

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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8
9 WASTE MANAGEMENT OF
10 NEVADA, INC.
11 Appellant,

Supreme Court
Case No.: 80841

12 vs.

13 WEST TAYLOR STREET, LLC,
14 Respondent.

Second Judicial District Court
Case No. CV12-02995

15 _____ /
16
17 **APPELLANT'S**
18 **OPENING BRIEF**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Appellant Waste Management of Nevada, Inc. is a corporation.
2. Waste Management of Nevada, Inc., is wholly owned by Waste Management Holdings, Inc., a Delaware corporation.
3. Waste Management Holdings, Inc., is a wholly owned subsidiary of Waste Management, Inc.
4. Waste Management, Inc. is publicly traded on the New York Stock Exchange symbol WM.

The undersigned counsel at SIMONS HALL JOHNSTON PC appeared in these proceedings on behalf of Appellant Waste Management of Nevada, Inc.

DATED this 29th day of June, 2020.

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.....	ii
TABLE OF AUTHORITIES.....	v
JURISDICTIONAL STATEMENT.....	viii
NRAP 17 ROUTING STATEMENT.....	viii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
PROCEDURAL BACKGROUND.....	3
FACTUAL BACKGROUND.....	6
SUMMARY OF THE ARGUMENT.....	11
ARGUMENT.....	14
I. STANDARD OF REVIEW.....	14
II. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DETERMINING THAT WTS’S CLAIMS WERE ASSERTED IN GOOD FAITH.....	15
A. WTS’S CLAIMS WERE NOT ASSERTED IN GOOD FAITH AS A MATTER OF LAW SINCE THE CLAIMS CONTRADICT THE PLAIN LANGUAGE OF THE STATUTE.....	17
1. THE DISTRICT COURT ERRED IN REFUSING TO APPLY THE LAW OF THE CASE.....	18

1	2.	A RULING THAT THE FIRST <u>BEATTIE</u>	
2		FACTOR CAN BE AN ISSUE OF LAW COMPORTS	
3		WITH ESTABLISHED JURISPRUDENCE.....	20
4	3.	THE DISTRICT COURT FAILED TO	
5		EXAMINE THE LEGITIMACY OF WTS'S	
6		CLAIMS.....	22
7	4.	THE DISTRICT COURT FAILED TO	
8		EXAMINE THE LEGAL BASIS OF WTS'S	
9		CLAIMS.....	23
10	5.	A FINDING THAT WTS'S CLAIMS WERE	
11		BASELESS AS A MATTER OF LAW	
12		PROMOTES THE POLICY UNDERLYING	
13		NEVADA'S FEE SHIFTING PROVISIONS.....	26
14	B.	THE DISTRICT COURT ERRED IN DETERMINING	
15		WTS'S CLAIMS SUBSTANTIALY BENEFITTED	
16		THE COMMUNITY.	27
17	C.	WASTE MANAGEMENT'S VOLUNTARILY RELEASE	
18		OF ITS GARBAGE LIENS IS NOT A CONCESSION	
19		THAT WTS'S CLAIMS WERE BROUGHT IN	
20		GOOD FAITH.....	29
21	III.	THE DISTRICT COURT ERRED IN RULING THAT WTS'S	
22		REJECTION OF THE OFFER WAS REASONABLE.....	31
23	A.	WASTE MANAGEMENT'S PURPORTED LIABILITY	
24		WAS PREMISED UPON AN INVALID CONTENTION.....	33
25	B.	WTS DID NOT SUSTAIN ANY DAMAGES.....	34
26		CONCLUSION.....	36
		CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 28.2.....	38
		CERTIFICATE OF SERVICE.....	40

TABLE OF AUTHORITIES

NEVADA CASES

<u>AA Primo Builders, LLC v. Washington</u> , 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).....	15
<u>Allianze Ins. Co. v. Gagnon</u> , 109 Nev. 990, 996, 860 P.2d 720, 724 (1993).....	24
<u>Barnes v. Eighth Judicial Dist. Ct.</u> , 103 Nev. 679, 682, 748 P.2d 483, 486 (1987).....	27
<u>Beattie v. Thomas</u> , 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983).....	viii
<u>Bergmann v. Boyce</u> , 109 Nev. 670, 674, 675, 856 P.2d 560, 563 (1993) (<i>superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.</i> , 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017)).....	14, 18, 25
<u>Bower v. Harrah's Laughlin, Inc.</u> , 125 Nev. 470, 480, 215 P.3d 709, 717 (2009).....	14
<u>Capanna v. Orth</u> , 134 Nev. 888, 895, 432 P.3d 726, 734 (2018).....	25-26
<u>Cormier v. Manke</u> , 108 Nev. 316, 318, 830 P.2d 1327, 1328 (1992).....	32
<u>Day v. W. Coast Holdings, Inc.</u> , 101 Nev. 260, 265, 699 P.2d 1067, 1071 (1985).....	35-36
<u>Dictor v. Creative Mgmt. Servs., LLC</u> , 126 Nev. 41, 44, 223 P.3d 332, 334 (2010).....	19
<u>Falline v. GNLV Corp.</u> , 107 Nev. 1004, 1009, 823 P.2d 888, 891 (1991).....	23
<u>Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC</u> , 129 Nev. 181, 186, 300 P.3d 124, 128 (2013).....	16
<u>Horgan v. Felton</u> , 123 Nev. 577, 586, 170 P.3d 982, 988 (2007).....	34

<u>In re Estate & Living Tr. of Miller</u> , 125 Nev. 550, 553, 216 P.3d 239, 241 (2009).....	20, 21
<u>Int'l Indus., Inc. v. United Mortg. Co.</u> , 96 Nev. 150, 156, 606 P.2d 163, 167 (1980) (<i>disapproved of on other grounds</i> <u>Sandy Valley</u> <u>Assocs. v. Sky Ranch Estates Owners Ass'n</u> , 117 Nev. 948, 35 P.3d 964 (2001)).....	24-25
<u>Katz v. Incline Vill. Gen. Improvement Dist.</u> , 452 P.3d 411, Docket No. 71493 (Nov. 21, 2019).....	26
<u>LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.</u> , 116 Nev. 415, 423, 997 P.2d 130, 136 (2000).....	14
<u>Lemel v. Smith</u> , 64 Nev. 545, 566, 187 P.2d 169, 179 (1947).....	9
<u>Lytle v. Sept. Tr., Dated Mar. 23, 1972</u> , Docket No. 76198, *6, 458 P.3d 361 (March 2, 2020).....	25
<u>Rodriguez v. Primadonna Co.</u> , 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).....	25
<u>Schouweiler v. Yancey Co.</u> , 101 Nev. 827, 833, 712 P.2d 786, 790 (1985).....	15
<u>Thomas v. City of N. Las Vegas</u> , 122 Nev. 82, 90–91, 127 P.3d 1057, 1063–64 (2006).....	29
<u>Waste Management of Nev. Inc. v. West Taylor Street, LLC</u> , 135 Nev. 168, 169, 170, 173, 443 P.3d 1115, 1116, 1117, 1119 (2019).....	1, 4, 5, 7, 8, 11, 30, 36
<u>Wilson v. Happy Creek, Inc.</u> , 135 Nev. 301, 311, 448 P.3d 1106, 1114 (2019).....	14
<u>Wynn v. Smith</u> , 117 Nev. 6, 13, 16 P.3d 424, 428-29 (2001).....	14, 21-22
<u>Yamaha Motor Co., U.S.A. v. Arnoult</u> , 114 Nev. 233, 251, 316, 318, 955 P.2d 661, 672–73, fn. 16 (1998).....	ix, 22, 31

EXTRA JURISDICTIONAL CASE LAW

<u>Cooter & Gell v. Hartmarx Corp.</u> , 496 U.S. 384, 405, 110 S.Ct. 2447, 2460, 110 L.Ed.2d 359 (1990).....	18
<u>F.A.A. v. Cooper</u> , 566 U.S. 284, 295 (2012).....	34
<u>Gakiya v. Hallmark Properties, Inc.</u> , 68 Haw. 550, 722 P.2d 460, 463 (Haw. 1986).....	18
<u>Western United Realty, Inc. v. Isaacs</u> , 679 P.2d 1063, 1069 (Colo. 1984).....	24

NEVADA STATUTE

NRS 7.085(1)(b).....	ix
NRS 18.010(2)(b).....	ix, 24, 26
NRS 444.440.....	28
NRS 444.520.....	3, 4

NEVADA RULES

NRAP 28(a)(4).....	viii
NRAP 28(a)(5).....	viii

JURISDICTIONAL STATEMENT

Pursuant to NRAP 28(a)(4), Appellant provides the following jurisdictional statement. This appeal arises from a district court order denying a NRCP 68 Motion for Attorneys' Fees ("Motion") filed by Waste Management of Nevada, Inc. ("Waste Management") against respondent West Taylor Street, LLC ("WTS"). The district court's Order Denying Waste Management of Nevada, Inc.'s Motion for An Award of Attorneys' fees was filed on March 10, 2020 (the "Order"). Notice of Entry of the Order was filed on March 11, 2020. Waste Management's Notice of Appeal was filed on March 19, 2020.

