

Electronically Filed  
Aug 24 2020 09:51 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

WASTE MANAGEMENT OF  
NEVADA, INC.  
Appellant,

Supreme Court  
Case No.: 80841

vs.

WEST TAYLOR STREET, LLC,  
Respondent.

Second Judicial District Court  
Case No. CV12-02995

**APPELLANT'S**  
**REPLY BRIEF**

MARK G. SIMONS, ESQ.  
Nevada Bar No. 5132  
SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., #F-46  
Reno, Nevada 89509  
T: (775) 785-0088  
F: (775) 785-0087  
Email: [msimons@shjnevada.com](mailto:msimons@shjnevada.com)  
Attorneys for Appellant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## 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 24<sup>th</sup> day of August, 2020.

SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., # F-46  
Reno, Nevada 89509

BY: 

Mark G. Simons, Esq.

Nevada Bar No. 5132

*Attorney for Appellant*

## TABLE OF CONTENTS

<b>NRAP 26.1 DISCLOSURE</b>	<b>ii</b>
<b>TABLE OF AUTHORITIES</b>	<b>v</b>
<b>ARGUMENT IN REPLY</b>	<b>1</b>
<b>I. OVERVIEW OF THE APPEAL</b>	<b>1</b>
<b>A. THE FIRST <u>BEATTIE</u> FACTOR</b>	<b>2</b>
<b>B. THE THIRD <u>BEATTIE</u> FACTOR</b>	<b>7</b>
<b>II. WTS'S MISSTATEMENTS OF FACT AND UNSUPPORTED CONTENTIONS</b>	<b>8</b>
<b>A. WTS FAILED TO COMPLY WITH WASHOE COUNTY'S VACANCY POLICY AND REFUSED TO PAY FOR SERVICE FEES, LATE CHARGES AND INTEREST</b>	<b>8</b>
<b>B. WTS'S SLANDER OF TITLE CLAIM WAS NOT DISMISSED BY AGREEMENT WITH WASTE MANAGEMENT TO BEAR ITS OWN FEES AND COSTS</b>	<b>10</b>
<b>C. WASTE MANAGEMENT DID NOT ABANDON ITS CLAIMS FOR COLLECTION OF MONIES</b>	<b>11</b>
<b>D. WTS DID NOT ALTER WASTE MANAGEMENT'S BUSINESS PRACTICES</b>	<b>11</b>
<b>III. WTS CONTENDS ITS STATUTORY INTERPRETATION IS CORRECT AND THIS COURT IS WRONG</b>	<b>12</b>
<b>A. WTS CONTENDS ITS STATUTORY INTERPRETATION IS CORRECT AND THIS COURT IS WRONG</b>	<b>12</b>

B.	<b>THE <u>WASTE MANAGEMENT</u> DECISION IS NOT RETROACTIVELY APPLIED.</b>	12
C.	<b>THE OFFER WAS NOT DEFICIENT.</b>	13
D.	<b>WASTE MANAGEMENT IS NOT OVERREACHING.</b>	16
E.	<b>THE SUBSTANTIAL BENEFIT DOCTRINE DOES NOT APPLY TO DENY ATTORNEY’S FEES.</b>	17
F.	<b>WASTE MANAGEMENT’S VOLUNTARY RELEASE OF ITS LIENS IS NOT A VALID FACTOR TO BE CONSIDERED BY THE DISTRICT COURT IN DENYING FEES.</b>	17
G.	<b>WTS’S SLANDER OF TITLE CLAIM WAS BASELESS AS WTS DID NOT SPEND ANY MONEY ON ATTORNEY’S FEES.</b>	18
H.	<b>WTS’S REJECTION OF THE OFFER WAS GROSSLY UNREASONABLE.</b>	19
	<b>CONCLUSION</b>	19
	<b>CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 28.2</b>	22
	<b>CERTIFICATE OF SERVICE</b>	24

## TABLE OF AUTHORITIES

### NEVADA CASES

<u>Beattie v. Thomas</u> , 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983).....	2
<u>Berberich v. S. Highlands</u> , Nev. Ct. App., December 10, 2016.....	14
<u>Bergmann v. Boyce</u> , 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).....	4
<u>Browning v. State</u> , 120 Nev. 347, 361, 91 P.3d 39, 50 (2004).....	17-18
<u>Campos-Garcia v. Johnson</u> , 130 Nev. 610, 331 P.3d 890, 891 (2014).....	15
<u>Couturier v. Am. Invsco Corp.</u> , 10 F. Supp. 3d 1143, 1149 (D. Nev. 2014).....	6
<u>Frazier v. Drake</u> , 131 Nev. 632, 641, 357 P.3d 365, 371 (Nev. Ct. App. 2015).....	14
<u>Green v. Buchanan</u> , Nev. Ct. App., December 11, 2017.....	14
<u>In re Estate &amp; Living Tr. of Miller</u> , 125 Nev. 550, 553, 556 216 P.3d 239, 242, 243 (2009).....	3-4, 13, 21
<u>Mahaffey v. Investor's Nat. Sec. Co.</u> , 102 Nev. 462, 464, 725 P.2d 1218, 1219 (1986).....	13, 16
<u>Schouweiler v. Yancey Co.</u> , 101 Nev. 827, 833, 712 P.2d 786, 790 (1985).....	7
<u>Waste Management of Nev. Inc. v. West Taylor Street, LLC</u> , 135 Nev. 168, 173, 443 P.3d 1115, 1119 (2019).....	1
<u>Yamaha Motor Co. v. Arnoult</u> , 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).....	2

