IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 84707

GILBERT P. HYATT

Appellant,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

Respondent.

Appeal Regarding Judgment and Post-Judgment Orders
Eighth Judicial District Court
District Court Case No.: A382999

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ROUTING STATEMENT

Though appellant Gilbert Hyatt ("Hyatt") argues this appeal is "presumptively assigned to this Court" because of NRAP 17(a), he does not cite the specific provision of that rule that he contends applies. Similarly, he provides no reasoning supporting the same. While the case's prior appeals raised constitutional issues of first impression under NRAP 17(a)(11), Hyatt's current appeal does not. It is a straightforward review for an abuse of discretion of the district court's post-judgment determination of recoverable costs under NRS 18.005 and 18.020. That determination involves *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015) and well-settled resulting case law from this Court. There is no issue of first impression before the Court, and no other individual provision of NRAP 17(a) applies.

Instead, the provision of NRAP 17 that applies here is NRAP 17(b)(7), which states that appeals from post-judgment orders in civil cases are presumptively assigned to the Court of Appeals. Hyatt has provided no reason for the Court to deviate from this rule, and so respondent Franchise Tax Board of the State of California ("FTB") asks the Court to assign this straightforward matter to the Court of Appeals.

INTRODUCTION

After a long and winding procedural history involving one trial and multiple appeals, the district court entered judgment in the FTB's favor in February 2020 dismissing Hyatt's case. In the aftermath, the FTB moved to recover its statutory costs as the prevailing party under NRS 18.020. Hyatt moved to retax the FTB's costs under NRS 18.110.[1] The briefing on both sides was voluminous, resulting in hundreds of pages of hyperlinked motion practice and thousands of pages of supporting documentation of the FTB's costs. Though the district court at first found that the FTB was not a "prevailing party" under NRS 18.020, this Court reversed. After that decision and at Hyatt's request, the parties submitted supplemental briefing addressing NRS 18.020 and *Cadle Co.* as to the reasonableness and necessity of the FTB's costs and the substantiating cost documentation and explanation that the FTB had supplied.

Hyatt's appendix in this appeal includes all documents that the district court considered in ruling on the FTB's costs. That appendix is 42 volumes and 9,795 pages long. The district court reviewed the documentation for nearly two months

[1] The FTB also moved to recover its attorney fees as the prevailing party under NRS 18.010 and based on FTB's offer of judgment under NRCP 68. The district court denied these fees, and this Court affirmed the same in the most recent appeal. As a result, the FTB's attorney fees are not at issue in this appeal.

before holding a multi-day, multi-hour hearing in January 2022. The district court did so because Hyatt requested more time to make his rebuttal argument on his motion to retax. Before the district court issued a written minute order, it took nearly eight weeks to consider the FTB's supporting documentation challenged by Hyatt. In the end, through a final written order, the district court awarded the FTB $2,262,815.56 in recoverable costs covering the 24 years this case has been in Nevada courts. The district court's award did not include all out-of-pocket expenses that the FTB incurred in this multi-decade dispute advanced by Hyatt. Instead, it included only those covered by NRS 18.005.

Still, Hyatt accuses the district court of abusing its discretion in awarding these costs and asks this Court to reverse the district court's order. First, Hyatt claims all the FTB's costs incurred after April 2003 are unnecessary or unreasonable under *Cadle Co.* He gets there by arguing that the FTB should have sought jurisdictional relief by asking the United States Supreme Court to overrule *Nevada v. Hall* on the first appeal in 2003. Had FTB done so, Hyatt speculates that the FTB would have succeeded, avoiding any extra costs after April 2003, thus making them unnecessary under *Cadle Co.* Second, Hyatt argues the district court fell asleep at the wheel and did not scrutinize the FTB's claimed costs, thereby "failing to exercise any discretion" to deny such costs under *Cadle Co.* Third, Hyatt argues the district

court diverted without justification from the special master's prior report and recommendation in 2009, which examined the woefully deficient bill of costs that Hyatt submitted. Fourth, Hyatt argues that the district court did not provide proper explanation for its award of the FTB's expert costs under NRS 18.020. Fifth, Hyatt argues the FTB failed to adequately document and explain its requests for deposition and travel expenses, photocopy and telecopy costs, and long-distance telephone and postage costs. And finally, Hyatt argues that the district court violated Hyatt's due process rights as to his property by awarding all the FTB's costs without "any analysis or explanation" of its reasoning.

But none of Hyatt's arguments have factual or legal merit. First, Hyatt's argument about *Nevada v. Hall* and the definitions of necessity and reasonableness under *Cadle Co.* has no precedent in this Court or any other court. Hyatt invites the Court to instruct district courts to Monday morning quarterback litigants' strategy and timing in making legal arguments and to deny costs if the district court believes the litigant did not raise the winning argument at the proper time. But Hyatt provides no guiding principles for how district courts should do so, nor does he illustrate how a district court can pragmatically evaluate litigation strategies without litigants' inside (and privileged) information to contextualize their strategy decisions. Even more, Hyatt provides no reference for his unprecedented definitions of "necessity"

and "reasonableness." This Court has always broadly defined a litigation cost as one needed for some purpose or reason in the lawsuit. The FTB needed all its costs after 2003 because they were necessary to defend against Hyatt's baseless case. In the end, Hyatt's definitions of necessity and reasonableness are unprecedented. They would bog down district courts with impossibly evaluating a litigant's prior strategy decisions with incomplete information. They would invade privileged information between client and attorney. And they would create unwarranted costs as the parties debate the litigation through the lens of hindsight. This is not what NRS 18.020 requires, and not what the Court has previously required, and so the Court can reject it as unsupported.[2]

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[2] It is factually baseless and pure speculation as to what would have happened had the FTB raised the idea of overruling *Nevada v. Hall* in 2003 rather than explore the parameters of the exception described in that opinion. *See* 538 U.S. 488, 497-99 (2003).

Hyatt claims that the FTB did not raise jurisdiction as a defense or ask for reversal of *Nevada v. Hall* until recently, and so the FTB should not recover any costs after April 2003. But as this Court is aware, the United States Supreme Court rejected this very argument from Hyatt in *Hyatt III* and noted that the FTB challenged jurisdiction from the start of this case. 139 S. Ct. 1485, 1491 n.1 (2019) (explaining the FTB raised "an immunity-based argument from this suit's inception"). The United States Supreme Court also explained in *Hyatt III* that cases after *Hyatt I* in 2003 had proven *Nevada v. Hall* could no longer survive, and it gave no indication that it would have reversed *Nevada v. Hall* in 2003 had the FTB requested it. *See id.* at 1499 (confirming *Nevada v. Hall* was "an outlier in [the Court's] sovereign-immunity jurisprudence, particularly when compared to more recent decisions.").

