IN SUPREME COURT OF THE STATE OF NEVADA

BARTHOLOMEW MAHONEY,

Appellant,

v.

BONNIE MAHONEY,

Respondent.

Supreme Court No. 82412, 82413
District Court Case No. D-13-477883-D

Appeal from the Eighth Judicial District Court

RESPONDENT'S ANSWERING BRIEF

RADFORD J. SMITH, CHARTERED
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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: Kimberly Stutzman, Esq. (fka Kimberly A. Medina), for Radford J. Smith, Chartered, attorney of record for Respondent/Plaintiff.

Dated this 3 February 2022.

RADFORD J. SMITH, CHARTERED

/s/ Kimberly A. Stutzman
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I. JURISDICTIONAL STATEMENT

Respondent agrees with Appellant's jurisdictional statement except for Appellant's statement that the court did not properly notice Appellant or that the hearing amount to a one-sided presentation of evidence.

II. STATEMENT OF THE ISSUES

D. Whether Bartholomew was properly served and noticed of the Evidentiary Hearing.

E. Whether the district court's findings of fact and conclusions of law regarding Bartholomew's failure to comply with the parties' decree of divorce were supported by substantial evidence.

F. Whether the district court's award of attorney's fees and costs to Respondent was reasonable, fair, equitable, and supported by NRS 18.010 and not a manifest abuse of discretion.

III. STATEMENT OF THE CASE

This was a simple, post-divorce motion to address unpaid child support, spousal support, bonuses, and other monies. Unfortunately, throughout the litigation, Appellant, Bartholomew Mahoney ("Appellant") failed to appear or meaningfully participate. He failed to provide any evidence in support of his case, any evidence in disclosures, and failed to appear at any hearings prior to March 26, 2021. RA001[1]; RA005, RA82. Appellant now appeals two orders: (1) the Findings of Fact, Conclusions of Law, and Judgment entered on December 28, 2020 (II AAA000389);

[1] The minutes state he was present at the November 13, 2019 hearing, but only his attorney was present.

and (2) the Order Granting Attorney's Fees and Costs, filed January 11, 2021. IIIAA000483.

D. Brief Procedural History

The parties were divorced by stipulated Decree of Divorce ("Decree") filed February 3, 2016. I AA0001-12. The parties have two children, ages 20 and 17. On May 9, 2019, Respondent filed her Motion to Reduce Arrears et al. I AA00013-34. Initially, she was unable to serve him at his last known address. I AA000146-152. Once served on June 7, 2019, Appellant failed to file his Opposition until August 21, 2019, one day before the hearing scheduled for August 22, 2019. I AA000192.

E. The Evidentiary Hearing

On May 4, 2020, the parties agreed to continue the Evidentiary Hearing. It was originally continued to October 29, 2020. Appellant does not deny that he was served notice of October 29, 2020 Evidentiary Hearing. The district court later rescheduled the Evidentiary Hearing to December 3, 2020. The district court sent Appellant's prior counsel the Notice of Rescheduling Hearing on September 17, 2020, but Respondent served Appellant directly on September 28, 2020. II AA000300; 302. Appellant was required to sign up for electronic service pursuant to Administrative Order 20-17 but failed to do so.

At trial, the district court waited for Appellant to appear. III AA000502. It found that Appellant was not present though fully notified. II AA000392. At trial,

Respondent testified in support of her case though it was Appellant's burden of proof. Respondent testified for approximately one hour. III AA000540. She admitted twelve exhibits, including Appellant's subpoenaed personal bank statements from three banks and work records. III AA000500. Respondent subpoenaed these records because Appellant failed to file his Financial Disclosure Form for four months after the initial hearing. II AA000243.

Upon its review of the substantial evidence admitted at trial, the district court entered its Findings of Fact, Conclusion of Law, and Judgment on December 28, 2020. II AA000389-454. It directed Respondent to file a Memorandum of Fees, Costs, and Disbursements. *Id.*, II AA000455-482. Then, it entered its Order Granting Respondent fees on January 11, 2021. III AA000483-498.

