside primarily with him. *Id.*

A. Heidi's move to Hudson, Ohio

On October 1, 2019, Heidi filed her Motion to Relocate to Ohio. Her motion was filed in good faith to address the move to be with her fiancé, place Greg on notice, and schedule an evidentiary hearing if the district court found it necessary. As discussed in her Reply, she filed the motion out of an abundance of caution 1RA00235.

The parties' daughter, Sara has special needs. 2AA00391. In 2016, Sara was evaluated by her school for Asperger's Syndrome, and the evaluation result was positive. *Id.* Sara also receives special education through the Individualized Education Program (IEP). *Id.* As indicated in her motion, the Ohio area has additional autism resources for Sara, including the Hopebridge: Autism Treatment Center for Children, Monarch Center for Autism, and the Applied Behavioral Services in West Chester. *Id.* at 391-92.

In her Reply, Heidi noted that in general, Greg's visitations would be the same as when the children were in Florida or Arizona. 1RA00241.

B. Heidi's Move did not fall under NRS 125C.006

As discussed above, the district court granted Heidi's motion to relocate of the State of Nevada. Heidi properly moved to Florida and then to Arizona. Greg did not object. Because Heidi already moved out of *this* State of Nevada, she filed her motion out of an abundance of caution. 1RA00235. At the November 20, 2019

hearing, Greg waived an evidentiary hearing on the issue of Heidi's move to Ohio. 4AA00714. As discussed above, The district court ordered that NRS 125C.006 refers to *this* state of Nevada, is plain on its face, and thus, Heidi was not required to file a motion pursuant to NRS 125C.006 to move to Ohio. 4AA00715. As a result, the district court ordered that Heidi did not need its permission to relocate outside of Arizona. The district court ordered that Heidi's move to Ohio would not substantially impede the current timeshare since Greg's timeshare remained the same. *Id.* at 716. Thereafter, Heidi moved to Ohio.

C. Greg caused Heidi to incur approximately \$60,000 in attorney's fees and costs

As discussed above, Heidi extensively litigated the issue of custody for almost 18 months. She prepared for trial on March 12, 2019, March 18, 2019, October 10, 2019, and November 20, 2019. *See* 4AA00666-67; 4AA00691; 4AA712-718. To Heidi's and the district court's chagrin, Greg not only arrived thirty minutes late, but he was also unprepared for trial and withdrew his motion that morning. Greg's actions were egregious.

For these reasons, the district court found that Greg unnecessarily multiplied these proceedings and that Heidi was the prevailing party. Greg agreed. 4AA00650. There is no dispute that Heidi was the prevailing party, and she was entitled to an award of attorney's fees and costs. As a result, Heidi submits that the district court correctly, legally, and justly awarded her \$59,699.25. 4AA00696.

VII. Issues on Appeal

- A. Whether Appellant waived appeal of the Order Awarding Respondent Attorney's Fees and Cost.
- B. Whether the district court's award of attorney's fees and costs was reasonable, fair, equitable, and supported by NRS 18.010 and EDCR 7.60.
- C. Whether Appellant waived an Evidentiary Hearing on the issue of Respondent's move to Ohio.
- D. Whether NRS 125C.006 and NRS 125C.007 applies to a parent who was previously granted permission to relocate out of Nevada.

VIII. Legal Argument:

A. Standards of Review

The decisions of a district court granting or denying attorney's fees are reviewed for an abuse of discretion.³ “[D]istrict courts have great discretion to award attorney fees, and this discretion is tempered only by reason and fairness.”⁴ “[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the factors set forth in *Brunzell v. Golden State Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33

³ See *Miller v. Wilfong*, 121 Nev. 619, 622-23, 119 P.3d 727, 729 (2005).

⁴ *Haley v. Eighth Judicial District Court*, 128 Nev. Adv. Rep. 16, 273 P.3d 855, (2012).

