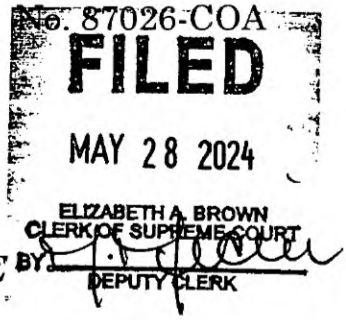
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY P. ZAMORA,
Appellant,
vs.
CHRISTOPHER KLEIN,
Respondent.

No. 87026-COA



ORDER OF AFFIRMANCE

Gregory P. Zamora appeals from a district court order granting respondent Christopher Klein's motion for attorney fees and costs and denying his request for relief under NRCP 59(e) and NRCP 60(b)(4). Eighth Judicial District Court, Clark County; Jacob A. Reynolds, Judge.

In May 2021, Klein filed a complaint against Zamora alleging that Zamora breached the parties' Residential Purchase Agreement (RPA), wherein Zamora agreed to sell his Las Vegas residence to Klein.[1] The district court granted summary judgment in favor of Klein and ordered specific performance under the RPA.[2] Additionally, although Klein did not request attorney fees or costs in his summary judgment motion, the summary judgment order stated that Klein was "awarded his reasonable costs and attorney fees" and "directed [Klein] to submit his Bill of Costs and Memorandum of Attorney Fees contemporaneously with the filing of the herein Ordered Notice of Closing." Zamora moved for reconsideration. Zamora did not challenge the district court's intent to award attorney fees

[1]We do not recount the facts except as necessary for our disposition.

[2]Zamora appealed the grant of summary judgment, and this court affirmed insofar as the district court's order compelled specific performance. *See Zamora v. Klein*, No. 86293-COA, 2024 WL 1268513 (Nev. Ct. App. Mar. 22, 2024) (Order of Affirmance).

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and costs upon the filing of a bill of costs and memorandum of attorney fees (memorandum), but instead argued that the district court erred in awarding Klein summary judgment for various reasons. The district court denied Zamora's motion and instructed Klein to submit his memorandum by April 19.

Klein's memorandum requested $104,549.50 in attorney fees and $7,800.85 in costs. The attached affidavit of one of Klein's attorneys of record averred that "[t]he attorney fees are reasonable in light of the amount of work, . . . the research and investigation required . . . and length of time [spent on the matter]," and "[t]hat the fees and costs incurred in the prosecution of this matter were essential to litigate this matter." Also attached to the memorandum were points and authorities explaining that Klein was entitled to attorney fees and costs under section 26 of the RPA,[3] and applying the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), to the work done in this case by his attorneys of record. Finally, Klein also provided nearly 200 pages of documentation concerning the fees and costs including billing statements, itemized memoranda, receipts, and invoices.

Zamora opposed Klein's memorandum and filed a countermotion seeking NRCP 59(e) and 60(b)(4) relief from the district

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[3]That section of the RPA provided, in pertinent part,

> Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof . . . then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including . . . reasonable attorney's fees and costs.

court's order granting summary judgment, to the extent that it awarded Klein attorney fees and costs.[4] Specifically, Zamora argued that Klein did not request attorney fees and costs in his motion for summary judgment, and therefore that the district court erred in awarding fees and costs in its order granting the motion. Zamora also argued that Klein's memorandum was insufficient in several ways and did not warrant an award of attorney fees and costs.

The district court held a hearing on Klein's request for attorney fees and costs, where it explained that Klein's memorandum was timely filed on April 19 in accordance with the district court's order denying Zamora's motion for reconsideration. The district court further explained that it found Klein's requested fees proper as to the work performed by Klein's attorneys, but that it would not award fees for the work of non-attorneys. Additionally, the district court found that Klein was not entitled to costs for interest and Westlaw searches, but that Klein otherwise included sufficient documentation to support his remaining costs. In turn, the district court entered an order granting Klein $98,462.50 in attorney fees and $3,605.39 in costs. While the district court's order did not expressly mention the *Brunzell* factors, these factors were analyzed in Klein's memorandum for fees and costs; and the minutes of the hearing and hearing transcript suggest that the court found the *Brunzell* factors were met. This appeal followed.

