

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Appellant/Cross-Respondent,
vs.

LAS VEGAS REVIEW-JOURNAL, INC.,
Respondent/Cross-Appellant.

No. 82867

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Appellant/Cross-Respondent,
vs.

LAS VEGAS REVIEW-JOURNAL, INC.,
Respondent/Cross-Appellant.

No. 83430

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Appellant,
vs.

LAS VEGAS REVIEW-JOURNAL, INC.,
Respondent.

No. 84308

FILED

AUG 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

These are consolidated appeals and cross-appeals from district court orders granting in part a petition for a writ of mandamus or prohibition and awarding attorney fees and costs in an action to compel the production of records under the Nevada Public Records Act (NPRa). Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

These cases arise from litigation between appellant/cross-respondent, Las Vegas Metropolitan Police Department (Metro), and respondent/cross-appellant, Las Vegas Review-Journal, Inc. (LVRJ), concerning a public records request made by LVRJ in connection with a December 2019 fire at the Alpine Motel Apartments in Las Vegas, to which

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Metro officers responded. Immediately following the fire, a search warrant was served on the Alpine Motel Apartments, and the following day investigators returned to the scene to gather evidence.

Two days after the fire, LVRJ requested the following records via Metro's Public Records Unit (PRU) portal: (1) body worn camera (BWC) footage of the fatal fire from around 4:00 a.m. on December 21, 2019, as well as any BWC footage taken between December 22 and 23, 2019, when Metro executed the search warrant; and (2) 911 audio recordings from the morning of the fire. Metro's PRU advised LVRJ the same day that the BWC request was denied due to an active pending criminal investigation, and communicated that LVRJ needed to request the 911 audio by filing a Communications Research Office Request Form. LVRJ immediately filed the form and paid the required fee. The Communications Research Office then notified LVRJ that it would not produce the 911 audio or radio traffic due to the ongoing criminal investigation.

On January 14, 2020, LVRJ submitted a second records request via the PRU seeking: (1) all incident reports, (2) all officer reports, and (3) all witness statements associated with the fire. Additionally, LVRJ requested

All reports, photos, general records and documentation provided by LVMPD since Dec. 21 to all City of Las Vegas employees, including but not limited to Mayor Carolyn Goodman, members of the city council and city manager Scott Adams, in regards to:

[1] Alpine Motel Apartments, 213 N. 9th St

[2] The deadly fire that occurred at the Alpine on Dec. 21, 2019

[3] The Alpine's owner, Las Vegas Dragon Hotel LLC, including but not limited to the Alpine or other properties owned by the LLC [and]

[4] Adolfo Orozco, the managing member of Las Vegas Dragon Hotel LLC.

Metro denied the requests, again asserting that the records could not be produced because of the ongoing criminal investigation, as well as privacy interests.

On February 6, 2020, after unsuccessfully attempting to obtain the records, LVRJ filed a petition for a writ of mandamus or, in the alternative, prohibition in the district court seeking to compel production of the records. LVRJ's petition also sought attorney fees, costs, and penalties under the NPRA. The same day, Metro produced some responsive records, specifically, (1) 6 out of the 83 responsive BWC videos, (2) one half hour of 911 calls, and (3) approximately 42 minutes of radio traffic records. The district court held a hearing on May 20, 2020, and allowed Metro to provide an *ex parte in camera* declaration. After LVRJ sought reconsideration, the district court ordered Metro to submit a privilege log on July 30, 2020, but still did not order production of the records requested by LVRJ. Metro submitted a privilege log on August 13, 2020, identifying 29 witness statements and 64 BWC videos that were withheld from disclosure.

The district court held a subsequent hearing on December 3, 2020, and ordered Metro to produce the requested records but declined to impose penalties. That hearing resulted in a December 30, 2020, order granting in part LVRJ's petition.¹ Metro appeals the district court's grant

¹Although the order was subsequently amended and re-entered on March 31, 2021, the amendments are not relevant to the issues raised in these appeals and cross-appeals.

of writ relief in Docket No. 82867, and LVRJ cross-appeals the district court's refusal to impose penalties on Metro for its alleged willful violations of the NPRA.

After successfully obtaining writ relief and the requested records, LVRJ filed a motion seeking about \$200,000 in attorney fees and costs under the NPRA. On August 6, 2021, the district court entered an order awarding a reduced fee of \$155,000 (the first fee award), and roughly \$3,000 in costs. Metro appeals the first fee and cost award in Docket No. 83430, and LVRJ cross-appeals the district court's fee reduction.