As to Hyatt's arguments about the FTB's supporting documentation and the district court's efforts in evaluating the FTB's requested costs, Hyatt misstates the record as he concludes that the district court violated *Cadle Co.* and his due process rights. *Cadle Co.* required the district court to determine whether the costs are recoverable under NRS 18.005's categories and review counsel's declaration and the supporting documentation to determine their reasonableness and necessity. That is what the district court did here. Contrary to Hyatt's unfounded accusations against the district court, the judge spent weeks reviewing thousands of documents, held a hearing on the same over two days, and entered a written order detailing the district court's findings. The FTB supported each of its requested costs with a hyperlinked brief that included backup documentation and extensive explanation in the supporting declaration of the FTB's lead counsel. Not only does this meet the *Cadle Co.* standard, but it exceeds how district courts normally handle routine motions to retax costs after judgment. It is inexplicable that Hyatt accuses the district court of violating his due process rights when the district court read thousands of pages and heard hours of oral argument from Hyatt about the cost requests at issue.

Cadle Co. gives the district court broad discretion to award costs since the district court is most familiar with the case and the reasonableness and necessity of litigation costs incurred in its prosecution or defense. The district court did not abuse

that discretion here. Quite the opposite, the district court went beyond the *Cadle Co.* standard. As a result, the FTB asks the Court to affirm the district court's award of the FTB's requested costs.

STATEMENT OF FACTS

A. The FTB Sought Jurisdictional Relief From The Case's Beginning, A Finding That The United States Supreme Court Expressly Made.

Hyatt accuses the FTB of sitting "on its hands from the outset of the case" on jurisdictional issues and not seeking "jurisdictional relief." *See* Appellant's Opening Brief ("AOB") at 8-9. Hyatt's accusation is outright false and was found to be false by the United States Supreme Court.

The case first reached this Court in 2001 through the FTB's writ petition, in which the FTB asked the Court to dismiss Hyatt's case for lack of subject matter jurisdiction based on principles of sovereign immunity, full faith and credit, choice of law, comity, and administrative exhaustion. *See Franchise Tax Bd. of Cal. v. Hyatt ("Hyatt I")*, 538 U.S. 488, 491 (2003).

After this Court granted the FTB's writ petition as to Hyatt's negligence claim but denied it as to Hyatt's other tort claims, the United States Supreme Court granted certiorari in *Hyatt I* in 2002 and affirmed this Court's decision in April 2003. From the beginning of its oral argument, the FTB argued that Nevada lacked jurisdiction over the FTB because of principles of sovereign immunity, full faith and credit,

choice of law, comity, and administrative exhaustion. *See* Appellant's Appendix ("AA") at 39 AA 9116.[3]

As a result, it is incorrect for Hyatt to suggest that the FTB did not challenge jurisdiction or seek jurisdictional relief immediately. *See Franchise Tax Bd. of Cal. v. Hyatt ("Hyatt II")*, 578 U.S. 171, 173-74 (2016). The United States Supreme Court recognized this in *Hyatt III* when it rejected Hyatt's exact same argument contending that the FTB had waived jurisdictional challenges to *Nevada v. Hall* by not raising them sooner. *See Franchise Tax Bd. of Cal. v. Hyatt ("Hyatt III")*, 139 S. Ct. 1485, 1491 n.1 (2019) ("We also reject Hyatt's argument that the Board waived its immunity. The Board has raised an immunity-based argument from this suit's inception, though it was initially based on the Full Faith and Credit Clause.").

And it was the latter jurisdictional argument under which the FTB prevailed in full in *Hyatt III*. In that final appeal, the United States Supreme Court reversed *Nevada v. Hall* and found that *Nevada v. Hall* was "contrary to our constitutional design and the understanding of sovereign immunity shared by the States that ratified the Constitution." *Id.* at 1492. The United States Supreme Court confirmed developments in the case law since it decided *Hyatt I* in 2003 and that such

[3] Unless otherwise indicated, the FTB cites Hyatt's appendix as "Volume Number AA Page Number."

developments proved that *Nevada v. Hall* was "an outlier in [the Court's] sovereign-immunity jurisprudence, particularly when compared to more recent decisions." *Id.* at 1499.

While Hyatt now speculates that the United States Supreme Court would have reversed *Nevada v. Hall* in *Hyatt I* had the FTB asked it to do so, there is no support for that speculation in *Hyatt III*. *See generally id.* Quite the opposite, *Hyatt III* confirms that recent cases illustrated to the United States Supreme Court the folly of its prior decision and prompted it to deviate from stare decisis in overruling *Nevada v. Hall*.

B. With Its Jurisdictional Challenges Pending, The FTB Offers Hyatt Judgment Under NRCP 68, But Hyatt Refuses And Instead Wages A Multi-Decade War In Nevada.

Near the end of discovery, the FTB offered case-concluding judgment to Hyatt under NRCP 68 and NRS 17.115 in the amount of $110,000. *See* 38 AA 8828 (noting the FTB's offer was for "all claims asserted by Hyatt against FTB . . . and if accepted, shall completely resolve this matter."). By then, the parties had incurred hundreds of thousands of dollars in discovery and the multiple appeals through *Hyatt I*. 38 AA 8714. Though the FTB still believed as it did before *Hyatt I* that the FTB's jurisdictional arguments were correct and dispositive, it offered judgment to Hyatt to save the California taxpayers from the attorney fees and costs of trial and any jurisdictional appeals.

Hyatt rejected the FTB's offer. The matter then went to trial in 2008. Between the FTB's offer of judgment and trial, Hyatt filed nearly 20 pretrial motions. *See* 38 AA 8714; 38 AA 8760-8825. The trial began in April 2008 and lasted four months, covering 75 trial days, 58 witnesses, and over 2,700 exhibits. *See* 38 AA 8714; 38 AA 8836. Though Hyatt at first prevailed at trial, the FTB appealed many aspects of the judgment. At each appeal, this Court or the United States Supreme Court whittled down Hyatt's jury verdict as being legally unsound, until ultimately the FTB won complete dismissal in *Hyatt III* because Nevada lacked jurisdiction over the FTB as the FTB had argued from the very start. *See* 139 S. Ct. at 1491-92.