F. Post-Trial Motions

Appellant retained the same counsel and filed a Motion to Set Aside on January 25, 2021, a Notice of Appeal on January 26, 2021, and a Motion for Stay on February 3, 2021. I RA 7-16. Respondent filed her combined oppositions on February 8, 2021. I RA29-66.

IV. STATEMENT OF THE FACTS

Under NRAP 28(b), Respondent may submit a statement of facts if she is dissatisfied with Appellant's statement. Appellant's statement is incomplete and misrepresents the facts of this case.

Pursuant to the parties' Decree, Respondent was granted primary physical custody of the minor children. I AA 000001-12. The parties also agreed that she could relocate to California with the children. *Id.* At no time has Appellant ever moved to modify custody. Thus, his claim that one child resided in his care is not only false, but an issue on appeal.

1. Bart's Failure to Pay Bonnie Child and Spousal Support

The Decree obligates Appellant to pay Respondent child support in the amount of $1,091 per child per month, for a total of $2,182 per month. I AA000007. One-half of the total amount of child support is due on the 5th of each month, and the remaining half is due by the 25th of each month. *Id.*

The Decree also obligates Appellant to pay Respondent spousal support in the amount of $2,668 per month for four (4) years beginning September 1, 2015. I AA000008-09. One-half of the total amount of support is due on the 5th of each month, and the remaining half is due by the 25th of each month. *Id.*

Appellant failed to timely or fully paid his obligations to Respondent. Rather than pay the total amount due prior to the 5th and 25th of each month, he paid sporadically and combined the two obligations. She kept a record of the total amount received each month. She used her records and the subpoenaed records to complete the Updated Schedule of Arrears for trial. II AA000342-380; II AA000389-454.

From September 2015 through to the present, Appellant paid less than the total combined amount that he owed. As a result, Respondent included the statutory penalty until the penalty expired on January 31, 2020 pursuant to the new Child Support Guidelines in NAC 425. II AA000404. The penalties that Appellant owes relate to his delinquencies in support and are calculated in the Updated Schedule of Arrearages. II AA000414-454. The interest is calculated at the legal rate(s). The mandatory statutory penalty under NRS 125B.095 is calculated at 10 percent per annum after 30 days of delinquency.

2. Bart's Failure to Pay Bonnie's Attorney Fees

Bart was delinquent on other payments required under the Decree. The Decree obligated Bart to reimburse Bonnie attorney fees in the amount of $10,000. Bart was to pay Bonnie $555 per month for the attorney fees directly until paid in full. I AA000009.

Bart failed to make these payments to Bonnie. Because Bart did not pay his attorney fee payments timely, he is subject to interest calculated at the legal interest rate. Bonnie subpoenaed Bart's bank records. Upon a thorough and time-consuming review, she confirmed that Bart paid a portion of the fees as a result of a note in his transfer. II AA000424-26. Bart paid Bonnie $4,895 towards the $10,000. *Id.* Bart still owes Bonnie $5,105. Bart also owes $1,523.78 in interest. As set forth in the analysis of the attorney fee arrearages, Bart owes **$6,628.78**. *Id.*

3. Bart's failure to pay a portion of his Bonuses to Bonnie

The Decree orders Bart to pay Bonnie her portion of his bonuses each year. He failed to do so. The Decree states in relevant part –

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Dad receives bonuses annually and it is agreed that Dad shall pay Mom twenty-five percent (25%) of the after-tax amount of the bonus for a period of four years, commencing September 1, 2015. For tracking purposes, Dad shall provide Mom with a copy of his W-2 forms annually. If Dad does not provide his W-2 forms to Mom by April 15th of each year, Dad shall be responsible to pay Mom ***thirty-five (35%)*** of the after-tax amount of any bonus he received for the period in which he failed to provide the W-2.

