SUMMARY
September 14, 2023

2023COA79

No. 22CA0463, *Gomez v. Walker* — Courts and Court Procedure — Limitation of Actions — General Limitation of Actions Three Years; Computation of Time

A division of the court of appeals holds that section 2-4-108(2), C.R.S. 2023, does not operate to extend the statute of limitations established by section 13-80-101, C.R.S. 2023, to the next business day when the limitations period ends on a Saturday, Sunday, or legal holiday.

COLORADO COURT OF APPEALS **2023COA79**

Court of Appeals No. 22CA0463
City and County of Denver District Court No. 19CV32345
Honorable Michael J. Vallejos, Judge
Honorable Stephanie L. Scoville, Judge

Carmelita Gomez,

Plaintiff-Appellant,

v.

Ryan Walker,

Defendant-Appellee.

JUDGMENT AND ORDER AFFIRMED,
AND CASE REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE LUM
Bernard* and Graham*, JJ., concur

Prior Opinion Announced July 13, 2023, WITHDRAWN
Petition for Rehearing GRANTED

Announced September 14, 2023

Law Offices of John D. Halepaska, John D. Halepaska, Denver, Colorado, for Plaintiff-Appellant

Jeremy R. Maline & Associates, Andrew M. LaFontaine, Westminster, Colorado, for Defendant-Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 Plaintiff, Carmelita Gomez, appeals the district court's dismissal of her complaint against defendant, Ryan Walker. She contends that the district court erred by dismissing her complaint as untimely and awarding Walker his attorney fees and costs. Because we determine that section 2-4-108(2), C.R.S. 2023, does not operate to extend the statute of limitations period in this case, we affirm the judgment. We also affirm the order awarding Walker attorney fees and costs.

I. Background

¶ 2 Gomez and Walker were involved in a car crash on June 15, 2016. Gomez filed her complaint on June 17, 2019, alleging that Walker negligently collided with her, causing her to suffer injuries.

¶ 3 Walker moved to dismiss Gomez's complaint under C.R.C.P. 12(b)(5) because it was filed beyond the applicable three-year statute of limitations period prescribed by section 13-80-101(1)(n)(I), C.R.S. 2023.[1] Because the June 15, 2019, limitations

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[1] While a statute of limitations is an affirmative defense, a defendant may raise it in a C.R.C.P. 12(b)(5) motion "where the bare allegations of the complaint reveal that the action was not brought within the required statutory time period." *Wagner v. Grange Ins. Ass'n*, 166 P.3d 304, 307 (Colo. App. 2007) (quoting *SMLL, L.L.C. v. Peak Nat'l Bank*, 111 P.3d 563, 564 (Colo. App. 2005)).

deadline fell on a Saturday, Gomez maintained that the court should accept her June 17, 2019, filing because that day was the next business day that the court was open.

¶ 4 Initially, the district court agreed with Gomez, concluding that the limitations period ended on June 17, 2019, and it denied Walker's motion to dismiss. However, in April 2021, a division of this court published *Morin v. ISS Facility Services, Inc.*, 2021 COA 55, which had a similar fact pattern. In *Morin*, the division held that C.R.C.P. 6(a)(1) — which provides for the extension of a time period when the period ends on a Saturday, Sunday, or legal holiday — does not extend a statutory limitations period that expires on a weekend. *Morin*, ¶¶ 4, 13, 15. Based on *Morin*, Walker filed a "renewed motion to dismiss." Gomez opposed the motion, asserting that section 2-4-108(2) extended the applicable statute of limitations and that *Morin* did not address that statute.

¶ 5 Relying on *Morin*, the district court granted the renewed motion and dismissed Gomez's claims as untimely. Gomez moved for reconsideration, which the district court denied. Walker moved for, and was granted, attorney fees and costs. Gomez appeals.

II. Statute of Limitations

¶ 6 The parties agree that (1) Gomez's claims were subject to the three-year statute of limitations prescribed by section 13-80-101(1)(n)(I); (2) the limitations period began to run on June 15, 2016, when the collision occurred; and (3) June 15, 2019 — the end of the three-year period — was a Saturday. Thus, the only question before us is whether section 2-4-108(2), which generally acts to extend statutory time periods that expire on a Saturday, Sunday, or legal holiday, applies to the statute of limitations in this case. We conclude that it does not.