C. After Hyatt Loses His Entire Case, The FTB Requests Statutory Costs And Includes Voluminous Supporting Documentation With Hyperlinked Briefing.

After the United States Supreme Court decided *Hyatt III* in 2019, the FTB submitted a memorandum of costs as NRS 18.110 requires from the prevailing party. *See* 21 AA 4761-72. With its memorandum of costs, the FTB submitted 17 volumes of supporting documentation covering each of the categories that the FTB was requesting under NRS 18.005. *See* 21 AA 4773-37 AA 8694. As *Cadle Co.* requires, the FTB's lead counsel also submitted a declaration explaining and confirming that the costs were necessary and reasonable and that the FTB actually incurred them. *See* 21 AA 4768-71. FTB also made clear that it was not seeking

recovery of all its out-of-pocket expenses in defending against Hyatt's allegations, but only those carefully curated to meet the recoverable categories identified by Nevada's Legislature in NRS 18.005.

Hyatt moved to retax these costs and argued that the FTB could not recover costs because it was not a "prevailing party" under NRS 18.020. *See* 37 AA 8695-38 AA 8705. If the district court disagreed with that argument, Hyatt also asked the district court for the opportunity to file supplemental briefing addressing *Cadle Co.* and the specific costs that the FTB was seeking. *See* 38 AA 8702-03.

Though the district court at first embraced Hyatt's argument about prevailing parties, this Court reversed and instructed the district court to proceed with a *Cadle Co.* analysis of the FTB's memorandum of costs and Hyatt's motion to retax the same. *See* 39 AA 9075-83. After remand in June 2021, the district court allowed the parties to submit supplemental briefing as Hyatt had requested. Hyatt first filed a supplemental memorandum with nearly 170 pages of exhibits aimed at the FTB's costs. *See* 39 AA 9086-116. The FTB then filed a supplemental reply brief with two more volumes of exhibits covering 405 pages. *See* 40 AA 9284-42 AA 9689-710. Consistent with the FTB's practice in this Court, the FTB hyperlinked its brief and memorandum of costs so that the district court could quickly pull up and substantiate the supporting documentation for each specific cost in each specific cost

category. *See* 42 AA 9754.

With briefing complete by December 3, 2021, the district court took nearly two months to review the initial motions, supplemental briefing, and the thousands of pages of supporting documents, exhibits, and the FTB's explanations of the same. *See* 42 AA 9729-74. The district court ultimately scheduled a hearing on January 25, 2022. *See id.* At that hearing, the district court heard multiple hours of arguments from Hyatt's counsel and the FTB's lead trial counsel. *See* 42 AA 9772-74. Still, because Hyatt had not yet had time to make his rebuttal argument, the district court continued the matter at Hyatt's request and brought all counsel back on January 27, 2022, to conclude the hearing. *See id.*[4] Hyatt concluded his rebuttal argument that day, at which time the district court confirmed the parties had done a "fine job" briefing and arguing their competing positions and that the district court wanted more time to review the supporting documentation before issuing a written

[4] Though Hyatt now accuses the district court in his Opening Brief of not protecting his due process rights during these hearings, his trial counsel stated the opposite during the hearing. During the hearing's first day, Hyatt's counsel noted that the FTB's trial counsel had argued for 50 minutes, and so Hyatt requested commensurate time to make his rebuttal argument. *See* 42 AA 9772. The district court honored that request so as not to "cut off" Hyatt from making his arguments and continued the hearing to a second day so that Hyatt could be heard. *See id.* Hyatt's counsel began his continued argument two days later by thanking the district court for the additional time and never once suggested that the district court had improperly cut off Hyatt's ability to be heard. *See* 42 AA 9777.

decision. *See* 42 AA 9794-95.

Six weeks later, the district court completed its review and entered a minute order granting the FTB's memorandum of costs and denying Hyatt's motion to retax the same. *See* 42 AA 9711-12. The district court confirmed that it reviewed the parties' voluminous submissions and this Court's prior orders and determined that the FTB's supporting documentation proved that the costs were reasonable, necessary, and actually incurred as *Cadle Co.* requires. *See id.* The parties submitted competing orders to the district court, and nearly four weeks later, the district court entered a written order confirming the FTB's recovery of its costs. *See* 42 AA 9713-15. Hyatt now appeals this order. *See* 42 AA 9726-28.

ARGUMENT

A. After Months Of Reviewing The FTB's Voluminous And Hyperlinked Supporting Documentation, The District Court Followed *Cadle Co.* And Properly Awarded The FTB's Statutory Costs Through A Written Order.

In 2015, the Court decided *Cadle Co.*, which established the evidentiary basis by which district courts must examine and award costs under NRS 18.020. *See* 131 Nev. at 114, 345 P.3d at 1049. The Court explained that district courts must award costs to a prevailing party so long as the party shows the "costs were reasonable, necessary, and actually incurred." *Id.* at 121, 345 P.3d at 1054. This standard requires "sufficient justifying documentation to support the award of costs." *Id.*

Cadle Co. further clarified and extended the holding of *Bobby Berosini, LTD. v. PETA*, in which the Court confirmed that the reasonableness test under NRS 18.005 requires costs that are "actual and reasonable rather than a reasonable estimate or calculation of such costs." 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (cleaned up). Thus, a district court's primary charge in evaluating cost requests is to ensure that counsel confirms the party actually incurred costs and is not guessing or estimating its costs. *See id.*

As a result, after *Cadle Co.*, a party moving for costs must supply supporting documentation of each cost, and the district must evaluate the same for reasonableness and necessity before awarding the costs. While such a procedure often involves simple motion practice and at times not even a hearing, the district court did far, far more in this case. It reviewed tens of thousands of pages of documents, hundreds of pages of briefing, granted supplemental briefing, held a hearing stretching two days, and gave every party a full opportunity to be heard before ruling through written order. This is all that *Cadle Co.* requires. Hyatt's arguments to the contrary do not hold up.

