

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SARGEANT, Individually and
on behalf of other similarly situated,

Appellant,

v.

HENDERSON TAXI,

Respondent.

Supreme Court Case No. 70837

District Case No. A7-14136

Electronically Filed
Jan 09 2018 11:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from Eighth Judicial District Court, State of Nevada,
County of Clark,

The Honorable Michael P. Villani, District Judge

RESPONDENT'S ANSWER TO PETITION FOR REHEARING

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I. INTRODUCTION

In affirming the District Court’s decision below, this Court recognized that Sargeant “repeated” “previously rejected arguments” “under the guise of a motion for reconsideration and an opposition to summary judgment,” thus, justifying the District Court’s decision to award Respondent Henderson Taxi (“Henderson Taxi”) fees. *See* Order of Affirmance (the “Order”) filed on December 1, 2017 in Appeal No. 70837, at pg. 2. In Appellant’s Petition for Rehearing Pursuant to NRAP 40 (the “Petition,”), Sargeant does the same—Sargeant argues that, with one exception, the Court misapprehended the very facts and law cited in his Opening and Reply Briefs.

The only new argument Sargeant presents is that the Order contains an error in reciting that the Union was a participant to the District Court proceedings. Sargeant is not incorrect: the Order does not contain that error. But the error is only an immaterial one. It does not change the underlying reasoning of the opinion and therefore, is not grounds for rehearing. For these reasons, as explained further herein, Henderson Taxi respectfully submits that this Court should deny the Petition for Rehearing.

II. REHEARING STANDARD

Rehearing is only appropriate “[w]hen the court has overlooked or misapprehended a **material** fact in the record or a material question of law in the case, or . . . [w]hen the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.” NRAP 40(c)(2) (emphasis added).

III. REHEARING IS NOT WARRANTED

A. The Typographical Error in the Order is Immaterial

Henderson Taxi does not dispute that page 2 of the Order contains an error when it states that Sargeant opposed “the **Union**’s motion for summary judgment . . .” below. Order at pg. 2 (emphasis added). Henderson Taxi does not dispute that the union was not a party to the proceedings in District Court or that the motion in question was in fact filed by Henderson Taxi. But this typographical error is immaterial and may be easily corrected.

The fact that Henderson Taxi, not the Union, filed the motion for summary judgment does not change the issues before this Court. As set forth in Henderson Taxi’s Answering Brief, filed on April 11, 2017, Sargeant commenced the underlying lawsuit against Henderson Taxi under the Minimum Wage Amendment. After Henderson Taxi reached a settlement with the Union, the

settlement with the Union constituted a complete accord and satisfaction of Sargeant's claims, rendering his claims frivolous. Sargeant maintained this litigation nonetheless by filing a motion for reconsideration and opposition to Henderson Taxi's motion for summary judgment. It was Sargeant's decision to continue to litigate the matter beyond the District Court's October 8, 2015 dispositive order to be deserving of the District Court's award of fees; the fact that Henderson Taxi was the party who filed the motion for summary judgment is immaterial.

This Court has previously made clear to caution counsel for petitions, as well as all members of the State Bar of Nevada, to be mindful of the proper purpose of petitions for rehearing. *See Gordon v. Eighth Judicial Dist. Court*, 114 Nev. 744, 745 (1998).

Under our long established practice, rehearings are not granted to review matters that are of no practical consequence. Rather, a petitioner for rehearing will be entertained only when the court has overlooked or misapprehended some material matter, or when otherwise necessary to promote substantial justice.

Id. (quoting *In re Hermann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984) (internal citations omitted)). Minor inaccuracies in the court's opinions do not warrant rehearing. *See e.g., Ainsworth v. Combined Ins. Co. of Am.*, 105 Nev. 237, 774 P.2d 1003, cert. denied, 493 U.S. 958, 110 S. Ct. 376 (1998) (although opinion misstated sequence of events, the court did not overlook a material fact).

Accordingly, the Order's reference to the Union filing the motion for summary judgment below, instead of Henderson Taxi, does not warrant rehearing.

