IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC Petitioners, vs. DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, Respondents.	Supreme Court Case No. 83258 Consolidated with 83260 (District Court A-18-767242-C Consolidated with A-16-738444-C)

ANSWER OF RESPONDENTS TO

EDGEWORTH APPELLANTS' OPENING BRIEF

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Law Office of Daniel S. Simon and Daniel S. Simon

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NRAP 26.1 Disclosure

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

No parent or holding corporations are involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, of Christiansen Trial Attorneys has also appeared for the Petitioner.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney of for Real Party in Interest

I. Introduction/Statement of the Case

Respondents, collectively referred to as Simon, responds to Appellants, collectively the Edgeworths, appeal of an order adjudicating an attorney lien.[1] Of note, Simon also seeks limited relief from the adjudication order as described in the writ petition filed March 11, 2022.

This case is about a dispute over the district court's adjudication of an attorney's charging lien.

II. Statement of Issues

The district court acted within its discretion on remand when the district court found $200,000.00 was a reasonable fee for work done by Simon after November 29, 2017. Earlier, the district court provided a four-page *Brunzell* analysis which addressed the entirety of Simon's work and representation, both before and after Simon was fired. After remand, the district court did not ignore or refuse to obey this Court, rather the district court *added language* to the adjudication order to address the post

[1] The subject of the notice of appeal deals with the lien adjudication in district court case no: A-16-73844-C. The current appeal does not address any aspect of district court case no.: A-18-0767242-C, the direct action against Simon. The direct action against Simon has been dismissed and the dismissal was affirmed on appeal. *Edgeworth Family Trust v. Simon*, 2020 WL 7828800, 477 P.3d 1129 (Nev. 2020) (unpublished). The Edgeworths did not appeal the limited issue on remand in the direct action. Simon followed the use of the caption from the direct action on this brief to avoid confusion, but requests that the caption be corrected at some point.

discharge fee finding. Moving beyond the unfair depiction of the district court, the post discharge fee is well supported by the latest adjudication order and the record below.

III. Statement of Facts

Angela and Brian Edgeworth are both sophisticated international business owners and managers.[2] The Edgeworths have experience hiring and paying lawyers.[3] The Edgeworths are not lay clients.

Angela Edgeworth majored in Business Administration and Actuarial Science.[4] Angela has been an entrepreneur for over 20 years. Angela started, built up and sold a cosmetics company; Angela is the co-founder and President of Pediped Footwear, a successful children's footwear company with an international footprint; and Angela is active with the family business, American Grating.[5]

Brian Edgeworth has a Harvard MBA.[6] Brian Edgeworth traded commodity derivatives for Enron and has worked as a Wallstreet trader.[7] Brian Edgeworth helps run Pediped, manages American Grating, which is a

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[2] *E.g.*, VIII-AA01956
[3] *E.g.*, V-AA01236:12-AA01238:18
[4] VIII-AA01808:11-14
[5] VIII-AA01808:17-AA01809:6
[6] V-AA01226:13-18
[7] V-AA01226:13-18

fiberglass reinforced plastic manufacturer with an international footprint, and works in a crypto currency operation.[8]

Angela Edgeworth met Eleyna Simon when their children attended school together about 15 years ago.[9] The families were close, they vacationed together, they helped each other through family crises, including the death of a loved one, and Angela thought of Eleyna as one of her closest friends.[10]

In April 2016, a premature fire sprinkler activation caused about $500,000.00 in property damage to a speculation home being built by the Edgeworths.[11] The fire sprinkler was manufactured by Viking and was installed by Lange Plumbing.[12] The Edgeworths did not carry insurance for the loss, and Viking and Lange denied responsibility.[13]

The Edgeworths turned for help to their family friend, Daniel Simon. The Edgeworths turned to Simon because other lawyers had asked for as much as a $50,000.00 retainer to work on the claim.[14] On May 27, 2016, Brian Edgeworth emailed that he did not want to pay a high attorney's fee

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[8] V-AA01227:16-21
[9] VIII-AA01818:19-23; XI-AA02704:9-14
[10] *Ibid.*
[11] XI-AA02704:16-22; XI-AA02704:27-AA02705:4
[12] *Ibid.*
[13] *Ibid.*
[14] V-AA01089:13-14

so Simon agreed to help his close friends as a favor and send a few letters without an express fee agreement.[15] Simon agreed to help because he treated the Edgeworths like family.[16] Simon never asked for a retainer.[17]

Historically, Simon does contingency fee work.[18] Simon's expectation of a fee was always based on reasonableness. When Simon's role was to send a few letters, the anticipated reasonable fee was dinner on the Edgeworths.[19] Later, after thousands of hours of effective representation, the reasonable fee increased.