A. Standard of Review and Applicable Law

¶ 7 "We review de novo a district court's dismissal of an action based on a statute of limitations defense." *Williams v. Crop Prod. Servs., Inc.*, 2015 COA 64, ¶ 3. The issues raised in this appeal also concern statutory interpretation, which we review de novo. *See Fogg v. Macaluso*, 892 P.2d 271, 273 (Colo. 1995).

¶ 8 In construing a statute, our primary task is to give effect to the General Assembly's intent, which we do by first looking to the plain language of the statute. *Elder v. Williams*, 2020 CO 88, ¶ 18. We construe words and phrases according to their common usage

unless they have acquired a technical or particular meaning, whether by legislative definition or otherwise. § 2-4-101, C.R.S. 2023; *Ma v. People*, 121 P.3d 205, 210 (Colo. 2005). In addition, we must construe the statute as a whole, giving its terms consistent, harmonious, and sensible effect, while avoiding an illogical or absurd result. *Elder*, ¶ 18. "If the statute is unambiguous, then we apply it as written and need not resort to other rules of statutory construction." *Id.*

B. Sections 2-4-108(2) and 13-80-101(1)

¶ 9 As an initial matter, we agree with Gomez's contention that *Morin* does not control, or even address, whether section 2-4-108(2) extends a statute of limitations period that expires on a weekend. While *Morin* concluded that similar language in C.R.C.P. 6(a)(1) did not extend a limitations period under similar facts, its holding was premised on express language limiting the applicability of C.R.C.P. 6(a)(1) to periods of time "prescribed or allowed by" the rules of civil procedure.[2] *Morin*, ¶ 15 (quoting C.R.C.P. 6(a)(1)). *Morin* did not

[2] The *Morin* division also rejected the plaintiff's argument that section 24-11-110, C.R.S. 2023, applied to extend the limitations period. Gomez does not raise the applicability of that section in her appeal.

consider the effect of section 2-4-108(2), which — unlike C.R.C.P. 6(a)(1) — specifically applies to statutory time periods.[3]

¶ 10 Sections 2-4-101 through 2-4-114, C.R.S. 2023, govern how the words and phrases of statutes are to be construed.

¶ 11 Section 2-4-108(2) provides as follows: "If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday." "Period" is defined as "a portion of time determined by some recurring phenomenon." Merriam-Webster Dictionary, https://perma.cc/MXF4-N7VT; *see also Veith v. People*, 2017 CO 19, ¶ 15 (noting that courts may consult recognized dictionaries to ascertain a term's ordinary meaning). In the directly preceding sections, three different time periods are defined: a week,

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[3] We reject Walker's contention that, because section 2-4-108(2), C.R.S. 2023, was raised in the *Morin* briefing, it was "considered" by the *Morin* division in reaching its holding. First, section 2-4-108(2) was raised only in the *Morin* reply brief, and we do not consider arguments raised for the first time in a reply brief. *See Meadow Homes Dev. Corp. v. Bowens*, 211 P.3d 743, 748 (Colo. App. 2009). Second, even if section 2-4-108(2) had been properly raised, an opinion cannot have precedential value as to an issue it did not decide. *Cf. Romer v. Bd. of Cnty. Comm'rs*, 956 P.2d 566, 570 n.4 (Colo. 1998) (where a prior decision did not address standing, it did not have precedential value as to that issue).

a month, and a year. §§ 2-4-105 to -107, C.R.S. 2023. A year is "a calendar year." § 2-4-107.

¶ 12 "Any" means "one or some indiscriminately of whatever kind." Merriam-Webster Dictionary, https://perma.cc/J97F-NUD7. The plain meaning of "any period" is inclusive; it does not exclude a certain period. Therefore, the plain language of section 2-4-108(2), in conjunction with the context of the immediately preceding sections, unambiguously declares that, if a period described in years (or any other recurring portion of time) ends on a Saturday, Sunday, or legal holiday, the period is extended to the next day that is not a Saturday, Sunday, or legal holiday.

¶ 13 Section 13-80-101(1) provides that certain tort actions, including those arising from car accidents, must be brought "within three years after the cause of action accrues, and not thereafter." Thus, section 13-80-101(1) describes a "period" of three years, which begins on the date the cause of action accrues and — under the definition of a "year" in section 2-4-107 — ends on the third calendar anniversary of that date.