I AA000007 [emphasis added]. The court reserved jurisdiction to address the bonuses. *Id.* Despite Bonnie's requests, Bart failed to provide her with his W2 forms or any portion of the after-tax amount f0r 2015 to 2019. Appellant was obligated to provide her with his W2s to demonstrate his ***annual*** bonuses. Because he failed to comply with the April 15th deadline each year, Bart must pay Bonnie with 35% of the after-tax bonuses plus the legal interest that has accrued as a result of his non-payment. *Id.*

Upon a thorough and time-consuming review of Bart's employment records, Respondent learned that Bart received approximately $249,455.00 in bonuses. Thus, Bonnie calculated her total portion to be at least $87,309.25 ($249,455.00 x 35%), without interest.

4. The modification of child support is accurate.

Prior to the Order after the December 2020 trial, the last order regarding child support was filed on February 3, 2016. Bart's FDF filed December 13, 2019 indicates that he earns $132.21 per hour, which is $274,996.80 per year or a gross monthly income of $22,916.40. Pursuant to NAC 425, his child support was properly calculated as follows for two children: ($6,000 x 22% = $1,320) + ($4,000 x 11% = $440) + ($12,916.40 x 6% = $774.98) = **$2,534.98.** His child support was calculated as follows for one child: ($6,000 x 16% = $960) + ($4,000 x 8% = $320) + ($12,916.40 x 4% = $517) = $1,797.

On October 1, 2019, Brigitte emancipated. Bart unilaterally decided to reduce his child support obligation from $2,182 to $1,091 per month without a court order allowing him to do so. Brigitte, however, did not graduate until August 2020. Thus, her child support should have continued until graduation. Furthermore, the district court properly used NAC 425 to calculate child support prior to February 1, 2020 because it was child support guidelines in existence at the time of the modification at the December 3, 2020 evidentiary hearing. NAC 425.160.

5. Respondent's Attorney's Fees and Costs were supported by substantial evidence, including a complete billing history

Bonnie has incurred attorney's fees and costs in the prosecution of her Motion and preparation for the Evidentiary Hearing. Bart refused to comply with the court's

Decree requirement that he pay child support, alimony, attorney fees, and health insurance to Bonnie. Respondent timely filed and served Appellant with her Memorandum of Fees and Costs. II AA000471. Appellant failed to respond. 796.Therefore, the district court found that the fees incurred were necessary, reasonable, and commensurate to the work performed. III AA000496. The district court awarded Respondent $22,000 for attorney's fees and $1,339.80, which is less than the amount Respondent incurred. *Id.;* III AA000497. For these reasons, Respondent respectfully requests that the district court's order be affirmed.

V. SUMMARY OF THE ARGUMENT

In his appeal, Appellant challenges the district court's Order entered on December 28, 2020. The arguments are addressed below.

1. **Due Process:** Appellant confuses notice with service. Though he received notice, he also was properly served. Appellant simply believed he was above the law and did not need to participate. It was also his burden of proof to demonstrate proof of payment to Respondent. He failed to produce one document during the litigation. The evidentiary hearing proceeded on the merits. Had he appeared, Appellant would have also failed to meet his burden. Nevertheless, because Respondent subpoenaed Appellant's records, the trial proceeded on the merits.

2. **Substantial Evidence:** As addressed in section 1 above, Respondent subpoenaed Appellant's work and banking records. She meticulously and thoroughly reviewed his records for payments and bonuses. She testified and offered 12 exhibits. The Findings and Order entered on December 28, 2020 included attachments supporting its order and was 64-pages. Thus, there was substantial evidence in the record to support the district court's findings.
3. **Attorney' Fees:** The district court did not manifestly abuse its discretion. Respondent was unemployed throughout the majority or the case whereas Appellant earned **$22,916/month.** Appellant failed to participate in the action and caused Respondent to subpoena his records. The fees Appellant was ordered to pay Respondent is approximately one month's income for Appellant.