LVRJ then filed a second motion for attorney fees and costs under the NPRA, which sought recovery of fees incurred during the period between the filing of its first and second motions for fees and costs, totaling about \$27,000. Metro filed an opposition and a motion to retax costs. The district court held a hearing on the motions and on February 4, 2022, entered an order awarding \$15,580 in fees, as well as \$253.86 in costs, and denying Metro's motion to retax (the second fee award). Metro challenges the second fee award in Docket No. 84308.

Docket No. 82867

The district court did not err in granting writ relief to LVRJ

A district court's decision to grant or deny a writ petition is reviewed by this court for an abuse of discretion, but when the writ petition raises questions of statutory interpretation, our review is de novo. *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 85, 343 P.3d 608, 612 (2015).

Metro asserts that the district court erred by refusing to deny the writ petition as moot because all responsive records had been produced

prior to the time the court granted writ relief.² LVRJ maintains that its petition was not moot because not all of the responsive records had been produced at the time the district court granted relief. Additionally, LVRJ argues that there were other outstanding issues regarding its request for penalties, attorney fees, and costs. We agree with LVRJ.

This court has recognized that a live controversy exists in public records cases when all the requested records have not been produced. *See, e.g., Las Vegas Review-Journal v. City of Henderson*, No. 73287, 2019 WL 2252868, at *2 (Nev. May 24, 2019) (Order Affirming in Part, Reversing in Part, and Remanding) (explaining that “so long as the records in a public records request are not produced, the controversy remains ongoing and can be litigated”). Here, there is evidence in the record indicating that Metro continued to withhold records over a month after the district court ordered production. In addition, there were outstanding issues regarding penalties, attorney fees, and costs. Therefore, we conclude that the controversy was not moot and affirm the March 31, 2021, order granting writ relief.

The district court did not err in declining to impose penalties under the NPRA

While this court usually reviews a district court’s decision regarding sanctions for an abuse of discretion, the availability of penalties under the NPRA presents a question of statutory interpretation which this court reviews de novo. *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 242, 416 P.3d 249, 256 (2018) (discovery sanctions under

²Metro’s argument appears to be premised on its view that certain BWC footage produced after the district court’s December 30, 2020, order was not responsive to LVRJ’s requests. We are not so persuaded, as Metro has not explained why it would produce BWC footage that was not responsive to LVRJ’s requests.

NRCP 37 reviewed for an abuse of discretion); *cf. Clark Cty. Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 48, 458 P.3d 1048, 1052 (2020) (reviewing fee award eligibility based on a statute de novo).

Although it partially granted LVRJ's request for writ relief, the district court denied LVRJ's request for penalties. LVRJ argues on cross-appeal that the district court erred by not penalizing Metro for its willful violations of the NRPA, as permitted by NRS 239.340(1).³ Metro claims that the district court properly denied LVRJ's requests for penalties because there was no willful violation of the NPRA. The district court considered this issue and determined that penalties were not warranted *at the time it granted writ relief*. However, the district court expressly noted that LVRJ could request penalties *at a later date* upon a showing that Metro committed a willful violation of the NPRA. We discern no error in the district court's decision not to impose penalties in its December 30, 2020, order because LVRJ failed to show a willful violation had occurred *at that time*. As a

³NRS 239.340(1) provides:

[I]f a court determines that a governmental entity willfully failed to comply with the provisions of this chapter concerning a request to inspect, copy or receive a copy of a public book or record, the court must impose on the governmental entity a civil penalty of:

(a) For a first violation within a 10-year period, \$1,000.

(b) For a second violation within a 10-year period, \$5,000.

(c) For a third or subsequent violation within a 10-year period, \$10,000.

result, we affirm the district court's order determining that penalties were not warranted.

Docket No. 83430

An award of attorney fees is generally reviewed for an abuse of discretion. *Blackjack Bonding*, 131 Nev. at 89, 343 P.3d at 614. However, when eligibility for a fee award depends on interpretation of a statute or court rule, the district court's decision is reviewed de novo. *Logan v. Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141 (2015).

Here, the district court awarded attorney fees to LVRJ pursuant to NRS 239.011, based on its conclusion that that LVRJ was the prevailing party in a public records action. However, the district court awarded a reduced fee, as opposed to the full amount requested by LVRJ. Thus, we review the district court's decision to award LVRJ fees as the prevailing party de novo, and the court's fee reduction for an abuse of discretion.

