IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Max Global, Inc. Appellants, vs. MEDAPPEAL, LLC, an Illinois Limited Liability Company, Respondent.	Supreme Court No. 83763

RESPONDENT'S ANSWERING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Max Global, Inc. Appellants, vs. MEDAPPEAL, LLC, an Illinois Limited Liability Company, Respondent.	Supreme Court No. 83253

RESPONDENT'S RULE 26.1 DISCLOSURE

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

Plaintiff Medappeal, LLC is a limited liability company with no parent corporations. No publicly held company owns 10% or more of Medappeal, LLC.

The following law firms have appeared for Plaintiff in this action:

The Law Office of Jay Freedman-District Court

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The Ball Law Group-District Court, Court of Appeals and Supreme Court

Dated this 27th day of June, 2022.

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I. STATEMENT OF FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW.

Defendants appeal from an award of attorneys' fees to plaintiff Medappeal, LLC and from an Order denying their post-trial *Hunneycutt* motion. Defendants acknowledge that this is their second appeal. However, they fail to acknowledge that the only legal issue they raise in this appeal was raised in and decided against them in their prior appeal.

On page xi of their prior Opening Brief, in Case Number 83252, Defendants identified five "Issues Presented for Review." Defendants identified one of the issues as follows: "Do public policy considerations require non-resident limited liability companies to do business in Nevada and be licensed in Nevada to be able to file a lawsuit in Nevada?" On page xi of their Opening Brief in this appeal, Defendants identify the following as "Issues Presented for Review:

- "Does commencing a lawsuit equate to maintaining a lawsuit?"
- "Does NRS 86.5483 allows a foreign LLC to sue foreign defendants in Nevada without having to get a license or to do business in Nevada?"
- "Is it the public policy in Nevada to allow foreign LLCs to create litigation in Nevada without being licensed?"

Though not discussed in their Statement of Facts, Defendants do acknowledge that this Court affirmed the District Court's grant of summary judgment. (Opening Brief at xi:6-8.) Relevant to this appeal, this Court's June 17 decision provided the following analysis:

> Appellants next contend that the district court should have dismissed respondent's action because respondent is not licensed in Nevada to transact business. *Cf,* NRS 86.548(2) (prohibiting any foreign limited-liability company from "transacting business" in Nevada without first registering with the Secretary of State). ***This argument is without merit***, as it ignores NRS 86.5483 (1), which provides that "For the purposes of NRS 86.543 to 86.549, inclusive, the following activities do not constitute transacting business in this State: [m]aintaining, defending or settling any proceeding." ***Pursuing a legal action appears to fall squarely within this definition, and appellants do not argue otherwise.***

(*Reddy v. Medappeal, LLC*, No. 83253, at *3 (Nev. June 17, 2022) (emphasis added).)

As to the award of attorneys' fees, Defendants do not contend on appeal that Plaintiff was not entitled to recover fees or that the amount of fees awarded was improper. Instead, in this Court and in the District Court Defendants attack both orders solely on the grounds that Plaintiff was not qualified to do business in Nevada when it filed suit. However, Defendants have never offered any evidence that Plaintiff ever conducted business in Nevada.

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At page four of their Opening Brief, lines four and five, Defendants admit that "[t]here is not any dispute" that "Respondent has never done business in Nevada, other than to commence this litigation." Later on page 4, Defendants again concede that "[t]here is no dispute that the Respondent is a foreign LLC who never did business in Nevada . . ." This is the only relevant fact cited by Defendants.

Defendants' concession that Plaintiff has never done business in Nevada is not surprising. In their underlying *Hunneycutt* motion, Defendants did not identify a single fact supporting their argument and they did not attach any evidence to their motion indicating that Plaintiff has ever conducted business in Nevada. Plaintiff provided the following analysis in its Opposition to Defendants' *Hunneycut* motion:

> Not surprisingly, Defendants do not event attempt to identify the business Plaintiff currently conducts or previously conducted in Nevada. Defendants do not attribute any business activities to Plaintiff, they do not identify any of Plaintiff's Nevada employees and they do not identify any of Plaintiff's Nevada business contacts. Simply put, Defendants say nothing.

(AA, at 815.)

