

Electronically Filed
Feb 27 2017 03:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 70837

Dist. Ct No.: A-15-714136-C

MICHAEL SARGEANT,
Petitioner,

vs.

HENDERSON TAXI,
Respondents

APPELLANT'S OPENING BRIEF

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827
Attorney for Petitioner

TABLE OF CONTENTS

NRAP RULE 26.1 DISCLOSURE STATEMENT	1
NRAP RULE 17 ROUTING STATEMENT	3
JURISDICTIONAL STATEMENT	4
STATEMENT OF ISSUES PRESENTED	4
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	7
APPLICABLE STANDARD OF REVIEW	11
ARGUMENT	11
I. ATTORNEY’S FEES UNDER NRS § 18.010(2)(b) ARE NOT PROPERLY AWARDED IN RESPONSE TO A MOTION FOR RECONSIDERATION SEEKING TO CLARIFY AN UNCLEAR ORDER OR ALTERNATIVELY ENTER FINAL JUDGMENT	11
A. Attorney’s fees are not properly awarded under NRS 18.010(2)(b) when unclear or unsettled issues are decided and no unreasonable or harassing conduct exists.	11
B. Attorney’s fees are not properly awarded under NRS 18.010(2)(b) when reconsideration is sought on issues left unclear or unsettled by a prior court order.	13
C. Attorney’s fees are not properly awarded under NRS 18.010(2)(b) when reconsideration is sought to have a prior order that does not contain a case dispositive recital entered as a final judgment.	16

II.	THERE IS NO SUPPORT FOR THE DISTRICT COURT’S FINDING THAT SARGEANT ACTED WITHOUT REASONABLE GROUNDS OR TO HARASS	18
A.	The district court’s finding that Sargeant should have been aware his actions after October 8, 2015 “had no factual or legal basis” is unexplained and unsupported	18
B.	The district court’s finding Sargeant’s motion for reconsideration inherently had no merit is based upon an unexplained, and erroneous, statement of his pleading.	19
C.	The district court’s finding Sargeant’s opposition to Henderson’s motion for summary judgment was improper is erroneous and contrary to the record.	21
D.	There is no evidence that Sargeant acted to harass Henderson and the district court’s other findings support the conclusion Sargeant acted properly to seek clear rulings on novel legal issues.	22
	CONCLUSION	24
	Certificate of Compliance With N.R.A.P Rule 28.2	25

TABLE OF AUTHORITIES

	Page
 Federal Cases	
<i>Estate of Blas ex. rel. Chargualaf v. Winkler</i> , 792 F.2d 858 (9 th Cir. 1986)	15
 State Cases	
<i>Allianz Ins. Co. v. Gagnon</i> , 860 P.2d 720, (Nev. Sup. Ct. 1993)	12
<i>Baldonado v. Wynn Las Vegas</i> , 194 P.3d 96 (Nev. Sup. Ct. 2008)	11, 12
<i>Bower v. Harrah’s Laughlin, Inc.</i> , 215 P.3d 709 (Nev. Sup. Ct. 2009)	12
<i>Key Bank v. Donnels</i> , 787 P.2d 382 (Nev. Sup. Ct. 1990)	12
<i>Lee v. GNLV Corp.</i> , 996 P.2d 416, (Nev. Sup. Ct. 2000)	17
<i>Rodriguez v. Primadonna Co., LLC</i> , 216 P.3d 793, 800 (Nev. Sup. Ct. 2009)	11, 12
<i>Semenza v. Caughlin Crafted Homes</i> , 901 P.2d 684, (Nev. Sup. Ct. 1995)	12, 13
<i>Valley Bank of Nevada v. Ginsburg</i> , 874 P.2d 729 (Nev. Sup. Ct. 1994)	17

State Statutes

NRS § 18.010(2)(b) 4-6, 11-13, 15, 16, 23

State Rules

NRAP 3A(b)(8) 4

NRCP Rule 11 4

NRCP Rule 23(b)(2) 14

Other Authorities

Article 15, Section 16 of the Nevada Constitution 4, 5

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 70837

-----X

MICHAEL SARGEANT, ,)	Dist. Ct No.: A-15-714136-C
Individually and on behalf of others)	
similarly situated,)	
)	
Petitioners,)	
)	
vs.)	
)	
HENDERSON TAXI,)	
)	
Respondents,)	