On June 5, 2016, Brian Edgeworth began arranging hard money loan(s) from friends and family.[20] The Edgeworths are wealthy and did not need a loan, but Brian thought it was a prudent business decision to take out high interest loan(s) which could be added to the claim.[21]

On June 5 & 10, 2016, Simon and Brian Edgeworth exchanged emails about the claim. There was no mention of fees.[22]

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[15] XI-AA02704:9-14; XI-AA02708:7; XI-AA02710:2-3; XI-AA02713:27-AA02714:2
[16] VII-AA01533:15-20
[17] V-AA01090:24-1091:11
[18] V-AA01138:24-AA01139:4
[19] VII-AA01533:12-20
[20] I-AA00003-AA00004
[21] V-AA01065-AA01069; V-AA01070-AA01073
[22] I-AA00003-AA00004

Simon's letters were not fruitful. On June 14, 2016, Simon filed a complaint against Viking and Lange Plumbing.[23] The case was complex,[24] with multiple parties, with negligence, contract and product liability claims, and construction, manufacturing, and fraud issues.[25]

The early case conference was set in December 2016. Brian Edgeworth wanted to produce an attorney's bill to bolster the case against Lange.[26] Brian Edgeworth understood the contract with Lange obligated Lange to pursue a claim for a loss caused by a defective product which Lange installed.[27] Because of which, the contract provided for attorney's fees if Lange did not pursue a claim against Viking.[28] Thus, Edgeworth attorney's fees were an element of damage in the case against Lange and would not be fully known until the case against Viking resolved.[29]

On December 2, 2016, Simon sent a bill to the Edgeworths, half a year after retention.[30] The bill is not well crafted, dates are missing, time is not itemized, and the bill did not capture many day and night emails and

[23] XI-AA02704:25-AA02705:4
[24] XI-AA02704:15
[25] XI-AA02721:16-24
[26] V-AA01080-AA01089
[27] XI-AA-02717:26-27
[28] *Ibid.*
[29] XI-AA02704:27-AA02705:4
[30] XI-AA02705:21-25

calls from Brian Edgeworth.[31] Over the 19-month litigation, Simon sent three more incomplete bills.[32] It is a fair inference Brian Edgeworth knew the Simon bills were incomplete, because at a minimum the bills did not include entries for his hundreds of emails and phone calls. As it was, Brian Edgeworth was happy receiving lower bills.[33] Simon also fronted substantial costs throughout the case.[34]

Simon aggressively worked the file.[35] The District Court found that Simon did a "tremendous amount of work"[36], which was impressive in quality and quantity.[37] Michael Nunez, a defense attorney in the case, testified Simon's work was extremely impressive.[38] Mr. Will Kemp, the renowned trial lawyer, reviewed the case file and testified that Simon's work and results were exceptional.[39] Mr. Kemp said he would not have taken the case and the Edgeworths were lucky Simon was their friend.[40]

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[31] I-AA00005-AA00008; V-AA01112-AA01113
[32] XI-AA02705:26-AA02706:14
[33] VI-AA01304
[34] *See, e.g.*, V-AA01090:24-1091:11 & XI-AA02719
[35] XI-AA02721:23-26
[36] XI-AA02706:19-21
[37] XI-AA02721:119-21
[38] XI-AA02721:7-14
[39] *Ibid.*
[40] VII-AA01737:24-AA01738:17

On August 9, 2017, Simon and Brian Edgeworth discussed attorney's fees. Brian Edgeworth testified that as part of an attorney fee agreement, *Brian wanted Simon to give the Edgeworths enough money to pay off a $300,000.00 loan taken from Angela's mother*.[41] Brian also believed the more work Simon did, the less Simon should get paid.[42]

On August 22, 2017, Brian Edgeworth sent an email which read "contingency" in the topic line. In the body of the email Brian acknowledged there was no express fee contract and discussed as fee options a contingency, a hybrid, or an hourly.[43]

On August 23, 2017, Brian Edgeworth sent an email in which he bemoaned the fact that the defense had not made an offer and despaired of the likelihood of receiving a meaningful offer in the future.[44]

On August 29, 2017, Brian Edgeworth had to remind Simon to deposit an Edgeworth payment.[45]

On September 29, 2017, Brian Edgeworth was deposed by Viking and Lange.[46] During the deposition, Simon offered that all the attorney bills

[41] VI-AA01303:17-AA01311:20; VI-AA01379:15-AA01380:25
[42] VI-AA01307
[43] XI-AA-02705:5-18; XI-AA02710:2-AA02711:9
[44] V-AA01112-AA01113
[45] I-AA000029
[46] I-AA00115:12-23

had been produced and Brian Edgeworth testified that fees were continuing to accrue.[47] Later, the Edgeworths would argue that Simon's comment meant that Simon had been paid in full and was owed nothing — while omitting Brian's testimony.[48]

On October 10, 2017, a mediation was held. The defense made a nominal offer.[49] Shortly after the mediation, Simon secured the exclusion of Viking's liability expert, an evidentiary hearing was set to resolve Simon's motion to strike Defendants' answers for discovery abuse, and depositions and dispositive motions were set.

