IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: D.O.T. LITIGATION

No. 86071

GREEN LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; NEVCANN LLC; RED EARTH LLC; AND THC NEVADA LLC,
Appellants/Cross-Respondents,
vs.
DEEP ROOTS HARVEST, INC.,
Respondent/Cross-Appellant
and,
LONE MOUNTAIN PARTNERS, LLC,
Respondent.

FILED
NOV 27 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross-appeal from orders awarding costs. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

The primary issue in this case is whether the district court properly awarded costs under NRS 18.020.[1] Upon review, we affirm in part, reverse in part, and remand.

[1]As the parties are familiar with the complicated facts and procedural history of this dispute, we will only recount them as necessary to our disposition.

24-45407

The district court did not abuse its discretion in determining that respondents were prevailing parties

We review an award of costs for an abuse of discretion. *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015). Respondents sought costs pursuant to NRS 18.020, which mandates an award of costs "to the *prevailing party* against any adverse party against whom judgment is rendered" in five specific types of actions. (Emphasis added.)

District court Judge Elizabeth Gonzalez ordered a bench trial that would proceed in three phases, with Phase 2 proceeding first. Judge Gonzalez issued her Findings of Fact, Conclusion of Law and Permanent Injunction in Phase 2 (the Phase 2 FFCL), granting appellants' claim for declaratory relief, but concluding that "[a]ll remaining claims for relief raised by the parties in this Phase are denied." District court Judge Kishner reviewed respondents' memoranda of costs following trial and determined that respondents were prevailing parties because appellants sought to "rescind," "revoke[,] or impair" respondents' conditional licenses, and respondents prevailed in their defense.

We disagree with appellants' contention that this determination was erroneous because the essence of their declaratory relief claim was the assertion that DOT's application process was flawed, as opposed to an attempt to strip respondents of their licenses. While a party need not succeed on every issue in litigation to be a prevailing party, it must succeed on "*any significant issue* . . . which achieves some of the benefit it sought in bringing suit." *Blackjack Bonding, Inc.*, 131 Nev. at 89, 343 P.3d at 614 (internal quotation marks omitted). We cannot ascertain any Phase 2 relief that was granted *against respondents* since the operative

complaint did not request any relief against respondents aside from requesting a declaration that their licenses were void. While the Phase 2 FFCL clearly granted appellants relief with respect to *some* of their claims against DOT, we cannot ascertain *any* benefit that appellants achieved in suing respondents. *See id.* Thus, the district court did not abuse its discretion in finding respondents to be a "prevailing party" with respect to the Phase 2 FFCL.[2]

Deep Roots' Costs for Phase 1

Appellants argue on appeal Deep Roots was not entitled to costs under NRS 18.020 for Phase 1 of the trial proceedings. We disagree.[3]

The district court did not abuse its discretion when it deemed the Phase 1 judicial review claim a "special proceeding" mandating a cost award to a prevailing party under NRS 18.020(4). This court has explained that "any proceeding in a court which was not under the common-law and equity practice, either an action at law or a suit in chancery, is a special proceeding." *Foley v. Kennedy*, 110 Nev. 1295, 1304, 885 P.2d 583, 588 (1994) (quoting *Schmaling v. Johnston*, 54 Nev. 293, 301, 13 P.2d 1111, 1113 (1932)). Here, the judicial review appellants sought of DOT's decisions was "strictly a creature of statute" (e.g., NRS Chapter 233B), and ordinarily would not have been available to appellants under the common law. *Foley*, 110 Nev. at 1305, 885 P.2d at 589. We therefore conclude the district court did not abuse its discretion in determining Deep Roots was entitled to costs

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[2]With respect to Phase 1, appellants clearly did not prevail. We therefore conclude that the district court did not abuse its discretion to the extent that it deemed Deep Roots a "prevailing party."

[3]We do not address Phase 1 recovery for Lone Mountain because Deep Roots was the only party that sought costs for this phase.

for Phase 1 because the statutorily created claim for judicial review falls into the "special proceeding" category under NRS 18.020(4).

Deep Roots argues on cross-appeal that it became a party at the time appellants' complaint named it and is thus entitled to costs from that date, January 29, 2020. It contends that the district court erred in determining Deep Roots became a party when it answered the operative complaint on February 12, 2020. We agree that this determination was erroneous, as it runs contrary to United States Supreme Court authority. "In general, a party to litigation is one by or against whom a lawsuit is brought or one who becomes a party by intervention, substitution, or third-party practice." *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011). Thus, Deep Roots became a "party" on January 29, 2020, when appellants' operative complaint brought a lawsuit against Deep Roots.