1. The FTB provided the district court with sufficient justification of each cost as *Cadle Co.* requires.

The first touchstone under *Cadle Co.* is whether the moving party identified appropriate costs under NRS 18.005 and provided sufficient documentation of the

same for the district court's review. The FTB met this standard. The FTB timely filed a memorandum of costs in February 2020 that included 17 volumes of supporting documentation and a detailed declaration from the FTB's lead counsel. *See generally* 21 AA 4761-37 AA 08694. The FTB hyperlinked its memorandum of costs and its later supplemental briefing on the same so that the district court could quickly locate the supporting documentation, matching it against the request for a particular cost. *See* 42 AA 9754. As a representative sample, the FTB's supporting documentation included the following:

- Deposited checks of certain costs that the FTB had paid directly during the litigation (21 AA 4778);
- Invoices from all court reporters used during discovery (21 AA 4853);
- Individual receipts for meals, rental cars, and hotels related to the FTB's attorneys who attended discovery events and hearings (22 AA 5057-62);
- Over 150 pages of invoices from FedEx related to mailings in the case (29 AA 6581-6750);
- Bank and credit card statements along with individual receipts related to meals, travel, and lodging (36 AA 8432-8450).

The FTB included thousands of pages of other similar supporting documentation for each requested cost. *See* 21 AA 4761-37 AA 08694. And the FTB offered detailed explanation of each requested cost category in the attorney declaration required by *Cadle Co.* *See* 21 AA 4768-71. This is the type of supporting documentation and

explanation that *Cadle Co.* requires. *See* 131 Nev. at 121-22, 345 P.3d at 1054-55 (confirming receipts, invoices, and court records support claimed costs).

Even so, Hyatt claims that five categories of costs lack sufficient documentation or explanation and so the district court could not award them—travel, lodging, and meal costs, photocopies, long-distance telephone calls, telecopies, and postage. *See* AOB at 38-41. As to photocopies and telecopies, Hyatt claims that a previous special master disallowed such costs in 2009 when Hyatt only requested them with an unsupported spreadsheet, and so the district court erred in not disallowing the FTB's costs in 2022 for the same reason. *See id.* at 38-40. As to long-distance telephone calls and postage, Hyatt argues that the FTB did not explain the details of each call or piece of mail to establish its reasonableness and necessity. *See id.* at 39-41. And as to travel, lodging, and meal costs, Hyatt suggests the FTB did not properly provide explanation for the necessity of each cost. *See id.* at 28-29. But Hyatt is again incorrect on these points.

a. The FTB sufficiently supported its travel and deposition costs.

Hyatt argues that the district court should not have awarded the FTB certain of its travel, meal, and lodging costs for depositions, hearings, and trial in this case. *See* AOB at 28-29. Hyatt contends that the FTB did not provide supporting documentation and that the FTB did not distinguish between costs incurred

conducting depositions and discovery and costs incurred traveling for hearings, trial, and other case activities. *See id.* But Hyatt misses the mark on these arguments.

Initially, NRS 18.005(15) limits recoverable costs for travel and lodging to those incurred "taking depositions and conducting discovery," but NRS 18.005(17)'s catch-all provision has no similar limitation. Hyatt cites no case from this Court holding that travel, meal, and lodging costs for hearings, trial, and other case activities are not recoverable under NRS 18.005(17). Quite the opposite, this Court has held that those costs are recoverable under the catch-all provision. *See Las Vegas Land Partners, LLC v. Nype*, 133 Nev. 1041, 408 P.3d 543, 2017 WL 5484391, at *7 n.3 (2017) (unpublished) (allowing mediation costs and travel, lodging, and meal costs under NRS 18.005(17) (citing *Lewis, Wilson, Lewis, & Jones, Ltd. v. First National Bank of Tuscumbia*, 435 So. 2d 20, 23 (Ala. 1983)). As a result, the FTB sought all recoverable travel costs for depositions and discovery under NRS 18.005(15) and other travel, meal, and lodging costs for trial, hearings, and other case activities under NRS 18.005(17). *See* 21 AA 4765-66. It was not an abuse of discretion for the district court to award them under either statutory provision, as applicable, if the FTB properly supported all its travel costs with underlying documentation.

Second, unlike Hyatt in 2009, the FTB supported its travel, lodging, and meal

costs with individualized receipts and other supporting documentation. *See* 30 AA 7002-32 AA 7526; 36 AA 8432-8450. For example, this included hotel invoices (32 AA 7286), bank statements showing airfare charges (32 AA 7309), meal receipts (32 AA 7358), airport parking receipts (32 AA 7509), and other similar backup documentation. The declaration from the FTB's counsel explained in detail why these costs were reasonable and necessary in the litigation. *See* 21 AA 4768-71. Nothing more is required under *Cadle Co.* to award these costs, and the district court did not abuse its discretion in awarding them under NRS 18.005(15) or NRS 18.005(17).

b. The FTB sufficiently supported its photocopy and telecopy costs.

As to the photocopies and telecopies, the special master issued his report and recommendations in 2009, six years before the Court decided *Cadle Co.*, and so the special master did not apply the legal standard that is in place today. *See* 39 AA 9131-9157. Instead, the special master applied *Village Builders 96, L.P. v. U.S. Lab'ys, Inc.* and concluded that Hyatt's spreadsheets without justifying or source document for each photocopy or telecopy did not establish that costs were reasonable, necessary, and actually incurred. 39 AA 9146.

But the special master misapplied *Village Builders*, and the district court was correct in distancing itself from this. *Village Builders* was primarily concerned with

avoiding the estimates or guesses with which the *Berosini* court took issue. *See Berosini*, 114 Nev. at 1352, 971 P.2d at 385-86 (costs must be "actual and reasonable rather than a reasonable estimate or calculation of such costs.") (cleaned up). The main point of the prove-up process under *Cadle Co.* is to ensure that the moving party *actually incurred* each cost. In *Village Builders*, this Court could not determine if the party actually incurred the costs because counsel only supplied a declaration without supporting documentation and the party "failed to verify the motion" through a memorandum of costs to assure the Court that all costs were actually incurred. *See Village Builders 96, L.P. v. U.S. Lab'ys, Inc.*, 121 Nev. 261, 277, 112 P.3d 1082, 1092-93 (2005).

Village Builders quoted *Gibellini v. Klindt* to illustrate why costs cannot be estimates or guesses but instead must be actually incurred. *See id.* at 276-77, 112 P.3d at 1092. *Gibellini* provided the analytical basis for *Village Builders 96, L.P.* and *Berosini*. 110 Nev. 1201, 885 P.2d 540 (1994). In *Gibellini*, the moving party did not provide an itemized spreadsheet of photocopy costs or otherwise confirm counsel had reviewed the source documentation supporting such costs to ensure they were actually incurred. *See id.* at 1205-06, 885 P.2d at 543. Instead, counsel charged clients "4 percent of the total billable hours fee" for photocopies, telephone costs, and postage expenses without tying such costs to those actually incurred. *Id.* As a

result, counsel no doubt overcharged some clients while undercharging others, and this Court denied such costs because they did not accurately reflect costs actually incurred. *See id.* Rather, they were estimates of each cost that did not comply with NRS 18.020.