On November 10, 2017, a second mediation occurred after which mediator Floyd Hale issued a mediator's proposal for Viking to settle for $6,000,000.00.[50] Mr. Hale confirmed to Mr. Kemp that about $2,400,000.00 of the Viking proposed settlement was intended for attorney's fees.[51]

[47] I-AA00115:12-23
[48] *See, e.g.*, I-AA000115; I-AA000118
[49] V-AA01119
[50] I-AA000042
[51] VII-AA-01750-VIII-AA01751

On November 15, 2017, Viking made a counteroffer to the mediator's proposal which required confidentiality and a dismissal of Lange.[52] In the days following, Simon convinced Viking to drop both conditions.[53]

On November 17, 2017, Simon met with the Edgeworths. Simon discussed the case including the counteroffer, the claim against Lange, upcoming hearings, the upcoming evidentiary hearing on discovery abuse, preparation for trial, and a reasonable fee.[54] The Edgeworths testified to a radically different meeting, which included intimidation by Simon (who is dwarfed in size by Brian who stands 6'4'' and weights 280 lbs.[55]) and a threat to harm the case. The District Court *did not find* the Edgeworth version of the meeting had occurred.[56] Instead, the Court found Simon had always competently represented the Edgeworths; noting that "recognition is due to Mr. Simon" for protecting Edgeworth interests even after Vannah was hired.[57]

On November 17, 22, 23 & 25, Angela Edgeworth and Eleyna Simon exchanged friendly text messages, holiday greetings and discussed the

[52] XI-AA02706:22-24
[53] XI-AA02712:15-AA02713:4
[54] VII-AA01538:12-AA01549:3
[55] V-AA01125
[56] XI-AA02703-AA02725; XI-AA02707:4-5
[57] XI-AA02722:7-17

case. There is no mention, or hint, of alleged extortion, bullying or threats by Simon.[58] Brian Edgeworth did not mention bad behavior by Simon either.[59] The allegations of poor behavior did not arise until the Edgeworths sued Simon to punish him.

On about November 21, 2017, Brian Edgeworth "insisted" Simon provide a written fee proposal.[60] Shortly following, the Edgeworths stopped all communication with Simon.[61]

On November 27, 2017, Simon provided a written fee proposal as requested by Brian.[62] Simon advised the Edgeworths to talk to other attorneys about the fee proposal.[63]

On November 29, 2017, the Edgeworths hired Vannah "for representation on the Viking settlement agreement and the Lange claims."[64]

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[58] I-AA000043-48; I-AA000056-58
[59] V-AA01125; V-AA01211-AA01212
[60] V-AA01052; V-AA01128
[61] XI-AA02707:10-11
[62] XI-AA02707:6-8
[63] XI-AA02714:11-12
[64] XI-AA02707:9-11; XI-AA02711:25-AA02712:12

On November 30, 2017, Vannah faxed Simon a letter signed by Edgeworth stating that Vannah had been hired to work on the Viking case.[65] On reading the letter, Simon believed that he had been fired.[66]

On November 30, 2017, Vannah instructed Simon to settle with Lange for $25,000.00.[67] Simon knew the Lange case was worth substantially more. Despite being terminated, Simon protected his former clients and was able to obtain a $100,000.00 offer from Lange.[68]

On December 1, 2017, the Edgeworths, advised by Vannah, signed a release with Viking for a promised payment of $6,000,000.00[69] The release listed Vannah as attorney for the Edgeworths.[70]

On December 1, 2017, Simon served an attorney lien for outstanding costs and a reasonable fee.[71]

On December 7, 2017, advised by Vannah, the Edgeworths signed a consent to settle with Lange for $100,000.00[72] Vannah's advice and the

[65] XI-AA02707:12-19
[66] VII-AA01568:10-15
[67] VII-AA01640:11-15
[68] XI-AA02708:8-9
[69] I-AA00071-AA00079
[70] I-AA00071-AA00079
[71] XI-AA02707:24-AA02708:1
[72] XI-AA02708:8-9

Edgeworths' decision to settle at $100,000.00 ran against the advice of Simon, because Simon knew the case was worth much more.[73]