On remand, the district court should award Deep Roots' costs incurred with respect to Phase 1 dating back to the operative complaint in January 2020.

Respondents' costs for Phase 2

Appellants argue that the district court abused its discretion in awarding respondents' costs for Phase 2 pursuant to NRS 18.020(2) and NRS 18.020(4). We agree with appellants' contentions.

NRS 18.020(2) permits the award of costs to a prevailing party "[i]n an action to *recover the possession of personal property*, where the value of the property amounts to more than $2,500." (Emphasis added.) Here, appellants did not intend to recover licenses. *See Recover, Black's Law Dictionary* (12th ed. 2024) (defining "recover" as "[t]o get back or regain in full or in equivalence" or "[t]o obtain (relief) by judgment or other legal process"). Appellants did not seek a transfer of respondents' licenses to

them, but rather only asked the district court to void respondents' licenses. Because appellants did not seek recovery of personal property in Phase 2, we conclude the district court abused its discretion in awarding Phase 2 costs to respondents under NRS 18.020(2).

As mentioned above, NRS 18.020(4) mandates a cost award to the prevailing party "[i]n a special proceeding." Here, with respect to appellants' declaratory relief and equal protection claims, the relief sought was compensatory damages, a declaratory judgment, and injunctive relief. *Cf. Foley,* 110 Nev. at 1304, 885 P.2d at 588. It therefore follows that Phase 2 was in no way the result of a "special proceeding" for purposes of NRS 18.020(4). Accordingly, the district court abused its discretion in awarding Phase 2 costs to respondents under NRS 18.020(4).

Notwithstanding our foregoing conclusions, Lone Mountain contends that appellants only challenged the recoverability of costs under NRS 18.020 with respect to the Phase 1 FFCL and did not challenge the Phase 2 FFCL in the proceedings below, thus waiving that argument. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Because the district court orders subject to this appeal pertain *only* to TGIG Plaintiffs'[4] motions to retax, we will only consider those arguments and not

[4]"TGIG Plaintiffs" is a term that the district court used to collectively refer to a group of recreational marijuana entities that were plaintiffs in the underlying litigation. Like High Sierra, TGIG Plaintiffs are not parties to this appeal and thus the briefing before us does not discuss these parties in detail.

the arguments raised in High Sierra's motion to retax.[5] *See id.* However, Lone Mountain is the only respondent to raise this claim, and therefore is the only respondent entitled to waiver of appellants' claims regarding Phase 2 costs. *See Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present."). We therefore only reverse the Phase 2 cost award to Deep Roots and affirm the Phase 2 cost award to Lone Mountain.[6]

Conclusion

To summarize, the district court did not abuse its discretion in determining Lone Mountain and Deep Roots to be prevailing parties pursuant to Phase 1 and Phase 2 for cost recovery. Deep Roots is entitled to Phase 1 costs dating back to January 29, 2020, but is not entitled to Phase 2 costs. Thus, we reverse in part the order awarding costs to Deep Roots, and remand for the district court to apportion Deep Roots' Phase 1 costs incurred from January 29, 2020. Finally, although Lone Mountain would not otherwise be entitled to any Phase 2 costs, we nonetheless affirm the order awarding costs to Lone Mountain on the basis that appellants failed to contest Lone Mountain's Phase 2 costs below. Accordingly, we

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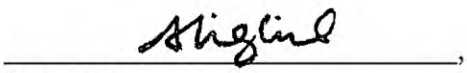
[5]High Sierra's motion to retax argued *both* Phase 1 and Phase 2 costs were unrecoverable, while TGIG Plaintiffs' motions to retax only challenged Phase 1 costs.

[6]Deep Roots argues it may alternatively be awarded costs under NRS 18.050. But an NRS 18.050 cost award argument was not properly raised below and is therefore waived on appeal. *Old Aztec Mine, Inc.*, 97 Nev. at, 52, 623 P.2d at 983.

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



_____, J.
Stiglich

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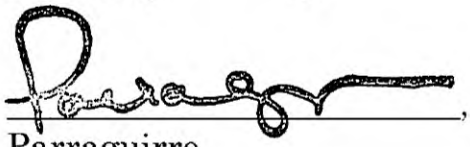

_____, J.
Parraguirre

cc: Hon. Joanna Kishner, District Judge
Eleissa C. Lavelle, Settlement Judge
Sugden Law
N.R. Donath & Associates PLLC
Hone Law
Robertson, Johnson, Miller & Williamson
Eighth District Court Clerk