NRAP RULE 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

This undersigned's client in this case, Appellant Michael Sargeant, is an individual and is not a corporation. Michael Sargeant is not using a pseudonym in this case. The only counsel appearing for Michael Sargeant in this case, and

expected to appear for him in the future in this case, are Dana Sniegocki and Leon Greenberg of Leon Greenberg Professional Corporation.

Dated: February 27, 2017

Respectfully submitted,
/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Appellant

NRAP RULE 17 ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP Rule 17(b)(8) as amended effective January 1, 2017 because it concerns a postjudgment order in a civil case.

Assignment of this appeal to the Nevada Supreme Court is desirable given its intimate relationship to the fully briefed prior appeal in this case pending under Supreme Court case number 69773. Briefing on that prior appeal was completed on November 23, 2016 and it has been assigned to the *en banc* track. That appeal concerns at least two questions of first impression involving Article 15, Section 16 of the Nevada Constitution (the “Minimum Wage Amendment” or “MWA”).

Appellant believes the Supreme Court, in deciding appeal case number 69773, will obtain a significant familiarity with the circumstances of this case that would aid in the efficient and just disposition of this appeal. For that reason, or because this appeal may be deemed to fall within the purposes of NRAP 17(a)(10) or (11) (involving appeals raising certain issues of first impression or of statewide public importance), it should be assigned to the Supreme Court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal because it is an appeal of a post final judgment special order granting respondent Henderson Taxi (“Henderson”) an award of attorney’s fees pursuant to NRS 18.010(2)(b). *See*, NRAP 3A(b)(8). The Order granting the award of attorneys fees to Henderson pursuant to NRS 18.010(2)(b) was entered by the District Court on July 8, 2016 and Notice of Entry of the same served by electronic delivery on July 11, 2016. The Notice of Appeal was served and filed on July 13, 2016.

STATEMENT OF ISSUES PRESENTED

NRS § 18.010(2)(b) only allows an award of attorney’s fees for litigation conduct that was “without reasonable ground or to harass” and is applied, like NRCP Rule 11, to “punish” and “deter frivolous or vexatious claims.” The District Court awarded Henderson attorneys fees based upon its finding that appellant Michael Sargeant’s (“Sargeant’s”) motion for partial reconsideration of its order of October 8, 2015, or alternatively for entry of a final judgment upon such order, and Sargeant’s related opposition to Henderson’s motion for summary judgment,

violated NRS § 18.010(2)(b).

The specific question this Court is called upon to answer is:

Did Sargeant act “without reasonable grounds or to harass” when he presented his motion to the district court for partial reconsideration or alternatively for the entry of final judgment or in presenting his opposition to Henderson’s motion for summary judgment?

STATEMENT OF THE CASE

Sargeant filed this case on February 19, 2015 in the Eighth Judicial District Court, alleging in his class action complaint that Henderson failed to compensate him and a class of similarly situated taxi drivers with the minimum wage required by Article 15, Section 16 of the Nevada Constitution (the Minimum Wage Amendment or “MWA”). AA 1-7.¹

On March 19, 2015 Henderson answered Sargeant’s complaint and denied all allegations that it owed Sargeant or any of its taxi drivers unpaid minimum wages. AA 8-15. On October 8, 2015 the district court entered an order denying

¹ Referenced page numbers of Appellant’s Appendix are referred to as “AA.”