¶ 14 It is tempting to give effect to both statutes by simply applying the language of section 2-4-108(2) to extend Gomez's three-year

limitations period — which ended on a Saturday — to the next date that was not a Saturday, Sunday, or legal holiday. And if section 13-80-101(1) stated only that the claim must be brought "within three years after the cause of action accrues," it would be possible to harmonize the statutes in this manner. *See People v. Steen*, 2014 CO 9, ¶ 9 (a court is obligated to construe legislative acts to avoid inconsistency).

¶ 15 However, we must also give effect to the phrase "and not thereafter." *Wolford v. Pinnacol Assurance*, 107 P.3d 947, 951 (Colo. 2005) ("[W]e must interpret a statute to give effect to all its parts and avoid interpretations that render statutory provisions redundant or superfluous."). When read in conjunction with the rest of section 13-80-101(1), the plain meaning of these words is that the action cannot be filed after the three-year anniversary of the date the cause of action accrued. Harmonizing the statutes by applying section 2-4-108(2) to extend the three-year anniversary date either renders the phrase "and not thereafter" redundant to the phrase "within three years" or reads "and not thereafter" out of the statute entirely. Therefore, we conclude that the statutes cannot be harmonized and are in conflict.

¶ 16 "If giving effect to both statutes is not possible, the more specific provision prevails over a more general provision." *Morin*, ¶ 10; *see also* § 2-4-205, C.R.S. 2023. "A general provision, by definition, covers a larger area of the law. A specific provision, on the other hand, acts as an exception to that general provision, carving out a special niche from the general rules to accommodate a specific circumstance." *Martin v. People*, 27 P.3d 846, 852 (Colo. 2001).

¶ 17 Section 2-4-108(2) is a general provision because it facially applies to all time periods described by statute. In contrast, section 13-80-101 applies only to the types of actions identified in subsections (1)(a) through (1)(n) of that statute. Through the phrase "and not thereafter," section 13-80-101(1) acts as an exception to the general rule that statutory time periods are extended when they expire on a weekend or legal holiday. *Cf. People v. Fransua*, 2016 COA 79, ¶ 21 (describing section 2-4-108(1), regarding the computation of a period of days, as a "generic statute of general applicability" and concluding it must give way to a more specific statute regarding the calculation of a period of presentence confinement), *aff'd*, 2019 CO 96.

¶ 18 Even if we were unable to determine which statute is more specific, section 13-80-101(1) would prevail because it is more recent. Section 2-4-206, C.R.S. 2023, provides that "[i]f statutes enacted at the same or different sessions of the general assembly are irreconcilable, the statute prevails which is latest in its effective date." "This directive does not differentiate between an initial enactment and an enactment subsequent to a repeal for purposes of a statute's effective date." *Jenkins v. Panama Canal Ry. Co.*, 208 P.3d 238, 243 (Colo. 2009). Here, section 2-4-108(2) was enacted in 1973, whereas section 13-80-101(1) was enacted in 1986. *See* Ch. 406, sec. 1, § 135-1-108, 1973 Colo. Sess. Laws 1423;[4] Ch. 114, sec. 1, § 13-80-101, 1986 Colo. Sess. Laws 695. We must "assume the General Assembly is aware of its past enactments, and thus . . . conclude that by passing an irreconcilable statute at a later date, the legislature intended to alter the prior statute." *Jenkins*, 208 P.3d at 242.

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[4] Section 2-4-108 was numbered 135-1-108 in the 1973 session laws. It was renumbered to its current location in 1974 with the adoption of the 1973 C.R.S. codification. The renumbering does not change the effective date.

C. Equitable Tolling

¶ 19 We reject Gomez's contention that principles of equity apply to extend the statute of limitations period in this matter.[5]

¶ 20 "At times . . . equity may require a tolling of [a] statutory period where flexibility is required to accomplish the goals of justice." *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096 (Colo. 1996). Colorado has applied the doctrine of equitable tolling "where the defendant's wrongful conduct prevented the plaintiff from asserting [the] claims in a timely manner" and where "extraordinary circumstances make it impossible for the plaintiff to file . . . within the statutory period." *Id.* at 1096-97.

¶ 21 While Gomez contends, without citation to the record, that Walker engaged in wrongful conduct, she does not assert that Walker's conduct prevented her from timely filing her claim.