On appeal, Zamora raises several arguments, which we consolidate into four main contentions. First, Zamora argues that Klein's

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[4]Under NRCP 59(e), a district court may alter or amend its judgment, and under NRCP 60(b)(4), a district court may grant a party relief from a final judgment if that judgment is void.

award of attorney fees and costs was improper because Klein did not request fees and costs in his summary judgment motion. Second, Zamora argues that Klein waived his right to attorney fees and costs because he failed to timely request attorney fees under NRCP 54(d)(2) and costs under NRS 18.110(1). Third, Zamora argues that Klein's memorandum was not sufficient to support his award of attorney fees and costs. Fourth, Zamora argues that substantial evidence does not support the district court's award of attorney fees and costs. We address each in turn.

The district court did not abuse its discretion in denying Zamora's request for relief under NRCP 60(b)(4) because Klein subsequently timely filed a motion for attorney fees under NRCP 54(d)(2) and a memorandum of costs under NRS 18.110

Zamora argues that the district court erred in awarding Klein attorney fees and costs in its order granting summary judgment because Klein did not request them in his summary judgment motion. Thus, Zamora contends that portion of the district court's order was void and thus that the district court abused its discretion in denying his post-judgment request for relief under NRCP 59(e) and NRCP 60(b)(4).[5] Zamora further argues that the district court abused its discretion in its post-judgment order awarding Klein attorney fees and costs because Klein did not otherwise timely file a motion for attorney fees under NRCP 54(d)(2) as required.

Klein, in turn, argues that, although he did not request attorney fees and costs in his motion for summary judgment, the district court was

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[5]We note that Zamora filed his countermotion for relief under NRCP 59(e) several months after the district court entered its order granting Klein summary judgment. Therefore, Zamora's countermotion was untimely insofar as it requested that the district court's order be altered or amended under NRCP 59(e), as a request for relief under NRCP 59(e) must be "filed no later than 28 days after service of written notice of entry of judgment."

entitled to grant all relief that it found to be proper in rendering judgment under NRCP 54(c), regardless of whether Klein expressly requested them in his motion.[6] Additionally, Klein argues that he was not required to move for attorney fees under NRCP 54(d)(2) because the RPA explicitly provided that the prevailing party was entitled to attorney fees, and that he otherwise complied with the district court's order to submit a memorandum.[7]

While the district court arguably erred in making an award of reasonable costs and attorney fees in its order without a request for costs and fees by Klein, *see Renown Reg'l. Med. v. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014) (holding that district courts may not sua sponte grant summary judgment on issues that were not raised in a request for summary judgment), we nevertheless conclude that such error was

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[6]NRCP 54(c) provides, in pertinent part, "[e]very other final judgment [besides default judgment] should grant the relief to which each party is entitled, even if the party has not demanded such relief in its pleadings." We note that Klein did include costs and attorney fees in the prayer for relief in his complaint, even though he did not request them in his summary judgment motion.

[7]As a threshold matter, we reject this argument insofar as Klein relies on *Oella Ridge Trust v. Silver State Schools Credit Union*, 137 Nev. 760, 500 P.3d 1253 (2021). There, the Nevada Supreme Court concluded that, where a deed of trust provided that attorney fees were automatically added to the debt needed to pay off the deed, a party did not have to file a motion requesting those fees to be added to the debt. *Id.* at 762-63, 500 P.3d at 1255-56. However, the supreme court explained that, had the prevailing party wanted to hold the losing party personally liable for attorney fees, it would have had to move for those fees under NRCP 54(d)(2). *Id.* at 764 n.3, 500 P.3d at 1256 n.3. Thus, because Klein sought "an award of attorney fees within the confines of the district court," he was required to file a motion for fees under NRCP 54(d)(2). *Id.* at 760, 500 P.3d at 1254.

immaterial because Klein timely requested costs and fees following the entry of judgment as directed by the district court. *Cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Specifically, we conclude that Klein, at the district court's direction after the grant of summary judgment, timely submitted a request for attorney fees under NRCP 54(d)(2) and costs under NRS 18.110(1) pursuant to a bill of costs and memorandum of attorney fees, which could properly be considered by the district court.

Under NRCP 54, "[a] claim for attorney fees must be made by motion," and "filed no later than 21 days after written notice of entry of judgment is served." NRCP 54(d)(2)(A), (B)(i). The motion must include "the judgment and the statute, rule, or other grounds entitling the movant to the award," and "the amount sought or provide a fair estimate of it." NRCP 54(d)(2)(B)(ii)-(iii). Additionally, the motion must be supported by "counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable; documentation concerning the amount of fees claimed; and points and authorities addressing the appropriate factors to be considered by the court in deciding the motion." NRCP 54(d)(2)(B)(v).

