

IN THE SUPREME COURT OF THE STATE OF NEVADA

DR. WADE WAGNER,
Appellant,
vs.
CITY OF NORTH LAS VEGAS, A
LOCAL MUNICIPAL GOVERNMENT
ENTITY; COUNCILWOMAN ANITA
WOOD, ACTING IN HER OFFICIAL
CAPACITY; COUNCILMAN ROBERT L.
ELIASON, ACTING IN HIS OFFICIAL
CAPACITY; COUNCILMAN WILLIAM
ROBINSON, ACTING IN HIS
CAPACITY; AND RICHARD
CHERCHIO, IN HIS CAPACITY AS
CANDIDATE FOR CITY
COUNCILMAN,
Respondents.

No. 60482

FILED

DEC 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malm
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court's order denying attorney fees. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge Eighth Judicial District Court, Clark County.

Appellant Wade Wagner won the 2011 North Las Vegas City Council Member general election for Ward Four. After discovering that a vote was improperly cast, the North Las Vegas City Council decided to hold a new election. In response, Wagner filed a complaint challenging the City's decision. The district court issued a writ of prohibition precluding the City from holding a new election, and issued a writ of

mandamus ordering the City to declare Wagner the election's winner. Subsequently, Wagner moved for attorney's fees under 42 U.S.C. § 1988 and Nevada's substantial benefit doctrine. The district court determined that Wagner failed to present a substantial federal claim to warrant attorney's fees under 42 U.S.C. § 1988 and that the substantial benefit doctrine was inapplicable. Thus, the court denied Wagner's motion. This appeal followed.

Standard of review

We review this matter de novo because it implicates a question of law. See *Thomas v. N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006).

42 U.S.C. § 1988

Wagner was not entitled to attorney fees under the federal statute because he did not present a federal claim for the court's review. See *Robinson v. Omaha*, 495 N.W.2d 281, 284 (Neb. 1993) (detailing that a plaintiff must present a substantial federal claim to receive attorney fees under the federal statute).

Substantial benefit doctrine

Generally, the substantial benefit doctrine is inapplicable in actions against municipalities because all citizen taxpayers in a municipality "usually cannot share the [conferred benefit], and therefore, the costs cannot be shifted with some exactitude to those benefitting." *Thomas* 122 Nev. at 92, 127 P.3d at 1064. However, this court has recognized an exception to the general rule when a successful party represents all citizen taxpayers in the litigation, and the litigation benefits all of the taxpayers. See *id.* at 92-93, 127 P.3d at 1064-65.


The substantial benefit doctrine is applicable because Wagner's success benefitted all of North Las Vegas's taxpayers. Wagner's

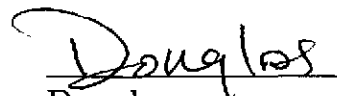
action precluded the City from conducting an improper revote; thus, it saved the taxpayers the expense of another general election. Saving the North Las Vegas taxpayers money is undoubtedly a benefit and renders the substantial benefit doctrine applicable to this matter.


“To recover fees under the substantial benefit doctrine, a successful party must demonstrate” three things: (1) the beneficiary class is “small in number and easily identifiable;” (2) ‘the benefit [can] be traced with some accuracy;’ and (3) ‘the costs [can] . . . be shifted with some exactitude to those benefiting.” *Id.* at 91, 127 P.3d at 1063-64 (quoting *Kinney v. Int’l Bhd of Elec. Workers*, 939 F.2d 690, 692 n.1 (9th Cir. 1991)).

The district court failed to apply the *Thomas* factors when it denied Wagner’s motion; thus, a remand is necessary. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Pisanelli Bice, PLLC
Griffin Rowe & Nave
Eighth District Court Clerk