No such problem arises in the context of itemized spreadsheets like the FTB's where the party submits a verified memorandum of costs and counsel states in a declaration that costs were actually incurred rather than arbitrarily passed to clients on a speculative percentage basis. In a multi-decade case like this one, so long as a spreadsheet itemizing each cost is supported by a declaration of counsel noting that the spreadsheet was put together from source documentation and reflects costs actually incurred rather than guesses or estimates, that spreadsheet is sufficient justifying documentation to overcome *Cadle Co.*'s concern about mere estimates. The FTB's spreadsheet verified by counsel's declaration does not reflect estimates or guesses. Instead, as the FTB's lead counsel's declaration states, the FTB actually incurred these costs, and those costs were further substantiated by the supporting spreadsheet and additional invoices to the FTB showing it actually incurred such costs. *See* 21 AA 4768-71. This documentation meets the *Cadle Co.* standard.

Hyatt twists *Cadle Co.* into stating an apparent hardline requirement that each cost, no matter how small, must be supported by individual source documents

attached to motion practice. As seen from the FTB's supporting itemized spreadsheets, many of the photocopy and telecopy costs it seeks to recover are under $1.00. *See, e.g.*, 24 AA 5406 (listing 50 photocopy charges, with 16 being for $1.00 or less); 23 AA 5239 (listing 47 telecopy charges, with 32 being for $1.00 or less). These charges stretch out over 24 years and involve various cost recording procedures. *See id.* Providing the source documentation beyond that offered by the FTB for each small photocopy or telecopy charge as Hyatt demands would cost the FTB more in attorney fees to prepare the documentation than the charge for the initial copy that the FTB seeks to recover. If the Court embraced Hyatt's misreading of *Cadle Co.*, the process would require massive time commitment from district courts to review such minimal costs. This sort of inefficiency discourages parties from seeking recovery of such small costs in complex litigation, though they actually incurred the costs that are otherwise recoverable under NRS 18.020.[5]

[5] Hyatt also overlooks that the Court decided *Cadle Co.* and its requirement of supporting documentation in 2015, but the FTB incurred most of its costs before 2010. It would be incorrect for the Court to retroactively apply *Cadle Co.*'s standard to the FTB's pre-2015 costs, as doing so would not have provided fair notice to the FTB of how it needed to document such costs. The Court has recognized that it should not apply new legal standards retroactively in other contexts, and it should confirm the same here. *See, e.g.*, *Pub. Emp.'s Benefits Program v. Las Vegas Metro. Police Dept.*, 124 Nev. 138, 155, 179 P.3d 542, 554 (2008) (in deciding whether to apply a statute retroactively, "courts are guided by fundamental notions of fair notice, reasonable reliance, and settled expectations.") (citation omitted); *Colwell v. State*, 118 Nev. 807, 820-21, 59 P.3d 463, 472-73 (2002). [footnote continued]

The district court evaluated the FTB's photocopy and telecopy costs pragmatically based on their amounts, and it found that the spreadsheet and supporting declaration and documentation from counsel established they were reasonable, necessary, and actually incurred. That is all NRS 18.005 and 18.020 require.

c. The FTB sufficiently supported its long-distance telephone and postage costs.

In criticizing whether the FTB established the necessity and reasonableness of the costs for long-distance telephone calls and postage, Hyatt argues that counsel's declaration did not individually discuss each call or piece of mail to show its necessity to the litigation. *See* AOB at 39-41. Hyatt claims the special master found the same insufficient on Hyatt's part in 2009, and so the district court erred in granting these costs to the FTB now. *See id.*

But *Cadle Co.* does not require counsel's supporting declaration to lay out the details of each individual call or each piece of mail. *Cadle Co.* confirms that district

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Even more, as a practical matter, with the increase in computing power and software programs designed to track expenses, it is much easier to track telecopy and photocopy costs in 2022 than it was when the FTB incurred them beginning in 1998 for this case. This case has unique facts in the context of recoverable costs because it stretches 24 years. Hyatt's after-the-fact application of *Cadle Co.* to costs that the FTB incurred before 2015 asks this Court to speculate as to whether Hyatt's demanded source documentation was even available during the early portions of this case when the FTB incurred most of its costs.

courts have wide discretion to award costs, and the first part of that discretion is based on counsel providing a declaration generally asserting that the costs were reasonable, necessary, and actually incurred. 131 Nev. at 120-21, 345 P.3d at 1054. Once counsel provides this declaration, the district court can then scrutinize individual costs as necessary based on the supporting documentation. *See id.* The FTB's counsel provided a declaration confirming that each cost was necessary, reasonable, and actually incurred. *See* 21 AA 4768. Requiring counsel to explain each individual cost in complex litigation as Hyatt suggests would turn otherwise routine cost declarations into voluminous affairs, taking up the time and resources of district courts and litigants without justification. *Cadle Co.* does not require such detail in counsel's declaration, and so the district court did not abuse its discretion in this respect.

Even more, Hyatt mischaracterizes the special master's denial of his costs in 2009. The special master noted that Hyatt did not provide "justifying documentation that reached the standard set forth in *Village Builders*" and so the special master denied these costs. 39 AA 9147. By comparison, the FTB supported its long-distance telephone calls and postage with individualized supporting documentation and therefore satisfied *Cadle Co.* in doing so. *See* 26 AA 5936-6001 (phone bills); 26 AA 6036-30 AA 6997 (postage costs).

2. The district court reviewed the FTB's supporting documentation, heard extensive oral argument, and then entered a written order sufficiently laying out its reasoning for granting the FTB's costs.

Hyatt criticizes the district court for not asking any questions during the hearing and as a result suggests that the district court accordingly "gave no meaningful review" of Hyatt's arguments and provided no rationale for its award of the FTB's costs. *See* AOB at 20-21. Essentially Hyatt argues that unless a judge asks questions during oral argument, the judge is not discharging his or her duties. This argument is disrespectful and incorrect for multiple reasons.