NRAP 17 ROUTING STATEMENT

Pursuant to NRAP 28(a)(5), Appellant provides the following routing statement. This appeal presents an issue of first impression regarding the interpretation and application of the first factor of a NRCP 68 analysis. This case is also properly before this Court because this appeal raises "as a principal issue a question of statewide public importance".

Specifically, this Court has instructed district courts to analyze and weigh four (4) factors outlined in Beattie v. Thomas, 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983) in determining whether attorney's fees should be awarded

1 pursuant to NRCP 68.¹ This appeal seeks to establish a party does not bring a
2 claim in good faith under the first Beattie factor “as a matter of law” when this
3 Court determines the claim contradicts the plain language of a statute.²
4
5 Alternatively, this appeal seeks to establish a claim does not have “a reasonable
6 basis” when the claim contradicts the “plain language” of a statute.³
7

8 Consideration of these issues on appeal has far reaching application other
9 than just an analysis of the first prong of the Beattie factors under a NRCP 68
10 analysis. This is because pursuant to NRS 18.010(2)(b), attorney’s fees may be
11 awarded to a party when a claim was “brought or maintained without [a]
12 reasonable ground”⁴ Similarly, NRS 7.085(1)(b) also contains a “reasonable”
13 analysis for claims in determining whether an award of attorney’s fees and costs
14 against an attorney is appropriate. Accordingly, while this appeal presents an
15
16
17

18 ¹ See e.g., Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 251, 955
19 P.2d 661, 672–73 (1998) (“Under *Beattie*, the trial court must carefully weigh the
20 following [four] factors in exercising its discretion to award fees under NRCP 68:
(1) whether the plaintiff’s claim was brought in good faith”).

21 ² This argument seeks to establish a bright-line rule that a claim is not
22 asserted in good faith when the claim asserted contradicts the plain language of a
23 statute.

24 ³ This argument seeks to establish that a claim LACKS “a reasonable basis”
25 when the claim asserted contradicts the plain language of a statute.

26 ⁴ This statute also mandates that this provision is to be “liberally construed”
so as to award fees and costs. Id.

1 issue limited to a NRCP 68 analysis, it appears the Court's determination of the
2 issues on appeal will also have applicability to the interpretation of NRS
3 18.010(2)(b)'s and NRS 7.085(1)(b)'s provisions.
4

5 In addition to the foregoing, this appeal seeks a determination that the
6 district court also erroneously concluded that WTS's claims were brought in good
7 faith on the basis that WTS's lawsuit provided a substantial benefit to the
8 community. Similarly, this appeal seeks a determination that Waste
9 Management's voluntarily release of its garbage liens due to the district court's
10 erroneous judgment is irrelevant to the good faith analysis.
11
12

13 Lastly, this appeal seeks a determination that the district court erred in
14 determining that WTS's rejection of the offer of judgment was reasonable under
15 the circumstances of the case so as to preclude an award of fees to Waste
16 Management under the third Beattie factor.⁵
17

18 ///

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20 ///

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22
23 ⁵ The district court ruled in favor of Waste Management on the second
24 Beattie prong finding that Waste Management made its Offer of Judgment
25 ("Offer") "in good faith, in both timing and amounts." The district court also ruled
26 in favor of Waste Management on the fourth Beattie factor finding that the
attorney's fees sought were "reasonable and justified in amount." The district
court's analysis on the second and fourth factors are not at issue in this appeal.

STATEMENT OF THE ISSUES

1. Whether the district court erred in determining that WTS's claims were asserted in good faith in light of this Court's decision in Waste Management of Nev. Inc. v. West Taylor Street, LLC, 135 Nev. 168, 443 P.3d 1115 (2019) ("Waste Management"), in which this Court held as a matter of law WTS's claims were baseless as they contradicted the plain language of NRS 444.520.

2. Whether the district court erred in determining that WTS's legally baseless lawsuit benefitted the community so as to constitute good faith satisfying the first of the Beattie factors.

3. Whether the district court erred in determining that Waste Management's voluntary release of its garbage liens due to the district court's initial erroneous judgment equated to a finding that WTS's claims were brought in good faith satisfying the first of the Beattie factors.

4. Whether the district court erred in determining that WTS's rejection of Waste Management's \$10,000 Offer of Judgment was reasonable under the circumstances of the case precluding an award of fees to Waste Management under the third Beattie factor.

///

STATEMENT OF THE CASE⁶

The district court conducted an analysis of the four (4) Beattie factors in denying Waste Management's Motion. The district court erroneously determined that the first Beattie factor weighed in favor of WTS concluding that WTS's claims were brought in good faith. However, the district court entirely ignored this Court's decision in Waste Management in its analysis. Rather, the district court overreached concluding WTS's claims were asserted in good faith without considering the lack of merit and the legally baseless nature of the claims asserted by WTS as determined by this Court.

Further, again entirely ignoring this Court's decision in Waste Management, the district court asserted that WTS's lawsuit was brought in good faith because it "substantially benefitted the community" and that Waste Management voluntarily released its garbage liens. However, the district court erroneously applied the doctrine of substantial benefit and Waste Management's compliance with the district court's erroneous decision is in no way an indicator that the claims were asserted in good faith.⁷

⁶ For ease of reading, this section will omit appendix citations, but citations will be provided for factual statements in the body of the brief.

⁷ Waste Management's argument on this point can be summarized as compliance with the district court's erroneous decision does not breathe life and vitality into WTS's baseless claims and/or the district court's erroneous decision.

1 Lastly, the district court also erroneously determined that the third Beattie
2 factor weighed in favor of WTS because the rejection “does not appear to be
3 unreasonable or made in bad faith.” The district court’s analysis on this prong
4 again ignored this Court’s decision in Waste Management and because it was
5 undisputed that WTS: owed money to Waste Management for delinquent waste
6 collection fees, WTS had not sustained any harm and the underlying action was
7 pursued solely to harass Waste Management.
8

9
10 As this brief will demonstrate, WTS’s owner and manager, C. Nicholas
11 Pereos (the attorney appearing on behalf of WTS) pursued his own personal
12 vendetta against Waste Management seeking to cause Waste Management to spend
13 significant amounts on litigation even though WTS had sustained no harm and no
14 compensable damages.⁸ Accordingly, the district court also erroneously ruled that
15 the third Beattie factor weighed in favor of denying Waste Management recovery
16 of its attorney’s fees under NRCP 68.
17
18

19 20 **PROCEDURAL BACKGROUND**

21 WTS originally brought two claims for declaratory relief contending that
22 Waste Management violated the provisions of NRS 444.520 when it recorded three
23

24
25 ⁸ The original garbage liens at issue in this case totaled \$1,754.13 and were
26 for amounts that were properly charged but WTS refused to pay.