### NEVADA RULES

District Court Rule 16.....	10-11
-----------------------------	-------

1	NRAP 14(g).....	16
2	NRAP 28(e).....	8
3		
4	NRAP 36(c)(3).....	15
5	NRCP 68.....	2
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

## ARGUMENT IN REPLY

The Answering Brief from Respondent West Taylor Street, LLC (“WTS”) does not address the arguments raised by Waste Management. Instead, WTS spends a majority of its Answering Brief rearguing the supposed merits of its claims--the same claims that this Court previously determined were meritless because the claims contradicted the plain language of NRS 444.520. Then, WTS attempts to argue issues resolved by the district court in Waste Management’s favor and which WTS did not challenge or contest via appellate review. Because WTS did not challenge the district court’s rulings via a cross-appeal those rulings are not at issue herein. Lastly, WTS’s limited responsive arguments misstate the law.

### I. OVERVIEW OF THE APPEAL.

After this Court rendered its decision in Waste Management of Nev. Inc. v. West Taylor Street, LLC, 135 Nev. 168, 173, 443 P.3d 1115, 1119 (2019) (“Waste Management”), the case was remanded back to the district court. Waste Management sought and obtained an order dismissing WTS’s action in total since this Court had resolved WTS’s 1<sup>st</sup> and 2<sup>nd</sup> claims in Waste Management’s favor and WTS had previously voluntarily withdrawn its 3<sup>rd</sup> claim for slander of title. 5

1 JA 1007. Because “no case or controversy” existed, the district court dismissed the  
2 action. Id.

3  
4 In dismissing the action after remand, the district court awarded Waste  
5 Management its costs. 6 JA 1209-1214. Waste Management also sought recovery  
6 of its attorney’s fees based upon WTS’s refusal to accept a NRCP 68 Offer of  
7 Judgment extended to WTS in the amount of \$10,000 (the “Offer”). The district  
8 court denied Waste Management’s NRCP 68 motion and this appeal has ensued  
9 challenging the district court’s analysis.  
10

11  
12 **A. THE FIRST BEATTIE FACTOR.**

13 Waste Management’s appeal seeks to add clarity to the application and  
14 analysis of the first Beattie factor when a district court performs an NRCP 68  
15 analysis after remand.<sup>1</sup> The first Beattie factor requires the district court to analyze  
16 whether the plaintiff’s claims were brought in good faith.<sup>2</sup> The district court failed  
17  
18  
19

---

20 <sup>1</sup>Beattie v. Thomas, 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983).

21  
22 <sup>2</sup> While the Beattie factors assume the defendant is the offeror and the  
23 plaintiff is the offeree, when the roles are reversed and the plaintiff is the offeror  
24 and the defendant is the offeree, the first Beattie factor is considered in light of  
25 “whether [the defendant’s] defenses were litigated in good faith.” Yamaha Motor  
26 Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). Accordingly, the  
issues raised in this appeal will also apply to defenses a party may assert and,  
where a defense contradicts the plain language of a statute, the putative defense  
would also not be asserted in good faith supporting an award of fees under NRCP  
68.



1 to analyze the plaintiffs' claims in context of this Court's decision in Waste  
2 Management wherein this Court held as a matter of law WTS's claims were  
3  
4 baseless as they contradicted the plain language of NRS 444.520.

5 Waste Management contends that under the law of the case, the district court  
6 should have held that WTS's claims were not brought in good faith because: (1) as  
7  
8 a matter of law, Waste Management fully complied with the requirements of NRS  
9 444.520 and properly served and recorded its garbage liens and (2) WTS's claims  
10 asserting that Waste Management had violated NRS 444.520's provision  
11 contradicted the "plain language" of the statute, and were therefore, baseless as a  
12 matter of law. The district court entirely ignored the Court's decision in Waste  
13 Management and ignored this Court's decision even though the district court was  
14 additionally instructed to conduct further proceedings "consistent with [the Court's  
15 decision.]." Id.

