

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69410, 69896

DAVID DEZZANI AND ROCHELLE DEZZANI

Appellants
v.

Electronically Filed
Dec 06 2016 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

KERN & ASSOCIATES, LTD. AND GAYLE A. KERN

Respondents

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT'S
ORDER FILED NOVEMBER 19, 2015
HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

RESPONDENTS' OBECTION TO BILL OF COSTS

McDONALD CARANO WILSON LLP
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*Attorneys for Respondents
Kern & Associates, Ltd.; and Gayle A. Kern*

Pursuant to NRAP 39, Respondents Kern & Associated, Ltd. and Gayle A. Kern (collectively, “Kern”), through counsel Debbie Leonard of McDonald Carano Wilson LLP file this objection to the Bill of Costs filed by Appellants David Dezzani and Rochelle Dezzani (collectively, “the Dezzanis”). The Dezzanis are not entitled to the costs they seek for the following reasons:

A. The Court Has Not Ordered That Costs Be Awarded To Appellants

The Dezzanis’ bill of costs is inappropriate because the Nevada Rules of Appellate Procedure do not allow for costs to be taxed in their favor unless the Court so orders, and no such order has issued. “[I]f a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.” NRAP 39(a)(4). Here, the Court of Appeals affirmed the district court’s dismissal of appellants’ complaint and reversed the fee award pending further proceedings. In its Order Affirming in Part and Reversing in Part, the Court did not order that the Dezzanis be awarded costs. Indeed, because the Court of Appeals affirmed dismissal of their complaint, such an award would be nonsensical. As a result, the Dezzanis cannot recover costs under NRAP 39.

B. Certain Costs Sought By Appellants Are Not Taxable By The Appellate Courts

The Dezzanis seek costs that are not taxable in the appellate courts. The only costs that are taxable in the appellate courts are the costs of producing necessary copies of briefs and appendices and certain transportation costs of

counsel. NRAP 39(c). The filing fee for a notice of appeal is not enumerated in the rule and therefore not taxable. *See id.* As a result, the Dezzanis cannot recover this cost in the appellate courts.

C. The Copying Costs Are Not Adequately Supported

The Dezzanis have provided no proof that they actually expended \$33 for copying costs, and their bill of costs states such costs only “on information and belief.” As a result, the copying costs are not recoverable. *See* NRAP 39(c)(1).

D. The Court Should Not Determine Costs Until The Supreme Court Considers Kern’s Petition For Review

Kern has received an extension of time to file a Petition to Review of the Court of Appeals’ Order. The filing of a Petition for Review stays issuance of the remittitur. NRAP 41(b)(2). The case has been transferred to the Supreme Court. Because the Petition for Review may alter the outcome of the appeal, it would be premature for the Court to consider costs now.

For the foregoing reasons, Kern respectfully requests that no costs be awarded to the Dezzanis.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 5th day of December, 2016.

McDONALD CARANO WILSON LLP

By: /s/ Debbie Leonard
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Attorneys for Respondents

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of McDonald Carano Wilson LLP and on the 5th day of December, 2016, I certify that I served the foregoing document on the party(s) set forth below by placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, addressed as follows:

David Dezzani
Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

/s/ Pamela Miller
An employee of McDonald Carano Wilson, LLP