Although Klein did not file a "motion" for fees, we conclude that the district court properly construed Klein's "Bill of Costs and Memorandum of Attorney's Fees" as a motion for attorney fees under NRCP 54(d)(2). *See Ohfuji Invs., LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *2 (Nev. Mar. 15, 2018) (Order of Affirmance) (considering a respondent's memorandum of attorney fees as a motion under NRCP 54(d)(2)). At the outset, Zamora provides no authority to support that the district court erred in treating Klein's memorandum of fees and costs as a motion under NRCP 54(d)(2). And Zamora even refers to Klein's memorandum as a "Motion for

Fees" in his briefing on appeal. *See id.* Therefore, we conclude that the district court properly construed Klein's memorandum of attorney fees as a motion for attorney fees under NRCP 54(d)(2), and thus we are unpersuaded by Zamora's argument on appeal to the contrary. *See id.*

We also conclude that Klein's memorandum was timely. While a motion requesting attorney fees originally had to be filed within 21 days of the entry of the district court's order granting summary judgment, the district court was able to extend Klein's time to file his memorandum prior to that deadline. *See* NRCP 54(d)(2)(C) (allowing district courts to grant an extension to file a motion under NRCP 54(d)(2) so long as the party's original 21 days to file the motion has not expired). Because a motion for reconsideration that requests a substantive change to a judgment tolls the time to file a motion for fees, it also tolls a district court's time to grant an extension. *See Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 590, 356 P.3d 1085, 1090 (2015) (holding that a motion tolling a party's time to appeal also tolls a party's time to file a motion for attorney fees); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (holding that if a motion for reconsideration requests a substantive change to a final judgment, it functions as a tolling motion under NRCP 59(e)). Therefore, as applied to the circumstances of this case, the district court timely extended Klein's deadline to file his request for attorney fees, here in the form of a memorandum versus a motion, until April 19 in its order denying Zamora's motion for reconsideration, with which Klein then timely complied.

Additionally, while NRS 18.110(1) states that a party must file a memorandum of costs within five days of the entry of judgment, the Nevada Supreme Court has explained that "the five-day period [under NRS

18.110(1)] is not jurisdictional and the district court has discretion to reach the merits of an untimely motion for costs." *Vill. Builders 96, L.P. v. U.S. Lab'ys, Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). Thus, we reject Zamora's argument that Klein's memorandum of costs was untimely because Zamora fails to cogently argue why the district court abused its discretion in considering Klein's untimely memorandum of costs. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Accordingly, both the motion for attorney fees and memorandum of costs were timely and the district court did not err in denying the request for relief under NRCP 60(b)(4).

The district court did not abuse its discretion in awarding Klein attorney fees

We review "an award of attorney fees for an abuse of discretion and will affirm an award that is supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (internal citation omitted). In *Brunzell*, the Nevada Supreme Court set forth four factors district courts must consider when awarding attorney fees, including "(1) the qualities of the advocate . . . ; (2) the character of the work to be done . . . ; (3) the work actually performed by the lawyer . . . ; [and] (4) the result" of the litigation. 85 Nev. at 349, 455 P.2d at 33. In determining the amount of attorney fees to award, district courts may utilize any reasonable method, "'so long as the requested amount is reviewed in light of the' *Brunzell* factors." *Logan*, 131 Nev. at 266, 350 P.3d at 1143 (quoting *Haley v. Eighth Jud. Dist. Ct.*, 128 Nev. 171, 178, 273 P.3d 855, 860 (2012)). While it is preferred that district courts expressly analyze each factor set forth in *Brunzell*, "express findings on each factor are not necessary;" rather, district

courts "need only demonstrate that [they] considered the required factors, and the award must be supported by substantial evidence." *Id.*

In the present case, we conclude that the district court did not abuse its discretion in awarding Klein attorney fees. As a threshold matter, we note that Zamora fails to argue why the fee amount was unreasonable, but instead, summarily states that the order was not supported by substantial evidence. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Here, Klein's memorandum of attorney fees contained all the requirements set forth under NRCP 54(d)(2)(B). Specifically, the memorandum stated which "judgment"—the district court's order granting him summary judgment—and "other grounds"—section 26 of the RPA—entitled him to attorney fees, as required by NRCP 54(d)(2)(B)(ii). The memorandum also stated the amount of attorney fees sought, as required by NRCP 54(d)(2)(B)(iii). Finally, the memorandum was supported by the documents set forth under NRCP 54(d)(2)(B)(v), including an affidavit from Klein's attorney swearing the fees were necessary and reasonable; extensive documentation concerning the fees; and points and authorities addressing the appropriate factors to be considered by the district court.[8] Thus, Klein's motion for

[8]We reject Zamora's argument that Klein's bill of costs and memorandum of attorney fees was insufficient, including Zamora's contentions that that the attorney's affidavit had to contain its own analysis of the *Brunzell* factors, or that the other attorney of record was required to submit her own independent affidavit, also with another independent analysis of the *Brunzell* factors, insofar as Zamora points to no authority supporting his contentions. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant

attorney fees met the requirements under NRCP 54(d)(2) and included sufficient documentation supporting the requested fees.