16  
17  
18 Under the law of the case, this Court's decision in Waste Management was  
19 controlling upon the district court and by entirely ignoring this Court's rulings in  
20 Waste Management, the district court erred as a matter of law in its NRCP 68  
21 analysis.<sup>3</sup> Further, the district court erred in failing to examine the lack of  
22  
23  
24

---

25 <sup>3</sup> In re Estate & Living Tr. of Miller, 125 Nev. 550, 553, 216 P.3d 239, 242  
26 (2009) (when addressing a NRCP 68 motion for fees: "**the reversal and**

1 “legitimacy” of WTS’s claims in light of this Court’s decision in Waste  
2 Management.  
3

4 Similarly, the district court failed to analyze the actual circumstances of the  
5 case to determine that WTS’s claims had no reasonable basis. The district court  
6 merely looked to the allegations of the complaint and held that facially it appeared  
7 that the claims were asserted in good faith. This again was the wrong standard to  
8 be applied by the district court since this Court has stated that the determination of  
9 a “reasonable basis” “depends upon the actual circumstances of the case rather  
10 than a hypothetical set of facts favoring [the party’s] averments.” Bergmann v.  
11 Boyce, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).  
12  
13

14 Alternatively, Waste Management contends the district court should have  
15 found after review of the undisputed factual circumstances of the case that there  
16 was no legal or factual basis for WTS’s claims, and therefore, the claims were not  
17 asserted in good faith.<sup>4</sup> The facts of the case were undisputed that Waste  
18  
19

---

20 **remittitur comprise the judgment by which the parties and the district court**  
21 **are thereafter bound.”** (emphasis added)).

22 <sup>4</sup> As detailed in Waste Management’s Opening Brief, WTS’s lawsuit was  
23 nothing more than a vendetta against Waste Management seeking to cause Waste  
24 Management to engage in costly and time-consuming litigation. WTS did not  
25 challenge the validity or constitutionality of NRS 444.520’s provisions, or  
26 otherwise argue that Waste Management failed to comply with any of NRS  
444.520’s requirements. In fact, WTS conceded Waste Management fully  
complied with the statute’s requirements but proceeded with claims of wrongdoing

1 Management fully complied with NRS 444.520's requirements. WTS's claims  
2 were based upon an interpretation of the statute that contradicted the plain  
3 language of the statute. 1 JA 132:5 ("Neither party argues that there is a question of  
4 fact, therefore the Court will decide the pending questions as a matter of law.").

5  
6 In addition, the facts were undisputed that WTS did in fact owe money to  
7 Waste Management and had not sustained any "special damages" as follows:  
8

- 9 1. WTS failed to comply with Washoe County's Vacancy Policy  
10 which was implemented to allow customers to avoid imposition  
11 of services fees, late charges and interest. 2 JA 313.
- 12 2. Waste Management notified WTS how to contact Washoe  
13 County to request waiver or forgiveness of service fees, late  
14 charges and interest if WTS's property was truly vacant at the  
15 time it alleged it was vacant. 2 JA 308-12.
- 16 3. WTS refused to contact Washoe County about the alleged  
17 vacancies and instead unilaterally refused to pay Waste  
18 Management for ongoing service fees, late charges and interest  
19 accruing on its accounts. Id.<sup>5</sup>
- 20 4. Waste Management's liens were recorded in full compliance  
21 with NRS 444.520's requirements. 1 JA 131.
- 22 5. WTS brought suit asserting that Waste Management failed to  
23 comply with NRS 444.520's provisions claiming the statute  
24 incorporated all mechanic lien statutes—even though this  
25 contention contradicted the "plain language" of the statute. Id.

26 by Waste Management that contradicted the "plain language" of the statute. 1 JA 131.

<sup>5</sup> The logical conclusion to be drawn is that WTS did not pursue waiver of the service fees, late charges and interest on its accounts because WTS's rental units were not really vacant when WTS claimed they were vacant.

6. WTS also asserted Waste Management's liens were not "perpetual" even though the plain language of the statute said the liens were "perpetual." *Id.*
7. WTS asserted a slander of title claim falsely asserting that WTS had "spent" money on attorney's fees as special damages.<sup>6</sup>
8. WTS named Waste Management's employee Karen Gonzales as a party even though Ms. Gonzales had no liability and was subsequently dismissed on summary judgment.<sup>7</sup>
9. WTS's counsel "invested" over \$100,000 in this litigation over the minor amount of \$1,700 in dispute. 4 JA\_743:22-23.
10. WTS's counsel and principal was pursuing his vendetta against Waste Management because he was "an attorney who could (at this stage of his career) absorb time investment to hold WM accountable." 5 JA\_1107:1-2.<sup>8</sup>

---

<sup>6</sup> WTS's counsel falsely represented to the district court that "the Plaintiff **has spent** a substantial amount of money in legal fees . . . ." 3 JA\_0572:17-18 (emphasis added). WTS's counsel later admitted WTS did not "spend" any money in legal fees and WTS's principal Mr. Pereos was instead "absorbing the time invested" in pursuing WTS's claims against Waste Management without payment or obligation by WTS to pay for his legal services. 5 JA\_1107:1-2.

