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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SOLINGER, Appellant, v. CHALESE MARIE SOLINGER, Respondent.	Docket No.: 84832 **RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO STAY PAYMENT OF ATTORNEY'S FEES**

COMES NOW, Respondent, Chalese Solinger, through her attorney of record Alex Ghibaudo, Esq., of Alex B. Ghibaudo, P.C., and files this *Opposition to Appellants Motion to Stay Payment of Attorney's Fees*:

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

Respondent (Chalese) agrees with Appellants recitation of the procedural history of this case. For brevities sake, Chalese adopts Appellant's version of that history herein.

II. LEGAL ANALYSIS

Chalese prays this Court deny Appellant's motion to stay the order disbursing funds. As a single mother and a hair stylist who has a limited income to live on and support her child, Chalese needs the money she was awarded desperately. Appellant, who is an attorney working for the Nevada Attorney General's Office is in a more comfortable position and can wait pending this appeal. For the reasons set forth below, pursuant to NRAP 8(c) and *Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650*, 6 P.3d 982 (2000), Appellant's motion should be denied.

1. Whether the object of the appeal or writ petition will be defeated if the stay is denied.

Appellant argues that Chalese could never afford to repay him the money Chalese was awarded should he prevail on appeal (he has no chance to do so, as further discussed below). True, Appellant would not collect all his fees *immediately*. But, as Appellant states, Chalese can work, though she makes "little money" as a hair stylist. Nonetheless, she makes money and Appellant can garnish

her wages if he so pleases. Moreover, it is presumptuous of Appellant to think that Chalese will suddenly engage in a spending spree and blow tens of thousands of dollars in the time it would take to resolve this appeal. The object of this appeal will not be defeated if the stay is denied, it will only, improbably, take Appellant just a bit more time to collect.

2. Whether Adam will suffer irreparable or serious injury if the stay is denied.

As stated above, he will not. Though it will take time to collect, if in the improbable event that Chalese blows tens of thousands of dollars in the time this appeal is pending (for which Appellant provides no support for the fact that she is even the kind of person that would do such a thing). Though it would take just a tad longer to collect, Adam will collect since he even admits that Chalese is employable and does work. Appellant does not explain the great rush he has in collecting this money. After all, it was him and his litigiousness in a quixotic quest that delayed this matter as long as it has been.

3. Whether Chalese will suffer irreparable or serious injury if the stay is granted.

Chalese is a single mother who, as Appellant loves to point out, makes little money and has a child to support while Appellant is a practicing attorney who works for the Nevada Attorney General's Office. Without the money awarded to her, Chalese will struggle to survive and to provide the child the life she deserves while Appellant engages in his years long battle to obtain primary physical custody

for no good reason at all, and contrary to the legislative policy preference that the parties share custody of the child.

4. Whether Adam is likely to prevail on the merits in the appeal or writ (no, he will not).

Appellant advances several arguments, without citation,[1] to support his contention that he is likely to prevail on the merits. Each will be addressed in turn. The first is that Judge Moss regularly awarded attorney's fees in his favor. The district court Judge now presiding over the case, Judge Mary Perry, deemed those awards "frivolous and unnecessary", summarizing the reasons why Judge Moss "regularly granted Adam's requests related to the best interest of the minor children." However, the district court, which in this case is Department P of the Eighth Judicial Court, Family Division, not any one Judge, may:

> **[I]n its discretion**, upon application by either party and notice to the other party, require either party to pay moneys necessary to assist the other party in accomplishing one or more of the following: (a) To provide temporary maintenance for the other party; (b) To provide temporary support for children of the parties; or (c) To enable the other party to carry on or defend such suit.
>
> 2. The court may make any order affecting property of the parties, or either of them, which it may deem necessary or desirable to accomplish the purposes of this section. Such orders shall be made by the court only

[1] ***This court does not need to consider any argument that is unsupported by legal authority***. (Emphasis added). See *Sengel v. IGT*, 116 Nev. 565, 573, 2 P.3d 258, 263 (2000); see also *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)

after taking into consideration the financial situation of each of the parties.