B. The Petition Improperly Reargues Points Presented in Appellant's Opening and Reply Briefs

The remainder of Sargeant's Petition contains the same arguments that both the District Court and this Court previously rejected. Specifically, Sargeant argues: (1) Sargeant's motion for reconsideration did not make previously rejected arguments, (2) Sargeant's motion for reconsideration did not raise unpleaded claims, and (3) Henderson Taxi should not have been awarded fees because Henderson Taxi was responsible for the ambiguity in the District Court's prior order, which was found to be completely dispositive of Sargeant's case. Petition at pg. 2-6. Sargeant admits that he raised these arguments in his opening brief.¹ Indeed, Sargeant's Opening and Reply briefs in the instant appeal focus on these same arguments. *See* Opening Brief at pg. 9-11 (arguing that Sargeant's motion for reconsideration did not make previously rejected arguments as the Court contended and instead sought alternative relief), 17-18 (arguing that Sargeant's motion for reconsideration was intended to have the district court advise him what relief, if

¹ Petition at pg. 4 ("As discussed in Sargeant's opening brief, the words of that order contained at least one colorable material ambiguity . . .") (citing Appellant's Opening Brief, pg. 14-15); *id.* at pg. 5 ("That this circumstance and result was an error of law is discussed at page 15 of Appellant's Opening Brief . . . As also explained in Appellant's Opening Brief, this Court's jurisprudence conforms to this principle, that it is an abuse of discretion . . .").

any, he could seek and if no relief was possible, to enter a final judgment), 23 n. 2 (arguing that Henderson Taxi should have been precluded from requesting fees whatsoever because it drafts the “ambiguous and contradictory” language of the prior order); Appellant’s Reply Brief (“Reply Brief”) filed June 9, 2017, at pg. 7-9 (arguing Sargeant’s motion for reconsideration did not raise unpleaded claims). In addition, Sargeant made these same arguments before this Court on the appeal from the underlying motion for summary judgment. *See* Appellant’s Opening Brief, filed on July 28, 2016 in Appeal No. 69773 at pg. 55 (“The October 13, 2015 order did not direct the entry of a final judgment, did **not** state the district court would entertain no further requests for any sort of relief from Sageant . . . and made a number of findings that were unclear on whether any issues remained to be litigated.”) (emphasis in original), 56 (“Sargeant did not challenge the findings of the October 13, 2015 order in his reargument motion and asked for clarification as to whether any issues remained to be litigated or, in the alternative, for entry of final judgment if no such issues remained.”), 57 (“Judge Villani’s post-judgment order awarding Henderson \$26,715 in attorney’s fees was not just an abuse of discretion. It was punitive and lacking of any reason or even a patina of rationalization.”). Consequently, **this is now the fourth time Sargeant has made these arguments.** Sargeant made these arguments at the District Court level, before this Court in Appeal No. 69773, again before this Court in the underlying

appeal (Appeal No. 70837), and now ahead in his Petition for Rehearing. This is the same conduct that resulted in the award of attorney's fees in the first instance.

Because Sargeant is simply rearguing issues already raised, and not arguing that the Court overlooked or misapprehended a material fact, his petition must be denied. *See* NRAP 40(c); *see also Gordon*, 961 P.2d 142, 745 (“A petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court’s initial opinion.”) (internal citations omitted).

IV. CONCLUSION

Based upon the foregoing, Henderson Taxi respectfully submits that this Court should deny the Petition for Rehearing.

DATED: January 8, 2018.

/s/ Andrea M. Champion

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CERTIFICATE OF COMPLIANCE

I 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), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief on is to be found. The Brief complies with the formatting requirements of NRAP 32(a)(4)-(6) and the volume limitation stated in NRAP 40(b)(3) because it does not exceed 4,667 words.

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.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the Social Security Number of any person.

DATED: January 8, 2018.

/s/ Andrea M. Champion

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PROOF OF SERVICE

I, the undersigned, hereby certify that I electronically filed the forgoing **ANSWER TO PETITION FOR REHEARING** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on January 8, 2018.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System:

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