<sup>7</sup> 5 JA 1007, ¶3. WTS asserted Karen was individually liable for recording the liens as Waste Management's employee. However, the law is clear an employee is not vicariously liable for the acts of its employer. *Couturier v. Am. Invsco Corp.*, 10 F. Supp. 3d 1143, 1149 (D. Nev. 2014) ("The general rule is that a principal is vicariously liable for the authorized actions of [its] agent **but not vice-versa.**" (emphasis added)).

<sup>8</sup> Of dispositive note, all WTS's baseless lawsuit did was confirm Waste Management was acting appropriately and in full compliance with the law.

1 As the foregoing undisputed facts demonstrate, the district court acted  
2 improperly in finding WTS's claims were asserted in good faith. A district court  
3 abuses its discretion "when the court's evaluation of the Beattie factors is arbitrary  
4 or capricious." Schouweiler v. Yancey Co., 101 Nev. 827, 833, 712 P.2d 786, 790  
5 (1985). Finally, the district court erroneously concluded the substantial benefit  
6 doctrine and that Waste Management's removal of its liens during the pendency of  
7 the litigation transformed WTS's claims into being asserted in good faith. The  
8 foregoing will be more fully discussed below where appropriate and/or to address  
9 additional argument asserted by WTS in its Answering Brief.  
10  
11  
12

13 **B. THE THIRD BEATTIE FACTOR.**

14 The district court also erroneously determined that the third Beattie factor  
15 weighed in favor of WTS hypothesizing that the rejection of the Offer "does not  
16 appear to be unreasonable or made in bad faith." The district court's analysis on  
17 this prong again ignored this Court's decision in Waste Management. The district  
18 court's analysis also ignored that WTS owed money to Waste Management for  
19 delinquent waste collection fees, WTS had not sustained any harm and the  
20 underlying action was pursued solely to harass Waste Management.  
21  
22  
23

24 ///

25 ///

1 **II. WTS'S MISSTATMENTS OF FACT AND UNSUPPORTED**  
2 **CONTENTIONS.**

3 WTS's Answering Brief contains a number of contentions that do not have  
4 any factual support even though the rules of appellate procedure necessitate  
5 identification of such alleged "facts" in the record.<sup>9</sup> In an abundance of caution,  
6 and to demonstrate WTS's history of abusing the legal system to pursue its  
7 vendetta, Waste Management details WTS's more egregious violations as follows.  
8

9  
10 **A. WTS FAILED TO COMPLY WITH WASHOE COUNTY'S**  
11 **VACANCY POLICY AND REFUSED TO PAY FOR SERVICE**  
12 **FEEES, LATE CHARGES AND INTEREST.**

13 Continuing with its history of misstatements and deception, WTS claims that  
14 Waste Management acted improperly in billing WTS for disposal services when  
15 WTS's duplex was vacant. AB, p.2. However, WTS fails to inform this Court that  
16 Washoe County implemented a vacancy policy relating to how property owners  
17 were billed for services in the event a residential unit was vacant for any period of  
18 time (the "Vacancy Policy"). 2 JA 307. Waste Management property billed WTS  
19 and WTS failed to follow Washoe County's Vacancy Policy which resulted in  
20 Waste Management properly servicing WTS's property. 2 JA 307-313.  
21  
22  
23  
24

---

25 <sup>9</sup> See NRAP 28(e) ("every assertion in briefs regarding matters in the record  
26 shall be supported by a reference to the page and volume number, if any, of the  
appendix where the matter relied on is to be found . . .").

1           WTS never timely paid the amounts owed to Waste Management, never  
2 followed the county's Vacancy Policy, did not petition the county for correction or  
3 forgiveness of any of the fees or charges and obstinately only paid for service fees  
4 it unilaterally decided it would pay, while all the time ignoring the late fees,  
5 interest and additional service fees incurred. Id.

6  
7           The undisputed history of WTS's abusive conduct is demonstrated by the  
8 undisputed facts that Waste Management notified WTS it needed to comply with  
9 Washoe County's Vacancy Policy to obtain exemption from the waste service fees  
10 and even notified WTS how to contact the county to have such fees waived and/or  
11 suspended. Id. Instead of complying with its obligations to pay for waste service  
12 fees or comply with the Vacancy Policy, WTS embarked on a course of abuse,  
13 non-compliance, threats of litigation and deceit solely to cause Waste Management  
14 to incur legal fees and costs. Id.