Plaintiff supported its Opposition to Defendants' *Hunneycutt* motion with a declaration from one of its principals. (AA, at 818.) That declaration stated that Plaintiff "does not do business in Nevada and has never done business in

Nevada." The declaration stated that Plaintiff "does not have any employees or agents in Nevada, it has never generated any sales from Nevada and it does not have any offices in Nevada." The declaration stated that Plaintiff's "only contact with Nevada is this lawsuit." Defendant did not offer any contrary evidence in the District Court and they do not cite to any contrary evidence in the appellate record.

Defendants also include an argument towards the end of their Opening Brief that is not supported by the record on appeal, not asserted in the District court and not discussed in their Statement of Facts. Defendants argue on page 14 that Plaintiff "was solely formed for the sole purpose of bringing this action against Appellants and others." They similarly argue on page 15 that "it is clear that Respondent was formed solely to do business in Nevada for the purpose of suing the non-appealing Defendants in Illinois and for no other reason." This statement is not merely false, Defendants do not attempt to support it by citation to the record.

In this case, the only evidence that the reviewing court can consider when evaluating the District Court's award of attorneys' fees or denial of Defendants' *Hunneycutt* motion is the evidence that was submitted to the District Court by the parties to support and oppose the two Motions. As noted by the Nevada Supreme Court, "[i]t is appellant's responsibility to make an adequate appellate

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record." (*Johnson v. State*, 113 Nev. 772, 776 (Nev. 1997) (citation omitted).) The high court further held that it "cannot properly consider matters not appearing in that record." (*Id.; see also* NRAP 28(e)(1) [every assertion in briefs regarding matters in the record must be supported by a citation to the record].) In this case, the evidence submitted to the District Court defeats Defendants' appeal.

II. SUMMARY OF ARGUMENT.

Defendants' argument is absurd and can only result from their deliberate misreading of the relevant statutes and case-law. The statutes cited by Defendants regulate entities that are *engaging in business activities* in Nevada. The judicial opinions cited by Defendants concern entities that were *engaging in business activities in Nevada*. Defendants, in their second attempt to assert an argument that cannot be supported, still cannot locate a single statute or decision that requires a foreign entity that is not engaging in business activities to qualify to do business before it can file suit in Nevada. Defendants' appeal is frivolous and they should be sanctioned pursuant to Rule 38 of the Nevada Rules of Appellate Procedure.

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III. LEGAL ARGUMENT.

A. Introduction.

The appeal filed by Defendants is inherently defective and should be dismissed for several different reasons. First, Defendants' argument is defeated by the law of the case doctrine. This Court has already reviewed Defendants' argument and decided against them. Defendants are not entitled to a second bite at the apple.

Second, Defendants do not cite to any evidence in the appellate record supporting their contention that Plaintiff engaged in business activities in Nevada. To the contrary, Defendants concede that Plaintiff has "never done business in Nevada." (Opening Brief at 4:4.) Having never done business in Nevada, Plaintiff certainly did not need to qualify to do business.

Finally, Defendants' appeal is demonstrably frivolous. They cite to statutes while ignoring the language of the statutes, they cite to judicial decisions while ignoring the facts of the decisions and they assert an argument that was just decided against them when their prior appeal was denied. No reasonable attorney would file the appeal at issue and Defendants should be sanctioned.

B. Standard Of Review.

Plaintiff does not disagree with the legal authority provided by Defendants when they discuss the applicable appellate standards of review. However,

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Defendants did not identify all of the relevant standards. In particular, Defendants ignored the rule that they must identify a prejudicial error to overturn the District Court's aware of attorneys' fees or the denial of their *Hunnycut* motion. According to the Nevada Supreme Court, an appellate court "must affirm unless the error complained of is substantial." (*Ormachea v. Ormachea*, 67 Nev. 273, 294 (Nev. 1950).) The high court further held that "[w]henever substantial justice is done, a technical error, which has worked no injury, will not warrant reversal." (*Id.*) Likewise, a District Court's order will not be disturbed on appeal, even if rendered for the wrong reason, if the order was not in error. (*Id* at 295; *see also Trans. Western Leasing v. Corrao Constr. Co.*, 98 Nev. 445, 449 (Nev. 1982).) In this case, Defendants do not identify any substantial errors committed by the District Court.

