

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE THE EXECUTION SEARCH
WARRANTS FOR:

12067 OAKLAND HILLS, LAS VEGAS,
NEVADA 89141; 54 CAROLINA
CHERRY DRIVE, LAS VEGAS,
NEVADA 89141; 5608 QUIET CLOUD
DRIVE, LAS VEGAS, NEVADA 89141
AND 3321 ALCUDIA BAY AVENUE,
LAS VEGAS, NEVADA 89141

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Appellant,

vs.

LAURA ANDERSON,

Respondent.

Case No.: 71536

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, The Honorable
Judge Ron Israel Presiding.

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as 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.

1. The Las Vegas Metropolitan Police Department (“LVMPD”) is a governmental entity and is not owned by a publicly traded corporation. LVMPD was represented in the District Court and is represented in this Court by Nick D. Crosby, Esq., of the law firm of Marquis Aurbach Coffing.

Dated this 17th day of August, 2017.

MARQUIS AURBACH COFFING

By /s/ Nick D. Crosby, Esq.
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I. JURISDICTIONAL STATEMENT

Appellant, Las Vegas Metropolitan Police Department (“Department”), appeals from an order granting attorney fees to Respondent, Laura Anderson (“Respondent”). Nevada Rule of Appellate Procedure 3A(b)(8) authorizes an appeal from a “special order entered after final judgment.” This Court has consistently held that an order resolving a motion for attorney fees and costs is appealable as a special order entered after final judgment. See Thomas v. City of N. Las Vegas, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006); see also Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (holding that a post-judgment order awarding attorney fees and costs may be appealed as a special order made after final judgment). Therefore, pursuant to NRAP 3A(b)(8), allowing for an appeal from a special order entered after final judgment, this Court has appellate jurisdiction over this case.

II. ROUTING STATEMENT

This case does not technically fall within either the presumptive jurisdiction of the Nevada Supreme Court or the Court of Appeals as set forth in NRAP 17. That said, however, the case is more closely aligned with the presumptive jurisdiction of the Court of Appeals under NRAP 17(b)(2) in that it is an order awarding attorney fees which does not exceed \$250,000.

III. ISSUES ON APPEAL

Whether the District Court abused its discretion in awarding attorney fees under NRS 18.010(2)(a) when Respondent did not obtain a money judgment.

IV. STATEMENT OF THE CASE

In this appeal, the Department challenges the District Court's award of attorney fees to Respondent. The Department executed several search warrants at various locations. Subsequently, Respondent filed a Motion for Return of Seized Property pursuant to Nevada Revised Statute 179.085. The District Court granted the Motion for Return of Seized Property. Thereafter, Respondent moved for attorney fees and, on September 7, 2016 the District Court awarded Respondent attorney fees. The order granting fees was issued pursuant to Nevada Revised Statute 18.010(2)(a). However, the order is contrary to well-settled precedent from this Court because Respondent did not obtain a money judgment. See Smith v. Crown Financial Servs., 111 Nev. 277, 285, 890 P.2d 769, 774 (1995). Instead, Respondent obtained an order granting a Motion for Return of Seized Property. As such, the order awarding attorney fees under Nevada Revised Statute 18.101(2)(a) is improper as a matter of law and should be reversed.

V. STANDARDS OF REVIEW

Generally, this Court reviews decisions awarding or denying attorney fees with an abuse of discretion standard. Frantz v. Johnson, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000) (citations omitted). When the attorney fees matter implicates questions of law, the proper review is de novo. Trs. of the Plumbers and Pipefitters Union, Local 525 Health and Welfare Trust Plan v. Developers Sur. & Indem. Co., 120 Nev. 56, 59, 84 P.3d 59, 61 (2004) (citations omitted); see also Crestline Inv. Group v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 365 (2003); Thomas v. City of N. Las Vegas, 122 Nev. 82, 90 127 P.3d 1057, 1064 (2006).

VI. FACTUAL BACKGROUND

On or about May 18, 2015, officers with the Department served and executed search warrants at different locations. (ER 24-33). The Department seized property in the identified locations on the search warrant. (Id.)

VII. PROCEDURAL HISTORY

On February 19, 2016, Respondent filed a Motion for Return of Seized Property. (ER 2-36). The District Court granted Respondent's Motion for Return of Seized Property on April 20, 2016 and Notice of Entry of the Order was filed April 26, 2016. (ER 57-65).

Thereafter, on May 16, 2016, Respondent filed a Motion for Attorneys Fees and Costs. (ER 66-79). Respondent also filed a Memorandum of Costs on May 19, 2016. (ER 80-81). The Department filed a Motion to Retax on May 20, 2016 (ER 82-87) and an Opposition to the Motion for Attorneys Fees and Costs on June 3, 2016, and a Supplemental Brief in opposition, per request of the District Court, on August 18, 2016. (ER 89-100, 119-145). Respondent filed her Response to the Supplemental Brief on August 30, 2016. (ER 146-151). The District Court held an in chambers hearing on the Motions on September 7, 2016, and granted in part Respondent's Motion for Attorney Fees and awarded Respondent \$18,255.00 in attorney fees. (ER 152).