(1969)[.]”⁵ Moreover, in the absence of a manifest abuse of discretion, the court’s decision on the issue will not be overturned.⁶

Issues of statutory interpretation are questions of law reviewed de novo⁷. If a statute is unambiguous, this court does not look beyond its plain language in interpreting it.⁸ A district court’s conclusions of law are reviewed de novo⁹. The district court’s factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence¹⁰. “Substantial evidence ‘is evidence that a reasonable person may accept as adequate to sustain a judgment.’”¹¹

This court reviews a district court’s decisions regarding custody, including visitation schedules, for an abuse of discretion¹². District courts have broad discretion in child custody matters, but substantial evidence must support the court’s findings¹³. A district court may at any time enter an order for the custody and care of a minor child “as appears to be in his or her best interest.”¹⁴

⁵ *Id.* at 860.

⁶ *Cnty. of Clark v. Blanchard Constr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

⁷ *See Las Vegas Sands Corp. V. Eighth Judicial Dist. Court*, 130 Nev. 118, 123, 319 P.3d 618, 621 (2014). *See also, Taylor v. State, Dep’t of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013).

⁸ *Westpark Owners’ Ass’n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007).

⁹ *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224. 120 Nev. 436, 92 P.3d 1224, 1227 (2004).

¹⁰ *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704. (2009).

¹¹ *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239. 242 (2007)).

¹² *Id.*

¹³ *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-242 (2007).

¹⁴ NRS 125C.0045.

B. Greg waived his appeal of Heidi's award of attorney's fees and costs

A failure to object in the trial court bars the subsequent review of the objection.¹⁵ The general rule is that failure to object to asserted errors at trial will bar review of an issue on appeal.¹⁶

Here, Greg failed to timely object to Heidi's Request for Fees. He also failed to file any motion to reconsider, set aside, or amend. In fact, Greg *admitted* Heidi was the prevailing party and entitled to fees. 4AA00650. The district court ordered Greg to file his objection within ten days of the filing of Heidi's Memorandum. 4AA00739.

Heidi filed her Memorandum on November 26, 2019. 4AA00647. Greg was required to file an Objection on December 6, 2019. 1RA00200. On December 12, 2019, Heidi submitted a Request for Submission regarding her Memorandum after the timeframe to respond expired. 1RA00199. Heidi argued that Greg's failure to file an objection should be construed as an admission¹⁷ that her Memorandum was meritorious, and that Greg consented to the district court granting it in its entirety. On December 17, 2019, the district court executed the Order awarding Heidi fees.

¹⁵ *McCullough v. State*, 99 Nev. 72, 657 P.2d 1157 (1983).

¹⁶ *Krueger v. State*, 92 Nev. 749, 755, 557 P.2d 717, 721 (1976); *Walker v. State*, 89 Nev. 568, 516 P.2d 739 (1973); *Clark v. State*, 89 Nev. 392, 513 P.2d 1224 (1973).

¹⁷ Heidi based her request off of EDCR 5.503(b), which states "(b) Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that it be granted." Though this rule addressed oppositions to motion, Greg failed to timely oppose her Memorandum, yet again causing delay, unnecessarily multiplying the proceedings, and causing Heidi to incur additional attorney's fees and costs.

4RA00697.¹⁸ The district court filed the Order on December 19, 2019. 4AA00676. After the Notice of Entry of Order was filed on December 19, 2019. 4AA00686. Greg did not appeal this order. Because Greg untimely objected or failed to raise these issues at the November 21, 2019 hearing, Heidi submits that these issues are barred from review on appeal.¹⁹

In *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 172 P.3d 131 (2007), the appellant was responsible for making an adequate record, and when the appellant failed to include necessary documentation in the record, the Supreme Court presumes that the missing portion supports the district court's decision²⁰.

