

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

LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT,

Appellant,

vs.

THE CENTER FOR INVESTIGATIVE  
REPORTING, INC., A CALIFORNIA  
NONPROFIT ORGANIZATION,

Respondent.

Supreme Court Case No. 77617/77965  
**Electronically Filed**  
Nov 22 2019 09:14 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Eighth Judicial District  
Court, the Honorable Elizabeth  
Gonzalez Presiding

**APPELLANT LVMPD'S NOTICE OF SUPPLEMENTAL AUTHORITIES**

**(CASE NOS. 77617/77965)**

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Appellant, Las Vegas Metropolitan Police Department (“LVMPD”), by and through its counsel Marquis Aurbach Coffing, hereby supplements LVMPD’s opening and reply briefs in Case Nos.: 77617/77965 pursuant to NRAP 31(e). This supplemental authority is based upon this Court’s order of reversal issued in *City of Henderson v. Las Vegas Review-Journal*, 2019 WL 529087, Case No. 75407 (Nev. October 17, 2019) (unpublished disposition).<sup>1</sup> For the convenience of the Court and all parties to this appeal, LVMPD has attached a copy of this order as **Exhibit 1**.

Specifically, LVMPD asks this Court to take note of page 3 of the *City of Henderson* order, discussing the prevailing party standard in actions involving the Nevada Public Records Act (“NPRA”). In particular, LVMPD directs this Court to the language in the order, applying the prevailing party standard to NRS 239.011. This Court applied the following standard:

To qualify as a prevailing party in a public records action, the requester must “succeed[ ] on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” *Las Vegas Metro. Police Dep’t v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (quoting *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)). While a records requester “need not succeed on every issue” to prevail, *id.* at 90, 343 P.3d at 615, this court has “consistently held that a party cannot be a

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<sup>1</sup> NRAP 36(c)(3) permits a party to cite to an unpublished disposition issued by the Supreme Court on or after January 1, 2016 for its persuasive value.

‘prevailing party’ where the action has not proceeded to judgment.”  
Dimick v. Dimick, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996).

*City of Henderson*, 2019 WL 529087, Case No. 75407, at \*3. In the lower court, the Las Vegas Review-Journal, sought access to various documents from the City of Henderson pursuant to the NPRA. *Id.* at \* 1. In addition to seeking access to the records, the Las Vegas Review-Journal brought declaratory and injunctive relief claims against the City in an attempt to invalidate the City’s policies related to the fees it initially assessed for processing records requests. *Id.* at \* 4. Because the City of Henderson provided the requested records free of charge, the district court determined that the Las Vegas Review-Journal’s equitable claims were moot and explicitly declined to decide those issues raised in the petition. *Id.* The lower court ultimately denied the Las Vegas Review-Journal’s petition. *Id.* This Court determined that the district court’s refusal to consider the injunctive and declaratory relief claims asserted by the Las Vegas Review-Journal meant that the Las Vegas Review-Journal did not prevail on these claims. *Id.* Using this reasoning, this Court concluded that the Las Vegas Review-Journal did not prevail, and therefore, was not entitled to an award of attorney fees and costs. *Id.*

This Court’s application and clarification of the prevailing party standard under NRS 239.011 on pages 3-4 of the *City of Henderson* order corresponds to an issue in LVMPD’s appeal and the argument on pages 15-21 of the opening brief

and pages 6-11 of the reply brief. Specifically, LVMPD requested in this briefing that the Court determine that the prevailing party standard apply to NRS 239.011 and that the Center for Investigative Reporting (“CIR”) did not prevail under the established standard because the underlying petition was denied as moot.

Therefore, LVMPD respectfully requests that this Court take into account the referenced portions of the *City of Henderson v. Las Vegas Review-Journal* order when considering LVMPD’s opening and reply briefs in the instant appeal.

Dated this 22nd day of November, 2019.

