

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED NASSIRI, et al.,

Appellants/Cross-Respondents,

vs.

THE STATE OF NEVADA, on relation
of its DEPARTMENT OF
TRANSPORTATION,

Respondent/Cross-Appellant.

Supreme Court No. 76660

Electronically Filed
Sep 14 2018 02:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: 26
County: Clark Judge: Hon. Gloria Sturman
District Ct. Case No.: A-12-672841-C

2. Attorney filing this docketing statement:

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Client(s): Respondent/Cross-Appellant The State of Nevada, on relation of
its Department of Transportation

3. Attorney(s) representing appellants/cross-respondents:

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Las Vegas, Nevada 89119

Client(s): Appellants/Cross-Respondents Fred Nassiri, individually and as
Trustee of the Nassiri Living Trust, a Trust Formed Under
Nevada Law

4. Nature of disposition below (check all the apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/denial of declaratory relief | <input type="checkbox"/> Divorce decree |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| | ■ Other disposition (specify):
<u>Award of Fees and Costs</u> |

5. Does this appeal raise issues concerning any of the following: No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court: List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- *The State of Nevada, Department of Transportation v. Eighth Judicial District Court of the State of Nevada, et. al.*, Supreme Court Case No. 70098, District Court Case No. A-12-672841-C

7. Pending and prior proceedings in other courts: List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiffs filed a Complaint against the State of Nevada, on relation of its Department of Transportation (the "State of Nevada") in November 2012 based upon the State of Nevada's 2010 construction of a flyover ramp connecting eastbound Blue Diamond to northbound I-15. Plaintiffs' action included claims for inverse condemnation, breach of contract, breach of the implied covenant of good faith and fair dealing (contractual and tortious), negligent misrepresentation, and intentional misrepresentation. The State of Nevada filed counterclaims for breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, and

attorney's fees as special damages. The majority of Plaintiffs' claims were dismissed at the District Court level via summary judgment in favor of the State of Nevada. Ultimately, the State of Nevada filed a Petition for Writ of Mandamus with the Nevada Supreme Court as to Plaintiffs' surviving contractual-based claims. The State of Nevada was successful on its Petition for Writ of Mandamus, and the District Court was ordered to enter judgment in favor of the State of Nevada on all of Plaintiffs' remaining claims for relief.

After obtaining judgment in its favor, the State of Nevada filed a Verified Memorandum of Costs and Disbursements pursuant to NRS 18.005 and 18.110, as well as a Motion for Award of Attorneys' Fees, Costs, and Interest pursuant to the prevailing party attorneys' fees and costs provision in the parties' underlying settlement agreement. The District Court entered its Findings of Fact, Conclusions, of Law and Order Granting in Part: (1) the State of Nevada's Motion for Award of Attorneys' Fees, Costs, and Interest; and (2) Nassiri's Motion to Retax Memorandum of Costs; and Judgment ("FFCL"). Plaintiffs filed their Notice of Appeal of the FFCL and the State of Nevada filed its Notice of Cross-Appeal.

9. Issues on appeal: State concisely the principal issue(s) in this appeal (attach separate sheets as necessary): On Cross-Appeal:

- Whether the district court improperly denied awarding the State of Nevada all or any portion of the attorneys' fees incurred by the Office of the Attorney General as co-counsel for the State of Nevada.
- Whether the district court improperly denied awarding the State of Nevada all of its costs incurred and paid to outside counsel for legal research.
- Whether the district court improperly reduced the State of Nevada's incurred expert witness costs.

The State of Nevada may add or abandon the foregoing issues on appeal as its counsel further reviews the record.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Unknown.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employer thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

■ N/A

□ Yes

□ No,

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

□ Reversal of well-settled Nevada precedent (identify the case(s))

□ An issue arising under the United States and/or Nevada Constitutions

□ A substantial issue of first impression

■ An issue of public policy

□ An issue where en banc consideration is necessary to maintain uniformity of this court's decision

□ A ballot question

If so, explain: Whether the State of Nevada, on relation of its Department of Transportation be denied an award of attorneys' fees incurred by the Office of the Attorney General, who actively participated in, and served as co-counsel of record in the District Court and appellate proceedings when the underlying agreement provides for an award of all reasonable attorneys' fees for the prevailing party. The District Court's denial of *all* attorneys' fees incurred for the work performed by the Office of the Attorney General by categorically classifying them as "overhead" violates the mandate of NRS 18.025, which precludes a court from reducing the amount of attorneys' fees or costs it awards the State of Nevada solely because the State of Nevada is the prevailing party.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17(b)(8) states that the Court of Appeals is presumptively assigned "[a]ppeals from post judgment orders in civil cases." This matter involves a post-judgment order awarding attorney's fees and costs. Given that the Supreme Court is already familiar

with this matter and issued a ruling in Case No. 70098, the State of Nevada believes the Supreme Court should retain the case.