On December 23, 2017, while trying to arrange endorsement and deposit of Viking settlement checks, Vannah sent an email accusing Simon of an intent to steal the settlement.[74] Vannah later clarified that the accusation came from the Edgeworths.[75]

On December 28, 2017, Simon and Vannah agreed to deposit settlement checks into a joint interest-bearing trust account, which required both Vannah and Simon's signatures for a transaction, and with all interest going to the Edgeworths.[76] Vannah later described the agreement to the District Court as follows:

> MR. VANNAH: In other words, he chose a number that—in other words we both agreed that, look, here's the deal. Odds you can't take and keep the client's money, which is about 4 million. So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account.[77]

On January 2, 2018, Simon e-served an amended attorney lien with the largest number he would be asking for.[78]

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[73] XI-AA02713:5-20
[74] XI-AA02713:21-24
[75] I-AA00099
[76] X-AA02257:5-19
[77] VIII-AA01940-AA01942
[78] I-AA000104-AA000110

On January 4, 2018, the Edgeworths sued Simon alleging Simon converted the Viking settlement by using an attorney lien.[79] *Angela Edgeworth later testified that the Edgeworths chose to sue Simon for conversion, before the settlement was even deposited, to "punish him".*[80] Brian Edgeworth later testified they sued because Simon used an attorney lien.[81]

The complaint alleged:

- An express oral fee contract was formed at the "outset of the attorney client relationship".[82]
- That Simon had been paid in full.[83]
- That the Edgeworths are due all the settlement money.[84]

The Edgeworths sought declaratory relief in the second cause of action and requested a judgment from the District Court that:

> [T]he CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are due the full amount of the settlement proceeds.[85]

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[79] XI-AA02708:10-12
[80] VIII-AA01939:15-25
[81] V-AA01190-AA01191
[82] I-AA000113:16-19
[83] *See e.g.* I-AA000118:1-8; I-AA000119:3-9
[84] *See e.g.* I-AA000115:26-AA000116:3; I-AA000117:1-3; I-AA000118:9-17; I-AA000119:1-9
[85] I-AA000118:9-17; IV-AA00764:21-23

In stark contrast to the complaint, Brian Edgeworth testified he always knew Simon was owed money;[86] further, Vannah told the District Court that it has always been the Edgeworths' position that they owed Simon money and, "We owe him money; we're going to have you make that decision".[87]

On January 4, 2018, Vannah sent a letter to Bank of Nevada explaining that Simon and the Edgeworths had agreed to deposit the settlement monies in a joint account pending resolution of the Simon lien.[88]

On January 8, 2018, the settlement checks were endorsed at the bank and deposited into the joint account.[89]

On January 9, 2018, the conversion complaint was served; and Vannah threatened Simon not to withdraw.[90]

On January 18, 2018, the Edgeworths received $**3,950,561.27** in undisputed funds, which they agree made them more than whole on their $500,000.00 property loss claim.[91]

On January 24, 2018, Simon moved to adjudicate the attorney lien. The Edgeworths opposed adjudication claiming the conversion complaint

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[86] V-AA01126
[87] V-AA01189-AA01190
[88] I-AA000121
[89] X-AA02257:15-19
[90] I-AA00122
[91] I-AA000125; VIII-AA01964:11-19

blocked adjudication. The District Court granted the motion and held a five-day evidentiary hearing to adjudicate the lien.

On August 27, 2018, the evidentiary hearing began. Simon sought a reasonable fee based on the market rate under quantum meruit.[92] Will Kemp was recognized by the Court as an expert in calculation of a reasonable attorney's fee in a product case. Mr. Kemp opined the total reasonable fee due Simon was $2,440,000.00 based on the *Brunzell* factors and the market rate.[93]

For the hearing, Simon demonstrated the massive size of the file[94] and provided what was called the superbill which documented the hours worked on the case. While extensive, the superbill conservatively listed time spent because Simon does not keep contemporaneous time records, so the superbill was based on file review and only verifiable tangible events were logged.[95]

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[92] NRS 18.015(2) ("In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.")
[93] III-AA00546-553 & VII-AA01733-1781
[94] VII-AA01554-1555
[95] VI-AA01444:15-AA01445:8; VII-AA01521:14-AA01523:11

On October 11, 2018, the district court issued findings granting the Simon motion to dismiss the conversion complaint and issued its own findings, decision and order adjudicating the lien.[96]

On October 29, 2018, Simon moved for relief under Rule 52.[97] The Edgeworths opposed the motion and did not request their own relief.