Here, Greg failed to include a copy of Heidi's Request for Submission or the transcript for the November 21, 2020 hearing where Greg admitted that Heidi is the prevailing party. His failure to include Heidi's Request on appeal provides the Supreme Court without a meaningful way to review the district court's orders granting Heidi's Memorandum and the attorney's fees in the amount of \$59,699.25. 4AA00684.

For these reasons, Heidi submits that Greg waived appeal of the attorney's fee issue. Therefore, the Supreme Court should affirm the district court's order awarding Heidi attorney's fees and costs.

¹⁸ It is important to note that Greg also admits the Heidi's history of the proceedings and the events leading to the hearing of November 21, 2019 were *accurate*. *Id.*

¹⁹ *Fick v. Fick*, 109 Nev. 458, 462, 851 P.2d 445, 448 (1993).

²⁰ *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 603-04, 172 P.3d 131, 135 (2007).

C. The district court's award of attorney's fees and costs to Respondent was reasonable, fair, equitable, and supported by NRS 18.010 and EDCR 7.60

In his Fast Track Statement, Greg argues that the district court exceeded its own order in granting attorney's fees beyond those to prepare for the November hearing. The decisions of a district court granting or denying attorney's fees are reviewed for an abuse of discretion²¹. While it is within the trial court's discretion to determine the reasonable amount of attorney fees under a statute or rule, in exercising that discretion, the court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

The district court has broad discretion in its award of attorney fees²². "Attorney fees may not be awarded absent a statute, rule or contract authorizing such award."²³ NRS 18.010 states in relevant part –

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

...

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was ***brought or maintained without reasonable ground or to harass the prevailing party***. The court shall ***liberally construe*** the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. ***It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph*** and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure ***in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses***

²¹ *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 729 (2005).

²² *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-350, 455 P.2d 31, 33 (1969).

²³ *Thomas v. City of North Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006).

because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

...²⁴

Court rules have the effect of statutes²⁵. EDCR 7.60 states –

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

(1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

(2) *Fails to prepare for a presentation.*

(3) *So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.*

(4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge of the court.

EDCR 7.60(b)(3) permits the Court to order sanctions and the payment of attorney fees. Here, the District Court made findings under *Brunzell* and EDCR 7.60. 4AA00692, 694. The review of those findings is under an abuse of discretion standard.²⁶

In *Leeming v. Leeming*, 87 Nev. 530, 532, 490 P.2d 342, 343 (1971), the Supreme Court held that the power of the court to award attorney fees in divorce

²⁴ *Id.* (emphasis added).

²⁵ *Margold v. Eighth Judicial Dist. Court*, 109 Nev. 804, 806, 858 P.2d 33, 35 (1993)

²⁶ *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).

actions remains part of the continuing jurisdiction of the court in appropriate post-judgment motions relating to support and child custody.²⁷

In *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), this Court held that in family law matters, the district court must utilize the factors identified in *Brunzell*, when determining “the appropriate fee” to award in a case. *Wilfong* requires parties seeking attorney fees in family cases to support their fee request with “affidavits or other evidence” that meets the factors in *Brunzell*, and in cases involving a disparity in income, the factors in *Wright v. Osburn*, 114 Nev. 1367, 979 P.2d 1071 (1998).

Under *Brunzell*, when courts determine the appropriate fee to award in civil cases, they must consider various factors, including the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and the result obtained. Additionally, in *Wright v. Osburn*, the Nevada Supreme Court stated that family law trial courts must also consider the disparity in income of the parties when awarding fees²⁸.

In his Fast Track Statement, Greg argues that the court abused its discretion in not reviewing the affidavit of fees and costs and awarding all fees. *See* Fast Track Statement at page 16. Greg, however, fails to provide any authority to support his claims. Greg does not dispute that the district court’s order was supported by NRS

²⁷ *See also Love v. Love*, 114 Nev. 572, 581, 959 P.2d 523, 529 (1998).

²⁸ *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005).

18.010 or EDCR 7.60. Heidi submits that the attorney's fee award was reasonable, fair, equitable, and supported by Nevada law.

