

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDB TRUCKING, LLC,

Appellant,

vs.

VERSA PRODUCTS COMPANY,
INC.,

Respondent.

Supreme Court Case Nos.:

75022, consolidated with 76395
75319, consolidated with 76397
75321, consolidated with 76396
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Elizabeth A. Brown
Clerk of Supreme Court

[District Court Case Nos.:

CV15-02349, CV16-00976 and
CV16-01914]

MOTION TO CONSOLIDATE APPEALS

MDB Trucking, LLC (“MDB”), the Appellant/Cross-Respondent in Supreme Court Case Nos. 75022, 75319 and 75321¹, hereby moves to further consolidate these cases before the Court in the interests of judicial and party economy. All three cases arise from identical orders issued by District Court Judge Elliott A. Sattler in three underlying district court cases arising from the same 2014 multi-vehicle traffic accident. The identical orders granted case-ending sanctions, denied attorneys’ fees and awarded costs, albeit in differing amounts, to Petitioner Versa Products Company, Inc. (“Versa”). The appeals from these identical orders present the same discreet issues for the Court’s determination.

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¹ Case Nos. 75022, 75319 and 75321 were consolidated with Case Nos. 76395, 76397 and 76396, respectively, pursuant to the Court’s Orders Consolidating Appeal and Cross-Appeal and Reinstating Briefing filed on August 6, 2018.

I.

PROCEDURAL HISTORY

All three consolidated appeals at issue arise from the district court's determinations to impose case-ending sanctions on MDB for alleged spoliation of evidence pursuant to NRCP 37, and to subsequently deny attorney's fees and award reduced costs to Versa. At the time the case-ending sanctions were imposed, the only claim remaining to be litigated as a result of a 2014 multi-vehicle traffic accident involving one of MDB's semi-trailers, (which inadvertently released its load of gravel on Interstate 80 outside of Reno), was MDB's Cross-Claim for Contribution against Versa. Versa manufactured the solenoid valve that activated and caused the load of gravel to release. As a result of a mediation which took place on May 5, 2017, MDB paid in excess of \$1.7 million to resolve all underlying personal injury claims in the three district court cases, and the plaintiffs assigned all claims against Versa to MDB as part of the settlement.

Ten days later, on May 15, 2017, Versa filed a Motion to Strike MDB's Cross-Claim for Contribution in the three district court cases, wherein it sought sanctions for alleged spoliation of evidence pursuant to NRCP 37. Following briefing and a hearing on August 29, 2017, the district court issued an interim order dated September 22, 2017 in which it found "there would be some sanctions levied on MDB for their discovery abuse: the actual sanction was not determined."

The district court's interim order set the matter for evidentiary hearing and further stated "[e]ach party will be familiar with *Young, supra*, *Nevada Power, supra*, and their progeny and present witnesses in support of their respective positions." The district court then held the evidentiary hearing on October 13, 2017 and, at the conclusion of the hearing, informed the parties that Versa's Motion to Strike would be granted and that case-ending sanctions would be imposed. The district court vacated the pending October 30, 2017 trial date in the lowest-numbered of the three cases and advised it would enter a written decision.

The district court entered its written decision in the lowest-numbered of the three cases on December 8, 2017. Versa served MDB with a Notice of Entry thereof on December 29, 2017, and MDB's timely appeal followed to open Case No. 75022. Thereafter, the district court applied the same analysis and entered identical orders in the remaining two cases on January 22, 2018. Versa served MDB with Notices of Entry thereof on February 8, 2018, and MDB's timely appeals followed to open Case Nos. 75319 and 75321. Finally, the district court entered written orders regarding Versa's requests for attorney's fees and costs on June 7, 2018 and entry of the orders were filed on June 13, 2018. The appeals and cross-appeals from these subsequent orders are currently consolidated into each initial appeal, leaving three separate but identical cases to be decided by the Court.

II.

STATEMENT OF ISSUES ON APPEAL

The three consolidated appeals at issue present the following overlapping issues for this Court's determination on appeal, specifically:

1) Whether the District Court abused its discretion by imposing case concluding sanctions pursuant to NRCP 37, where the District Court failed to consider the Supreme Court's long-standing spoliation of evidence jurisprudence, including the limitations on the degree of sanctions to be imposed for negligent spoliation of evidence under *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).

2) Whether the District Court committed legal error when it applied the definition of "willfulness" set forth in *Childers v. State*, 100 Nev. 280, 283, 680 P.2d 598, 599 (1984), a child abuse prosecution, to its analysis pursuant to NRCP 37 and *Young v. Ribeiro Building Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), as to whether MDB acted willfully.

3) Whether the District Court abused its discretion by awarding expert costs in excess of the \$1,500.00 statutory limit pursuant to NRS 18.005(5), without consideration of the factors set forth in *Frazier v. Drake*, 131 Nev. Adv. Op. 64, 357 P.3d 365, 377-378 (Nev. App. 2015).

4) Whether the District Court abused its discretion by awarding costs to Versa pertaining exclusively to Versa's defense of the underlying plaintiffs'

personal injury actions for which Versa was not the prevailing party.

5) Whether the District Court abused its discretion by awarding costs to Versa which predate its Offers of Judgment, in contravention of its Motion for Attorneys' Fees, wherein Versa specifically requested costs incurred after the service of the Offers of Judgment.

6) Whether the District Court abused its discretion by awarding costs to Versa which are not specifically taxable pursuant to NRS 18.005.

7) Whether the District Court erred in denying Versa's motion for an award of attorneys' fees and the full amount of costs.²

III.

ARGUMENT FOR COMPLETE CONSOLIDATION

Pursuant to NRAP 3(b), this Court may consolidate pending appeals "upon its own motion or upon motion of a party." Here, the three initially consolidated cases are appropriate for complete consolidation because the matters arise from the same decisions of the same district court judge and involve the same discreet issues on appeal. Indeed, Case Nos. 75022, 75319 and 75321 seek appellate review of case-ending sanctions and attorneys' fees and costs orders involving the same two parties, which orders were issued by the same judge and based on the same legal analyses. Because the cases raise overlapping questions of law relating to the same

² See Docketing Statements filed by Versa in Case Nos. 76395, 76396 and 76397, respectively.

facts, consolidation of these appeals “will assist in their disposition” and prevent duplication of effort. *See Hansen v. Harrah’s*, 100 Nev. 60, 675 P.2d 394, 395 n.1 (1984); *Jacobson v. Manfredi*, 100 Nev. 231, 679 P.2d 251, 252 n.1 (1984); *see also Barnes v. District Court*, 103 Nev. 679, 748 P.2d 483, 484 (1987).

Accordingly, MDB respectfully requests the Court further consolidate Case Nos. 75022, 75319 and 75321 prior to the due date for any briefing, to assist in the disposition of the cases, avoid confusion and prevent duplication of efforts.

Dated this 10th day of September, 2018.

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CERTIFICATE OF SERVICE

I certify that on the 10th day of September, 2018, I served a copy of this completed **MOTION TO CONSOLIDATE APPEALS** upon all counsel of records:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attached a separate sheet with the addresses.)

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