On November 19, 2018, the district court issued amended findings adjudicating the lien.[98] Importantly, the court found:

- There was no express fee contract, contrary to the Edgeworths' direct testimony.[99]
- The Edgeworths constructively discharged Simon on November 29, 2017.[100]
- The Simon lien was valid and enforceable.[101]
- The Edgeworths owed Simon money for fees and costs.[102]

On December 7, 2018, Simon moved for fees and costs because the Edgeworth conversion complaint was not well grounded in fact or law.[103] On

[96] IX-AA02067-AA02103
[97] IX-AA02112-AA02183
[98] X-AA-02261-AA02283
[99] X-AA02267:15-AA02268:12
[100] X-AA02269:6-7
[101] X-AA02267:1-7
[102] X-AA02273:7-8
[103] X-AA02284-AA02443

February 8, 2018, the motion was granted, and the district court sanctioned the Edgeworths $50,000.00 in fees and $5,000.00 in costs.[104]

On December 7, 2018, the Edgeworths filed their first notice of appeal.

On October 17, 2019, Simon filed a petition for mandamus seeking a larger attorney fee.

On December 30, 2020, this Court issued two orders addressing the Edgeworth appeal and Simon's writ petition. The appeal order affirmed the district court in some respects. The appeal order remanded the case with instructions to re-address the quantum meruit award of fees to Simon and to re-address the amount of fees assessed as a sanction against the Edgeworths for pursuit of their frivolous conversion complaint. In the writ order, the Simon petition on the manner of calculation of quantum meruit was denied as moot, apparently in consideration of the instructions on remand contained in the appeal order.

On March 16, 2021, because of procedural confusion, the district court issued an amended order a few days before this Court denied the Edgeworths' petition for rehearing.[105]

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[104] XI-AA02524-AA022525; XI-AA02548-AA02551
[105] XI-AA02677-AA02699

On May 13, 2021, Simon moved for lien adjudication following remand and argued the proper method for determining the reasonable fee due Simon was the market approach under quantum meruit and submitted a second declaration from expert Will Kemp on the amount of the reasonable fee.[106]

On April 19, 2021, the district court issued an order adjudicating the lien. Notice of entry of order was filed May 16, 2021.[107] The district court committed an error of law in its order when the district court enforced the terms of the repudiated implied contract and calculated the reasonable fee due using the superbill which it had already found unreliable, instead of applying the market rate approach under quantum meruit. The error in law resulted in an unjust award to Simon and provided a windfall to the Edgeworths by allowing the Edgeworths to avoid paying reasonable attorney fees for the work performed.

On July 22, 2021, the Edgeworths filed a notice of appeal of the latest adjudication order.

On January 27, 2022, the Edgeworths filed their opening brief. The Edgeworths claimed the district court refused to obey and ignored the

[106] XI-AA02562-AA02666
[107] XI-AA02703-AA02725

instructions on remand because the district court only added one additional paragraph of explanation on the determination of the reasonable fee found due to Simon for work following his discharge.

On March 11, 2022, Simon filed a petition for mandamus seeking a reasonable attorney fee based on the market fee approach under quantum meruit.

IV. Standard of Review

After remand and appeal, the question of whether a district court adhered to a clearly expressed rule of law or principal is reviewed de novo. *State Engineer v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017). However, on remand the law of the case doctrine does not apply to "matters left open by the appellate court." *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).

Adjudication of an attorney lien is reviewed for an abuse of discretion. *Bero-Wachs v. Law Office of Logar & Pulver*, 123 Nev. 71, 80 n.21, 157 P.3d 704, 709 n.21 (2007). A district court decision must be upheld unless it is based on a clearly erroneous factual finding, *NOLM*, 120 Nev. at 739, 100 P.3d at 660-61, or ignores controlling law. *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

Findings of fact are reviewed for an abuse of discretion. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-661 (2004). A finding must be upheld if it is based on substantial evidence or is not clearly erroneous. *Gibellini v. Klindt*, 110 Nev. 201, 1204, 885 P.2d 540, 542 (1994). Substantial evidence is evidence such that "a reasonable mind might accept as adequate to support a conclusion." *State, Emp. Security Dep't v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

The reviewing court may imply findings that are supported by the evidence in the absence of an explicit finding. *Trident Construction Corp., v. West Electric Inc*., 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989). An appellate court may affirm a decision on any ground found in the record. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

V. Summary of Argument

Simon provided excellent work for his friends even after the attorney client relationship disintegrated. Because Simon was owed fees and costs, Simon followed the law and served an attorney lien, for which he was sued for conversion.

Of note, in the petition for writ filed March 11, 2022, Simon submits that the district court committed an error of law in its April 19, 2021, order when the district court enforced the payment terms of the implied contract

that was terminated by the Edgeworths and calculated the reasonable fee due Simon using the superbill which the district court had already found unreliable, instead of applying the market rate approach under quantum meruit. The error in law resulted in an unjust award to Simon and gave a windfall to the Edgeworths by allowing the Edgeworths to avoid paying reasonable attorney fees for the work they greatly benefited from.