1 (3) garbage liens totaling \$1,754.13 against WTS's property.⁹ In addition, WTS
2 brought a claim for slander of title contending that WTS sustained damages as a
3 result of the recordation of the garbage liens.
4

5 WTS brought suit claiming that Waste Management's liens were illegally
6 recorded because NRS 444.520(3)'s provisions stating garbage liens "may be
7 foreclosed in the same manner as provided for the foreclosure of mechanics' liens"
8 meant the entire mechanics' lien statutory scheme was incorporated into the
9 garbage lien statutes--not just the specific foreclosure statute that was referenced.
10 In addition, WTS claimed a statute of limitations applied to enforcement of Waste
11 Management's garbage liens even though the liens were expressly stated as
12 "perpetual" liens.
13
14
15

16 The district court adopted WTS's arguments and ruled Waste Management's
17 three (3) liens were illegally recorded (the "Judgment"). In response to the district
18 court's ruling, Waste Management released its three (3) liens. The district court's
19 Judgment also arbitrarily imposed a 2-year statute of limitations to pursue any
20 foreclosure proceedings under NRS 444.520 even though the garbage lien is
21 defined by statute as "a perpetual lien".
22
23
24
25

26 ⁹ The procedural background and facts are taken from this Court's decision
in Waste Management, 135 Nev. at 169, 443 P.3d at 1116.

1 Waste Management subsequently appealed the district court's Judgment.
2 This Court held that the application of NRS 444.520's provision was a matter of
3 law. Waste Management, 135 Nev. at 170, 443 P.3d at 1117 ("We review
4 questions of statutory construction de novo."). This Court then reversed in total
5 the district court's interpretation and application of NRS 444.520. This Court
6 found that NRS 444.520(3)'s provisions were "clear on its face" and that according
7 to the statute's "plain meaning" only the foreclosure statute was incorporated into
8 NRS 444.520(3)'s provisions, not the entirety of the mechanic's lien statutory
9 scheme as argued by WTS.¹⁰

13 In finding that the district court erred in interpreting the clear and
14 unambiguous language of the statute, and its plain meaning, this Court held:

16 **[T]he district court erred** in incorporating into NRS 444.520 the
17 perfections requirements under the mechanics' lien statute as outlined in
18 NRS 108.226, which is separate from NRS 108.239's foreclosure procedure.
19 . . . under the plain language of the garbage lien statute, the perfection
20 requirements of the mechanics' lien statute, or any other requirements that
21 do not involve the foreclosure of a mechanics' lien, are not incorporated.
22 **The district court erred** when it incorporated anything beyond NRS
23 108.239 into the garbage lien statute. Accordingly, we hold that **the district**
24 **court erred** in concluding that Waste Management needed to record its lien
25 within 90 days of completing the work in accordance with NRS 108.226,
26 **and we reverse the district court's order on this ground.**

25 ¹⁰ Id. at 171, 443 P.3d at 1117 ("Based upon the statute's plain meaning, the
26 only provision of the mechanics' lien statutes incorporated into NRS 444.520 is
NRS 108.239.").

1 Id. at 171, 443 P.3d at 1117 (emphasis added).

2 In addition, this Court found that “the district court erred . . . in applying . . .
3 the two-year statute of limitations . . . to the foreclosure of those liens” This
4 Court held that applying a two (2) year statute of limitations to the foreclosure of
5 the garbage lien was erroneous because: “a garbage lien is perpetual, it is not
6 subject to a statute of limitations.” Id. at 173, 443 P.3d at 1119. This Court then
7 reversed the district court’s Judgment and remanded the case back to the district
8 court for further proceedings “consistent with [the Court’s decision].” Id.
9
10

11 After remand, Waste Management filed its Motion seeking recovery of
12 attorney’s fees under NRCP 68 pursuant to its Offer. Due to the district court’s
13 denial of the Motion, this appeal follows.
14
15

16 **FACTUAL BACKGROUND**

17 1. The garbage liens recorded by Waste Management were for a total of
18 \$1,754.13 in unpaid amounts owed by WTS for garbage collection services.
19
20 5 JA_1218.

21 2. Even though Waste Management fully complied with the garbage lien
22 statute, WTS’s claims were premised on the contention Waste Management
23 illegally recorded its garbage liens by not following all the perfection and
24
25
26

1 recording obligations contained in Nevada’s mechanic lien statutes. Waste
2 Management, 135 Nev. at 169, 443 P.3d at 1116.¹¹
3

4 3. The district court entered summary judgment against Waste
5 Management finding it did not properly record its liens because it failed to record
6 the liens within 90 days of the completion of work as required by the mechanics’
7 lien statutes (the “Judgment”). Id.
8

9 4. The district court’s Judgment also held that Waste Management
10 “could no longer foreclose on its liens because a two-year limitations period
11 applied to the foreclosing on garbage liens.” Id.
12

13 5. As a result of the district court’s erroneous decision, Waste
14 Management voluntarily released all three of its liens. Id.
15

16 6. On July 27, 2017, during the pendency of the litigation, Waste
17 Management extended its Offer allowing WTS to have judgment against it in the
18 amount of \$10,000. 5 JA_1215:16-20. The Offer was never accepted and expired
19 according to its terms.
20
21
22
23

24 ¹¹ As discussed extensively in this Court’s Waste Management decision,
25 Nevada’s garbage lien statutes are separate and distinct from Nevada’s mechanics’
26 lien statutes. Nevada’s garbage lien statutes were enacted “to give waste collection
companies a method for collecting delinquent payments for their services.” Id. at
168, 443 P.3d at 1116.

1 7. On June 27, 2019, this Court entered its decision in Waste
2 Management v. West Taylor Street, LLC, 135 Nev. 168, 173, 443 P.3d 1115, 1119
3
4 (2019) reversing the district court's erroneous Judgment and remanded for further
5 proceedings "consistent with [the Court's decision]."

6 8. Upon remand, Waste Management filed its Motion seeking an award
7
8 of fees pursuant to the terms of its Offer and NRCP 68 requesting an award of
9 \$69,115.25 in attorneys' fees incurred by Waste Management after the service of
10 the Offer. 5 JA_1045-1098.

11 9. WTS is managed by C. Nicholas Pereos (*i.e.*, he oversees and rents
12 out the duplex owned by WTS). Mr. Pereos' trust is called the Restated 1980
13 Pereos Trust ("Pereos Trust") and the Pereos Trust is the sole member of WTS.
14
15 4 JA_0799.

16 10. Mr. Pereos operates all aspects of WTS's rental business including
17 who to rent to, negotiating and signing leases, contracting for use of Waste
18 Management's services, and receiving and responding to all mail and bills.
19
20 4 JA_0759-760.

21 11. In addition to running WTS, Mr. Pereos makes all decisions for the
22
23 Pereos Trust. 4 JA_0760-761.

24 12. Even though WTS claimed it sustained and incurred attorneys' fees
25
26 by retaining Mr. Pereos as its attorney as special damages, it did not. This is

1 because Mr. Pereos was never formally retained, was never paid and WTS never
2 actually “incurred” any attorneys’ fees at all. 4 JA_0799.

3
4 13. WTS admits it did not sustain any special damages for attorney’s fees
5 because Mr. Pereos was “absorbing the time invested” in pursuing WTS’s claims
6 against Waste Management without payment or obligation by WTS to pay for his
7 legal services. 5 JA_1107:1-2.

8
9 14. Mr. Pereos characterized his activities as an “investment” and that he
10 “invested” over \$100,000 of his time in pursuing WTS’s claims against Waste
11 Management. 4 JA_743:22-23.¹²

12
13 15. The \$1,754.13 in dispute was for charges and late fees WTS
14 unilaterally refused to pay. The history of WTS’s charges and late fees are
15 undisputed. 2 JA_0306-312.

16
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21
22 ¹² Waste Management suggests this Court can take judicial notice that
23 investing over \$100,000 in time and effort into a lawsuit over a dispute valued at
24 \$1,754.13 is prima facie bad faith conduct (especially when it is admitted some, if
25 not all, of the \$1,754.13 is actually owed). Lemel v. Smith, 64 Nev. 545, 566, 187
26 P.2d 169, 179 (1947) (“[Judicial notice] fulfills the object which evidence is
designed to fulfill, and makes evidence unnecessary Judicial notice has been
applied to a wide range of subjects from the facts of ordinary life to the arts,
sciences and professions, confined only to those things which any well informed
person would be presumed to know.”).