First, the district court need not hold a hearing, and it certainly is not required to ask any questions during the same if it finds the parties' briefing and oral argument enough to decide the issues raised. This Court has held that a district court need only review evidence supporting that costs were reasonable, necessary, and actually incurred before awarding them. *See Cadle Co.*, 131 Nev. at 121, 345 P.3d at 1054 (district court may award costs with "evidence to determine whether a cost was reasonable and necessary"); *see also* EDCR 2.23(c) (district court judge may decide motion on its merits at any time with or without oral argument). The district court did that here. Hyatt's argument holds no water.[6]

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[6] Hyatt's feigned exasperation that the district court judge did not ask any questions reeks of paternalism. Though Justice Clarence Thomas wrote the opinion in *Hyatt III* and asked no questions during oral argument in front of the United States Supreme Court, Hyatt did not similarly criticize him for his silence.

Second, Hyatt has no facts to support his claim that the district court conducted no meaningful review. He merely assumes the district court conducted no review because it disagreed with his misplaced arguments. Hyatt's unfounded assumption does not establish abuse of discretion. The district court received thousands of pages of evidence from the parties, reviewed it for nearly eight weeks before holding a hearing, held the hearing over two days to allow the parties to fully argue their positions, and took another seven weeks to review the entire record before issuing a minute order. Indeed, the district court confirmed at the end of the hearing that it would review the record again before issuing a decision. *See* 42 AA 9795 ("So something of this size deserves nothing short of a written order. So because of that I am absolutely going to take this matter under advisement, and I am going to issue a written decision" on the pending motions.). The district court then issued a minute order and later reduced the same to a multi-page written order reflecting the district court's analysis of reasonableness and necessity under *Cadle Co.* *See* 42 AA 9713-20. This, again, is all that *Cadle Co.* requires. *See* 131 Nev. at 120-21, 345 P.3d at 1054. It is off the mark for Hyatt to suggest that this was not meaningful review by the district court.

3. Hyatt misrepresents the record to justify his *Nevada v. Hall* argument tying the definition of "necessity" to the prevailing party's litigation strategy, and it is without precedent and would create an unworkable rule for district courts to apply.

Hyatt is upset that he lost this case when the United States Supreme Court reversed *Nevada v. Hall* in *Hyatt III* and ordered Hyatt's case dismissed for lack of jurisdiction. In the last appeal to this Court, Hyatt argued that the Court should deny the FTB its costs as a matter of equity since the FTB did not immediately ask for reversal of *Nevada v. Hall* during *Hyatt I* in 2003. *See Franchise Tax Bd. of Cal. v. Hyatt*, 485 P.3d 1247, 2021 WL 1609315, at *4 (Apr. 23, 2021) (unpublished). The Court rejected this equitable framing and instead held that costs are mandatory to the prevailing party under NRS 18.020. *See id.* On this appeal, Hyatt now shifts his equitable framing about *Nevada v. Hall* to arguing as a Monday morning quarterback that the FTB's costs after 2003 were not "necessary" because the FTB should have asked the United States Supreme Court for reversal of *Nevada v. Hall* in *Hyatt I*. *See* AOB at 22-26. Thus, Hyatt argues that the district court abused its discretion when it awarded the FTB its costs incurred after 2003. *See id.*

Though Hyatt is inviting the Court to join him in Monday morning quarterbacking the FTB's litigation strategy, he provides no authority from this Court or elsewhere permitting this speculative intellectual exercise. This is likely because requiring a district court to analyze a prevailing party's litigation strategy to

determine whether the party should have raised the winning argument sooner is an unworkable rule based on assumption and incomplete information. Complex cases are legal chess, and parties often weigh the risks and probabilities of legal arguments to deliver them at the appropriate time. In doing so, litigants have inside information about the evidence, strengths, and weaknesses of the case law and their case that opposing parties and district courts do not. Much of that information is privileged between attorney and client. It is impossible for a district court to analyze the prevailing party's litigation strategy after the fact when it cannot access that inside and privileged information. And even if it does, it requires the district court to recreate the case through speculation as to when the winning argument would have succeeded. That is what Hyatt suggests here,[7] and it would put district courts in an impossible situation.

That is why this Court has always defined necessity much broader in *Cadle Co.* and preceding cases. Black's Law Dictionary defines "necessary" as "[t]hat which is needed for some purpose or reason." *Necessary*, BLACK'S LAW

[7] As discussed above, *Hyatt III* gave no indication that the United States Supreme Court would have reversed *Nevada v. Hall* in 2003 as Hyatt suggests. Quite the opposite, *Hyatt III* discussed that the United States Supreme Court was abandoning stare decisis because of the failed experience of applying *Nevada v. Hall* after 2003. 139 S. Ct. at 1499 (confirming *Nevada v. Hall* was "an outlier in [the Court's] sovereign-immunity jurisprudence, particularly when compared to more recent decisions.").

DICTIONARY (11th ed. 2019). This Court has agreed with that definition and granted district courts wide latitude to determine whether a litigation cost was needed for some purpose or reason in the case. *See, e.g.*, *Matter of DISH Network Derivative Litigation*, 133 Nev. 438, 451-52, 401 P.3d 1081, 1093 (2017) (explaining it is within a district court's "sound discretion" to determine whether costs were necessary, *i.e.*, needed for some purpose or reason in the litigation).

The FTB showed why its costs incurred after 2003 were needed for some purpose or reason in the litigation. Until *Hyatt III* in 2019, the FTB had to defend itself from Hyatt's baseless tort claims and correct various jurisdictional errors on appeal, ultimately leading to the FTB's total win in 2019. *See Hyatt III*, 139 S. Ct. at 1491-92. Hyatt also ignores that at every round of appellate review—both by this Court and the United States Supreme Court—he lost more and more of his jury verdict award. As a result, the FTB's costs before and after 2003 were necessary, and it was not an abuse of discretion for the district court to reject Hyatt's speculative, unprecedented, and unworkable definition of "necessary."

B. The Special Master's 2008 Report And Recommendation Did Not Handcuff The District Court; It Was Not An Abuse Of Discretion For The District Court To Deviate From The Special Master When This Court's Cases And The FTB's Supporting Documentation Required It To Do So.