The District Court issued an order, granting in part and denying in part, Respondent's Motion on September 7, 2016, but the same was not filed until September 21, 2016. (ER 153-154). Pursuant to the District Court's order, Respondent was awarded attorney fees as the "prevailing party" under Nevada Revised Statute 18.010(2)(a), but denied Respondent's costs. (Id.)

Notice of Entry of the Order was filed September 22, 2016 and the Department timely filed a Notice of Appeal on October 13, 2016. (ER 155-163).¹

VIII. LEGAL ARGUMENT

A. SUMMARY OF ARGUMENT

For over two decades this Court has consistently ruled that a party seeking to obtain an award of attorney fees pursuant to Nevada Revised Statute 18.101(2)(a) must, as a prerequisite, obtain a money judgment. The record in this matter is clear – Respondent did not obtain a money judgment. As such, the District Court improperly awarded Respondent attorney fees under Nevada Revised Statute 18.010(2)(a). As such, the District Court’s order awarding attorney fees must be reversed.

B. THE DISTRICT COURT ERRED IN AWARDING FEES PURSUANT TO NRS 18.010(2)(A) BECAUSE RESPONDENT DID NOT OBTAIN A MONEY JUDGMENT.

The District Court’s award of attorney fees pursuant to Nevada Revised Statute 18.010(2)(a) was, as a matter of law, improper because Respondent did not obtain a money judgment.

¹ This Court issued an Order to Show Cause on March 24, 2017 regarding a potential jurisdictional defect in the appeal. The jurisdictional defect was cured by the Department and on May 19, 2017, the Court determined it had jurisdiction under NRAP 3A(b)(1) and reinstated the briefing schedule.

Nevada Revised Statute 18.010 states in relevant part:

NRS 18.010 Award of attorney's fees.

...

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than \$20,000;

...

Nev. Rev. Stat. 18.010(2)(a).

The Nevada Supreme Court has expressly held that a party is the “prevailing party” if it “succeeds on any significant issue in litigation which achieves some benefit it sought in bringing the suit.” Valley Elec. Assoc. v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (quoting Smith v. Crown Financial Servs., 111 Nev. 277, 285, 890 P.2d 769, 774 (1995)). However, achieving success on a significant issue is not the only requisite. Indeed, in 1995 the Nevada Supreme Court authored the Crown Financial decision, addressing the legislative history of NRS 18.010 and, after weighing all the possible scenarios regarding “prevailing parties,” the Court concluded the “*the recovery of a money judgment is a prerequisite to an award of attorney fees* pursuant to NRS 18.010(2)(a).” Crown Financial, supra, 111 Nev. at 285, 890 P.2d at 774 (emphasis added). The

prerequisite of a money judgment supported the legislative intent of the statute because to hold that something other than a money judgment (i.e. orders for equitable or declaratory relief) was sufficient, would allow every successful defendant to recover attorney fees under the statute, which is contrary to the intent of the statute. See Id. at 111 Nev. at 282-286, 890 P.2d at 772-775; see also Shupe & Yost, Inc. v. Fallon Natl. Bank of Nev., 109 Nev. 99, 102, 847 P.2d 720, 722 (1993); Key Bank v. Donnels, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990). This Court refused to overrule its decision in Crown Financial regarding the money judgment prerequisite. See Thomas v. City of N. Las Vegas, 122 Nev. 82, 93, 127 P.3d 1057, 1065 (2006). In Thomas, this Court, in refusing to change or alter the money judgment rule announced in Crown Financial, acknowledged there are “meritorious suits [which] neither seek nor recover a money judgment” but “[n]onetheless, NRS 18.010(2)(a) does not allow successful parties to recover attorney fees.” Id.

In the instant matter, there is no question the District Court awarded attorney fees pursuant to Nevada Revised Statute 18.101(2)(a). (ER 153:22-24). Likewise, there is no question Respondent did not obtain a money judgment. (ER 153-154). Instead, Respondent obtained an order granting a Motion for Return of Seized Property. (ER 57-65). Nowhere in the order granting the Motion for Return of

Seized Property did the District Court identify a money judgment or amount the Department was required to pay. (Id.) As such, Respondent cannot, as a matter of law, be a prevailing party for purposes of Nevada Revised Statute 18.010(2)(a) and this Court's holding in Crown Financial. Therefore, the order awarding attorney fees must be reversed.

IX. CONCLUSION

The precedent on the money judgment prerequisite under Nevada Revised Statute 18.101(2)(a) is clear and the record unequivocally proves Respondent did not obtain a money judgment. Therefore, the award of attorney fees under Nevada Revised Statute 18.010(2)(a) was in error and should be reversed.

Dated this 17th day of August, 2017.

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CERTIFICATE OF COMPLIANCE

1. 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 Microsoft Word 2007 in 14-point Times New Roman font.

2. 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 either:

proportionally spaced, has a typeface of 14 points or more and contains 1497 words; or

does not exceed _____ pages.

3. 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 17th day of August, 2017.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th day of August, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Suzanne Boggs

An employee of Marquis Aurbach Coffing