Sargeant's motion for class certification and other relief. AA 16-20. On October 30, 2015, Sargeant filed a motion for partial reconsideration of the district court's Order entered on October 8, 2015 or alternatively for entry of final judgment which was opposed by Henderson. AA 21-41, 56-70, 82-87. On November 11, 2015 Henderson filed a motion for summary judgment which was opposed by Sargeant. AA 42-55, 71-81. On February 3, 2016 the district court entered orders granting Henderson's motion for summary judgment and denying Sargeant's motion for partial reconsideration of the district court's order entered on October 8, 2015 or alternatively for entry of final judgment. AA 88-95. On March 7, 2016 Henderson filed its post final judgment motion for attorneys fees pursuant to NRS § 18.010(2)(b) with the district court which was opposed by Sargeant. AA 96-224. On July 8, 2016 the district court entered an order granting that motion and awarding \$26,715 in attorney's fees to Henderson. AA 225-230

Sargeant has also appealed the district court's February 3, 2016 order granting Henderson summary judgment. Briefing on that appeal, pending under Supreme Court case number 69773, was completed on November 23, 2016 and it

has been assigned to the *en banc* track. No argument date has been set.

STATEMENT OF FACTS

The District Court's Order of October 8, 2015

The district court's order of October 8, 2015 denied Sargeant's motion for class certification of his MWA claims and for other relief. AA 16-20. It did not grant summary judgment to defendant or direct entry of a final judgment. Such order found class certification was not warranted for a number of reasons. It also found that a grievance resolution agreement (the "Grievance Resolution") entered into between Henderson and its employee's union acted as "a complete accord and satisfaction" of the MWA claims of Henderson's taxi drivers and that the Grievance Resolution "did not necessarily act as a waiver of minimum wage rights":

This settlement agreement for the Grievance acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had.

Also as part of this settlement of the Grievance, Henderson Taxi agreed to provide acknowledgements to its current and former cab drivers for them to sign, though the drivers were not required to do so. The Court finds that there was no imbalance in bargaining power between the Union and Henderson Taxi when they negotiated a settlement of the Grievance and that

there is no evidence of coercion regarding any of the acknowledgements signed by Henderson Taxi cab drivers. Further, the Court finds that a bona fide dispute existed as to whether the *Yellow Cab* decision is to be applied retroactively. As such, it is unclear whether Henderson Taxi's cab drivers were or were not entitled to back pay prior to the settlement of the Grievance or whether they would be entitled to back pay absent the settlement of the Grievance. Accordingly, the settlement of the Grievance resolved a bona fide dispute regarding wages and did not necessarily act as a waiver of minimum wage rights. AA 17.

The district court relied upon certain “acknowledgments” entered into by a majority of the Henderson taxi drivers in finding that Sargeant had failed to meet the class certification requirements of numerosity, commonality, typicality and adequacy of representation of NRCP Rule 23(a). AA 19-20. The district court found that those acknowledgments are valid and that the Henderson taxi drivers who signed them “.... have acknowledged that they have no claim against Henderson Taxi and that they have been paid all sums owed to them.” AA 17, 19. Such circumstances resulted in the district court finding that common issues of law and fact warranting class certification did not exist. *Id.* It found the acknowledgments “....demonstrate defenses that are unique to the hundreds of current and former taxi drivers who signed them...” and such circumstances established that Sargeant’s claims were not “typical” of the class members. *Id.* It

also found such acknowledgments, because they contradict Sargeant's declaration to the district court, establish that Sargeant was not an adequate representative of the class he proposed for certification. AA 20.

**Sargeant's Motion for Partial Reconsideration of
the October 8, 2015 Order or for Entry of Final Judgment**

On October 30, 2015 Sargeant filed a motion for partial reconsideration of the district court's October 8, 2015 order or alternatively for entry of final judgment (the "Partial Reconsideration" motion). AA 21-41. He advised the district court the October 8, 2015 order, which was drafted by Henderson's counsel, was unclear about what, if any, further relief might be available from the court for Sargeant and the over 300 alleged class members who had never signed the acknowledgments discussed in that order (the "non-acknowledgment signers"). AA 23-25. He sought clarification on that point and proposed relief that was appropriate and consistent with a reasonable interpretation of the order in respect to that issue. AA 25-27, 82-83. He also advised the district court no request was made for reconsideration of the district court's denial of the relief originally sought in Sargeant's class certification motion. AA 23, 82-83. Alternatively, he asked

the district court to enter an order directing entry of final judgment if no further relief was available to Sargeant and the non-acknowledgment signers. AA 24-25, 29-30.