For various categories of costs under NRS 18.005, Hyatt objects to the district court awarding them when the special master previously denied these categories of

costs to Hyatt in 2009. *See* AOB at 27-36. These include costs for travel, video depositions, trial supplies, computer legal research, private investigators, mediators, the special master, and pro hac vice applications. *See id.* While the special master and district court may seem incongruent on the surface, the reasoning that the special master and district court employed shows why the FTB made sufficient showings in each category while Hyatt did not.[8]

As to travel costs, the special master and the district court are not in conflict. The special master denied such costs because Hyatt sought them under NRS 18.005(15) (which only applies to discovery and depositions), the special master applied a "strict construction" of that provision to hold only an attorney's travel expenses and not that of the party were recoverable, and Hyatt did not provide sufficient documentation to establish their recovery under the catch-all provision of NRS 18.005(17). *See* 39 AA 9148, 9153. By comparison, the FTB provided substantial supporting documentation establishing the reasonableness and necessity of travel costs, and it sought them under NRS 18.005(15) and NRS 18.005(17). *See* 30 AA 7002-32 AA 7526. As a result, the special master's "strict construction" of

[8] Lurking under the surface of Hyatt's brief is his intimation that the district court should have appointed a special master in 2022 just as it did in 2009. *See* AOB at 27 (claiming the district court gave "little consideration" to Hyatt's motion to retax the FTB's costs). But Hyatt did not request a special master, and so he cannot now accuse the district court of abusing its discretion by not appointing one.

NRS 18.005(15) did not apply to the FTB, and the district court accordingly analyzed the supporting documentation under NRS 18.005(15) and NRS 18.005(17) as *Cadle Co.* requires. The FTB is entitled to recover its travel costs, and the district court did not abuse its discretion in awarding them.

As to costs for videotaped depositions, the special master was incorrect in concluding in 2009 that videographer fees are "not allowable [under NRS 18.005(2)] if a reporter was otherwise present and charged a cost." 39 AA 9141. He cited no authority for this position, and this Court has never embraced that rationale. As a result, the district court did not abuse its discretion by deviating from it. The district court correctly awarded videographer fees to the FTB because they were reasonable and necessary. Videotaped depositions can be powerful evidence in jury trials like this one, and the district court recognized as much. *See, e.g.*, *United States v. Sacco*, 869 F.2d 499, 501 (9th Cir. 1989) (jury asking to review videotaped deposition to assess witness credibility).

As to trial supplies, the special master rejected these as to Hyatt because Hyatt only offered a "one sentence conclusory statement" that did not show reasonableness or necessity of such costs. *See* 39 AA 9154. Even more, the special master held that these costs were not supported as anything but regular office overhead. *See id.* By comparison, the FTB provided a detailed declaration from counsel establishing the

reasonableness and necessity of these supplies, and it also provided substantial supporting documentation as *Cadle Co.* requires. *See* 21 AA 4770; 36 AA 8269-312. As a result, the issue is not with the special master or the district court but with Hyatt failing to hit the evidentiary mark in 2009. The district court did not abuse its discretion when the FTB later hit the mark in 2022.

Hyatt's argument about computer legal research suffers from the same flaw. The special master allowed Hyatt to recover hundreds of thousands of dollars in legal research costs but denied others because Hyatt did not support them with documentary evidence satisfying *Cadle Co.* *See* 39 AA 9150 (awarding Hyatt $141,189.95 for computer legal research costs where Hyatt provided "statements and summaries" from Thompson West and Lexis). Still, Hyatt misrepresents to the Court that the special master denied all his costs and argues that the district court acted contrary to the special master in awarding the FTB's costs. *See* AOB at 33. This is offensive. The FTB supported its legal research costs with the very same type of supporting documentation justifying the special master's prior award to Hyatt. *See* 35 AA 8037-148. In doing so, the FTB provided over 100 pages of statements and summaries from its legal research providers. *See id.* There is no conflict between the special master's prior award and the district court's most recent award on legal research. Both awarded just what *Cadle Co.* requires—all those costs

supported by sufficient documentation. Hyatt's attempt to repaint the record does not survive scrutiny of his own appendix on this point.

As for private investigators, again, Hyatt fails to explain to the Court why the special master denied these costs. Hyatt only claimed these costs were necessary to "examine the underlying issues," but he provided no additional detail, and so the special master rejected his request. *See* 39 AA 9154. By comparison, the FTB provided such detail in noting that private investigators were necessary to "assist with locating witnesses" during the case. 21 AA 4770. As a result, it was not an abuse of discretion for the district court to award the FTB such costs.

As for costs for mediators and the special master, Hyatt concedes that the special master did not address costs for mediators and so the special master's lack of decision on those costs has no relevance to the district court's later decision. *See* AOB at 35; *see also* 39 AA 9107 (noting that the special master "did not address" mediator fees as a cost). Hyatt is correct that the district court previously required the parties to split the special master's upfront costs when the district court first appointed him. *See* 40 AA 9282. But that determination is irrelevant to the later analysis under NRS 18.020 as to whether the prevailing party may recover its one-half share of such costs. NRS 18.020's purpose is to compensate a winning litigant for the costs it incurred in prevailing. Costs for special masters fall within that

purpose, and it was not an abuse of discretion for the district court to award them to the FTB.[9]

As to costs for pro hac vice applications, the special master summarily rejected them as "not recoverable as costs." 39 AA 9155. But he provided no citation for this point, and this Court has never held the same. The FTB provided the reasonableness and necessity of its pro hac vice costs, and it sought them under NRS 18.005's catch-all provision. *See* 21 AA 4762 and 4768; 4777-817. Without legal authority holding that such costs are unrecoverable, the district court did not abuse its discretion in awarding them to the FTB.

C. The District Court Properly Exercised Its Wide Discretion In Allowing The FTB To Recover Expert Witness Fees.

NRS 18.005(5) ordinarily limits expert fees to $1,500. Recognizing that certain large cases or complex subject matters will require more costly experts, the provision gives district courts wide latitude to "allow a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." *Id.* The FTB supplied full explanation for why its experts were more costly than $1,500 each and provided the district court with copies of

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[9] It makes sense that the district court would at first require that the parties split the costs of the special master to ensure he received immediate compensation for his work. But that funding rationale does not apply to the post-judgment apportionment of costs.

each's billing invoices to establish the work performed. *See* 21 AA 4769; 22 AA 5085-144. The district court considered the same and awarded these costs to the FTB.