1 16. Mr. Pereos represented he was pursuing WTS's claims because he
2 was "an attorney who could (at this stage of his career) absorb time investment to
3 hold WM accountable." 5 JA_1107:1-2.
4

5 17. Mr. Pereos' vendetta permeated the underlying litigation with WTS
6 employing the following derogatory comments to further this objective:
7

8 a. "[T]he indifference maintained by WM in connection with the
9 amount of money owed by the plaintiff and probably other customers as
10 well. They do not want to be accountable to anyone! In turn, their
11 'indifference', translates to their attitude when it comes to the recording of
the lien against Plaintiff's property, and having to respond to these issues if
there is a dispute." 3 JA_0562:20-24.

12 b. "WM has an attitude that it does not have to account to
13 anyone when it records a lien and ignores pleas to address this
14 issue." 3 JA_0564:25-26.

15 c. "WM's business culture is to bleed as much money as it
16 can out of its customers to maximize profit." 5 JA_0564:27-28.

17 d. "The culture in Waste Management [is] of bleeding its
18 customers for money" 5 JA_0565:20-21.

19 e. "WM is not responsive to its customer's complaints
20 about billing which probably arises from a corporate attitude by WM that it
21 can get away with their billing practices given the legal expenses that
customers would otherwise incur to challenge them." 5 JA_1105:5-8.

22 f. "How many customers can afford to hire an attorney to
23 pursue a case of this nature and hold WM accountable? It would be cost
24 prohibitive! Waste Management is banking on that concept!"
25 5 JA_1106:25-27.

26 g. Waste Management has "unchecked authority . . .
without any accountability." 4 JA_0957:22-23.

1
2 h. Waste Management “is accountable to no one!” and
3 has “unchecked authority without accountability.” 4 JA_0964:1;
4 JA_0966:1.

5 i. Waste Management has “no accountability to the voters
6 or anyone else!” 4 JA_0974:15-16.

7 8 **SUMMARY OF THE ARGUMENT**

9 Waste Management argues that the findings by this Court in Waste
10 Management required the district court to rule as a matter of law that WTS’s
11 claims were not asserted in good faith. This is because this Court found that
12 WTS’s claims contracted the plain meaning of NRS 444.520(3) and that the
13 Legislature’s designation of a garbage lien as “perpetual” meant that as a matter of
14 law, no statute of limitations applied. Accordingly, under the doctrine of law of
15 the case and/or based upon this Court’s analysis in Waste Management, the district
16 court should have held that WTS’s claims were not asserted in good faith either as
17 a matter of law or because there was no reasonable basis supporting the claims.
18

19
20 In support of its position, Waste Management highlights the following
21 findings by this Court in Waste Management:

- 22 1. “The plain meaning of NRS 444.520(3) is clear on its face.”¹³
23
24 2. “Based on the definition of foreclosure, the statute's meaning
25 is clear on its face as to which provision of the mechanics lien statutes is

26 ¹³ Id. at 170, 443 P.3d at 1117.

1 incorporated into the garbage lien statute.”¹⁴

2 3. “[T]he district court erred in incorporating into NRS 444.520
3 the perfection requirements under the mechanics' lien statute”¹⁵

4 4. “[U]nder the plain language of the garbage lien statute, the
5 perfection requirements of the mechanics' lien statute . . . are not
6 incorporated.”¹⁶

7 5. “The district court erred when it incorporated anything beyond
8 NRS 108.239 into the garbage lien statute.”¹⁷

9 6. “[T]he district court erred in concluding that Waste
10 Management needed to record its lien within 90 days of completing the
11 work . . . and we reverse the district court’s order on this ground.”¹⁸

12 7. “The plain language of NRS 444.520(3) indicates that the lien
13 is perpetual, and therefore the remedy of foreclosure must also be
14 perpetual.”¹⁹

15 8. “[T]he district court erred . . . in applying both the lien
16 perfection requirements set forth in NRS 108.226 and the two-year statute
17 of limitations set forth in NRS 11.190(4)(b) to the foreclosure of those liens
18 under NRS 444.520. Since a garbage lien is perpetual, it is not subject to a
19 statute of limitations.”²⁰

20 ¹⁴ Id.

21 ¹⁵ Id. at 171, 443 P.3d at 1117

22 ¹⁶ Id.

23 ¹⁷ Id.

24 ¹⁸ Id. at 171, 443 P.3d at 1118.

25 ¹⁹ Id. at 173, 443 P.3d at 1119.

26 ²⁰ Id.

1 Based upon these findings, Waste Management contends that the district court
2 should have determined as a matter of law that WTS's claims were not asserted in
3 good faith under the first prong of the Beattie factors.
4

5 In addition, Waste Management will demonstrate the district court erred
6 when it concluded that WTS's lawsuit was brought in good faith under the theory
7 that WTS's lawsuit "substantially benefitted the community." It did not. The
8 district court completely misapplied the substantial benefit doctrine. Contrary to
9 the district court's analysis, the benefit to the community was this Court's
10 upholding Waste Management's compliance with the law and Nevada's garbage
11 lien laws, and, therefore, WTS's baseless claims did not benefit the community in
12 any fashion.²¹
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16 Waste Management will also demonstrate that the district court erred as a
17 matter of law concluding that Waste Management's voluntarily release of its
18 garbage liens should be treated as a concession that WTS pursued its claims in
19 good faith. Such a conclusion is erroneous because (1) Waste Management's
20 compliance with the district court's erroneous Judgment is not an admission of
21 merit and (2) this Court's decision in Waste Management established as a matter of
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24
25 ²¹ One can easily argue that WTS's baseless claims significantly harmed the
26 community by requiring the district court and this Court to expend time and
resources resolving a baseless claim instead of using the time and resources on
resolving meritorious disputes.

1 law Waste Management was legally entitled to re-record its liens since the liens are
2 perpetual should Waste Management have elected to do so. Lastly, the district
3 court's analysis of the third Beattie factor was baseless and erroneous and WTS's
4 rejection of the \$10,000 Offer was in bad faith and unreasonable.
5

6 **ARGUMENT**

7 **I. STANDARD OF REVIEW.**

8
9 Waste Management believes that the appropriate standard on review is a de
10 novo review. This is because Waste Management asserts that the analysis of the
11 first Beattie factor in this appeal presents questions of law and/or predominantly a
12 question of law. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 480, 215 P.3d
13 709, 717 (2009) (explaining that this court reviews mixed questions of law and fact
14 de novo when legal issues predominate); *see also* Wilson v. Happy Creek, Inc.,
15 135 Nev. 301, 311, 448 P.3d 1106, 1114 (2019) ("to the extent the question is
16 whether the facts . . . allow . . . relief, de novo review applies.").

17
18 Alternatively, this Court reviews a district court's application of the Beattie
19 factors for an abuse of discretion. LaForge v. State, Univ. & Cmty. Coll. Sys. of
20 Nev., 116 Nev. 415, 423, 997 P.2d 130, 136 (2000). However, in order to invoke
21 this deferential standard, "the record [must] clearly reflect[] that the district court
22 properly considered the *Beattie* factors" Wynn v. Smith, 117 Nev. 6, 13, 16
23 P.3d 424, 428-29 (2001).
24
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26

1 The district court abuses its discretion “when the court's evaluation of the
2 *Beattie* factors is arbitrary or capricious.” Schouweiler v. Yancey Co., 101 Nev.
3 827, 833, 712 P.2d 786, 790 (1985). Similarly, this Court does not defer to a
4 district court’s legal error when reviewing discretionary acts. AA Primo Builders,
5 LLC v. Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (“While
6 review for abuse of discretion is ordinarily deferential, deference is not owed to
7 legal error.”). Accordingly, “where a trial court exercises its discretion in clear
8 disregard of the guiding legal principles” the district court abuses its discretion.
9 Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). It is in this
10 setting that Waste Management contends the district court abused its discretion in
11 denying its Motion for an award of attorney’s fees pursuant to NRCP 68 either by
12 disregarding the law of the case, the misapplication and/or understanding of the
13 law or because the district court’s analysis was arbitrary and capricious.
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19 **II. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN**
20 **DETERMINING THAT WTS’S CLAIMS WERE ASSERTED IN**
21 **GOOD FAITH.**

22 The first Beattie factors focuses on an analysis of whether a plaintiff’s
23 claims were asserted in good faith. While this Court’s prior decisions focus on the
24 factual underpinnings of a plaintiff’s case (and the evidentiary support and/or lack
25 thereof), this appeal focuses on the lack of a legal basis for a claim to demonstrate
26 WTS’s claims were not asserted in good faith as a matter of law. Accordingly,

1 Waste Management asserts that while the analysis of the first Beattie factor may
2 present a pure question of law and/or alternatively, a mixed question of law and
3 fact. In this appeal the first factor is solely an issue of law based upon this Court's
4 analysis and ruling in Waste Management.