Sargeant's motion for Partial Reconsideration argued that a class was properly certified under NRCP Rule 23(b)(2) to enforce the Grievance Resolution discussed in the October 8, 2015 order for the non-acknowledgment signers. AA 25-26. Those Henderson taxi drivers, like Sargeant, had never signed the acknowledgments the October 8, 2015 order had found valid and had never received the monies owed to them under the Grievance Resolution. AA 27.

Sargeant proposed that the district court order Henderson to deposit those unpaid amounts with the district court and create a process to locate those class members and pay them the monies they were owed pursuant to the Grievance Resolution.

AA 26. Alternatively, if the Grievance Resolution did *not* limit the MWA rights of the proposed class of non-acknowledgment signers to just enforcing the Grievance Resolution, Sargeant sought leave to address certain aspects of the October 8, 2015 order denying class certification. AA 28-29. Finally, if no

further relief, of any kind, was available to Sargeant in the case he requested that the district court enter a final judgment. AA 29-30.

APPLICABLE STANDARD OF REVIEW

This appeal seeks reversal of an award under NRS § 18.010(2)(b) and this Court reviews such awards under an abuse of discretion standard. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. Sup. Ct. 2009) *citing Baldonado v. Wynn Las Vegas*, 194 P.3d 96, 106 (Nev. Sup. Ct. 2008).

ARGUMENT

- I. ATTORNEY’S FEES UNDER NRS § 18.010(2)(b) ARE NOT PROPERLY AWARDED IN RESPONSE TO A MOTION FOR RECONSIDERATION SEEKING TO CLARIFY AN UNCLEAR ORDER OR ALTERNATIVELY ENTER FINAL JUDGMENT**
 - A. Attorney’s fees are not properly awarded under NRS 18.010(2)(b) when unclear or unsettled issues are decided and no unreasonable or harassing conduct exists.**

The district court’s order entered on July 8, 2016 awarding attorney’s fees (the “Sanctions Order”) discusses the statutory language of NRS § 18.010(2)(b) and finds Sargeant acted “without reasonable grounds.” AA 227. It does not discuss any of this Court’s precedents, or any decision from any court, setting forth

in what circumstances such a “without reasonable grounds” finding under NRS § 18.010(2)(b) or an analogous statute, is warranted.

This Court has repeatedly held that district courts properly deny fee awards under NRS § 18.010(2)(b) against unsuccessful litigants who present a “novel issue” or litigate “unsettled issues” of Nevada law. *See, Rodriguez* 216 P.3d at 800 and *Baldonado*, 194 P.3d at 106. It has similarly held that it is an abuse of discretion to grant such an award against a party raising issues that were not entirely clear or “free from doubt.” *See, Key Bank v. Donnels*, 787 P.2d 382, 385 (Nev. Sup. Ct. 1990).

A claim is only “frivolous or groundless” under NRS § 18.010(2)(b), and warranting an attorney fee award against the losing party, “....if there is no credible evidence to support it.” *Rodriguez, Id.* citing *Semenza v. Caughlin Crafted Homes*, 901 P.2d 684, 687 (Nev. Sup. Ct. 1995) and *Allianz Ins. Co. v. Gagnon*, 860 P.2d 720, 724 (Nev. Sup. Ct. 1993). *See, also, Bower v. Harrah’s Laughlin, Inc.*, 215 P.3d 709, 726 (Nev. Sup. Ct. 2009) (“Although a district court has discretion to award attorney fees under NRS 18.010(2)(b), there must be evidence supporting

the district court's finding that the claim or defense was unreasonable or brought to harass.” citing *Semenza*).

B. Attorney’s fees are not properly awarded under NRS 18.010(2)(b) when reconsideration is sought on issues left unclear or unsettled by a prior court order.

