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Tracie K. Lindeman

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.W. BENTLEY and MARYANN
BENTLEY, Trustees of the Bentley Family
1995 Trust,

Petitioners.

v.

THE NINTH JUDICIAL DISTRICT
COURT of the State of Nevada, In and For
the County of Douglas, and THE
HONORABLE DAVID R. GAMBLE,
District Court Judge,

Respondents,

AND

DONALD S. FORRESTER; KRISTINA
M. FORRESTER; HALL RANCHES,
LLC, a Nevada limited liability company;
THOMAS J. SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; RONALD R. MITCHELL; and
GINGER G. MITCHELL as Intervenors
In the Matter of the Determination of the
Relative Rights in and to the Waters of
Mott Creek, Taylor Creek, Cary Creek
(aka Carey Creek), Monument Creek, and
Bulls Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg Spring,
Sharpe Spring, Wheeler Creek No. 1,

Supreme Court Case No. 56351

District Court Case No. 08-CV-0363-D

1 Wheeler Creek No. 2, Miller Creek, Beers)
2 Spring, Luther Creek, and Various)
3 Unnamed Sources in Carson Valley,)
4 Douglas Valley, Nevada,)
5 Real Parties-in-Interest)
6

7 **SUPPLEMENTAL OPPOSITION TO VERIFIED BILL OF COSTS**
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26 Senior Deputy Attorney General
27 100 North Carson Street
28 Carson City NV 89701
Attorney for Nevada State Engineer

1 COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the
2 Bentley Family 1995 Trust ("Bentley"), by and through their counsel of record,
3 Michael L. Matuska, Brooke · Shaw · Zumpft, and pursuant to this Court's Order of
4 12 April 2011 Directing Supplemental Briefing, hereby file this Supplemental Opposition
5 to the Verified Bill of Costs filed by the Real Parties-In-Interest.
6

7 Costs should not be taxed absent a specific rule authorizing taxable costs in
8 proceedings for extraordinary relief. There is no such rule. This is why Real Parties-In-
9 Interest moved to tax costs under NRAP 39. However, the provisions of the Nevada Rules
10 of Appellate procedure pertaining to bonding and taxing costs apply to cases on appeal and
11 not to proceedings for extraordinary writs (See NRAP 7, Bond for Costs on Appeal;
12 NRAP 39) ("A party who wants costs taxed shall within 14 days after the entry of
13 judgment – file an itemized and verified bill of costs with the clerk, with proof of
14 service."").
15
16

17 NRAP 39(d) further explains that the Clerk shall provide the itemized statement of
18 costs taxed with the remittitur. Remittitur is the mechanism by which the lower court
19 regains jurisdiction over the matter on appeal. *Buffington v. State*, 110 Nev. 124 (1994).
20 There is no judgment in this case. Also, the lower court was never divested of jurisdiction
21 over the subject matter of the petition for extraordinary relief; hence there is no remitter
22 and no inclusion of taxable costs. This Court even confirmed that there is no remittitur
23 when it issued the Notice in Lieu of Remittitur on 15 April 2011.
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1 Were costs to be taxed as part of proceedings for extraordinary relief, it would have
2 been a very simple matter to include such a rule in Part III of the Nevada Rules of
3 Appellate Procedure which pertains to Extraordinary Writs. The absence of any such
4 reference in Part III, along with the specific language in NRAP 39 explaining how and
5 when costs are taxed in civil appeals after judgment and remittitur, confirms that costs are
6 only taxable in civil appeals.
7

8 Moreover, Petitioners have not demonstrated that the costs they want taxed would
9 be taxable in a civil appeal. NRAP allows copies to be taxed only for “the cost of printing
10 necessary copies of briefs or appendices” This requirement should be compared to
11 Ninth Circuit Court Rule 39-1, which allows copy costs to be taxed only for the required
12 number of briefs plus one (1) extra.
13
14

15 In this case, the Verified Bill of Costs filed by the Real Parties-In-Interest is for
16 1,452 copies. Yet, Real Parties-In-Interest only filed two (2) briefs in these proceedings
17 which total thirty-two (32) pages. By this measure, Real Parties-In-Interest are seeking
18 reimbursement for more than forty-five (45) copies of their briefs. This cannot be
19 considered necessary by any measure. The only other possible explanation is that Real
20 Parties-In-Interest are trying to obtain reimbursement for copies made in the proceedings
21 in the lower court and not for their briefs in this proceeding.
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1 WHEREFORE, this Court should refuse to tax costs based on the Verified Bill of
2 Costs, or at least require a more thorough description of which copies Real Parties-In-
3 Interest attribute to which brief.
4

5 Respectfully submitted.

6 DATED this 20th day of April 2011.

BROOKE · SHAW · ZUMPFT



By: _____

Michael L. Matuska, Esq.
State Bar No. 5711

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

MICHAEL L. MATUSKA, being first duly sworn, deposes and says:

That he is the Attorney for Petitioners in the above-entitled action; that he has read the foregoing instrument and knows the contents thereof and that the same is true of his own knowledge except for those matters stated on information and belief, and as to those matters, he believes them to be true.


MICHAEL L. MATUSKA

SUBSCRIBED AND SWORN to before me,
this 20th day of April 2011,
by MICHAEL L. MATUSKA.


NOTARY PUBLIC



BROOKE · SHAW · ZUMPFT
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT and that on the 20th day of April 2011, I served a true and correct copy of the preceding document entitled **SUPPLEMENTAL OPPOSITION TO VERIFIED BILL OF COSTS** addressed to:

Hon. David R. Gamble Ninth Judicial District Court P.O. Box 218 Minden, NV 89423	Thomas J. Hall, Esq. 305 South Arlington Avenue P.O. Box 3948 Reno NV 89505-3948
Bryan L. Stockton, Esq. Senior Deputy Attorney General 100 North Carson Street Carson City NV 89701	

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada, in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individual and facsimile numbers indicated.


LIZ STERN, ALS