¶ 22 The heart of Gomez's contention is that she should be entitled to rely on her good faith, erroneous interpretation of the interplay between sections 2-4-108(2) and 13-80-101(1). But while we

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[5] The parties disagree about whether this issue was preserved for our review. Because we determine that equitable tolling does not apply, we need not resolve their dispute.

acknowledge that this is an issue of first impression and that Gomez's mistaken interpretation is not completely unreasonable, these are not the extraordinary circumstances contemplated by the doctrine of equitable tolling. A party's mistaken legal analysis is not outside of the party's control, nor does it render compliance with the statutory period "impossible." *See Dean Witter*, 911 P.2d at 1097.

¶ 23 Accordingly, we conclude that Gomez's claim is time barred.

III. Construction of "Renewed Motion to Dismiss"

¶ 24 Gomez contends that the district court erred by construing Walker's "renewed motion to dismiss" as one to reconsider its original order denying dismissal under Rule 12(b)(5) rather than as a motion for judgment on the pleadings under Rule 12(c). While resolution of this issue does not affect the outcome of our statutory analysis, it bears on whether Walker is entitled to attorney fees under section 13-17-201, C.R.S. 2023. *See infra* Part IV.C.

¶ 25 Walker contends that Gomez did not preserve this claim for review because she did not raise her Rule 12(c) argument until her motion to reconsider. And, Walker continues, although the district court ruled on Gomez's Rule 12(c) argument, its ruling was

untimely and thus cannot form the basis for appellate review.[6] We agree.

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[6] Regarding Gomez's procedural objections to the renewed motion to dismiss, Walker asserted in his answer brief that the issue was unpreserved because Gomez did not raise her argument until her motion to reconsider. Walker's preservation argument did not address the untimeliness of the court's order. We also note that Walker quoted from the untimely order to support his substantive arguments on pages 13, 14, 15, and 18 of his answer brief. However, we acknowledge that Walker made a single reference to the order's untimeliness in a separate section of his answer brief in a footnote that says, "The motion for reconsideration was not ruled on within 63 days, and thus it was denied by operation of C.R.C.P. 59(j). The district court's written order nevertheless holds persuasive value."

In his petition for rehearing, Walker directly addresses the effect of the untimeliness of the reconsideration order on the issue of preservation. While we do not address arguments raised for the first time in a petition for rehearing, *see People v. Gallegos*, 260 P.3d 15, 29 (Colo. App. 2010), we conclude that Walker's argument—that Gomez's 12(c) contention was unpreserved because it was first raised in the motion to reconsider *and* that the order addressing that argument was untimely and therefore void—was sufficiently raised in the answer brief for us to consider it now.

We modify our opinion because the petition for rehearing raises a valid preservation argument that the division overlooked and because we have an independent affirmative obligation to verify preservation. *People v. Tallent*, 2021 CO 68, ¶ 11. However, we note that Judges are not "required to hunt down arguments [the parties] keep camouflaged," *William v. Eastside Lumberyard & Supply Co.*, 190 F. Supp. 2d, 1104, 1114 (S.D. Ill. 2001), or "speculate as to what a party's argument might be," *People v. Palacios*, 2018 COA 6M, ¶ 29 (quoting *Beall Transp. Equip. Co. v. S. Pac. Transp.*, 64 P.3d 1193, 1196 n.2 (Or. Ct. App. 2003)).

¶ 26 Ordinarily, arguments raised for the first time in a post-trial motion are unpreserved. *Briargate at Seventeenth Ave. Owners Ass'n v. Nelson*, 2021 COA 78M, ¶ 66. But "where a trial court addresses an argument, whether that argument was preserved is moot." *In re Estate of Ramstetter*, 2016 COA 81, ¶ 71 n.7.

¶ 27 After the district court dismissed Gomez's action as untimely, Gomez filed a post-trial motion under C.R.C.P. 59.[7] In the motion, Gomez argued for the first time that the district court should have construed Walker's "renewed motion to dismiss" as a motion for judgment on the pleadings under C.R.C.P. 12(c) rather than a motion to dismiss under C.R.C.P. 12(b)(5). The court entered an order denying Gomez's motion some eighty days later. In the order, the court briefly addressed and then rejected Gomez's argument.