In the Fee Order, the district court found that Heidi was the prevailing party and entitled to an award of attorney's fees and costs. 4AA00679. The district court relied on EDCR 7.60. *Id.* at 680-81. It emphasized that fees are applicable pursuant to EDCR 7.60 if a party fails to prepare of a presentation or so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously. *Id.*

Furthermore, EDCR 7.60 allows the district court to impose any and all sanctions which may be reasonable, including the *imposition of fines, costs or attorney's fees*. In his brief, Greg does not dispute that he failed to prepare or multiplied the proceedings. Thus, Heidi submits that the award of fees is supported by EDCR 7.60 as a sanction.

For these reasons, there was adequate evidence in the record to support the district court's order awarding Heidi reasonable attorney fees. Thus, the district court's Order should be affirmed.

D. Greg waived an Evidentiary Hearing on the issue of Respondent's move to Ohio.

As discussed above, Greg's failure to object to asserted errors at trial will bar review of an issue on appeal.²⁹ Here, Greg agreed that an Evidentiary Hearing was

²⁹ *Krueger v. State*, 92 Nev. 749, 755, 557 P.2d 717, 721 (1976); *Walker v. State*, 89 Nev. 568, 516 P.2d 739 (1973); *Clark v. State*, 89 Nev. 392, 513 P.2d 1224 (1973).

not needed regarding Heidi's. 4AA00713-14. Thus, Greg's argument that this Court should remand this matter back to the court below for an evidentiary hearing is misplaced and not supported by the record.

For these reasons, Heidi submits that the Supreme Court should affirm the district court's decision regarding Heidi's move to Ohio on the basis that Greg knowingly waived an evidentiary hearing.

E. The language in NRS 125C.006 and NRS 125C.007's language is plain on its face and neither applies to this case

By his appeal, Greg challenges the rulings of the trial court regarding Heidi's move from Arizona to Hudson, Ohio. Greg does not challenge Heidi's primary physical custody. In fact, the morning of the evidentiary hearing on Greg's motion to modify custody and knowing that Heidi planned to move to Ohio, Greg withdrew his motion. Therefore, he admitted that it is in the children's best interests to remain in Heidi's primary care.

In his Fast Track Statement, Greg argues that the district court improperly interpreted NRS 125C.006 and NRS 125C.007. Greg, however, does not rely on applicable Nevada law or authority. Greg's claims are not supported on appeal.

Greg ostensibly supports this claim by citing to Assembly Bill 263 ("AB 263"). Greg's argument consists of mere speculation that the primary author of AB 263 "did not foresee the court's interpretation as a possible inclusion in the statute."

See Fast Track Statement at 13. Then, Greg cites to AB 248, which the legislature failed to adopt. Neither AB 263 nor AB 248 support Greg's positions on appeal.

Rather than provide relevant authority, Greg provides an analogy of a parent relocating from Nevada to Arizona and to Japan. Greg's analogy is overbroad, misplaced, and ignores the plain language contained in NRS 125C.006. Greg's analogy to moving to Japan does not consider the plain language in the statute which addresses the distance of the move and its effects on the parent-child relationship.

NRS 125C.006³⁰ states –

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place *outside of this State* or to a place within this State that is *at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child*, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

NRS 125C.006 is plain on its face. NRS 125C.006 addresses the procedure for a parent who is relocating out of *this state or* to a location that would *substantially impair* the ability of the other parent to maintain a meaningful relationship with the child.

³⁰ Though Heidi submits that neither NRS 125C.006 nor NRS 125C.007 apply, it is important to note that there are no cases on point regarding a parent's second move. As a result, Heidi submits that the Supreme Court's interpretation and guidance as to the procedure for a second, subsequent move after granting that party permission to relocate out of *this state* is an important issue of first impression.