C. Defendants' Appeal Is Barred By The Law Of The Case.

The law of the case doctrine is well-established in Nevada. The Nevada Supreme Court holds that "[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." (*Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 629-30 (Nev. 2007).) The Supreme Court explained that the doctrine "is designed to ensure judicial consistency and to prevent the reconsideration,

during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest." (*Id.*) The Supreme Court concluded that the law of the case doctrine serves important policy considerations, including judicial consistency, finality, and protection of the court's integrity.

In *Hall v. State*, 91 Nev. 314 (Nev. 1975), the high court stated the principle as follows: "The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." (*Id.* at 315.) In a statement that foreshadowed this appeal, the Supreme Court held that the doctrine "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." (*Id.* at 316.)

In this case, Defendants run headlong into *Hsu* and *Hall.* They argued in their prior appeal that Plaintiff was not able to file suit in Nevada because it had not qualified to do business in Nevada. That argument was soundly rejected. Nonetheless, Defendants again argue in this appeal that "[t]here is no evidence available that would serve to allow Plaintiff to maintain this action against these Appellants in any event, because of Respondent's assertions that it was never licensed and never did business here." (Opening Brief at 5:15-19.) This is the same argument that was rejected in the prior appeal and Defendants' change of focus from "maintaining a suit" to "commencing a suit" does not assist them. (*See Wolff v. State*, 455 P.3d 849 (Nev. 2020) [holding that the law of the case

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doctrine precluded a second appeal because the appellant "has not alleged nor shown that his current claim is substantially new or different than what was considered on direct appeal"].)

The law of the case doctrine prevents Defendants from re-litigating an issue they lost in a prior appeal. Defendants do not cite to any evidence that they did not cite to in their prior appeal and they do not identify any issue that is substantially different from the issue that was considered in their prior appeal. Defendants have already lost and their appeal should again be denied.

D. Plaintiff Was Not Required To Qualify To Do Business In Nevada To File Suit.

Defendants premise their legal argument on the statement that "Nevada does not allow foreign LLCs to do business without a license to do business." (Opening Brief at 5:6.) While Plaintiff does not disagree, the statement is entirely irrelevant. Defendants themselves concede that Plaintiff has never done any business in Nevada and as a result Plaintiff was never required to qualify to do business in Nevada. This undisputed fact defeats Defendants' appeal.

1. Plaintiff has never conducted business in Nevada.

In addition to the concessions in their Opening Brief, Defendants did not identify a single fact in their underlying *Huneycutt* motion indicating that Plaintiff has ever done business in Nevada. (Appellants' Appendix ("AA"), at

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800.) Defendants do not attribute any business activities to Plaintiff, they do not identify any of Plaintiff's Nevada employees and they do not identify any of Plaintiff's Nevada business contacts.

Defendants did not rebut the evidence that Plaintiff introduced supporting its position that it has never done business in Nevada. Defendants likewise do not identify any facts in their Opening Brief indicating that Plaintiff has ever done business in Nevada. As such, Defendants cannot meet their burden on appeal.

As stated by Plaintiff in its Opposition to the *Huneycutt* motion, Plaintiff is a limited liability company that is based in Illinois and conducts business in Illinois. It has not qualified to do business in Nevada because it has never done business in Nevada. Plaintiff does not have any employees in Nevada, it does not have any agents in Nevada, it does not maintain an office in Nevada and it does not have any clients in Nevada. (AA, at 813.) Plaintiff's only contact with Nevada is this litigation. (*Id.*)

The Nevada Supreme Court holds that "the test to determine if a company is doing business in a state is two pronged. Courts look first to the nature of the company's business functions in the forum state, and then to the quantity of business conducted in the forum state." (*Sierra Glass & Mirror v. Viking Indus., Inc.*, 107 Nev. 119, 122 (1991).) Again, this test results in the inescapable

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conclusion that Plaintiff is not doing business in Nevada under any possible legal test. Plaintiff has no business functions in Nevada and it has conducted no business in Nevada. Zero plus zero equals zero.