5
6 The premise of Waste Management's argument is because WTS's claims
7 contradicted the clear and unambiguous "plain language" of NRS 444.520, this
8 Court's determination equates to a finding that WTS's claims were not asserted in
9 good faith as a matter of law.²² As such, the district court should have determined
10 that WTS's claims lacked a legal basis and was therefore not asserted in good faith
11 under the first Beattie factor. Alternatively, Waste Management contends that the
12 district court should have at least made a factual finding that WTS's claims were
13 not asserted with a reasonable basis since WTS's claims contradicted the plain
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19 ²² A similar scenario as presented on appeal is when a plaintiff asserts a claim
20 that is facially barred by an applicable statute of limitations. While the underlying
21 facts may demonstrate a debt was owed, the prosecution of the claim violates a
22 statutory enacted statute of limitations and is barred as a matter of law. In this
23 setting, the underlying facts become irrelevant because the primary issue is solely a
24 legal issue, *i.e.*, is the claimed is barred by the plain language of the statute. Waste
25 Management contends a claim cannot be asserted in good faith when the claim
26 contradicts the plain language of a statute. *See e.g., Holcomb Condo.*
Homeowners' Ass'n, Inc. v. Stewart Venture, LLC, 129 Nev. 181, 186, 300 P.3d
124, 128 (2013) ("A court [may] dismiss a complaint for failure to state a claim
upon which relief can be granted [when an] action is barred by the statute of
limitations." (citation omitted)).

1 language of the applicable statute. The district court's conduct was egregious
2 because it simply ignored this Court's decision and analysis in Waste Management
3 to deny the Motion. These arguments are more fully discussed below.

4
5 **A. WTS'S CLAIMS WERE NOT ASSERTED IN GOOD FAITH**
6 **AS A MATTER OF LAW SINCE THE CLAIMS CONTRADICT**
7 **THE PLAIN LANGUAGE OF THE STATUTE.**

8 Waste Management is cognizant that a district court may be extremely
9 hesitant to award fees against a party when the district court makes an erroneous
10 legal decision which is later reversed by this Court. A judge may believe that
11 because a party wrongfully asserted a legal position that the judge adopted, the
12 party should not be penalized for the judge's error. Stated another way, a judge
13 may believe that because he or she was convinced to make a wrong decision, the
14 party asserting the wrong argument must have asserted it in good faith with a
15 reasonable basis since the judge bought-off on the argument. However, two
16 wrongs do not make a right.

17
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19
20 Waste Management argues to this Court that for purposes of considering the
21 first Beattie factor, when this Court rendered its decision in Waste Management
22 finding that the claims asserted by WTS contradicted the plain meaning of the
23 statute, the first Beattie factors should have been resolved in Waste Management's
24 favor as matter of law. WTS's legal arguments contradicted the plain language of
25 the statute (first wrong) and so did the district court's analysis (second wrong).
26

1 Merely because WTS engaged in the pursuit of an erroneous and facially
2 contradictory interpretation of a statute does not mean the claims were asserted in
3 good faith. Instead, Waste Management contends when there is a purely legal
4 decision rendered by this Court finding the underlying claims were not legally
5 valid, then the claims were not asserted in good faith as a matter of law.
6

7
8 **1. THE DISTRICT COURT ERRED IN REFUSING TO**
9 **APPLY THE LAW OF THE CASE.**

10 In Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), this
11 Court explained that “where a trial court exercises its discretion in clear disregard
12 of the guiding legal principles, this action may constitute an abuse of discretion.”
13 Similarly, in Bergman, the Court cited with approval Cooter & Gell v. Hartmarx
14 Corp., 496 U.S. 384, 405, 110 S.Ct. 2447, 2460, 110 L.Ed.2d 359 (1990) for the
15 proposition that: “A district court would necessarily abuse its discretion if it
16 based its ruling on an erroneous view of the law . . .”. Id. at 674, 856 P.2d at
17 563.²³ Applying these principals, Waste Management contends that the first
18 Beattie factor should be treated as an issue of law in the present circumstances and
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24 ²³ The Court also relied on Gakiya v. Hallmark Properties, Inc., 68 Haw. 550,
25 722 P.2d 460, 463 (Haw. 1986) for the proposition that disregarding rules or
26 principles of law to substantial detriment of a party litigant constitutes abuse of
discretion. Id.

1 that the district court abused its discretion based upon an erroneous view of the
2 law.

3
4 The district court failed to acknowledge that this Court's decision in Waste
5 Management was dispositive under the law of the case doctrine.²⁴ "The law of the
6 case doctrine provides that when an appellate court decides a principle or rule of
7 law, that decision governs the same issues in subsequent proceedings in that case."
8 Dictor v. Creative Mgmt. Servs., LLC, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010).

9
10 Although this Court instructed the district court to render further proceedings
11 "consistent with" the Court's decision in Waste Management, the district court
12 refused to do so. Instead, the district court ignored the law of the case and entirely
13 ignored that WTS's claims contradicted the plain language of the statute. This
14 legal error by the district court requires reversal.
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23 ²⁴ The district court's Order acknowledged this Court's decision in Waste
24 Management, acknowledged that this Court found that the district court
25 "erroneously granted summary judgment in favor of [WTS]" and then
26 acknowledged that the action was reversed and remanded "for further proceedings
consistent with the Decision." 5 JA_1215. However, the district court's
subsequent analysis of the Motion ignored in its entirety the findings contained in
this Court's Waste Management decision.

1 **2. A RULING THAT THE FIRST BEATTIE FACTOR CAN**
2 **BE AN ISSUE OF LAW COMPORTS WITH**
3 **ESTABLISHED JURISPRUDENCE.**

4 Waste Management asserts the analysis of all four (4) of the Beattie factors
5 may present a mixed question of facts and/or laws. However, based upon prior
6 case law, Waste Management contends that, as in this case, the determination of a
7 single prong can be rendered as a matter of law. *See e.g., In re Estate & Living Tr.*
8 *of Miller*, 125 Nev. 550, 553, 216 P.3d 239, 241 (2009) (“when a party's eligibility
9 for a fee award is a matter of statutory interpretation, as is the case here, a question
10 of law is presented . . .”).
11

12 In In re Estate & Living Tr. of Miller, this Court considered, among other
13 issues, whether a judgment obtained after an appeal qualified as a more favorable
14 judgment for purposes of fee shifting under NRCP 68.²⁵ The Court explained the
15 interrelatedness of the trial and appellate stages in analyzing whether, as a matter
16 of law, a more favorable judgment was rendered than contained in an offer of
17 judgment and stated:
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21 The trial and appellate stages are naturally related, and if an appeal is taken,
22 the final outcome may change depending on the outcome on appeal. When
23 this court reverses a judgment on a jury verdict for insufficient evidence and
24 declares the appellant entitled to judgment as a matter of law, **the reversal**
25 **and remittitur comprise the judgment by which the parties and the**
26 **district court are thereafter bound.**

26 ²⁵ In re Estate & Living Tr. of Miller also considered NRS 17.115's
applicability, but due to the repeal of that statute, it will be ignored.