Hyatt does not challenge these costs because the experts charged unreasonable fees or inflated the work performed. *See* AOB at 37-38. The Court has found these reasons sufficient to reverse an award of expert fees. *See Cotter ex rel. Reading Int'l, Inc. v. Kane*, 136 Nev. 559, 56-67, 473 P.3d 451, 457-58 (2020). Instead, Hyatt falls back on his argument about *Nevada v. Hall* and contends that the FTB did not need its experts to reverse *Nevada v. Hall* in *Hyatt III*. *See* AOB at 37-38. But as explained above, Hyatt strains the Court's definition of "necessary" in doing so, and he provides no precedent for why he can unilaterally change that definition. The FTB needed its experts "for some purpose or reason" in the litigation—defending against Hyatt's tort claims and rebutting his experts' claims about the same. *See Necessary*, BLACK'S LAW DICTIONARY (11th ed. 2019). The district court did not abuse its discretion in rejecting Hyatt's equitable framing of his *Nevada v. Hall* argument, as this Court had done the same in the most recent appeal guiding the district court's cost determinations. *See Franchise Tax Bd.*, 485 P.3d 1247, 2021 WL 1609315, at *4. The FTB paid for experts during this case, and it is entitled to recover such costs under NRS 18.005.

D. In Receiving Thousands Of Pages Of Evidence And Holding A Multi-Hour Hearing Over Two Days To Consider Statutory Costs, The District Court Did Not Violate Hyatt's Due Process Rights.

Hyatt's last-ditch argument is that the district court violated his due process rights under the Nevada Constitution and the Fourteenth Amendment of the United States Constitution when it purportedly awarded the FTB's costs "without fact finding or application of [the district court's] discretion." AOB at 42-43. Though Hyatt accuses the district court of violating "the most basic tenets of due process," he does not clarify whether he is alleging a procedural or substantive due process violation. *See* AB at 43. Still, no matter how Hyatt defines his due process argument, it fails under well-established principles of procedural and substantive due process.

Procedural due process protects a litigant's right to be heard, and so this Court has held that it requires "notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Grupo Famsa v. Eighth Jud. Dist. Ct.*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) (citation omitted). Hyatt has no credible claim that the district court did not protect his right to be heard. The district court allowed Hyatt to file an initial motion and a supplemental brief, it held a multi-hour hearing spanning two days to give Hyatt time to make his rebuttal argument, and it considered the massive supporting evidence on both sides for weeks before issuing

a written decision. Nothing more is required to satisfy procedural due process. *See id.*

Substantive due process, by comparison, guarantees that "no person shall be deprived of life, liberty or property for arbitrary reasons." *Eggleston v. Stuart*, 137 Nev. Adv. Op. 51, 495 P.3d 482, 488-89 (2021) (citation omitted). Even if the hearing process were fair, substantive due process protects individuals "against arbitrary government deprivation." *Id.* at 489. But it does not protect against all government infringement on a person's life, liberty, or property. *See id.* Instead, it applies only to "the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend judicial notions of fairness and that are offensive to human dignity." *Id.* Just as with procedural due process, Hyatt cannot meet the considerably high hurdle of a substantive due process violation. The district courts have a statutory duty to award costs to prevailing parties under NRS 18.020. Nothing about the district court's ruling in this case shocks the conscience, offends human dignity, or otherwise is an egregious governmental abuse. *See id.* The district court complied with this Court's instructions in *Cadle Co.* by considering the written evidence, issuing a written decision, and taking months to do both. Nothing the district court did offends substantive due process.

Perhaps realizing this, Hyatt instead shifts his aim to this Court and claims that the Court's most recent decision was "constitutional error" because it noted that costs under NRS 18.020 are mandatory to the prevailing party. *See* AOB at 43-44. Hyatt cites *Missouri Pacific Railroad Co. v. Tucker* for the proposition that automatic imposition of a penalty and attorney fees and costs is a taking of property that violates the due process clause. *See id.* at 44. But Hyatt appears to intentionally misread this Court's prior decision, as the Court only held that it was mandatory that a district court evaluate a prevailing party's costs under *Cadle Co.* Nothing is automatic, and instead the district court may only award costs if the moving party satisfies the showing required under *Cadle Co.* As a result, Hyatt's ire directed at this Court is based on his fictional reading of the Court's most recent decision.

Even worse, Hyatt stretches *Tucker* beyond all logical boundaries. Hyatt quotes a sentence in his Opening Brief that appears nowhere in *Tucker*. *See* AOB at 44. *Tucker* does not focus on the automaticity of attorney fees and costs as Hyatt claims but on the arbitrary and oppressive application of liquidated damages to rail carriers in Missouri. *See* 230 U.S. 340, 351 (1913). The *Tucker* court could not have been clearer on this point when invalidating a Missouri statute that applied liquidated damages as a fixed penalty to rail carriers even if the plaintiff suffered no actual damages. *See id.* The *Tucker* court, when properly quoted, explained that

imposing fixed "liquidated damages is not only grossly out of proportion to the possible actual damages, but is so arbitrary and oppressive that its enforcement would be nothing short of the taking of property without due process of law." *Id.* Tucker did not involve any meaningful analysis of awarding costs to a prevailing party as a governmental taking, and it is duplicitous for Hyatt to misquote *Tucker* so that he can claim it controls his case. *Tucker* does not apply to Hyatt's argument about substantive due process, and he offers no other persuasive reasoning on this point. The district court awarded the FTB's costs after a reasoned process in evaluating them, and there is no argument that this was somehow an arbitrary or capricious violation of Hyatt's property rights.

CONCLUSION

Through *Cadle Co.*, the Court has put in place a straightforward process for reviewing and awarding costs under NRS 18.020. The moving party must file a memorandum of costs and provide supporting documentation and a declaration of counsel that a cost was reasonable, necessary, and actually incurred. The district court must then consider the same to determine the reasonableness and necessity of costs that the moving party actually incurred. Both the FTB and the district court went above and beyond in satisfying that process. The FTB supplied thousands of pages of supporting documentation and attorney explanation for each category of

costs, and the district court held a multi-day, multi-hour hearing on the same and spent weeks reviewing the supporting documentation before issuing a written minute order and a later written order. If that is an abuse of discretion as Hyatt contends, it is hard to imagine any other case satisfying such an exacting standard.

But it is not an abuse of discretion, and so the FTB asks that the Court affirm the district court's award of the FTB's statutory costs. After 24 years of litigating, it is time to end this matter.

Dated this 9th day of November, 2022.

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CERTIFICATE OF COMPLIANCE

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-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 9,494 words.

Under NRAP 28.2, 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), which requires every assertion about matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions if this brief does not conform to the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of November, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 9th day of November, 2022, a copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson
An Employee of McDonald Carano LLP