However, Simon's position regarding the market rate for a reasonable attorney fee from September 19, 2017, forward is the subject of the petition filed March 11, 2022. In response to the argument raised by the Edgeworths on appeal, the district court did not ignore the remand instructions. The remand returned the case to the district court to address anew the amount of Simon's reasonable attorney fee. In response, the district court added language to its April 19, 2021, adjudication order that explained the basis for the fee award for post discharge work by Simon. Taking the newly added language in conjunction with the entire order and the established record, the district court's finding of a fee for post discharge work was reasonable, which is what is required by Nevada law.

VI. Argument

When a lawyer is discharged by a client, the lawyer is no longer compensated under the terminated contract but is paid based on quantum meruit. *Golightly v. Gassner*, 125 Nev. 1039, 281 P.3d 1176 (2009) (unpublished)(discharged contingency attorney paid by *quantum meruit* rather than by contingency); *citing*, *Gordon v. Stewart*, 74 Nev. 115, 324 P.2d 234 (1958)(attorney paid in *quantum meruit* after client breach of agreement); *and citing*, *Cooke v. Gove*, 61 Nev. 55, 114 P.2d 87 (1941)(fees awarded in quantum meruit when there was no agreement); *Gonzales v. Campbell & Williams*, 2021 WL 4988154, 497 P.3d 624 (Nev. 2021)(unpublished)(upheld the finding that an attorney without a fee agreement was due a percentage of a case's recovery as the measure of a reasonable fee in quantum meruit in a lien adjudication); *Edgeworth Family Trust,* 2020 WL 7828800, 477 P.3d 1129 (discharged attorney entitled to quantum meruit as the measure of reasonable attorney fees due under a charging lien); and, *see*, *Fracesse v. Brent*, 494 P.2d 9 (Cal. 1972).

Quantum meruit means, as much as is deserved. Black's Law Dictionary 1119 (5th ed. 1979). Quantum meruit is effectively synonymous with the reasonable fee language of NRS 18.015. Under either, the Court must find an attorney fee to be reasonable under the *Brunzell* factors.

O'Connell v. Wynn Las Vegas, LLC, 134 Nev. 550, 429 P.3d 664 (C.A. 2018); *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

When there is no express contract, an attorney is due a reasonable fee under the Nevada attorney lien statute, NRS 18.015(2). A court has wide discretion on the method of calculation of the reasonable attorney's fee. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006). The district court may employ any method of fee determination which is rational. *Logan*, 131 Nev. at 266, 350 P.3d at 1143.

The law in Nevada is clear, Simon is due a reasonable fee for work performed and the method of calculation of the fee due is left to the sound discretion of the district court.

The district court determined that Simon was due a $200,000.00 fee for post discharge work. Following remand of the case, the district court added language to its prior adjudication order which provided an explanation for the basis of the post discharge fee.

The Edgeworths take umbrage with the district court's added language. In so doing, the Edgeworths unfairly characterize the district court's actions and the adjudication order. The district court did not ignore

or refuse to obey this Court, instead the district court added language to its prior order.

The fact that the district court re-issued its earlier *Brunzell* analysis is improperly used by the Edgeworths as a basis for their accusations. The latest district court adjudication order addressed both pre-and post-discharge fee determinations. Further, the district court's earlier *Brunzell* analysis addressed factors that apply to both pre-and post-discharge analysis, such as the quality of the advocate. As such it is acceptable for the district court's latest adjudication order to use the earlier *Brunzell* analysis to address the pre-discharge fee analysis and overall factors like the quality of the advocate, with added language to address the topic of the remand instructions. Of course, the Edgeworths may challenge the *sufficiency* of the added post discharge analysis but should do so without unfair representations about the district court.

The wide discretion allowed a district court in determination of a reasonable attorney fee means the district court is not limited to an hourly fee calculation or time sheets when reaching the fee due Simon for post discharge work. *See, e.g*., *Katz v. Incline Village General Improvement Dist*., 2019 WL 6247743, 452 P.3d 411 (2019)(unpublished)(while reliance on a redacted memorandum of work made evaluation of the reasonable fee

due difficult, the fee award was based on sufficient evidence); *O'Connell*, 134 Nev. 550, 429 P.3d 664 (billing records are not required to support an award of fees); *Golightly*, 125 Nev. 1039, 281 P.3d 1176 (district court's decision to reject Golightly's lien adjudication request affirmed when "Golightly refused to provide itemized billing statements, an invoice of costs, an affidavit to show the hours worked or services performed, or any other evidence as to the reasonable value of his services to support his claim"); *Shuette v. Beazer Homes*, 121 Nev. 837, 864, 124 P.2d 530, 548-49 2005)(the district court may use any rational method to determine a fee, including use of a "contingency fee"); *Herbst v. Humana*, 109 Nev. 586, 591, 781 P.2d 762, 765 (1989)(a detailed affidavit regarding work performed was sufficient to determine a reasonable fee without a detailed billing statement); *Cooke*, 61 Nev. 55, 114 P.2d 87 (reasonableness of a fee award affirmed based upon testimony of attorney.