The district court awarded attorney’s fees based upon “Sargeant’s continued litigation of this case after [the] October 8, 2015 [order]” and not for any other conduct. AA 227. Sargeant’s conduct after the October 8, 2015 order consisted of (1) Making his motion for partial reconsideration or alternatively entry of a final judgment; and (2) Filing an opposition to defendant’s motion for summary judgment. That opposition by Sargeant was tied to his earlier filed motion for partial reconsideration or entry of final judgment, Sargeant conceding in that opposition, as in his motion, that depending upon how the October 8, 2015 order was interpreted, entry of final judgment may be proper. AA 73.

The conduct that Sargeant engaged in after October 8, 2015, and that the district court found violated NRS 18.010(2)(b), consisted of asking the court to consider taking certain actions or rule that no such actions were proper and enter

final judgment. That conduct occurred because the order entered on October 8, 2015 contained no statement that a final judgment should be entered or that no further relief could be granted, in any fashion, to Sargeant. Such conduct also occurred because that order's findings raised at least two other unanswered questions. Those findings, and questions, which Sargeant sought to clarify and answer via his motion for partial reconsideration were:

- (1) Would the district court enforce the terms of the “accord and satisfaction” of MWA claims it found had taken place pursuant to the Grievance Resolution? If yes, Sargeant proposed it do so through an NRCP Rule 23(b)(2) class certification for the Henderson taxi drivers who never received the payments (the “satisfaction” due under that “accord”) provided for by the Grievance Resolution. AA 25-27.
- (2) Were the over 300 taxi drivers, including Sargeant, who had never signed the acknowledgments discussed in the order

subject to the “accord and satisfaction” created by the Grievance Resolution? Sargeant asked for clarification from the district court on this point, as the order stated that the “accord and satisfaction” it found “did not necessarily act as a waiver of minimum wage rights.” AA 28-29.

A party raising legitimate concerns about the scope of a prior order, or seeking answers to questions raised by that order, is acting reasonably. *See, Estate of Blas ex. rel. Chargualaf v. Winkler*, 792 F.2d 858 (9th Cir. 1986) (District court’s award of sanctions in response to motion for reconsideration was improper, motion raised legitimate arguments regarding unexplained and unclear findings of original order). While this Court has never been confronted with the exact same “reconsideration motion” and “sanctions award” situation as in *Estate of Blas*, that case’s holding is completely consistent with this Court’s jurisprudence: the litigation of unsettled, unclear, or novel issues is not conduct justifying an award under NRS 18.010(2)(b). There is no reason for that rule to be applied in any different fashion in the reconsideration motion situation. The district court

manifestly abused its discretion by finding Sargeant's attempt to seek clarification of the October 8, 2015 order, via his motion for partial reconsideration, was unreasonable and warranted an award under NRS 18.010(2)(b).

C. Attorney's fees are not properly awarded under NRS 18.010(2)(b) when reconsideration is sought to have a prior order that does not contain a case dispositive recital entered as a final judgment.

The October 8, 2015 order was not a final judgment. It did not state it was granting summary judgment or dismissing Sargeant's case. Nor did it state the district court would grant no further relief of any kind to Sargeant. It did not state it would deny Sargeant any enforcement of his rights under the "accord and satisfaction" it found was created by the Grievance Resolution. Nor was it viewed by the parties, or treated by the district court, as a final judgment and the defendant subsequently sought summary judgment, which was granted by the district court.

Despite the clearly "non-final" status of the October 8, 2015 order, the district court, for the purposes of 18.010(2)(b), schizophrenically treated the order as one Sargeant should have known completely disposed of his rights and left him

without any claims to litigate. It penalized him for not recognizing the completely dispositive nature of the “non-final” October 8, 2015 order. Yet if the October 8, 2015 order was, in fact, by its terms clearly completely dispositive of all of the issues in this case it would have been a “final judgment” under this Court’s well established jurisprudence, something that it was not. *See, Lee v. GNLV Corp.*, 996 P.2d 416, 417-18 (Nev. Sup. Ct. 2000) (Final judgment is “one that disposes of all of the issues presented in the case” and is found by examining what the district court’s order or judgment “actually *does*, not what it is called,” *citing and quoting Valley Bank of Nevada v. Ginsburg*, 874 P.2d 729, 733 (Nev. Sup. Ct. 1994)).