14. Trial. If this action proceeded to trial, how many days did the trial last? Six

Was it a bench or jury trial? Bench trial in May 2015 on the limited issue of the State of Nevada's affirmative defense for statutes of limitations.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment on order appealed from: July 9, 2018.

17. Date written notice of entry or order was served: July 9, 2018.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59):

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCp 50(b) Date of filing: N/A
- ☐ NRCp 52(b) Date of filing: N/A
- ☐ NRCp 59 Date of filing: N/A

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served:
N/A

Was service by:

- ☐ Delivery
- ☐ Mail/electronic/fax

19. Date notice of appeal filed:

If more than one party had appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

- Fred Nassiri, individually and as Trustee of the Nassiri Living Trust, a Trust Formed Under Nevada Law filed its Notice of Appeal on August 7, 2018.
- Respondent/Cross-Appellant The State of Nevada, on relation of its Department of Transportation, filed its Notice of Cross-Appeal on August 21, 2018.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) other:

NRAP (4)(a)(2).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify): NRAP 3A(b)(8) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(8) permits an appeal from a special order entered after final judgment. "A post-judgment order awarding attorney's fees and/or costs may be appealed as a special order made after final judgment." *Lee v. GNLV Corp.*, 996 P.2d 416, 426 (Nev. 2000).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

- Appellants/Cross-Respondents:

Fred Nassiri, individually and as Trustee of the Nassiri Living Trust, a Trust Formed Under Nevada Law

- Respondent/Cross-Appellant:

State of Nevada, on relation of its Department of Transportation

(b) If the parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims and the date of formal disposition of each claim.

(a) Plaintiffs' Claims: Plaintiffs alleged six claims for relief in their complaint: (i) inverse condemnation, (ii) breach of contract, (iii)/(iv) breach of covenant of good faith and fair dealing (contractual and tortious), (iv) negligent misrepresentation, and (v) intentional misrepresentation. The entire matter was disposed of by the Court in *State Dep't of Transp. v. Eighth Judicial Dist. Court*, 402 P.3d 677 (Nev. 2017), and the District Court's Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment in Favor of Defendant on Each of Plaintiffs' Claims, entered on January 2, 2018.

(b) Defendant's Claims: Defendant alleged four claims for relief in its counterclaim: (i) breach of contract, (ii) breach of the implied covenant of good faith and fair dealing, (iii) declaratory relief, and (iv) attorney's fees as special damages. The entire matter was disposed of by the Court in *State Dep't of Transp. v. Eighth Judicial Dist. Court*, 402 P.3d 677 (Nev. 2017), and the District Court's Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment in Favor of Defendant on Each of Plaintiffs' Claims, entered on January 2, 2018. The current appeal involves the District Court's Findings of Fact, Conclusions of Law, and Order Granting in Part: (1) the State of Nevada's Motion for Award of Attorneys' Fees, Costs, and Interest; and (2) Nassiri's Motion to Retax Memorandum of Costs; and Judgment, entered on July 6, 2018.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below: None.

(b) Specify the parties remaining below: None.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): This appeal involves a post-judgment order awarding attorneys’ fees and costs, which may be appealed as a special order under NRAP 3A(b)(8). *See also Lee v. GNLV Corp.*, 996 P.2d 416, 426 (Nev. 2000).

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27. Attach file-stamped copies of the following documents*:

- The latest-filed complaint, counterclaims, crossclaims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim counterclaims, crossclaims, and/or third-party claims asserted in the action
- Any other order challenged on appeal
- Notices of entry for each attached order

*Appellants/Cross-Respondents attached all of the foregoing documents to their Case Appeal Statement, filed on September 5, 2018. The Nevada Supreme Court Clerk's Office confirmed with Respondent/Cross-Appellant on September 13, 2018, to not attach the foregoing again to this Case Appeal Statement.

VERIFICATION

I declare under penalty of perjury that I have read this Docketing Statement, that the information provided in this Docketing Statement is true and complete to the best of my knowledge, information and belief, and that I have attached all require documents to this Docketing Statement.

The State of Nevada, on relation of its
Department of Transportation

William L. Coulthard

Name of Respondent/
Cross-Appellant

Name of counsel of record

September 14, 2018

/s/ William L. Coulthard

Date

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of September, 2018, I served a copy of this completed Docketing Statement upon all counsel of record:

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

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Settlement Judge

/s/ Angela Embrey
An employee of Kemp, Jones & Coulthard, LLP