1
2 Id. at 553, 216 P.3d at 242 (emphasis added). This Court supported its rationale by
3 stating: “**we conclude that the policy of promoting settlement does not end in**
4 **district court but continues until the case is resolved.**” Id. (emphasis added).
5

6 Accordingly, applying the rationale of In re Estate & Living Tr. of Miller,
7 the district court was obligated to consider as a matter of law, the decision by this
8 Court in Waste Management in analyzing the first Beattie factor. In this setting,
9 the district court should have recognized this Court’s legal ruling in Waste
10 Management and determined that WTS’s claims were not asserted in good faith.
11

12 When the district court refused to apply, or even consider, the findings by this
13 Court relating to the meritless nature of WTS’s claims the district court erred as a
14 matter of law. In re Estate & Living Tr. of Miller, 125 Nev. at 553, 216 P.3d at
15 242 (“the judgment looked to in determining whether the judgment obtained is
16 more or less favorable than that which was offered **is the final judgment in the**
17 **case. . . .**”). Based upon the foregoing, the district court should have ruled that as a
18 matter of law, WTS’s claims were not asserted in good faith.
19
20

21
22 Waste Management also recognizes that if the first Beattie factor is decided
23 as a matter of law, the remaining Beattie factors contain sufficient flexibility for a
24 district court to analyze any other applicable facts and circumstances when
25 conducting a fee shifting analysis under NRCP 68. *See e.g., Wynn v. Smith*, 117
26

1 Nev. 6, 13, 16 P.3d 424, 428 (2001) (“Claims for attorney fees under . . . NRCP 68
2 are fact intensive.”). Such an application also coincides with the rule that no one
3 Beattie factor is dispositive. Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233,
4 955 P.2d 661, fn. 16 (1998) (“The district court is reminded that no one factor
5 under *Beattie* is determinative . . .”). Accordingly, when the district court refused
6 to abide by this Court’s decision in Waste Management when analyzing the first
7 Beattie factor, the district court erred as a matter of law and reversal is warranted.

10 **3. THE DISTRICT COURT FAILED TO EXAMINE**
11 **THE LEGITIMACY OF WTS’S CLAIMS.**

12 In addition to the foregoing, this Court has repeatedly focused on the
13 “legitimacy” of a claim in analyzing whether or not the claims are asserted in good
14 faith in determining appropriateness of assessing fees. In Yamaha Motor Co.,
15 U.S.A. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998) this Court stated:

18 If the **good faith** of either party in litigating liability and/or damage
19 issues is not taken into account, offers would have the effect of unfairly
20 forcing litigants to forego **legitimate claims**.

21 Id. (emphasis added). Expounding further on this point, this Court stated:

22 the district court is instructed to **consider both liability and damage issues**
23 **in weighing whether the defense of the matter was brought in good**
24 **faith**, and whether the rejection of the offer was grossly unreasonable or in
25 bad faith.

26 Id. (emphasis added). Waste Management contends the analysis of a legitimate
claim can be an issue of law, an issue of fact and/or a mixed issue of law and fact.

1 In the present case, because WTS's claims were exclusively based upon a
2 warped interpretation of NRS 444.520's provisions, Waste Management believes
3 that the determination of the first Beattie factor becomes exclusively an issue of
4 law. Accordingly, when conducting its good faith analysis, the district court
5 should have looked at the legitimacy of the legal basis for WTS's claims and
6 whether any liability and/or damages existed in light of this Court's Waste
7 Management decision.
8

9
10 Because this Court held that Waste Management's conduct was in full
11 compliance with NRS 444.520, the district court should have rendered a consistent
12 ruling that WTS's claims were facially invalid and without merit and ruled in favor
13 of Waste Management on analysis of the first Beattie factor exclusively as an issue
14 of law.
15
16

17 **4. THE DISTRICT COURT FAILED TO EXAMINE**
18 **THE LEGAL BASIS OF WTS'S CLAIMS.**

19 Similarly, to the analysis of the "legitimacy" of a claim, this Court also has
20 held that in the absence of "a reasonable basis" supporting a claim, the claim is not
21 asserted in good faith. Falline v. GNLV Corp., 107 Nev. 1004, 1009, 823 P.2d
22 888, 891 (1991) ("Bad faith, the converse of good faith, has been defined as 'the
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1 absence of a reasonable basis”).²⁶ Again, it is suggested that the
2 determination whether a claim has a “reasonable basis” can be an issue of law, an
3 issue of fact and/or a mixed issue of law and fact. Assuming it is a pure issue of
4 law as discussed above, then the district court erred as demonstrated.
5

6 As a comparison, NRS 18.010(2)(b) employs the language that fees should
7 be awarded if a claim “is brought or maintained without reasonable ground”
8 While not directly at issue, an analysis of NRS 18.010(2)(b)’s provisions support
9 Waste Management’s appeal. This Court first examined NRS 18.010(2)(b)’s
10 phraseology in the case Allianze Ins. Co. v. Gagnon, 109 Nev. 990, 996, 860 P.2d
11 720, 724 (1993), and explained that for purposes of an award of attorney's fees
12 pursuant to NRS 18.010(2)(b): “[a] claim is groundless if ‘the allegations in the
13 complaint . . . are not supported by any credible evidence at trial.’” (citation
14 omitted).²⁷ The Allianze Court did not examine the standard to employ when a
15 matter did not proceed through trial.²⁸
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20 ²⁶ Falline was decided in the context of an insurance bad faith claim,
21 however, this Court’s statement articulating that good faith conduct requires a
22 reasonable basis appears applicable in all contexts, including the context of this
23 appeal.

24 ²⁷ The Allianz Court adopted the cited language from Western United Realty,
25 Inc. v. Isaacs, 679 P.2d 1063, 1069 (Colo. 1984).

26 ²⁸ See Int’l Indus., Inc. v. United Mortg. Co., 96 Nev. 150, 156, 606 P.2d 163,
167 (1980) (*disapproved of on other grounds* in Sandy Valley Assocs. v. Sky

1 At the same time as its decision in Allianze, this Court in Bergmann v.
2 Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), stressed it was appropriate
3 for district courts to consider “the prosecution of five groundless claims” in its
4 analysis of an award of attorney’s fees. More recently, in Capanna v. Orth, 134
5 Nev. 888, 895, 432 P.3d 726, 734 (2018), this Court again reiterated “a claim is
6 frivolous or groundless if there is no credible evidence to support it.” *Id.* (quoting
7 Rodriguez v. Primadonna Co., 125 Nev. 578, 588, 216 P.3d 793, 800 (2009)). And
8 finally, even more recently, this Court again reiterated it in Lytle v. Sept. Tr.,
9 Dated Mar. 23, 1972, Docket No. 76198, *6, 458 P.3d 361 (March 2, 2020)
10 (unpublished disposition) that “a defense is without reasonable ground if no
11 credible evidence supports it.”
12

13 In this setting, the district court should have examined “the allegations in the
14 complaint”—in light of this Court’s decision in Waste Management--when
15 examining whether WTS’s claims had a reasonable basis. The allegations in
16 WTS’s complaint were clearly not asserted in good faith since this Court
17 determined that the claims contradicted the plain language of NRS 444.520.²⁹
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23 Ranch Estates Owners Ass’n, 117 Nev. 948, 35 P.3d 964 (2001)) (contentions . . .
24 “without any legal justification or excuse, indicates an absence of good faith.”).

25 ²⁹ This Court has stated that the determination of a “reasonable basis”
26 “depends upon the actual circumstances of the case rather than a hypothetical set of
facts favoring [the party’s] averments.” Bergmann v. Boyce, 109 Nev. 670, 675,

1 Similarly, there was no legitimate basis for WTS’s claims since WTS’s claims
2 relied solely upon a distorted interpretation of NRS 444.520’s plain and
3 unambiguous provision. *See e.g., Katz v. Incline Vill. Gen. Improvement Dist.*,
4 452 P.3d 411, Docket No. 71493 (Nov. 21, 2019) (unpublished disposition)
5 (“[defendant] argues that his claims were not frivolous because they were complex
6 and involved issues of first impression, but these attributes are not mutually
7 exclusive—a claim can be both complex and original, but frivolous nonetheless.”).
8 Again, since there was no reasonable basis for WTS’s claims, WTS’s claims were
9 not asserted in good faith.
10
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12

13 **5. A FINDING THAT WTS’S CLAIMS WERE BASELESS**
14 **AS A MATTER OF LAW PROMOTES THE POLICY**
15 **UNDERLYING NEVADA’S FEE SHIFTING**
16 **PROVISIONS.**

17 Nevada’s Legislature has made it abundantly clear that it is public policy to
18 deter frivolous litigation by shifting the burden of defending frivolous litigation to
19 the wrongdoer. This policy was aptly discussed in 2003 when the Legislature
20 enhanced the application of NRS 18.010(2)(b) by instructing Courts to “liberally”
21 award attorney’s fees in all “appropriate situations”:
22
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24

25 856 P.2d 560, 563 (1993) (*superseded by statute on other grounds as stated in In*
26 *re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093
n.6 (2017)).