Notably, the facts of *Sierra Glass* clearly demonstrate the defects with Defendants' argument. Viking Industries was the party allegedly doing business in Nevada. The Supreme Court described its "associations" with Nevada as follows:

> Its total sales volume amounts to approximately $ 20,000,000 in the thirty states in which it conducts business. Of that amount, about $ 3,000,000 is from sales into Nevada. At the time the cause of action arose, Viking had one sales representative, Linda Aronsohn, who worked in Nevada. She resided in Las Vegas and spent two weeks a month calling on customers and visiting sales prospects in Reno and Las Vegas. Viking maintained a listed telephone in Las Vegas which operated out of Aronsohn's home. Nevada customers would place orders through Aronsohn, who would then phone the orders and send checks to Portland. (*Sierra Glass*, 107 Nev. at 121.)

Despite this level of activity and its finding that Viking's activities appeared to be continuous and systematic, the Supreme Court held that Viking was not doing business in Nevada because it could not say Viking "had so localized itself into the community that its activities in Nevada took on an intrastate quality." (*Sierra Glass*, 107 Nev. at 125.) In this case, Plaintiff's only contact with Nevada is its current lawsuit against Defendants. It has no business

functions in Nevada, it earns no money from Nevada and it does not have any employees in Nevada. Plaintiff does not do any business in Nevada.

2. Defendants rely in irrelevant legal authority.

As they did in their prior appeal, Defendants primarily rely on *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190 (Nev. 2010) to support their brief. This case is irrelevant to this appeal. As noted by the Supreme Court, the substantive question in *AA Primo* was "whether a Nevada limited liability company whose charter is revoked, then reinstated, may litigate a pending suit to conclusion." (*Id.* at 9-10.) However, the resolution of this question, and the decision rendered in *AA Primo*, does not assist Defendants. AA Primo filed suit to recover payment for a patio remodel job that it performed in Nevada and it was unquestionably doing business in the state. (*Id.* at 11.) The Supreme Court's entire analysis was based on the fact that AA Primo was engaged in business activities in Nevada. In this case, it is undisputed that Plaintiff has never done business in the state and *AA Primo* is irrelevant to any plaintiff who is not transacting business.

Notably, Defendants do not merely rely on inapplicable authority but they grossly mischaracterize that authority. On page seven, line 14, of their Opening Brief, Defendants state that "in AA Primo Builders, commencement of a lawsuit

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is doing business in Nevada." The Supreme Court did not say anything remotely similar to this in *AA Primo*.

Defendants likewise mischaracterize the result of *Resort at Summerlin v. District Court*, 118 Nev. 110 (Nev. 2002). In *Resort at Summerlin*, the Supreme Court noted that it was deciding whether "Nevada's 'door closing' statute, NRS 80.210, bars foreign corporations from commencing or maintaining suits in the courts of this state when those corporations have initially qualified to conduct business in Nevada pursuant to the laws of this state, yet fail to comply with the statutorily prescribed annual reporting requirements." (*Resort at Summerlin*, 118 Nev. at 110-111.) This decision has nothing to do with the ability of a foreign LLC which has never conducted business in Nevada to file suit in Nevada.

Defendants then cite to NRS 86.213, which is likewise irrelevant. This statute concerns persons other than foreign LLCs "who [are] purporting to do business in this State." NRS 86.548 is irrelevant for the same reason as it concerns foreign LLCS which are "transacting business in this State."

It is not surprising that Defendants are unable to identify a single statute or judicial decision requiring a foreign entity which is not doing business in Nevada to qualify to do business before filing suit. No such authority exists and

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Defendants are deliberately misreading the authority on which they rely. Defendants do not meet their burden and their appeal should be denied.

3. There is no functional difference between commencing a lawsuit and maintaining a lawsuit.

Defendants try to argue that while Plaintiff may have been able to maintain its suit against them it was not able to file suit in the first place. This argument is absurd and can only have been asserted in bad faith. Defendants cannot avoid the impact of this Court's recent decision denying their prior appeal through clever wordsmanship and their current appeal is as meritless as their prior appeal.

While the words "commence" and "maintain" obviously have different meanings, that difference is meaningless in the context of this appeal. As Defendants correctly note, an entity that is doing business in Nevada can neither commence nor maintain a lawsuit if it is not qualified to do business during the course of the suit. On the other hand, an entity that is not doing business in Nevada does not need to qualify before commencing suit or maintaining a suit. In practice, there is no functional difference between the two words.