15  
16           WTS brought its baseless claims because it's principal was "an attorney who  
17 could (at this stage of his career) absorb time investment to hold WM  
18 accountable". 5 JA\_1107:1-2. WTS's counsel/principal intended to cause harm  
19 to Waste Management claiming "WM's business culture is to bleed as much  
20 money as it can out of its customers to maximize profit." 5 JA\_0564:27-28. As  
21 this Court held in Waste Management, Waste Management fully complied with  
22 Nevada law and did not act abusively or improperly in any manner. Instead, this  
23  
24  
25  
26

1 Court found Waste Management was a law-abiding organization providing a  
2 valuable and necessary service to the community of the City of Reno. Merely  
3 because WTS is a vindictive and petty customer trying to scam free waste  
4 collection service does not mean the other citizens or customers of the City act in  
5 this abusive fashion. Instead, it means that WTS should be held liable for the  
6 needless and unnecessary legal fees it caused Waste Management to incur in  
7 responding to WTS's baseless claims.  
8

10 **B. WTS'S SLANDER OF TITLE CLAIM WAS NOT DISMISSED**  
11 **BY AGREEMENT WITH WASTE MANAGEMENT TO BEAR**  
12 **ITS OWN FEES AND COSTS.**

13 WTS contends its slander of title claim was dismissed "with an  
14 understanding" that each party would bear its own costs and fees. AB, p. 8. This  
15 statement is not true. WTS voluntarily withdrew its claim for slander of title  
16 because WTS could not prove it had incurred any "special damages" for payment  
17 of attorney's fees. 5 JA 1007, ¶4; *see also* Docketing Statement, Appeal No.  
18 74876, ¶8 ("West Taylor voluntarily dismissed its slander of title claim."); 5 JA  
19 985 ("Plaintiff had voluntarily withdrawn its claim for slander of title . . .").<sup>10</sup>  
20  
21  
22

---

23 <sup>10</sup> WTS refers to an unsigned stipulation that it provided to the district court  
24 for this contention. 5 JA 1166. The document related solely to the slander of title  
25 claim and was never agreed upon or signed by the parties. *See* District Court Rule  
26 16 ("**Stipulations to be in writing or to be entered in court minutes. No**  
*agreement or stipulation* between the parties in a cause or their attorneys, in



1           **C.     WASTE MANAGEMENT DID NOT ABANDON ITS CLAIMS**  
2           **FOR COLLECTION OF MONIES.**

3           WTS also incorrectly contends that Waste Management abandoned its  
4           “claim” for collection of money therefore WTS secured a benefit from bringing its  
5           baseless claims. AB, p. 8. However, Waste Management did not assert any  
6           “claims” in the underlying action. Waste Management merely successfully  
7           defended against WTS’s baseless contentions and abusive litigation tactics.  
8

9           **D.     WTS DID NOT ALTER WASTE MANAGEMENT’S BUSINESS**  
10          **PRACTICES.**

11          WTS contends that its baseless lawsuit achieved a benefit since Waste  
12          Management altered its service fees for vacant units. AB, p. 8. This statement also  
13          has no support in the record--because no such support exists. The City’s Franchise  
14          Agreement and Washoe County’s Vacancy Policy dictate the business practices  
15          Waste Management and City customers must follow regarding vacant units. Waste  
16          Management follows these procedures. WTS’s baseless lawsuit has not altered  
17          Waste Management’s compliance with its obligations to the City, County and/or  
18          customers in any manner.  
19  
20  
21

22  
23  
24          \_\_\_\_\_  
25          respect to proceedings therein, *will be regarded* unless the same shall . . . be in  
26          writing *subscribed by the party against whom the same shall be alleged, or by his*  
        *attorney.*” (emphasis added)). Of note, the document relied upon by WTS does not  
        even have a signature block for WTS to execute. WTS unilaterally voluntarily  
        withdrew its slander of title claim on the eve of trial.

1 **III. WTS'S ARGUMENTS IN OPPOSITION ARE WITHOUT MERIT.**

2 In addition to the foregoing baseless factual assertions, WTS asserts a  
3 number of meritless legal arguments as well.<sup>11</sup> These arguments are addressed  
4 below.  
5

6 **A. WTS CONTENDS ITS STATUTORY INTERPRETATION IS**  
7 **CORRECT AND THIS COURT IS WRONG.**

8 WTS contends that its claims were not baseless because this Court's  
9 decision in Waste Management was incorrect. At pages 11 through 17 of its  
10 Answering Brief, WTS argues that Waste Management's liens violated a number  
11 of mechanic lien statutes and/or perfection statutes so Waste Management's liens  
12 were improper—regardless of this Court's Waste Management decision. It is  
13 suggested that WTS's attempts to reargue the substance of this Court's Waste  
14 Management decision demonstrates the abusive and baseless nature of WTS's  
15 claims.  
16  
17  
18

19 **B. THE WASTE MANAGEMENT DECISION IS NOT**  
20 **RETROACTIVELY APPLIED.**

21 WTS argues that the district court cannot “retroactively” apply this Court's  
22 decision in Waste Management when considering a subsequent NRCP 68 motion.  
23

---

24  
25 <sup>11</sup> WTS improperly outlines a number of “issues” it claims are subject to  
26 appellate review. AB, p. 1. However, WTS did not file a cross-appeal challenging  
or contesting any of the rulings by the district court. Accordingly, only the issues  
for appellate review are those framed by Waste Management.