VI. LEGAL ARGUMENT

1. Standards of Review

In his opening brief, Appellant fails to address the necessary standards of review on appeal. A district court's findings of fact are reviewed for abuse of discretion[2]. The trial court's determination of a question of fact will not be disturbed unless clearly erroneous or not based on substantial evidence.[3]

[2] *Collins v. Burns*, 103 Nev. 394, 399, 741 P.2d 819, 822 (1987), distinguished on other grounds by *Goodrich & Pennington Mortg. Fund, Inc. v. J.R. Woolard, Inc.*, 120 Nev. 177, 101 P.3d 792 (2004).
[3] *Ivory Ranch v. Quinn River Ranch*, 101 Nev. 471, 472, 705 P.2d 673, 675 (1985); NRCP 52(a).

A district court's findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. NRCP 52(a). The district court's factual findings will not be set aside unless they are not supported by substantial evidence[4]. "Substantial evidence 'is evidence that a reasonable person may accept as adequate to sustain a judgment.'"[5]

Here, the district court's factual findings are supported by substantial evidence. It found that Appellant was fully notified about the December 3, 2020 Evidentiary Hearing. II AA000395; III AA000501-52. Thus, this Court should affirm the Findings of Fact, Conclusions of Law, and Order entered December 28, 2020 and the Order Granting Fees filed January 11, 2021.

The decisions of a district court granting or denying attorney's fees are reviewed for an abuse of discretion.[6] "[D]istrict courts have great discretion to award attorney fees, and this discretion is tempered only by reason and fairness."[7] Moreover, in the absence of a ***manifest abuse of discretion***, the court's decision on the issue will not be overturned.[8]

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[4] *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704. (2009).
[5] *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)).
[6] *See Miller v. Wilfong*, 121 Nev. 619, 622-23, 119 P.3d 727, 729 (2005).
[7] *Haley v. Eighth Judicial District Court,* 128 Nev. Adv. Rep. 16, 273 P.3d 855, (2012).
[8] *Cnty. of Clark v. Blanchard Constr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

Here, the court did not manifestly abuse its discretion. Appellant failed to participate in the litigation, failed to participate in discovery, failed to submit exhibits and a pre-trial memorandum, failed to appear at trial, and failed to oppose Respondent's Memorandum of Fees and Costs.

2. Bartholomew was properly served and noticed of the Evidentiary Hearing.

Appellant was properly served pursuant to NRCP 5(b)(2)(C) by mailing it to the person's last-known address in which service is complete upon mailing. II AA000302-303. Appellant was also emailed November 23, 2020, November 24, 2020, November 25, 2020, and December 2, 2020 regarding trial, including the date and time. I RA063. Moreover, Appellant logically should have appeared on October 29, 2020 yet his post-trial motions and appeal are silent as to why Appellant did not appear on October 29, 2020 of which Appellant does not deny notice. Respondent purposefully omits his actual and constructive knowledge of the December 3, 2020 Evidentiary Hearing. It is illogical that Bart waited three months after the October 29, 2020 evidentiary hearing to look into his pending litigation.

Moreover, Appellant claims that the Scheduling Order is silent as to service. This, however, is illogical. It is plain on its face that the district court electronically served counsel and mailed Appellant at this Rafael Rivera address. II AA000304-308.

Appellant's failure to appear is consistent with his behavior in this matter. When Bart was represented by counsel, he failed to appear, even telephonically, at any hearing. He failed to timely file a Financial Disclosure Form. He provided only his W2s but failed to provide any documents to refute Bonnie's claims. He failed to file any other pleading or exhibit. Bonnie subpoenaed Bart's records. She incurred over $24,000 in attorney's fees and costs to tediously review those subpoenas. Undersigned meticulously outlined every transaction for Bart's payments to Bonnie (or lack thereof). Undersigned and Bonnie even acknowledged additional payments from Bart to Bonnie that were unintentionally left out of her exhibits/spreadsheet.