Sargeant’s actions after October 8, 2015 were not only reasonable, they were the only ones proper under the circumstances: he requested the district court advise him what relief, if any, he could still seek in light of the October 8, 2015 order’s findings or enter final judgment so he could appeal. He did not seek to burden the district court to reconsider anything it had *already* decided. Indeed, he expressly disavowed any such desire and stated the district court should not re-examine its prior rulings, only clarify them. AA 23, 82.

Even if Sargeant was unreasonable in believing some sort of relief was possibly available to him in the district court in light of the October 8, 2015 order, his request for reconsideration solely to have that order deemed a “final judgment” was not unreasonable. Such a final judgment was necessary for Sargeant to appeal his case and it was an abuse of discretion for the district court to sanction him for seeking reconsideration for that purpose.

II. THERE IS NO SUPPORT FOR THE DISTRICT COURT’S FINDING THAT SARGEANT ACTED WITHOUT REASONABLE GROUNDS OR TO HARASS

A. The district court’s finding that Sargeant should have been aware his actions after October 8, 2015 “had no factual or legal basis” is unexplained and unsupported.

The Sanction Order found that “[a]fter receipt of this Order [of October 8, 2015], Sargeant and his counsel were on notice that Sargeant’s claim had no factual or legal basis.” AA 227. It offered no explanation for that finding. Nor did the Sanctions Order discuss the unanswered questions raised by the October 8, 2015 order and that gave rise to Sargeant’s conduct after that date.

The Sanctions Order found that Sargeant should have known the prior order

denuded him of any “factual or legal basis” to assert any right to enforce the “accord and satisfaction” created by the Grievance Resolution. It stated no reason why Sargeant should have reached that conclusion. It also found, again without explanation, that Sargeant acted unreasonably in asking the district court to clarify whether the “non-acknowledgment signers” were bound by that “accord and satisfaction.” It did so despite Sargeant’s concern, as he advised the district court, that the October 8, 2015 order was unclear by stating that the “accord and satisfaction” it was finding “did not necessarily act as a waiver of minimum wage rights.” AA 28.

B. The district court’s finding Sargeant’s motion for reconsideration inherently had no merit is based upon an unexplained, and erroneous, statement of his pleading.

The Sanctions Order explained its finding that Sargeant’s motion for partial reconsideration was made without reasonable ground with one sentence: “A motion for reconsideration seeking judgment on an unpleaded claim and certification of an unpleaded class is not a motion for reconsideration and inherently has no merit.” AA 228. It cites no authority in support of this conclusion.

The Sanctions Order does explain what “unpleaded claim” and “unpleaded class” Sargeant was unreasonably “seeking judgment” on. Nor does it state what sort of pleading standard Sargeant needed to meet to properly present his motion. It fails to do so because this finding by the district court is clearly erroneous both as a matter of law and based upon Sargeant’s pleadings.

No heightened or particularized pleading requirement exists for MWA claims or class action claims. Nor did the district court find any such pleading requirement existed in this case. Sargeant’s complaint is a pleading seeking all appropriate class relief, including equitable relief, available under the MWA. AA 5-6. That broad request for relief would include relief for just Sargeant and a class of the other “non-acknowledgment” signers for an order enforcing the MWA “accord and satisfaction” found by the October 8, 2015 order if that was the only relief available under the MWA. While the district court may have found such relief was not available, or denied it for other reasons, its finding that such a claim for class relief was “unpleaded” is not only unexplained, it is clearly contrary to the record.

C. The district court's finding Sargeant's opposition to Henderson's motion for summary judgment was improper is erroneous and contrary to the record.

The Sanctions Order also found Sargeant improperly opposed Henderson's motion for summary judgment, such finding explained in a single sentence: "In his Opposition, Sargeant failed to even attempt to present facts that might stave off summary judgment, but rather sought to re-litigate the accord and satisfaction issue previously decided." AA 228. This finding is erroneous and contrary to the record.