1 AB, p. 20. Waste Management addresses this contention in its Opening Brief at  
2 pages 18-19 (application of the law of the case) and at pages 20-22 (appellate  
3 decision governs subsequent analysis of NRCP 68 motion). Without rehashing  
4 these arguments, Waste Management merely restates that WTS's brief fails to  
5 address or even recognize this Court's ruling In re Estate & Living Tr. of Miller,  
6 125 Nev. at 553, 216 P.3d at 242 wherein this Court held that when addressing a  
7 NRCP 68 motion for fees: **"the reversal and remittitur comprise the judgment**  
8 **by which the parties and the district court are thereafter bound."** (Emphasis  
9 added). Accordingly, WTS's argument fails to address what is believed to be  
10 controlling Nevada law demonstrating the fallacy of WTS's argument.  
11  
12  
13

14 **C. THE OFFER WAS NOT DEFICIENT.**

15  
16 WTS next argues the Offer was deficient. Initially, WTS also asserted this  
17 argument at the district court level and lost. However, WTS did not file a cross  
18 appeal challenging the district court's determination that the Offer was valid.  
19 Therefore, this argument and/or issue on appeal has been waived. Mahaffey v.  
20 Investor's Nat. Sec. Co., 102 Nev. 462, 464, 725 P.2d 1218, 1219 (1986) ("We  
21 conclude that a timely notice of cross-appeal is jurisdictional with respect to  
22 the cross-appeal."); *see also* NRAP 14(g).  
23  
24  
25  
26

1 To the extent the Court considers this argument, Waste Management does  
2 not need to obtain a “judgment” against WTS to prevail under NRCP 68.<sup>12</sup> WTS  
3 relies upon Frazier v. Drake, 131 Nev. 632, 641, 357 P.3d 365, 371 (Nev. Ct. App.  
4 2015), for the proposition that Waste Management did not obtain a judgment and  
5 cannot recover fees under NRCP 68. AB, pp. 21, 26-27. However, the Frazier  
6 Court explained:  
7

8  
9 If the party **to whom the offer is made** rejects it and then fails to obtain a  
10 more favorable judgment at trial, the district court may order that party to  
11 pay the offeror “reasonable attorney fees.”

12 Id. (emphasis added). The Offer was made to WTS. It was WTS’s obligation to  
13 “obtain a more favorable judgment” or be liable for the consequences of rejecting  
14 the Offer. WTS did not obtain a more favorable judgment. Therefore, WTS is  
15 liable for Waste Management’s attorney’s fees under NRCP 68 and a formal  
16 “judgment” is not a prerequisite to Waste Management’s right to recover attorney’s  
17 fees against WTS under NRCP 68.  
18

19  
20 WTS also cites to two unpublished decisions by the Nevada Court of  
21 Appeals in support of its erroneous argument.<sup>13</sup> AB, pp. 24-25. However, WTS  
22

---

23  
24 <sup>12</sup> WTS argues that NRCP 68 only applies “when a party obtains a judgement  
25 [sic] greater than that which was set forth in the offer of judgement [sic].” AB, p.  
26 21.

<sup>13</sup> Green v. Buchanan, Nev. Ct. App., December 11, 2017 and Berberich v. S.  
Highlands, Nev. Ct. App., December 10, 2016.

1 is not ethically allowed to cite to these unpublished decisions from the Nevada  
2 Court of Appeals for controlling or even persuasive value. *See* NRAP 36(c)(3)  
3 (“unpublished dispositions issued by the Court of Appeals may not be cited in any  
4 Nevada court for any purpose.”). Accordingly, Waste Management will not  
5 address the unpublished cases cited to and relied upon by WTS since WTS’s acts  
6 violate NRAP 36(c)(3)’s express provisions.<sup>14</sup>  
7

8  
9 Lastly, this Court has repeatedly stated it is the effect of the order and not its  
10 label that is material. Waste Management obtained a dismissal of WTS’s action  
11 which effectuated a judgment in Waste Management’s favor that WTS’s claims  
12 were all dismissed and Waste Management prevailed in the action. In  
13 Campos-Garcia v. Johnson, 130 Nev. 610, 331 P.3d 890, 891 (2014) this Court  
14 explained that for purposes of an attorney’s fee motion under NRCP 54:  
15  
16

17 the term “[j]udgment” includes “any order from which an appeal lies.”  
18 We have consistently explained that the appealability of an order or  
19 judgment depends on “what the order or judgment actually does, not what it  
20 is called.” . . . When district courts, after entering an appealable order, go on  
21 to enter a judgment on the same issue, the judgment is superfluous.  
22  
23  
24

---

25 <sup>14</sup> It is suggested that WTS’s failure to comply with NRAP 28(e) and NRAP  
26 36(c)(3) is further evidence of WTS’s abusive litigation practices and as support  
for finding WTS’s claims were not asserted in good faith.