The latest adjudication order and the record demonstrates that the post discharge fee award to Simon was reasonable and rational. Accordingly, the Edgeworths cannot demonstrate that the district court did not follow the mandate or otherwise abused its discretion.

The district court found that the Edgeworths fired Simon on November 29, 2017.[108]

The district court found that the case against Viking did not settle until "on or about December 1, 2017", which was *after* Simon had been fired. [109] The district court further found that Simon continued to work for the Edgeworths even after being fired.[110]

On appeal, the Edgeworths argue the Viking settlement occurred earlier and argue credibility. (*E.g.*, opening brief at page 12.) However, it is well settled that factual determinations and credibility assessments are not the purview of the appellate court. *See, e.g., Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). The Edgeworths' arguments are based on inference, innuendo, and issues unsuitable on appeal, the Edgeworths did not, and cannot, demonstrate an earlier settlement date that conflicts with the district court's finding of fact.

The district court found that the Edgeworths sued Simon on January 4, 2018.[111] The district court observed that immediately following service of the meritless conversion complaint, Vannah stated that Simon had to

[108] XI-AA02711-AA02714
[109] XI-AA02706:22-24
[110] XI-AA02714
[111] XI-AA02713

continue working for the Edgeworths.[112] In his email, Vannah asserted that withdrawal would result in the Edgeworths spending "lots more money" which Vannah implied Simon would eventually pay for.[113] Vannah's email demonstrates that Simon provided a benefit to the Edgeworths post discharge, which may be considered in reaching a reasonable fee. *See*, *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 664 F.3d 282 (9th. Cir. 2011)(*Crockett & Myers II*)(the court considered fee savings as a factor to consider in reaching a quantum meruit award). Further, the contemporaneous assertion of Vannah contradicts the current Edgeworth *post hoc* claim that Simon's post discharge work was of little value.

The last date recorded for work by Simon on the superbill is January 8, 2018.[114] However, there is substantial evidence in the record that Simon continued to work for his former friends after January 8.

On February 6, 2018, Simon appeared before the district court on the Viking/Lange case and was actively engaged in effectuating the settlement and helping his former clients.[115]

[112] XI-AA02713-AA02715
[113] I-AA00122
[114] XII-AA02840
[115] III-AA00658-AA00663

The February 6, 2018, hearing transcript provides a foundation for the post discharge fee award. While the transcript was not explicitly mentioned by the district court, the work was generally referenced in the adjudication order[116] and the proof of the work is in the record.

The February 6 transcript reflects that at the hearing the defense attorneys did not turn to Vannah, new counsel for the Edgeworths, but relied upon Simon.[117] Vannah did not step forward to represent his new clients, Vannah remained silent on this point.[118] Further, Simon did not refuse to assist his former friends and clients - *who had frivolously sued him for conversion to punish him* - rather, Simon upheld the highest standards of the profession and helped.[119]

In addition, the hearing transcript of February 20, 2018, also provides foundation for the adjudication order. On February 20, 2018, Simon addressed the district court regarding the status of resolution. The hearing transcript demonstrates that the district court saw first-hand that Defendant Simon continued to assist the parties that had wrongly sued him.[120] In fact, almost three months after retention to resolve the Viking/Lange case,

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[116] See, e.g., XI-AA02687, AA02694 & AA02697-98.
[117] III-AA00658-AA00663
[118] III-AA00658-AA00663
[119] III-AA00658-AA00663
[120] III-AA00724-AA00734

Vannah continued to deny any knowledge or involvement in the Viking Lange case: [121]

> MR. VANNAH: Why do we have to have anything on form and content? That is not required, it's for the lawyers to sign.
>
> MR. SIMON: Then if --
>
> MR. VANNAH: -- I'm asking that question.
>
> MR. SIMON: -- he's ok with that, then I'm fine with that.
>
> MR. VANNAH: *If you take out the form and content, I don't know anything about the case, and I want -- I don't know anything about the case -- I mean, we're not involved in a case. You understand that, Teddy?* (Italics added.)