In considering this procedure under the Due Process Clause, we recognize, as we have in other cases, that due process of law does not require a hearing "in every conceivable case of government impairment of private interest.[9]

It is a firmly established policy of this Court that controversies ***preferably*** be resolved on their merits whenever possible. The default must have been the result of mistake, inadvertence, surprise, or excusable neglect (NRCP 60(b)), and the defaulted party must additionally timely tender a meritorious defense.[10]

Appellant fails to acknowledge that he received notice and was properly served by the court and Respondent. He also fails to acknowledge that the case was

[9] *Stanley v. Illinois*, 405 U.S. 645, 650-51, 92 S. Ct. 1208, 1212 (1972)(citations omitted.)
[10] *Gutenberger v. Cont'l Thrift & Loan Co.*, 94 Nev. 173, 175, 576 P.2d 745, 745 (1978)(citations omitted).

heard on the merits considering Respondent subpoenaed his records. He was not denied a meaningful opportunity to present evidence. He chose not to disclosure ***any*** evidence in discovery. He failed to disclose any trial exhibits at any time and did not file a pre-trial memorandum.

At the December 3, 2020 trial, the district court waited for Appellant to appear. It also found that he was fully notified of the trial. II AA000392, III AA501-02. Additionally, at a subsequent hearing, the district court confirmed its efforts to contact Appellant by phone and mail. I RA083.

Payment of a debt is an affirmative defense, which the party asserting has the burden of proving.[11] Here, Appellant should have demonstrated his payments to Respondent using records such as his bank statements showing transfers. Though he failed to do so, Respondent subpoenaed his records and admitted them into evidence. Thus, Respondent properly accounted for all payments and non-payments as well as proof of his bonuses for 2015 to 2019, some of which he was likely trying to hide and omit during the original divorce action.

For these reasons, Respondent submits that Appellant was properly noticed and served, that the case was heard on the merits, and that Appellant was not denied due process.

[11] NRCP 8(c); *Schwartz v. Schwartz*, 95 Nev. 202, 206 591 P.2d 1137, 1140 (1979) ("Since the averments of an affirmative defense are taken as denied or avoided, each element of the defense must be affirmatively proved. The burden of proof clearly rests with the defendant.")

3. The district court's findings of fact and conclusions of law regarding Bartholomew's failure to comply with the parties' decree of divorce was supported by substantial evidence.

Findings of fact of the district court will not be set aside unless clearly erroneous.[12] In *Hermann v. Varco-Pruden Bldgs*., 106 Nev. 564, 566-67, 796 P.2d 590, 591-92 (1990), the Court found that there was no support in the record for the district court's finding. In this case, the record is replete with support for the district court's orders, including but not limited to Appellant's Wells Fargo bank records, Wells Fargo bank records, his Resorts World work records, and Golden Entertainment work records. III AA000500. In the findings, the district court also included multiple tables with the amounts and the BATES numbers associated with each entry to support its findings.

The court may also award interest on the child support arrearages owed. NRS 125B.140 states in relevant part –

> 1. Except as otherwise provided in chapter 130 of NRS and NRS 125B.012:
>
> (a) If an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on

[12] *Trident Construction Corp. v. West Electric, Inc*., 105 Nev. 423, 427, 776 P.2d 1239, 1241 (1989).