1 Id. Waste Management obtained an Order dismissing WTS's action. 5 JA 1006-  
2 1007. Therefore, the Order supports an award of fees to Waste Management under  
3 NRCP 68's provisions.  
4

5 **D. WASTE MANAGEMENT IS NOT OVERREACHING.**

6 WTS next argues that Waste Management is overreaching in seeking its  
7 attorney's fees incurred post-Offer. WTS also asserted this argument at the district  
8 court level and again lost. The district court ruled in favor of Waste Management  
9 on the fourth Beattie factor finding that the attorney's fees sought were "reasonable  
10 and justified in amount" and that Waste Management's counsel "was effective  
11 counsel". 5 JA 1219.  
12  
13

14 WTS did not file a cross appeal challenging the district court's determination  
15 the attorney's fees incurred by Waste Management were reasonable and justified in  
16 amount and, therefore, this argument and/or issue on appeal has been waived.  
17  
18 Mahaffey v. Investor's Nat. Sec. Co., 102 Nev. 462, 464, 725 P.2d 1218, 1219  
19 (1986) ("We conclude that a timely notice of cross-appeal is jurisdictional with  
20 respect to the cross-appeal."); *see also* NRAP 14(g).  
21

22 To the extent this Court again considers this factor, Waste Management  
23 relies upon the information provided to the district court supporting the amount of  
24 attorney's fees incurred post-Offer. 5 JA 1053-1055. In addition, Waste  
25 Management relies upon the district court's uncontested finding and conclusions  
26

1 that the requested attorney's fees were reasonable and justified in amount. 5 JA  
2 1219.

3  
4 **E. THE SUBSTANTIAL BENEFIT DOCTRINE DOES NOT**  
5 **APPLY TO DENY ATTORNEY'S FEES.**

6 WTS's Answering Brief does not address the arguments presented by Waste  
7 Management on this issue. WTS merely asserts the district court did not abuse its  
8 discretion in holding that WTS's lawsuit conferred a substantial benefit on a larger  
9 class of beneficiaries. AB, p. 29. However, there is no evidence in the record  
10 supporting any benefit to any members of the community arising out of WTS's  
11 baseless lawsuit. On the contrary, WTS's baseless lawsuit affirmed Waste  
12 Management's conduct as fully complying with the law. Further, WTS fails to  
13 address that the substantial benefit doctrine is only a basis "to award" attorney's  
14 fees—not a basis to deny fees. Accordingly, the district court erred as a matter of  
15 law in holding that the substantial benefit doctrine applied to deny Waste  
16 Management's NRCP 68 motion.  
17  
18  
19

20 **F. WASTE MANAGEMENT'S VOLUNTARY RELEASE OF ITS**  
21 **LIENS IS NOT A VALID FACTOR TO BE CONSIDERED BY**  
22 **THE DISTRICT COURT IN DENYING FEES.**

23 WTS's Answering Brief also does not address the arguments presented by  
24 Waste Management on this issue. Accordingly, WTS is deemed to have conceded  
25 the merits of this argument. *See e.g. Browning v. State*, 120 Nev. 347, 361, 91  
26

1 P.3d 39, 50 (2004) (recognizing that a “claim warrants no consideration” when  
2 appellant fails to provide this court with “any cogent argument, legal analysis, or  
3 supporting factual allegations”). As shown, it was error for the district court to  
4 have ruled that Waste Management’s voluntary release of its garbage liens caused  
5 by the district court’s erroneous Judgment as a basis for determining WTS’s claims  
6 were asserted in good faith.  
7  
8

9 **G. WTS’S SLANDER OF TITLE CLAIM WAS BASELESS AS**  
10 **WTS DID NOT SPEND ANY MONEY ON ATTORNEY’S**  
11 **FEES.**

12 WTS opposed Waste Management’s motion for summary judgment on  
13 WTS’s slander of title claims representing “the Plaintiff **has spent** a substantial  
14 amount of money in legal fees . . . .” 3 JA\_0572:17-18 (emphasis added).  
15 Subsequently, WTS voluntarily withdrew its slander of title claim because WTS  
16 had not “spent” any money at all. WTS did not pay for any attorney’s fees and no  
17 attorney fees were owed by WTS. Instead, WTS’s counsel was “investing” and  
18 “absorbing” his time to pursue WTS’s baseless claims. These facts and arguments  
19 are not rebutted by WTS. The district court failed to consider the baseless nature  
20 of WTS’s slander of title claim in denying Waste Management’s Motion.  
21  
22