Again, Defendants attempt to support their inane argument by simply ignoring the facts of the judicial decision on which they rely. They cite to *Resort at Summerlin, supra,* to support their position that Plaintiff was required to

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qualify to do business in Nevada before it commenced its suit against them. In particular, Defendants argue on page 9 of their Opening Brief that *Resort at Summerlin* holds that filing suit in Nevada, in and of itself, constitutes "doing business in Nevada." However, *Resort at Summerlin* says no such thing. While the Supreme Court did note that it was "uncontested that A B was 'doing business' in Nevada," it made the statement because A B was a painting subcontractor which was supplying labor and materials in construction projects. This conduct, not filing a lawsuit, constituted "doing business" in Nevada. Defendants do not meet their burden and their appeal should be denied.

4. Nevada law does not require a foreign LLC that is not doing business in Nevada to qualify to do business before filing suit.

Defendants' argument defies common sense. According to Defendants, an Arizona gas station that sues a Nevada resident in Nevada for writing a bad check would first have to qualify to do business in Nevada. Likewise, an out-of-state entity that buys a product from a Nevada seller would have to qualify to do business in Nevada before filing suit because the product was defective. Clearly, this is not the law.

Further, this Court already confirmed that NRS 86.5483 exempts Plaintiff from the requirement to qualify to do business. In its recent decision denying Defendants' prior appeal, this Court held that "pursuing a legal action appears to

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fall squarely within" NRS 86.5483(1)'s definition of conduct that does not constitute doing business. This ruling defeats Defendants' appeal and the appeal should be denied.

E. Defendants Should Be Sanctioned Pursuant To Rule 38.

Rule 38(a) of the Nevada Rules of Appellate Procedure authorizes this Court to impose sanctions if it determines that an appeal is frivolous. Rule 38(b) provides that when an appeal is frivolous or when circumstances indicate that an appeal has been taken solely for purposes of delay, this Court may require the offending party to pay as costs on appeal such attorney fees as it deems appropriate to discourage similar conduct in the future. In this case, Defendants should be sanctioned for filing a frivolous appeal.

Initially, no reasonable attorney could believe that Plaintiff was required to qualify to do business before filing suit. Defendants acknowledge in their Opening Brief that Plaintiff has never conducted business in Nevada and their argument that Plaintiff conducted business simply by filing suit is more than merely meritless. Defendants brazenly mischaracterize legal authority in their attempt to fit a square peg into a round hole and their conduct reveals their knowledge that their argument is frivolous.

Defendants also admit that they received this Court's June 17 decision which rejected the argument they assert in this appeal. In other words, despite a

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written request from Plaintiff, Defendants proceeded filing this appeal after learning that this Court rejected the precise argument they assert. Defendants' knowledge either confirms that this appeal is willfully frivolous or that it was taken solely for the purpose of delay. In either case, Defendants' conduct cannot be condoned and they and their counsel should be sanctioned.

V. CONCLUSION.

Defendants failed to meet their burden in the District Court and they fail to meet their burden on appeal. Plaintiff was not required to qualify to do business in Nevada because it has never done business in Nevada. Plaintiff, like any other injured party, was entitled to file suit in Nevada. Defendants failed to identify any facts or any legal authority disputing these two fundamental legal truths. For all of the above reasons, Plaintiff respectfully requests that Defendants' appeal be denied and that Defendants be sanctioned in a manner deemed appropriate.

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ATTORNEY'S CERTIFICATE

I, the undersigned attorney, certify the following:

1. I have read Plaintiff's Answering Brief;
2. To the best of my knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
3. The brief complies with all applicable Nevada Rules of Civil Procedure, including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number of the appendix where the matter relied on is to be found; and
4. The brief complies with the formatting requirements of Rule 32(a)(4)-(6), and the page limitations stated in Rule 32(a)(7).
5. This brief is prepared on 8 ½ by 11-inch paper. The text is double-spaced except for quotations or more than two lines. Margins are one inch on all four sides and the pages are consecutively numbered at the bottom.
6. This brief was prepared using 14-point Times New Roman typeface, which is a proportionally spaced typeface.

7. This brief does not exceed 30 pages, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), and was prepared using Microsoft Word. According to Word's "word count" feature, the brief contains 4051 words (not including the tables or other pages before page 1).

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