IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA, A NEVADA MUNICIPAL CORPORATION,
Appellant,
vs.
THE STATE OF NEVADA, DEPARTMENT OF TAXATION; THE HONORABLE DAN SCHWARTZ, IN HIS CAPACITY AS TREASURER OF THE STATE OF NEVADA; AND THE LEGISLATURE OF THE STATE OF NEVADA,
Respondents.

No. 66851

FILED

FEB 19 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING REHEARING

On January 14, 2016, this court issued an opinion regarding this appeal from the district court's decision granting summary judgment in a tax matter. *See City of Fernley v. State of Nevada*, 132 Nev., Adv. Op. 4, ___ P.3d ___ (2016). In that opinion, we considered whether the Local Government Tax Distribution Account (C-Tax) under NRS 360.660 is special or local legislation in violation of Sections 20 and 21 of the Nevada Constitution. We concluded that the district court properly found the C-Tax to be general legislation. Appellant City of Fernley seeks rehearing of that opinion on the issue of costs, as well as our characterization of Fernley's "services." Because we hold that the award of costs was proper

and the reference to Fernley's services was not a misapprehension of material facts, we deny rehearing.

Fernley argues that we "misapprehended and overlooked several material facts." Particularly, Fernley disputes three fact statements from the opinion:

> After its incorporation, Fernley neither entered into an interlocal agreement with Lyon County, *nor did Fernley create or assume public services. Instead, Lyon County continued to provide Fernley with all of its services. . . .*
>
> *Because Fernley did not create, assume,* or enter into an interlocal agreement to provide services, Fernley never became eligible to receive an increase in its C-Tax distribution. . . .
>
> Fernley incorporated hoping to collect more tax distributions, but *it has not provided any new benefits to its residents, beyond those it provided when it was an unincorporated town, nor has it assumed the fiscal responsibility of Lyon County for providing its services.*

Fernley argues that these facts are incorrect because Fernley does, in fact, offer governmental services, "including, but not limited to, public works including road improvements and maintenance, parks improvement and maintenance, waste water, animal control, cemetery, city attorney, city clerk, city treasurer, Municipal Court, building and planning, zoning, community development and business licenses."

Fernley also challenges this court's affirmation of the district court's award of costs to the State. Fernley relies on the fact that the State, on appeal, "reversed course" by stating that Fernley was not time-barred from creating services under NRS 360.740. Originally, in an

advisory opinion, the Department of Taxation told Fernley that NRS 360.740 only had a one-year window in which Fernley could create services to qualify for an increase in its C-Tax distribution. On appeal, the State said that the Department of Taxation's interpretation was incorrect and that Fernley could create additional qualifying services under NRS 360.740 at any time. In its petition, Fernley claims that it exhausted all of its administrative remedies and "filed suit *only* as a last resort," rendering costs inappropriate given the State's inconsistent stances on NRS 360.740.

"NRAP 40(c)(2) permits this court to grant a petition for rehearing when it has overlooked or misapprehended a *material* fact or has overlooked or misapplied controlling law." *City of N. Las Vegas v. 5th & Centennial*, 130 Nev., Adv. Op. 66, 331 P.3d 896, 898 (2014) (emphasis added). NRAP 40(c)(1) prevents parties from rearguing matters already presented in their appellate briefs and during oral arguments.

Here, we disagree with Fernley's contention that this court misapprehended and overlooked *material* facts. This court's reference to "services" denoted the services required to increase C-Tax distributions. While the reference to Fernley not providing services, read out of context, is too broad, in context, the meaning is clear. "Services" to increase C-Tax distributions required Fernley to incur or assume from another local government costs for police and fire protection, and construction maintenance and repair of roads. As we noted in our opinion, "[a]t the time, Lyon County provided Fernley's fire protection, police protection, and construction, maintenance, and repair of roads, while also funding Fernley's three public parks." Majority opinion ante p. 6. Since rehearing is only granted where facts material to the outcome have been misapprehended, this does not afford a basis for

rehearing. *See* NRAP 40(c)(2); *City of N. Las Vegas*, 130 Nev., Adv. Op. 66, 331 P.3d at 898.

We also deny rehearing on the issue of costs. Regardless of whether Fernley exhausted its remedies or the State changed positions on its interpretation of NRS 360.740, the State is entitled to costs pursuant to statute. *See* NRS 18.020(3) ("Costs must be allowed *of course* to the prevailing party against any adverse party against whom judgment is rendered, in the following cases: . . . (3) In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500." (emphasis added)); *see also Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 431, 132 P.2d 1022, 1036 (2006) ("Under NRS 18.020, the prevailing party in an action alleging more than $2,500 in damages is entitled to recover all costs as a matter of right."); *U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002) ("The parties to this appeal do not dispute that the Union and the Trustees each sought over $2,500.00. Accordingly, an award of costs under NRS 18.020(3) was mandatory."). Moreover, NRS 18.025 prohibits the district court from reducing or refusing costs solely because the prevailing party is the State.

Here, because Fernley concedes that it initially sought money damages in excess of $2,500, NRS 18.020(3) mandated the district court to award costs to the State. If Fernley had only sought declaratory and injunctive relief, the district court would have had discretion in awarding costs. *See* 18.050 (discussing discretion of court in allowing costs in all other actions). Therefore, while we acknowledge the State's change of

position,[1] under NRS 18.020(3), the outcome remains the same and so, again, there is no basis for rehearing.

Accordingly, we deny the petition for rehearing. NRAP 40(c).

_____, C.J.
Parraguirre

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

_____, J.
Pickering

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[1]In our opinion, we recognized that the State reversed course on appeal. *See City of Fernley*, 132 Nev., Adv. Op. 4, ___ P.3d at ___ n.3. Thus, in no way was this point overlooked or misapprehended.

cc: Hon. James Todd Russell, District Judge
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