MARQUIS AURBACH COFFING

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPELLANT LVMPD'S NOTICE OF SUPPLEMENTAL AUTHORITIES (CASE NOS. 77617/77965)** was filed electronically with the Nevada Supreme Court on the 22nd day of November, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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The Center for Investigative Reporting, Inc.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Krista Busch  
An employee of Marquis Aurbach Coffing

# **EXHIBIT 1**

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,  
Appellant/Cross-Respondent,  
vs.  
LAS VEGAS REVIEW-JOURNAL,  
Respondent/Cross-Appellant.

No. 75407

**FILED**

OCT 17 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL*

This is an appeal and cross-appeal from a district court order awarding attorney fees in an action to compel the production of records pursuant to the Nevada Public Records Act. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

The Las Vegas Review-Journal (LVRJ) submitted a public records request to the City of Henderson (City) pursuant to the Nevada Public Records Act (NPRA). After estimating that the request implicated approximately 70,000 documents, the City informed the LVRJ that it needed several weeks to review the documents and redact any confidential or privileged information contained therein. The City also informed the LVRJ that it would be responsible for paying certain costs that the City would incur in reviewing and redacting the requested documents. The LVRJ subsequently filed a petition in district court to compel the City to produce the requested records. The district court denied the petition and the LVRJ appealed. This court, in an unpublished order, affirmed in part and reversed in part the district court's order, instructing the district court to conduct further analysis on remand. *Las Vegas Review-Journal v. City*

of Henderson, Docket No. 73287 (Order Affirming in Part, Reversing in Part, and Remanding, May 24, 2019).

Before the NPRA action was addressed by this court, the LVRJ moved for attorney fees, which the district court granted in part, concluding that the LVRJ had prevailed in its action to obtain access to records from the City but awarding less than the amount LVRJ requested. The City timely appealed, arguing that the LVRJ did not prevail in its public records action, and the LVRJ cross-appealed, arguing that the district court's partial award of attorney fees was an abuse of discretion.

We conclude that the district court erred in concluding that, despite failing on the claims for relief as set forth in its writ petition, the LVRJ nevertheless prevailed in its public records action and was entitled to attorney fees under the NPRA. Accordingly, we reverse the district court's partial award of attorney fees to the LVRJ.

While we generally review an award of attorney fees for an abuse of discretion, "when a party's eligibility for a fee award is a matter of statutory interpretation, . . . a question of law is presented" warranting de novo review. *In re Estate and Living Tr. of Miller*, 125 Nev. 550, 552-53, 216 P.3d 239, 241 (2009). The district court based its conclusion that the LVRJ was eligible for attorney fees on its interpretation of the NPRA, specifically whether the LVRJ was eligible for attorney fees as a prevailing party for purposes of NRS 239.011(2).<sup>1</sup> The district court based its

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<sup>1</sup>The Legislature recently amended NRS 239.011. The effective date for those amendments is October 1, 2019, and thus they do not apply to the disposition here. S.B. 287, 80th Leg. (Nev. 2019).



conclusion on the NPRA's statutory language and this court's caselaw interpreting the NPRA. Accordingly, "we review the district court's interpretation of caselaw and statutory language de novo." *Las Vegas Metro. Police Dept. v. Blackjack Bonding, Inc.*, 131 Nev. 80, 85 343 P.3d 608, 612 (2015).

When a party requests access to a public record pursuant to the NPRA and the governmental entity denies the request, the requester may seek a court order permitting the requester to inspect or requiring the governmental entity to provide a copy of the public record. NRS 239.011(1). "If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the [public record]." NRS 239.011(2). To qualify as a prevailing party in a public records action, the requester must "succeed[ ] on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)). While a records requester "need not succeed on every issue" to prevail, *id.* at 90, 343 P.3d at 615, this court has "consistently held that a party cannot be a 'prevailing party' where the action has not proceeded to judgment." *Dimick v. Dimick*, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996).