Thus, on February 20, the district court plainly was aware that Simon was still the only attorney who was materially assisting the Edgeworths in resolution of their complex litigation. And, again, the record and the Edgeworths' first substitute attorney contradict the current *post hoc* claim that resolution of a complex case is simple or of little value.

A district court should make written findings about the reasonableness of an attorney fee under the *Brunzell* factors. *Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 125 Nev. 527, at fn2, 216 P.3d 779, at fn2 (2009), *superseded by statute on other grounds as stated in Las Vegas Metropolitan Police Dept., v. Eighth*

[121] III-AA00726:17-25; compare XI-AA02712

Jud. Dist. Ct., 134 Nev. 971, 431 P.3d 37 (2018)(unpublished). However, challenged findings that may be inadequately drafted do not necessarily result in reversal. A reviewing court may imply findings that are supported by the evidence in the absence of an explicit finding. *Trident Construction Corp.,* 105 Nev. at 426, 776 P.2d at 1241. A reviewing court may also affirm a district court's decision on any ground found in the record. *Rosenstein*, 103 Nev. at 575, 747 P.2d at 233.

The question of whether the district court was obligated to explicitly note the exact nature and dates of work by Simon post discharge within the four corners of its *Brunzell* analysis is not reached, because the work and the results of the post discharge work is clearly demonstrated in the record. So, while a scenario might be possible where a district court must detail post discharge work, it is not required here, because, for example, the work and descriptions of the work took place before the district court and is demonstrated in the record by such things as hearing transcripts.

Further, it is not reasonable to argue that the focus on appeal be aimed solely on the four corners of the district court order that appear below the *Brunzell* heading, or on the added paragraph. While a title or heading may be a permissible indicator of meaning, the entire text of the order should be considered. *See, Parson v. Colts Manufacturing Co*., 137

Nev. Adv. Op. #72, 499 P.3d 602 (2021)(discussion and application of the whole-text cannon).

The whole text of the latest adjudication order of the district court, in conjunction with the record, demonstrates a reasonable and rational basis for the post discharge fee award to Simon. Simon continued to work for his former clients after being fired, then sued by them. Simon negotiated better settlement terms, increased the amount of money in the former clients' pockets and expedited resolution, while punitive damages were sought from him personally. Simon continued to work on the file which resulted in the clients receiving almost four million dollars on their half million dollar claim soon after the settlement checks were delivered, despite a fee dispute made rancorous by the client. According to Vannah, Simon provided an additional economic benefit to the Edgeworths despite his replacement, and according to Vannah resolution of the complex case was not as simple as is now claimed. Therefore, the district court does not have to apply an hourly rate and the finding of a flat fee of $200,000.00 for post discharge work is reasonable and supported.

In contrast, the Edgeworths rely on the superbill and *post hoc* claims. As shown above, it would be error to limit recovery to the dates listed on the superbill because the billing ends in early January and the work

continued after, and the bill does not reach the nature of the continuing work performed by Simon for the former clients who had frivolously sued him for conversion. The *post hoc* claims of work complexity are contradicted by Vannah and the credibility claims are misplaced on appeal.

Lastly, the Edgeworths request that this Court assume the fact-finding role of the district court and direct the district court to enter specific factual findings based on the demonstrably incomplete superbill. The Edgeworths did not provide a cogent argument or the legal authority under which an appellate court could or should assume the role of fact finder. *SIIS v. Buckley*, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984)(conclusory arguments or novel legal theories unsupported by legal authority do not need to be considered). An appellate court may disregard an unsupported and improper request to act as a fact finder.

VII. Conclusion

The latest adjudication order of the district court in conjunction with the record, demonstrates a reasonable and rational basis for the post discharge fee award to Simon. The Edgeworths arguments to the contrary are either demonstrably wrong or are unsupported. Without addressing the writ petition, in this appeal, Simon submits the Edgeworths should be denied relief.

If the Simon petition is considered, then it is respectfully submitted that the respective issues with the adjudication order of the district court, and the issue of the clients' unjust enrichment, can be resolved by the district court following remand by use of the market approach under quantum meruit in a determination of reasonable fees due Simon from September 19, 2017 through the end of Simon's involvement.

Dated this 29th day of March 2022.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
Attorney for Simon

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

I, James R. Christensen, am an attorney for Simon herein. I hereby certify that I have read the foregoing Answering Brief, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

I declare under the penalty of perjury of the laws of Nevada that the foregoing is true and correct.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answering 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 for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 14,000 words and contains approximately 5,705 words.

I hereby certify that I have read this 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 Answering 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 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 it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 29th day of March, 2022.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March 2022, I served a copy of the foregoing ANSWERING BRIEF electronically to all registered parties.

/s/ Dawn Christensen
an employee of JAMES R. CHRISTENSEN