Further, while the district court's order did not specifically include an analysis of the *Brunzell* factors, the order stated that the court considered "the pleadings and papers on file herein," which necessarily included Klein's motion applying the *Brunzell* factors to justify an award of attorney fees. *See Bo Yang v. Haiming*, No. 77581-COA, 2019 WL 7171256, at *2 (Nev. Ct. App. Dec. 23, 2019) (Order of Affirmance) (affirming a district court's order awarding attorney fees that lacked any mention of the *Brunzell* factors because the order stated that it considered the respondent's affidavit, which analyzed the *Brunzell* factors). Additionally, the transcript and minutes of the parties' hearing on fees and costs further show that the district court considered the *Brunzell* factors when making its determination as to the amount of fees to award and that the court did not award the entire amount of the fees requested. *See id.* Thus, we conclude that substantial evidence supports the district court's award of attorney fees as the court considered the *Brunzell* factors and supporting documentation, and therefore did not abuse its discretion in awarding Klein $98,462.50 in fees. Nevertheless, we caution the district court to include the legal basis for an attorney fee award and *Brunzell* findings in its order.

The district court did not abuse its discretion in awarding Klein costs

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authority). The plain language of NRCP 54(d)(2)(B)(v) suggests that an attorney must merely attach an affidavit "swearing that the fees were actually and necessarily incurred and were reasonable," along with separate "points and authorities addressing the appropriate factors to be considered by the court," such as the *Brunzell* factors. Because Klein's memorandum for attorney fees included all the requirements set forth under NRCP 54(d)(2)(B), we conclude that Zamora's arguments as to the insufficiency of Klein's memorandum are without merit.

Zamora argues that the district court abused its discretion in awarding Klein costs because Klein did not "provide support and/or documentation and/or a memorandum of costs (with a full breakdown of the same) to demonstrate that all of the costs sought" were reasonable, actually incurred, and necessary to the litigation. Klein argues in response that he included sufficient documentation to support the district court's award of costs.

A district court's award of costs is reviewed for an abuse of discretion. *Frazier v. Drake*, 131 Nev. 632, 637, 357 P.3d 365, 369 (Ct. App. 2015). Under NRS 18.020(1), "costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered . . . in an action for the recovery of real property or a possessory right thereto." NRS 18.110(1) provides that a prevailing party "must file with the clerk, and serve a copy upon the adverse party . . . a memorandum of the items of the costs in the action or proceeding." A party requesting costs must show that the costs were actually incurred and necessary to the litigation. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 386 (1998). Generally, this requires a party to submit itemized memoranda setting forth its requested costs, along with justifying documentation showing that the costs were actually incurred and demonstrating how they were necessary to the action. *Id.* at 1352-53, 971 P.2d at 386. "Justifying documentation means 'something more than a memorandum of costs.'" *In re DISH Network Derivative Litig.*, 133 Nev. 438, 452, 401 P.3d 1081, 1093 (2017) (quoting *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015)).

We conclude that the district court did not abuse its discretion in awarding Klein costs because Klein provided sufficient documentation to support the award. Specifically, Klein included an itemized memorandum of costs and extensive documentation, consisting of nearly 100 pages of invoices and receipts, demonstrating how the costs were actually incurred and necessary to the litigation. The Nevada Supreme Court has deemed similar documentation sufficient to affirm an award of costs. *See Cadle*, 131 Nev. at 122 n.5, 345 P.3d at 1055 n.5 (determining that itemized memoranda and receipts or invoices, taken together, provided sufficient documentation to support an award of costs). Therefore, we conclude that substantial evidence supported the district court's award of costs, and therefore the court did not abuse its discretion in awarding Klein $3,605.39 in costs. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[9]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jacob A. Reynolds, District Judge
Paul S. Lychuk, Settlement Judge
V3 Law, LLC
O'Reilly Law Group
Eighth District Court Clerk

[9]Insofar as Zamora raises other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not present a basis for relief.