3. The court may make orders pursuant to this section concurrently with orders pursuant to NRS 125C.0055

(Emphasis added). NRS 125.040. That the district court may ***"at any time"*** make what orders it deems necessary "to provide temporary maintenance" or "to provide temporary support" or "to enable the other party to carry on or defend such suit" denotes an ability to change the district court's rulings and orders concerning money awards as it sees fit, at its discretion, and at ant time. That necessarily means that the district court may, at the commencement of the litigation see matters one way and at its conclusion see it differently.

It is the district court's discretion – it is not for nothing that one refers to "the district court" instead of any one Judge. The Judge presiding in the particular courtroom at issue is of no relevance as it is "the district court", as an separate entity, no matter who sits upon the throne, that renders the decision.

Appellant also complains that Chalese's mother paid her fees and so she incurred no attorney's fees. Appellant chooses to construe that as a gift putting his income and Chalese's in parity. The district court relied on *Logan v. Abe*, 350 P.3d 1139, 1142 (Nev. 2015) to justify its ruling that the attorney's fees and costs paid by Chalese's mother were incurred by Chalese. Appellant attempts to distinguish this

case by arguing that it applies only in the insurance context and because it involved an offer of judgment that was not "beat."

This Court, however, did not limit that case to the circumstances raised by Appellant. In its ruling, this Court broadly stated that:

> While we have not directly addressed the issue of whether a party incurs an expense that is ultimately satisfied by another party, other jurisdictions have persuasively held that an expense can be incurred even if it is ultimately satisfied by someone other than the party.

Logan v. Abe, 350 P.3d 1139, 1142 (Nev. 2015). This broad statement is not qualified in any way. It does not suggest that this Court never considered this issue in the insurance context or in the context of an offer of judgment extended that was not "beat." Indeed, this Court cites *Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639 (11th Cir.1991) which held that a "prevailing party may recover litigation costs without regard to whether a third party advanced the funds for the costs" in justifying its decision that "[w]e therefore extend *Schlang* and hold that a party can incur an expense that was paid on its behalf if the party would have been liable for the expense regardless of the third party's payment" *Logan v. Abe*, 350 P.3d 1139, 1142 (Nev. 2015). Again, this holding is without qualifiers or limits on any one or some combination of circumstances. Therefore, it applies broadly, to include attorneys fees and costs in the family court context.

Appellant then argues that "Adam was not the only one that filed motions in this case. Chalese filed several herself, except that most of Chalese's motion were

denied, with the district court making no note of that." Appellant's brief, page 6. However, what distinguishes that from Appellant is that Chalese ultimately prevailed in the case, having been awarded joint physical custody over Appellant's vehement and long-lasting objection and demand that he be awarded primary physical custody, which grants the district court authority to award Chalese attorney's fees and costs. NRS 18.010(2)(a). Further, the district court awarded attorneys' fees and costs pursuant to NRS 18.010(2)(b) (it should be noted that which provides for attorneys' fees "[w]ithout regard to the recovery sought…" The district court goes on at length, stating:

> This Court's findings herein and a review of this matter reveals the level at which Adam prosecuted this divorce case, persistent emergency motions on Order Shortening Time, basically all seeking to have the Court reduce Chalese's time share on some false claim/complaint by Adam. This Court considers this level of prosecution was intended to harass, was frivolous and unnecessarily extending litigation…

The district court continues:

> Chalese has had to retain three different attorneys/firms in this matter. 1. Louis C. Schneider, Esq…the prior judge reduced an award of attorney's fees in the amount of $10,875.00…2. Pecos Law Group - multiple attorneys and staff involved - submitted a Memorandum of Fees and Costs with Brunzell factors…request[ing] of $204,760.12. This Firm's involvement in this matter was for the majority of the persistent litigation (1999-2001) instituted by Adam…3. Alex Ghibaudo, P.C. - Michancy Cramer, Esq. submitted a Memorandum of Fees and Costs with Brunzell factors on May 12, 2022 for $10,000 charged as a flat fee. This Firm appeared for Chalise as of December 2021…

Decree of divorce, pages 47-49. It should be noted that under NRS 18.010(3), "[i]n awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence." By itself, this provision renders Appellant's arguments concerning attorneys fees and Judge Moss' various rulings without merit.