¶ 28 While the district court's ruling on Gomez's Rule 12(c) argument would normally allow us to review that otherwise-unpreserved contention, the ruling was void. The district court was required to rule on Gomez's motion within sixty-three days of the date it was filed but failed to do so. C.R.C.P. 59(j). Gomez's motion

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[7] Though titled as a "motion to reconsider," Gomez acknowledged that the motion would be considered under C.R.C.P. 59.

was thus denied by operation of law, and the court thereafter lost jurisdiction to act on it. *De Avila v. Est. of DeHerrera*, 75 P.3d 1144, 1146 (Colo. App. 2003). Effectively, the district court never ruled on Gomez's Rule 12(c) argument; therefore, it is unpreserved, and we will not review it.[8] *Briargate*, ¶ 66.

¶ 29 Gomez also asserts that the district court should have denied Walker's renewed motion to dismiss because it was procedurally and legally deficient. But even if Walker's motion was defective, "[a] trial court has inherent authority to reconsider its own rulings" and "may exercise this authority any time before it enters a final judgment." *Graham v. Zurich Am. Ins. Co.*, 2012 COA 188, ¶ 18. Because the district court had the authority to reconsider its prior order in the absence of any motion at all, we discern no reversible error.

IV. Attorney Fees and Costs

¶ 30 Gomez contends that the district court did not have jurisdiction to enter an award of attorney fees and costs to Walker

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[8] Likewise, we will not review Gomez's argument that the court should have construed Walker's motion as one for summary judgment because that argument was not raised at any stage before the district court.

after it dismissed her complaint. And even if it did, she argues that the court abused its discretion by entering an unreasonable award. We disagree.

A. Additional Background

¶ 31 After the court dismissed Gomez's complaint, Walker moved for attorney fees under section 13-17-201 as well as costs under C.R.C.P. 54(d) and sections 13-17-202 and 13-16-105, C.R.S. 2023.

¶ 32 Walker requested a total of $30,281.25 in attorney fees. The billing rate for both Walker's attorney and the attorney's paralegal was $125 per hour. Gomez did not contest the reasonableness of the hourly rate but did contest the number of hours spent on specific tasks, including drafting the original and renewed motions to dismiss and replies in support thereof; reviewing files, medical records, disclosures, and discovery; preparing for depositions; preparing discovery responses; and compiling the affidavit of attorney fees.

¶ 33 Walker also requested a total of $41,501.12 in costs, mostly for fees paid to Biodynamic Research Corporation (BRC), which provided expert witness services relating to accident reconstruction and causation, and to Dr. Hal Wortzel, an independent medical

examiner. Gomez's primary arguments before the district court were that (1) the majority of the BRC reports was "filler," "boiler plate," or "generalized" material that was present in all reports and did not require "thought or analysis"; and (2) BRC did not engage in "true analysis," but rather reached a "foregone" conclusion. Similarly, Gomez asserted that Dr. Wortzel's report was "(nearly) cookie cutter identical" to reports he prepared in other cases. Gomez did not request a hearing relating to the reasonableness of the attorney fees or expert costs.

B. Standard of Review and Applicable Law

¶ 34 Section 13-17-201 provides that a defendant "shall" be awarded reasonable attorney fees when a tort action is dismissed "on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure." § 13-17-201(1).

¶ 35 An attorney fee award must be reasonable. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991, 998 (Colo. App. 2011). "The reasonableness of attorney fees is a question of fact for the district court, and its ruling will not be reversed on appeal unless it is 'patently erroneous' or 'unsupported by the evidence.'" *Id.*

(quoting *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140, 152 (Colo. App. 2003)).

> A court makes an initial estimate of a reasonable attorney fee by calculating the lodestar amount. The lodestar amount represents the number of hours reasonably expended on the case, multiplied by a reasonable hourly rate. The court's calculation of the lodestar amount carries with it a strong presumption of reasonableness.

Payan v. Nash Finch Co., 2012 COA 135M, ¶ 18 (citations omitted).

¶ 36 Rule 54(d) and sections 13-17-202 and 13-16-105 all entitle Walker to an award of costs. The amount of costs awarded must be reasonable, and we will not disturb a court's findings as to reasonableness absent a showing of an abuse of discretion. *Danko v. Conyers*, 2018 COA 14, ¶¶ 68, 70.

¶ 37 Costs include reasonable expert witness fees. *See Clayton v. Snow*, 131 P.3d 1202, 1203 (Colo. App. 2006). In exercising its discretion to determine whether such fees are reasonable, a district court must answer two questions: "1. Were the expert's services reasonably necessary to the party's case? 2. Did the party expend a reasonable amount for the expert's services?" *Danko*, ¶ 71. A

court's findings "must include an explanation of whether and which costs are deemed reasonable." *Id.* at ¶ 72 (citation omitted).