Here, primary custody was established in the parties' Decree. 1RA00013-27. Heidi previously petitioned the district court to move outside of Nevada in 2014. 1RA00030. She moved to Florida and then to Arizona. *Id.*, 1RA00029. Greg did not object to either move. 1RA00030. Because the district court previously permitted Heidi to move outside of *this* state, NRS 125C.006 does not apply.

If, however, a parent seeks to move to a location where it is at such a distance that it would substantially impair the ability of the parent to maintain a meaningful relationship with the children, then the parent must also petition the court, such as the parent moving to Japan would need to petition the court in Greg's hypothetical.

In this case, neither scenario applies. Heidi's move contemplated a move from Arizona to Ohio, not a move from Nevada to another state. Moreover, the parties' parenting plan could be maintained whether the children resided in Ohio or Arizona. *Id.* In the Order After the November 20, 2019 hearing, the district court found that it "does not believe that Heidi's move to Ohio would substantially impede the current timeshare." *Id.* The district court further found that Greg would have the same timeshare with the children as he did when the children lived in Arizona. *Id.*

Here, the district court found that her move to Ohio would not impair Greg's ability to maintain a meaningful relationship with the children. 4AA00716. Thus, upon review of the totality of the circumstances, the district court considered Greg's

waiver of an evidentiary hearing, his withdrawal of his motion, and that Greg's visitation would remain the same whether in Arizona or Ohio.

As a result, the district court ruled on the parties' pleadings at the November 20, 2019 hearing. *Id.* at 714. Because the district court did not find that Greg's relationship was impaired, neither scenario contemplated by the plain language in NRS 125C.006 applies. Furthermore, the district court was not required to provide additional findings under this statute, especially since Greg withdrew his request to modify custody.

NRS 125C.007 states –

1. In every instance of a petition for permission to relocate with a child that is ***filed pursuant to NRS 125C.006*** or NRS 125C.0065, the relocating parent must demonstrate to the court that: . . .

NRS 125C.006 and NRS 125C.007 are plain on their face. Here, NRS 125C.007 does not apply. This section applies to petitions filed ***pursuant to*** NRS 125C.006. Because Heidi's move was not premised on NRS 125C.006, the district court's orders should be affirmed.

Greg argues that his case centered on the premise that Heidi's move was not in good faith and was solely intended to frustrate Greg's custodial time. *See* Fast Track, page 5. The district court did not make these findings. The district court preserved Greg's rights and familial relationship with respect to his children. It properly found that Heidi's move to Ohio would not substantially impair Greg's

ability to maintain a meaningful relationship with the child. 4AA00716. The district court further ordered that Greg's visitation schedule would not be modified. *Id.* Thus, the district court found that Greg is able to maintain the same visitation. *Id.*

Because NRS 125C.006 and NRS 125C.007 do not apply, the district court properly permitted Heidi to move to Hudson, Ohio to live with her fiancé, Justin.

For these reasons, there was adequate evidence in the record to support the district court's orders allowing Heidi to move to Ohio from Arizona and awarding Heidi attorney fees. Thus, the district court's Order should be affirmed in its entirety.

Respectfully submitted this 1st day of October 2020.

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CERTIFICATE OF COMPLIANCE

1. 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 Respondent's Answering Brief (Amended) has been prepared in a proportionally spaced typeface using Microsoft Word in Font Size 14, in Times New Roman;

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionally spaced, has a typeface of 14 points or more, and including the footnotes, contains **4864** words.

3. I further certify that I have read the Respondent's Answering 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)(1), which requires every assertion in the brief regarding matters in the record be supported by appropriate references to page and volume number, if any, 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 the accompanying brief is not in conformity with the requirements of the Nevada Rules Appellate Procedure.

Dated this 29th day of September 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Radford J. Smith, Chartered, and that on the 1st day of October 2020, a copy of Respondent's Fast Track Response in the above entitled matter was e-mailed and was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list, to the attorney listed below at the address, email address and/or facsimile number indicated below:

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An employee of Radford J. Smith, Chartered