1 to punish for and deter frivolous or vexatious claims and defenses
2 because such claims and defenses overburden limited judicial resources,
3 hinder the timely resolution of meritorious claims and increase the costs
4 of engaging in business and providing professional services to the
public.

5 NRS 18.010(2)(b) (bold added); *see also* Barnes v. Eighth Judicial Dist. Ct., 103
6 Nev. 679, 682, 748 P.2d 483, 486 (1987) (imperative to have
7 “economic deterrents to filing frivolous lawsuits . . .”).
8

9 Where a party asserts claims that contradict the plain language of a statute,
10 there must be a consequence. The consequence is the determination that the claims
11 were not asserted in good faith as a matter of law. Accordingly, a ruling holding a
12 claim contradicting the plain language of a statute will not be considered asserted
13 in good faith furthers the policy underlying Nevada’s fee shifting provisions. To
14 deny an award of attorney’s fees in this situation only promotes pursuit of baseless
15 and meritless claims without fear of repercussion or consequence.
16
17

18 **B. THE DISTRICT COURT ERRED IN DETERMINING WTS’S**
19 **CLAIMS SUBSTANTIALLY BENEFITTED THE**
20 **COMMUNITY.**

21 The district court engaged in another error of law when it held that WTS’s
22 claims “served to benefit the community who uses Waste Management’s services
23 under the Doctrine of Substantial Benefit.” 5 JA_1218:8-9. This finding by the
24 district court is nonsensical and legally erroneous.
25
26

1 First, there was no evidence presented that the community received any
2 benefit from WTS's lawsuit. Further, it escapes logic that the community
3 somehow benefitted when WTS's claims were found to be baseless by this Court.
4 WTS lost and the community received absolutely no benefit from WTS's lawsuit.
5

6 On the other hand, the dismissal of WTS's baseless claims benefitted the
7 City of Reno, Waste Management and by extension the entire community. The
8 Nevada Legislature deems waste collection services essential for the health and
9 safety of our community.³⁰ This Court's decision upholding collection company's
10 ability to pursue garbage liens for unpaid waste collection services promotes the
11 well-being of all citizens—not just one disgruntled user who refuses to pay for
12 services and files baseless lawsuits. Accordingly, the district court's conclusion
13 that WTS's lawsuit substantially benefitted the community is facially incorrect.
14
15
16

17 Second, the doctrine of substantial benefit is not a doctrine used to deny
18 attorney's fees. Instead, it is an exception (*i.e.*, an additional basis) to the
19 American rule that attorney's fees are only recoverable if authorized by contract,
20
21

22 ³⁰ **NRS 444.440 Declaration of state policy.** It is hereby declared to be
23 the policy of this State to regulate the collection and disposal of solid waste in a
24 manner that will:

- 25 1. Protect public health and welfare.
- 26 2. Prevent water or air pollution.
3. Prevent the spread of disease and the creation of nuisances.
4. Conserve natural resources.
5. Enhance the beauty and quality of the environment.

1 rule or statute. This doctrine, and its limited application, was discussed in Thomas
2 v. City of N. Las Vegas, 122 Nev. 82, 90–91, 127 P.3d 1057, 1063–64 (2006)
3 wherein this Court held:
4

5 Nevada follows the American rule that attorney fees may not be
6 awarded absent a statute, rule, or contract authorizing such award. A
7 judicially created exception to the American rule is the substantial *91
8 benefit doctrine. **This doctrine allows recovery of attorney fees when a**
9 **successful party confers “ ‘ “a substantial benefit on the members of an**
10 **ascertainable class” ‘ “**

11 Id. (citation omitted) (emphasis added). Accordingly, the substantial benefit
12 doctrine provides an additional judicially created basis for an award of attorney’s
13 fees to a successful party—not as a mechanism to deny a request for attorney’s
14 fees under NRCP 68 as employed by the district court.

15 Waste Management did not seek an award of attorney’s fees under the
16 substantial benefit doctrine. Waste Management sought an award of its attorney’s
17 fees under NRCP 68. Accordingly, the district court’s erroneous application of
18 the substantial benefit doctrine to deny Waste Management’s Motion for fees
19 under NRCP 68 is another clear error of law.
20

21
22 **C. WASTE MANAGEMENT’S VOLUNTARY RELEASE OF ITS**
23 **GARBAGE LIENS IS NOT A CONCESSION THAT WTS’S**
24 **CLAIMS WERE BROUGHT IN GOOD FAITH.**

25 The district court also ruled that because Waste Management released its
26 liens based upon the district court’s erroneous Judgment, this equated to a finding

1 that WTS's claims were brought in good faith under the first Beattie factor. 4
2 JA_1218:10-11. Again, this analysis makes no sense and has no legal support.

3
4 Waste Management released its liens because the district court said the
5 recordation of the liens was illegal. Waste Management's actions were not a
6 recognition that WTS's claims had any merit or validity, rather, Waste
7 Management sought to comply with the district court's erroneous Judgment.
8 Merely because Waste Management complied with the district court's erroneous
9 Judgment does not equate to a concession by Waste Management that WTS's
10 claims were asserted in good faith. Clearly Waste Management's successful
11 challenge of the district court's ruling and its appeal of the district court's
12 erroneous Judgment demonstrates Waste Management reserved all rights to
13 challenge and contest the district court's error.

14
15
16
17 Waste Management successfully appealed the Judgment and this Court held
18 that Waste Management validly and appropriately filed its liens and that there was
19 no prohibition or time restrictions on refileing its liens. Waste Management, 135
20 Nev. at 170, 443 P.3d at 1117 ("live controversy" remains as Waste Management
21 can refile its liens if appeal successful). Accordingly, there is no legal or factual
22 basis supporting the district court's erroneous determination that WTS's claims
23 were asserted in good faith because Waste Management initially released its liens
24 due to the district court's initial erroneous decision.

1 **III. THE DISTRICT COURT ERRED IN RULING THAT WTS'S**
2 **REJECTION OF THE OFFER WAS REASONABLE.**

3 The district court also held that WTS's "decision to reject the offered
4 amount, after years of ongoing litigation, does not appear to be unreasonable or
5 made in bad faith." 4 JA_1219:5-6. However, the district court did not undertake
6 any analysis of this factor in relation to WTS's conduct other than to self-
7 servingly state "WTS did not have to accept the offer, as settlement is voluntary."
8 4 JA_1219:4. Again, the district court acted arbitrarily and capriciously in
9 analyzing this third Beattie factor.
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12 While Waste Management agrees that a party does not have to accept an
13 offer of judgment or voluntarily settle a case, there are consequences to a party's
14 unreasonable conduct when faced with a reasonable offer of judgment. That
15 consequence is the risk of an award of attorney's fees being granted in favor of the
16 opposing party. WTS's rejection of the Offer was unreasonable for a multitude of
17 reasons. As stated in Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 252,
18 955 P.2d 661, 673 (1998): "the district court is instructed to consider both liability
19 and damage issues in weighing . . . whether the rejection of the offer was grossly
20 unreasonable or in bad faith." As discussed, the district court failed to consider
21 either the liability issue or the damage issue when determining if WTS acted
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26 unreasonably in rejecting the Offer.