C. Analysis

¶ 38 We first reject Gomez's contention that the district court was deprived of subject matter jurisdiction to award attorney fees and costs due to the expiration of the statute of limitations period. "[I]n civil actions, an expired statute of limitations is simply an affirmative defense that deprives the plaintiff of a remedy. It does not deprive the trial court of jurisdiction." *Grear v. Mulvihill*, 207 P.3d 918, 922 (Colo. App. 2009).[9]

¶ 39 Regarding attorney fees, the district court determined that the number of hours expended was reasonable in relation to the work performed, though it deducted one four-hour charge as not properly shifted to Gomez. On appeal, Gomez largely repeats the arguments she made before the district court in claiming the hours were

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[9] Although the district court construed Walker's "renewed" motion as one to reconsider its prior order denying Walker's motion to dismiss under Rule 12(b)(5), the court stated that it dismissed the case "pursuant to C.R.C.P. 12(b)(1)" because it was divested of jurisdiction due to the lapse of the statute of limitations. To the extent the district court concluded it lacked jurisdiction to hear Gomez's claim, it erred.

excessive, and she asserts that the district court abused its discretion by finding those hours "reasonable." Because Gomez did not request a hearing, the record evidence relating to reasonableness is documentary in nature: the fee affidavits; Walker's motion and renewed motion to dismiss, along with the replies in support thereof; Gomez's expert witness disclosures; Walker's discovery responses; a deposition transcript; and certain communications between the parties relating to discovery disputes. Having reviewed these documents and Gomez's objections to the hours spent on them, we cannot say that the court's findings of reasonableness relating to these items lack evidentiary support or are "patently erroneous." *Crow*, 262 P.3d at 998 (quoting *Double Oak Constr., L.L.C.*, 97 P.3d at 152).

¶ 40 We note that Gomez also asserts Walker's counsel spent an excessive number of hours on review or preparation of many other documents that are absent from the record. As the appellant, Gomez "is responsible for providing an adequate record to demonstrate her claims of error, and absent such a record, we must presume the evidence fully supports the trial court's ruling." *Clements v. Davies*, 217 P.3d 912, 916 (Colo. App. 2009).

¶ 41 In its order awarding costs, the district court noted that it had reviewed the documentation relating to the experts' charges and concluded that the costs were reasonably necessary to Walker's defense given that the issues of causation and the extent of Gomez's injuries — both matters outside the scope of ordinary juror experience — were hotly contested. The district court also explained that BRC spent 155 hours of work on two expert opinions that involved six professionals at varying hourly rates. While the court deducted twenty hours that it found duplicative, it found the rest of the costs expended on BRC to be reasonable. The court also found that Dr. Wortzel's fees were reasonable and that the hours he spent in preparing his report were reasonably necessary. Ultimately, the district court awarded Walker $38,677.12 in costs.

¶ 42 On appeal, Gomez states only that "the amount of . . . billing for simple reports is plainly unreasonable on its face." Gomez does not explain whether she takes issue with the number of hours spent on the reports or the hourly rates of the professionals, and she does not identify any evidence in the record that would have supported her claim that the expert reports did not reflect

independent analysis but rather were copied from prior reports the experts had submitted in other cases.

¶ 43 Having reviewed the lengthy and detailed BRC report in the record, we cannot say that the costs are facially unreasonable or that the district court abused its discretion. Dr. Wortzel's report is not in the record; therefore, we presume it supports the district court's ruling. *Id.*

¶ 44 Accordingly, we conclude that the district court did not err by awarding Walker his attorney fees and costs, and we affirm that order.

V. Appellate Attorney Fees

¶ 45 We agree with Walker that, because he has successfully defended a dismissal order, he is entitled to recover reasonable attorney fees incurred on appeal. *See Kreft v. Adolph Coors Co.*, 170 P.3d 854, 859 (Colo. App. 2007). Therefore, we remand the case to the district court to determine the amount of Walker's reasonable attorney fees incurred in connection with this appeal. *See* C.A.R. 39.1.

VI. Disposition

¶ 46 The judgment is affirmed, the order for costs and fees is affirmed, and the case is remanded for proceedings consistent with this opinion.

JUDGE BERNARD and JUDGE GRAHAM concur.