The district court correctly determined that LVRJ was the "prevailing party" entitled to attorney fees in a records request action

Under NRS 239.011(2), if the requester prevails in an NPRA action, "the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees in the proceeding." Here, LVRJ was the "prevailing party" in the underlying action because Metro produced certain records only after the district court issued a writ of mandamus directing it to do so. *Cf. Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615 (observing that a party need only prevail on "any significant issue in litigation" not every issue (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005))). Therefore, we conclude that the district court did not err in awarding attorney fees to LVRJ as the prevailing party.

Metro argues that the district court erred in awarding attorney fees by failing to address the five factors of the “catalyst theory” in its fee award. LVRJ maintains that the district court correctly determined it was the prevailing party in light of the court’s previous decision to partially grant LVRJ’s request for writ relief, but that in any event, the court properly applied the five catalyst-theory factors. We agree with LVRJ and decline to address Metro’s arguments regarding the catalyst theory because LVRJ was the prevailing party and, thus, entitled to attorney fees under NRS 239.011(2).

However, because LVRJ failed to respond to Metro’s argument that LVRJ did not show that its costs were reasonable, necessary, and actually incurred, *cf. Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120-21, 345 P.3d 1049, 1054 (2015) (observing that a party requesting costs must provide documentation establishing that the requested costs were reasonable, necessary, and actually incurred), we hold that the district court erred in awarding costs to LVRJ, *see Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2000) (recognizing that failure to respond to an argument can be treated as a confession that the argument is meritorious).

The district court abused its discretion by arbitrarily reducing LVRJ’s attorney fee request

On cross-appeal, LVRJ contends that the district court erred by narrowly applying the NPRA’s fee-shifting provision, excluding potentially compensable hours, and artificially finding that LVRJ’s work in the proceeding ended when the privilege log was produced in August 2020. Metro, on the other hand, asserts that the district court appropriately reduced LVRJ’s attorney fees because (a) NRS 239.011(2) requires fees to

be *reasonable*, and (b) fees must always be evaluated under the *Brunzell* factors.⁴ LVRJ's argument is persuasive.

Under NRS 239.011(2), a prevailing requester "is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees *in the proceeding*." (Emphases added.) As LVRJ notes, this court has recognized that "[NRS 239.011(2)'s] language plainly provides that if [a party] is the prevailing requester, it has met the sole legal requirement which qualifies it for, or makes it 'entitled to,' reasonable attorney fees and costs." *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 60, 458 P.3d 1048, 1061 (2020); see also *Las Vegas Review-Journal v. Clark Cty. Office of the Coroner/Med. Exam'r*, 138 Nev., Adv. Op. 80, 521 P.3d 1169, 1174 (2022) (holding that the district court erred in reducing a fee award by nearly 40% without an adequate explanation). Here, LVRJ prevailed in obtaining writ relief ordering Metro to disclose the requested records and was thus entitled to recover all of its reasonable fees and costs incurred in the underlying proceeding. As a result, we conclude that the district court abused its discretion by arbitrarily limiting LVRJ's first fee award to the date Metro provided a privilege log.

Docket No. 84308


We have considered Metro's and LVRJ's arguments with respect to the second fee and cost award and conclude that they are


⁴The *Brunzell* factors to be considered by the district court include: "(1) the qualities of the advocate . . . ; (2) the character of the work to be done . . . ; (3) the work actually performed by the lawyer . . . ; [and] (4) the result" *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

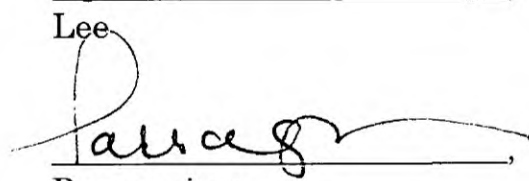
unpersuasive, as they are premised on LVRJ not being the “prevailing party.”⁵

In sum, we affirm the district court’s orders in Docket No. 82867 insofar as the court granted writ relief pursuant to the NPRA. We also affirm the district court’s order in Docket No. 83430 with respect to the fees awarded to LVRJ under NRS 239.011 as a prevailing party, but reverse the \$3,000 cost award, and reverse and remand the court’s order to the extent it reduced LVRJ’s attorney fee request, with instructions that the court evaluate the *Brunzell* factors to determine the additional fees to which LVRJ is entitled. Finally, we affirm the district court’s order in Docket No. 84308 awarding attorney fees and costs to LVRJ. Accordingly, we

ORDER the judgments of the district court AFFIRMED IN PART, REVERSED IN PART AND REMAND Docket No. 83430 to the district court for proceedings consistent with this order.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

⁵See, e.g., *Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (observing that this court need not reach issues that are unnecessary to resolve the case at bar).

cc: Hon. Gloria Sturman, District Judge
Kristine M. Kuzemka, Settlement Judge
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