> or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this state.
>
> . . .
>
> 2. Except as otherwise provided in subsection 3 and NRS 125B.012, 125B.142 and 125B.144:
>
> . . .
>
> (c) The court shall determine and include in its order:
>
> (1) *Interest upon the arrearages* at a rate established pursuant to NRS 99.040, from the time each amount became due; and
>
> (2) A reasonable attorney's fee for the proceeding,
>
> unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts. *Interest continues to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.*

[Emphasis added.] Thus, all amounts due should continue to accrue legal interest from the date of the filing of her motion until paid. NRS 17.115 reads:

> When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the commissioner of financial institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

Moreover, when parties to pending litigation enter into a settlement, they enter into a contract. Such a contract is subject to general principles of contract law. *Grisham v. Grisham*, 289 P.3d 230, 234 (Nev. 2012) (citations omitted). NRS 99.040 accounts

for the interest rate when it is ***not*** fixed by express contract for certain types of transactions. That statute reads:

> 1. When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, in the following cases:
>
> (a) Upon contracts, express or implied, other than book accounts.
>
> (b) Upon the settlement of book or store accounts from the day on which the balance is ascertained.
>
> (c) Upon money received to the use and benefit of another and detained without his or her consent.
>
> (d) Upon wages or salary, if it is unpaid when due, after demand therefor has been made.
>
> The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

Thus, interest accrued on Appellant's arrearages and unpaid monies to Respondent; it was properly calculated; and it was properly incorporated into Respondent's obligation reduced to judgment. interest was properly. For these reasons, Respondent submits that the district court's order was supported by substantial evidence and should be affirmed.

4. The district court's award of attorney's fees and costs to Respondent was reasonable, fair, equitable, and supported by NRS 18.010 and not a manifest abuse of discretion.

A request for an order directing another party to pay attorney's fees must be based upon statute, rule, or contractual provision.[13] The court has jurisdiction to

[13] *See, e.g, Rowland v. Lepire*, 99 Nev. 308, 662 P.2d 1332 (1983).

award attorney's fees in post-trial matters.[14] The Nevada Supreme Court has recognized the jurisdiction of a district court to grant attorney's fees to a party in a post-divorce child custody action under NRS 125.040.[15] 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 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.

Court rules have the effect of statutes[16]. 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:

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[14] *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998) (recognizing that a district court has the authority to award attorney fees in post-divorce proceedings involving child custody).
[15] *Leeming v. Leeming*, 490 P.2d 342, 343 (1971)("NRS 125.040 empowers our courts to grant "allowances and suit money" in divorce actions, including sums to enable a wife to employ counsel; and if the wife files an appropriate post-judgment motion relating to support or custody of minor children, that power remains as part of the continuing jurisdiction of the court.")
[16] *Margold v. Eighth Judicial Dist. Court*, 109 Nev. 804, 806, 858 P.2d 33, 35 (1993).

> (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. "[D]istrict courts have great discretion to award attorney fees, and this discretion is tempered only by reason and fairness."[17] Moreover, in the absence of a manifest abuse of discretion, the court's decision on the issue will not be overturned.[18]

Here, Appellant failed to state in his brief whether the district court's findings were a manifest abuse of discretion, which is the standard of review for the appellate court. Nevertheless, Respondent timely filed her Memorandum and *Brunzell* factors. II AA000455. Appellant failed to respond. The district court made specific findings of fact and conclusions of law to support its award of attorney's fees and costs in favor of Respondent. III AA000485.

[17] *Haley v. Eighth Judicial District Court,* 128 Nev. Adv. Rep. 16, 273 P.3d 855, (2012).
[18] *Cnty. of Clark v. Blanchard C485onstr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

For these reasons, the district court did not manifestly abuse its discretion in awarding Respondent's request for attorney's fees and costs. Thus, the district court's Order should be affirmed.

RADFORD J. SMITH, CHARTERED

/s/ Kimberly A. Stutzman
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CERTIFICATE OF COMPLIANCE

1. 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 fast 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 **4473** 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 3 February 2022.

RADFORD J. SMITH, CHARTERED

/s/ Kimberly A. Stutzman
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Radford J. Smith, Chartered, and that on the 3 February 2022, a copy of Respondent's Answering Brief 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:

Aaron Grigsby, Esq.
Attorneys for Appellant

/s/ Kimberly A. Stutzman

_____
An employee of Radford J. Smith, Chartered