Here, as the district court recognized in its order, the LVRJ has not succeeded on any of the issues that it raised in filing the underlying action. The LVRJ's amended petition, filed after the City permitted the LVRJ to inspect responsive records over the course of several days at no

charge to the LVRJ, sought the following: (1) complete copies of all records that the City withheld and/or redacted as privileged, (2) injunctive relief prohibiting the City from enforcing its public records fee policies, (3) declaratory relief invalidating those municipal policies, and (4) declaratory relief limiting any fees for public records to no more than 50 cents per page. As discussed further below, the LVRJ has failed on each of these objectives, with the exception of one, which, according to the record before us, has not yet proceeded to judgment.

First, as to the LVRJ's request for copies of records that the City withheld based on attorney-client privilege and work-product privilege, the district court summarily denied the LVRJ's request for relief, finding that the privilege log provided to the LVRJ was timely, sufficient, and compliant with the NPRA. We affirmed the district court's order as to records identified in the City's privilege log as confidential and protected by attorney-client privilege and work-product privilege. *Las Vegas Review-Journal v. City of Henderson*, Docket. No. 73287 (Order Affirming in Part, Reversing in Part, and Remanding, May 24, 2019).

The LVRJ also failed on its declaratory and injunctive relief claims, which the LVRJ asserted in an attempt to invalidate the City's policies relating to the fees it assessed for processing records requests. The district court determined that the LVRJ's claims seeking invalidation of the City's fee policies were moot, and explicitly declined to decide those issues as raised in the LVRJ's amended petition. On appeal, we affirmed the district court's conclusion, holding that "[t]he issue of [the City's] fee became moot once [the City] provided the records to LVRJ free of charge," and rejecting the LVRJ's argument that the City's fee policy represented a harm

that is “capable of repetition, yet evading review.” *Id.*


While we agreed with the LVRJ’s argument that the district court failed to “consider the difference between documents redacted or withheld pursuant to . . . attorney-client privilege and those redacted or withheld pursuant to . . . deliberative process privilege,” *id.*, the LVRJ cannot be a “prevailing party” as to that issue before the action has proceeded to a final judgment. *Dimick*, 112 Nev. at 404, 915 P.2d at 256. We reversed and remanded for the district court to analyze whether requested documents were properly withheld as confidential pursuant to the deliberative process privilege. We did not order the production of those records or copies of those records, as the LVRJ requested in its petition. We instructed the district court to conduct further analysis and determine whether, and to what extent, those records were properly withheld. The ultimate determination of the district court on that issue is not in the record before us. Because the sole remaining issue that the LVRJ raised in its underlying action has not yet proceeded to a final judgment, we conclude that the LVRJ is not a prevailing party. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.”).<sup>2</sup>

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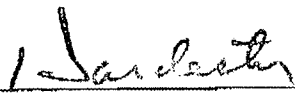
<sup>2</sup>Because we conclude that the LVRJ did not prevail in its underlying public records action and is not entitled to attorney fees, we need not address the LVRJ’s cross-appeal argument that the district court erred in awarding a reduced amount of attorney fees and costs.

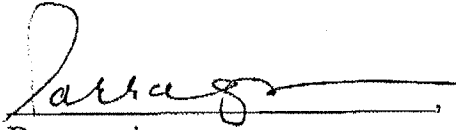
Accordingly, we


ORDER the judgment of the district court REVERSED.


, C.J.  
Gibbons

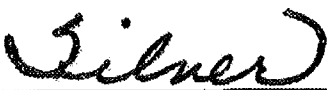
, J.  
Pickering

, J.  
Hardesty

, J.  
Parraguirre

, J.  
Stiglich

, J.  
Cadish

, J.  
Silver

cc: Hon. Mark B. Bailus, District Judge  
Israel Kunin, Settlement Judge  
Henderson City Attorney  
Bailey Kennedy  
McLetchie Law  
Eighth District Court Clerk