1 In Cormier v. Manke, 108 Nev. 316, 318, 830 P.2d 1327, 1328 (1992), this
2 Court examined a number of factors applicable to the reasonableness of the
3 rejection of an offer of judgment as including “whether the offeree eventually
4 recovered more than the rejected offer and whether the offeree's rejection
5 unreasonably delayed the litigation with no hope of greater recovery.”³¹ In the
6 present case, **WTS owed Waste Management** over \$1,700 for delinquent
7 payments. WTS sued Waste Management based upon claims that contradicted the
8 “plain language” of the garbage lien statutes. Waste Management’s Offer offered
9 to pay WTS an additional \$10,000 for dismissal of the lawsuit in addition to the
10 forgiveness of the \$1,700 debt. WTS refused to accept Waste Management’s
11 exceedingly generous Offer.
12

13 Instead, WTS’s principal embarked on a vendetta and “invested” over
14 \$100,000 in alleged legal services in persecuting WTS’s meritless claims against
15 Waste Management. WTS’s principal did so for the purpose of forcing Waste
16 Management to incur significant legal fees. WTS had no hope of a greater
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23 ³¹ In Cormier, the defendant made a defective offer of judgment pursuant to
24 NRCP 68 (since the offer was made less than 10 days before trial). When the
25 defendant prevailed, he sought recovery of his attorneys’ fees under NRS
26 18.010(2)(a), which the district court denied. On appeal, this Court held that the
district court must assess the “reasonableness of the rejection” of the defective
NRCP 68 offer to determine if fees should be awarded pursuant to NRS
18.010(2)(a).

1 recovery than offered by Waste Management because WTS did not sustain any
2 damages as a result of the filing of Waste Management's legal liens. This
3 litigation was not about resolution of a valid claim, instead, WTS asserted baseless
4 claims seeking to avoid payment of delinquent fees owed to Waste Management
5 and to force Waste Management into costly and time-consuming litigation. As
6 such, WTS's rejection of the Offer was grossly unreasonable.
7

8
9 **A. WASTE MANAGEMENT'S PURPORTED LIABILITY WAS**
10 **PREMISED UPON AN INVALID CONTENTION.**

11 The district court found that Waste Management's Offer "**was reasonable in**
12 **relation to the gravamen of the initial claims brought.**" 4 JA_1218:28 - 1219:1
13 (emphasis added). Waste Management contends that if its Offer was reasonable
14 then the analysis shifted to the merits of WTS's "initial claims". This Court held
15 that WTS's initial claims were baseless and without merit. Accordingly, WTS's
16 rejection of the reasonable Offer when pursuing baseless claims should have
17 resulted in a finding that this factor supported an award of attorney's fees in Waste
18 Management's favor.
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22 As discussed in detail above, WTS's claims against Waste Management
23 were based upon an interpretation of NRS 444.520 that contradicted the statute's
24 express terms. The plain language of the statute was "clear on its face" that WTS's
25 claims were not reasonably asserted and were not legitimate claims. The district
26

1 court's failure to consider this Court's decision in Waste Management in relation
2 to the actual claims asserted was again an error of law and/or constituted arbitrary
3 and capricious conduct. Alternatively, the district court's determination was made
4 without any substantive analysis and is therefore an abuse of discretion.
5

6 **B. WTS DID NOT SUSTAIN ANY DAMAGES.**
7

8 Although WTS asserted it sustained special damages for payment of
9 attorney's fees this statement was baseless as WTS never incurred any attorney's
10 fees.³² See e.g., Horgan v. Felton, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007)
11 (attorney fees are "available as special damages in slander of title actions."). On
12 the eve of trial, WTS withdrew its slander of title claim because, among other
13 reasons, WTS could not recover special damages in this action because WTS did
14 not pay for any attorney's fees and no attorney fees were actually incurred.
15
16 "“Special damages’ are limited to **actual pecuniary loss**, which must be
17 specifically pleaded and proved.” F.A.A. v. Cooper, 566 U.S. 284, 295 (2012)
18 (emphasis added); see also Day v. W. Coast Holdings, Inc., 101 Nev. 260, 265,
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20
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22 ³² Of note, in seeking to avoid entry of summary judgment on WTS's slander
23 of title claim, Mr. Pereos falsely represented to the District Court that "the Plaintiff
24 has spent a substantial amount of money in legal fees" 3 JA_0572:17-18. As
25 demonstrated, this statement is not true as WTS did not "spend" any money for
26 attorney's fees. It is suggested this false representation is further proof of WTS's
malicious intent to pursue baseless claims against Waste Management for which an
award of attorney's fees is proper.

1 699 P.2d 1067, 1071 (1985) (“West Coast never proffered a dollar amount
2 for actual damages. Proof of special damages is an element of the action for
3 slander of title.”).

4
5 The district court failed to determine that WTS never actually sustained any
6 special damages because it was never obligated to pay for any legal services.
7
8 Instead, WTS’s principal contributed his time as an “investment” into WTS, the
9 entity he managed and owned through his trust. As WTS’s principal phrased it, he
10 was “absorbing the time invested” in pursuing WTS’s baseless claims against
11 Waste Management. The district court’s failure to examine these undisputed facts
12 constitutes clear error and arbitrary and capricious conduct.
13

14 The district court also overlooked in its analysis that WTS owed money to
15 Waste Management for fees and costs incurred by Waste Management in servicing
16 WTS’s duplex.³³ The reason WTS’s accounts became delinquent is because WTS
17 unilaterally refused to pay for services, late fees and other related charges. The
18 history of WTS’s and Mr. Pereos’ abusive conduct in refusing to pay for services
19 and late fees is well-documented and detailed in Waste Management’s Motion for
20 Summary Judgment on WTS’s Slander of Title Claim. 2 JA_0306-312.
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26 ³³ Waste Management, 135 Nev. at 169, 443 P.3d at 1116 (“At some point,
[WTS’s] accounts became delinquent.”).

1 Lastly, the district court failed to analyze that rejecting a \$10,000 offer of
2 judgment on a \$1,700 dispute when WTS could not recover any damages at all
3 demonstrates that WTS's claims were baseless and pursued for an ulterior purpose.
4 Similarly, the district court ignored that Mr. Pereos "invested" \$100,000 pursuing
5 litigation where WTS could not recover any monetary relief demonstrated that the
6 rejection of the offer was grossly unreasonable. The case was not about resolution
7 of garbage liens, instead this case was about WTS's vendetta against Waste
8 Management seeking to force Waste Management to engage in costly and time-
9 consuming litigation.
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13 CONCLUSION

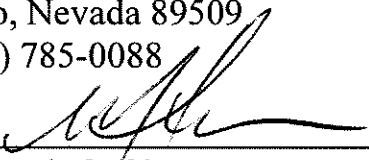
14 WTS pursued its vendetta against Waste Management asserting baseless
15 claims seeking to cause Waste Management to incur significant attorney's fees and
16 costs. Even though WTS owed unpaid garbage collection service fees exceeding
17 \$1,700 to Waste Management, and even though WTS had not sustained any harm
18 as a result of Waste Management's legal recordation of its liens, Waste
19 Management nonetheless extended an NRCP 68 Offer of judgment to pay WTS
20 \$10,000. WTS refused to accept Waste Management's generous offer.
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24 As a consequence of its own conduct, WTS is liable for the attorney's fees
25 incurred by Waste Management in responding to WTS's baseless and unreasonable
26 claims. On the grounds stated herein, this Court should reverse the district court's

1 Order denying Waste Management's Motion with instructions for the district court
2 to enter judgment in Waste Management's favor for all of its attorney's fees
3 incurred pursuant to NRCP 68 from the date of the Offer through all proceedings
4 including all attorney's fees on appeal and upon remand.³⁴
5

6 DATED this 29th day of June, 2020.
7

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25 ³⁴ In re Estate & Living Tr. of Miller, 125 Nev. 550, 556, 216 P.3d 239, 243
26 (2009) (attorney's fees on appeal and after remand should be awarded pursuant to NRCP 68).

**CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 28.2**

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 in 14 font and Times New Roman type.

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 proportionately spaced, has a typeface of 14 points or more, and contains 9,226 words.

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

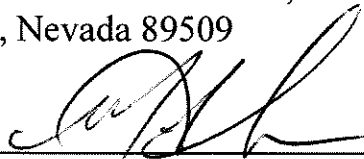
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1 sanctions in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.

3
4 DATED this 29th day of June, 2020.

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Ad Alhasan