23 ///

24 ///

25 ///



1           **H.     WTS’S REJECTION OF THE OFFER WAS GROSSLY**  
2           **UNREASONABLE.**

3           WTS’s Answering Brief does not seem to specifically address Waste  
4 Management’s arguments on this issue. Instead, WTS’s response appears to be a  
5 generalized diatribe against Waste Management. WTS does not explain how it  
6 could be reasonable to assert claims that violate the plain language of a statute, not  
7 incur any special damages, fail to comply with Washoe County’s Vacancy Policy,  
8 owe \$1,700 in services fees, late charges and then reject an Offer for payment of  
9 \$10,000 to it was not grossly unreasonable.  
10

11           WTS also does not dispute that it’s principal embarked on a vendetta and  
12 “invested” over \$100,000 in alleged legal services in persecuting WTS’s meritless  
13 claims against Waste Management over \$1,700 at issue—for legitimate charges  
14 owed by WTS. WTS had no hope of a greater recovery than offered by Waste  
15 Management because WTS did not sustain any damages as a result of the filing of  
16 Waste Management’s legal liens. This litigation was persecuted by WTS solely to  
17 harm Waste Management. As such, WTS’s rejection of the Offer was grossly  
18 unreasonable.  
19  
20  
21  
22

23                           **CONCLUSION**

24           WTS pursued baseless claims against Waste Management. Waste  
25 Management extended an NRCP 68 Offer of Judgment to pay WTS \$10,000 even  
26

1 though WTS owed Waste Management \$1,700 in service fees, late charges and  
2 interest. Waste Management's Offer was over 6x's the amount WTS could have  
3 recovered even if WTS's claims would have had any merit. Waste Management  
4 offered this generous sum notwithstanding WTS falsely claimed its units were  
5 vacant and falsely asserted it "had spent" money on attorney's fees.  
6  
7

8 WTS forced Waste Management to incur substantial fees and costs to  
9 establish that its conduct was lawful and in full compliance with all statutory  
10 requirements. In this case, this Court should hold WTS liable for the attorney's  
11 fees incurred by Waste Management in responding to WTS's baseless and  
12 unreasonable claims as a consequence of its unreasonable and vexatious conduct.  
13  
14

15 This Court should reverse the district court's Order denying Waste  
16 Management's Motion with instructions for the district court to enter judgment in  
17 Waste Management's favor for \$69,115.25 in attorneys' fees incurred by Waste  
18

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 Management as sought under its Motion and to order the district court to further  
2 conduct further proceedings to award Waste Management its attorney's fees  
3 incurred as a result of this appeal and after remand.<sup>15</sup>  
4

5 DATED this \_\_\_\_\_ day of August, 2020.

6 SIMONS HALL JOHNSTON PC  
7 6490 S. McCarran Blvd., # F-46  
8 Reno, Nevada 89509  
9 (775) 785-0088

10 BY: \_\_\_\_\_  
11 Mark G. Simons, Esq.  
12 Nevada Bar No. 5132  
13 *Attorney for Appellant*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

---

25 <sup>15</sup> 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  
2  
3       1.     I hereby certify that this brief complies with the formatting  
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and  
5 the type style requirements of NRAP 32(a)(6) because:  
6

7           This brief has been prepared in a proportionally spaced typeface using  
8 Microsoft Word in 14 font and Times New Roman type.  
9

10       2.     I further certify that this brief complies with the page- or type-volume  
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by  
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or  
13 more, and contains 4,647 words.  
14

15       3.     Finally, I hereby certify that I have read this brief, and to the best of  
16 my knowledge, information, and belief, it is not frivolous or interposed for any  
17 improper purpose. I further certify that this brief complies with all applicable  
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
19 every assertion in the brief regarding matters in the record to be supported by a  
20 reference to the page and volume number, if any, of the transcript or appendix  
21 where the matter relied on is to be found. I understand that I may be subject to  
22

23  
24     ///

25  
26     ///

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 24<sup>th</sup> day of August, 2020.

5 SIMONS HALL JOHNSTON PC  
6 6490 S. McCarran Blvd., #F-46  
7 Reno, Nevada 89509

8 BY: 

9 Mark G. Simons, Esq.

10 Nevada Bar No. 5132

11 *Attorney for Appellant*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6

\_\_\_\_\_ by using the Supreme Court Electronic Filing System:

DATED: This 24<sup>th</sup> day of August, 2020.

  
JODI ALHASAN