Appellant further argues that the district court was under obligation to consider the necessity of the fees awarded in light of the volume of pleadings involved. Appellant argues that *Brunzell v. Golden Gate National Bank*, 85 Nev. 345 (1969) dictates this proclamation. But, those factors, enumerated by Appellant in his motion at page 7, does not so state. It does include the work performed, its character, qualifications of counsel, and result. Focusing on results alone justify the fees awarded, especially considering how long and arduously Appellant fought a losing battle when the preference in Nevada is that the parties share custody of their children, which is all Chalese asked for.

Appellant then argues that the law of the case prohibits traveling back in time "to go against the law of the case." Motion page 7. If this were the case, it would render Sargeant, NRS 18.010, and every other rule, statute, and case law that provides for an award of attorneys fees at the conclusion of a case, particularly NRS 18.010(2)(a) which makes allowance for fees to a prevailing party after final

judgment. The orders referenced by Appellant were temporary orders made pursuant to the district court's authority under NRS 125.040. Indeed, Appellant's argument would render that rule, but particularly NRS 125.040(1)(c), devoid of teeth.

In an absurd statement, Appellant complains that Chalese was improperly awarded attorneys fees for opposing a motion she need not have opposed and then acknowledges the tens of thousands of dollars waived by Pecos Law Group, which opposed that motion. Motion, page 8.

Finally, Appellant complains that the award of fees is really a sanction that should have been done, if at all, on a graduated scale. However, to reach this conclusion, Appellant would have had to ignore NRS 18.010(2)(b), which the district court cited, and states:

> **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**.

(Emphasis Added). NRS 18.010(2)(b). Thus, sanctions are entirely appropriate where, as here, the district court determined that Appellant dragged the case out way too long, for no good reason and, essentially vexatiously, which is why the district court wrote a 55 page order with substantial and extensive findings.

In short, with respect to Appellant's challenge concerning attorneys fees, it is a futile endeavor and depriving a hair dresser of her award of fees when she has a

child to care for over an attorney's capricious and frivolous claims would amount to a manifest injustice as Appellant has little, if any, chance of success on this issue.

This is especially the case when an award of attorneys fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (reviewing an award of attorney fees for an abuse of discretion). In addition, it should be noted that Appellant's motion, concerning the merits of his case, are bereft of citation (with the exception of the *Logan* and *Brunzell* cases). See Ass'n Servs., Inc. v. Eighth Judicial Dist. Court, 130 Nev. ___, ___, 338 P.3d 1250, 1255 (2014) (arguments of counsel are not evidence); ***This court does not need to consider any argument that is unsupported by legal authority***. (Emphasis added). See *Sengel v. IGT*, 116 Nev. 565, 573, 2 P.3d 258, 263 (2000); see also *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

III. CONCLUSION

Based upon the foregoing, Chalese requests that this Court deny Appellant's motion to stay and direct the funds currently held in The Abrams & Mayo Law Firm to be disbursed according to this district court's order.

DATED this 28th day of July, 2022.

/s/ Alex Ghibaudo
ALEX GHIBAUDO, Nevada Bar No. 10592
Attorney for Respondent

Certificate of Service

Pursuant to NRAP 25, on July 28th, 2022 *RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION* was served upon each of the parties to appeal 84832via electronic service through the Supreme Court of Nevada's electronic filing system.

/s/ Alex Ghibaudo

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Attorney for Respondent