In opposing summary judgment Sargeant argued (1) That there might, or might not, be any further issues to be litigated before the district court as a result of the October 8, 2015 order and it referred the district court to Sargeant's motion for partial reconsideration and clarification of the same; and (2) If there was nothing further to litigate Sargeant should be granted summary judgment for the \$107.23 defendant concedes was owed to him, but not paid to him, pursuant to the Grievance Resolution. AA 73-78.

Sargeant's opposition proffered the only "facts" (really arguments based

upon the district court's view of the law) he could offer that would provide a basis for denying summary judgment: that depending on the district court's clarification of the October 8, 2015 order, issues might still exist to litigate or that Sargeant was entitled to receive a judgment for \$107.23 pursuant to the Grievance Resolution.

The district court's finding that Sargeant in his opposition "sought to re-litigate the accord and satisfaction issue previously decided" is in error. Nowhere in his opposition did Sargeant urge the district court to cast aside its finding of an accord and satisfaction made in the October 8, 2015 order. AA 73-78. His entire opposition is devoted to arguing that the district court should enforce such accord and satisfaction in favor of Sargeant and deny summary judgment for Henderson on that basis. *Id.*

D. There is no evidence that Sargeant acted to harass Henderson and the district court's other findings support the conclusion Sargeant acted properly to seek clear rulings on novel legal issues.

The Sanctions Order does not find that Sargeant acted to harass Henderson or with any other improper purpose. To the contrary, the district court's recognition that this litigation involved novel legal issues supports a finding

Sargeant acted properly in seeking clarification of the unsettled issues of law raised by the October 8, 2015 order. In the proposed Sanctions Order it presented to the district court Henderson² included two findings reciting that this case did *not* involve novel legal issues. AA 227-228. The district court, quite correctly, struck both of those findings. *Id.*

The application of the MWA, which was only enacted in 2006, involves many unsettled and novel legal issues. The district court's October 8, 2015 order concerned one such unsettled, and novel, issue. Given that background, Sargeant acted reasonably and properly, in seeking clarification of how, if at all, the MWA "accord and satisfaction" created by the Grievance Resolution, as found by the

² The Court may want to consider whether Henderson is barred from requesting attorney fees under NRS 18.010(2)(b) when it was Henderson's drafting of the October 5, 2015 order that caused Sargeant to seek reconsideration and clarification of the order and/or entry of final judgment. Henderson was responsible for the ambiguous and contradictory language of the October 8, 2015 order (finding an "accord and satisfaction" of MWA rights that "did not necessarily act as a waiver of minimum wage rights"); for its failure to specify that no enforcement of the accord and satisfaction created by the Grievance Resolution would be undertaken the district court; and for its failure to direct entry of final judgment.

October 8, 2015 order, could be enforced in this lawsuit.³

CONCLUSION

Wherefore, for all the foregoing reasons, the Order appealed from should be reversed in its entirety.

Dated: February 25, 2017

Respectfully submitted,

/s/ Leon Greenberg

Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Appellant

³ The Sanctions Order implicitly finds that Sargeant should have consented to entry of final judgment after October 8, 2015 without making any request for enforcement of the accord and satisfaction created by the Grievance Resolution. Yet if he had done so he very likely would be barred from raising any claim of a right to such enforcement on appeal. *See, Wolff v. Wolff*, 929 P.2d 916, 921 (Nev. Sup. Ct. 1996) (Issues not raised in district court are waived on appeal) and numerous other cases. This is yet another reason to hold Sargeant's conduct was reasonable.

Certificate of Compliance With N.R.A.P Rule 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman typeface in wordperfect.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,356 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 27th day of February, 2017.

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on February 27, 2017, she
served the within:

APPELLANT'S OPENING BRIEF

by Electronic Court filing to:

Anthony L. Hall, Esq.
R. Calder Huntington, Esq.
HOLLAND & HARD LLP
9555 Hillwood Drive, 2nd Fl.
Las Vegas, NV 89134

/s/ Sydney Saucier
Sydney Saucier