


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY SCHMIDT,
Appellant,
vs.
BOARD OF TRUSTEES OF THE
GERLACH GENERAL IMPROVEMENT
DISTRICT, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA AND JUDY CONLEY A/K/A
SUSAN CONLEY A/K/A SUSAN
CONNLEY,
Respondents.

No. 88545-COA

FILED

FEB 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Gary Schmidt appeals from a district court order denying a motion for attorney fees and costs in a public records action. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Schmidt is a resident of Storey County, Nevada and owns real property located in Washoe County that is within the Gerlach General Improvement District (GGID). GGID is a political subdivision of the State of Nevada and is a governmental entity that provides water, sewage, garbage and other services to Gerlach residents in Washoe County. In July 2023, Schmidt sent an email to respondent Judy Conley (Chairperson of the Board of Trustees of the GGID) requesting a list of water customers of the GGID and their contact information including addresses and phone

numbers. Subsequently, counsel for Conley responded to Schmidt's email stating that GGID had no public records responsive to Schmidt's request pursuant to NRS 239B.040. In October 2023, Schmidt filed a petition in the district court seeking to compel respondents to provide a list of water customers of the GGID and their contact information, including addresses and phone numbers, if available, under the Nevada Public Records Act (NPRO). In response, respondents filed a motion to dismiss the petition. After a hearing, the district court denied the motion to dismiss and granted Schmidt's petition in part, concluding some of the information sought was confidential but directing respondents to "provide Schmidt with the names and mailing addresses of their water customers within 5 days of issuance of this Order."

Subsequently, Schmidt filed a motion for attorney fees and costs. Schmidt argued that he was the prevailing party under NRS 239.011(2) and entitled to an award of attorney fees and costs because respondents were ordered to provide the names and mailing addresses of its water customers and did so after the district court's order. Schmidt's motion also asserted that even under the catalyst theory, which allows for a requester to be deemed the prevailing party and be entitled to attorney fees and costs where a public records matter is settled when the governmental body ultimately provides the records without mandate by court order, he was entitled to his attorney fees and costs. *See Las Vegas Review-J. v. City of Henderson*, 137 Nev. 766, 772, 500 P.3d 1271, 1278 (2021). Respondents filed an opposition asserting that an award of attorney fees and costs was

not warranted. Subsequently, the district court entered an order denying Schmidt's motion for attorney fees and costs. The court applied the catalyst theory factors and determined that Schmidt was not the prevailing party under the catalyst theory and, thus, was not entitled to an award of attorney fees and costs. This appeal followed.

On appeal, Schmidt asserts the district court erred in denying his motion for attorney fees and costs because, pursuant to NRS 239.011(2), he was entitled to his attorney fees and costs as the prevailing party and the catalyst theory was not applicable in determining whether or not he prevailed because the matter proceeded to a final judgment. Conversely, respondents argue the district court properly exercised its discretion and denied Schmidt's attorney fees and costs.

This court reviews the decision to grant or deny attorney fees or costs for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). However, when eligibility for a fee award depends on interpretation of a statute or court rule, the district court's decision is reviewed de novo. *Logan v. Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141 (2015). Additionally, statutory construction presents a question of law that the appellate court reviews de novo. *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). "[W]hen a statute's language is plain and its meaning clear, [we generally] apply that plain language." *Id.* at 403, 168 P.3d at 715.

Under NRS 239.011(2), if the requester prevails in a public records action, "the requester is entitled to recover from the governmental

entity that has legal custody or control of the record his or her costs and reasonable attorney's fees in the proceeding." A record requester "prevails" if the requester "succeeds 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)). As the Nevada Supreme Court recognized in a subsequent case discussing *Blackjack Bonding*, the record requester was considered the prevailing party under NRS 239.011(2) "because it obtained a writ compelling the production of records that were wrongfully withheld." *Las Vegas Metro. Police Dep't v. Ctr. for Investigative Reporting, Inc.*, 136 Nev. 122, 126, 460 P.3d 952, 956 (2020). The supreme court has also held that "[NRS 239.011(2)'s] language plainly provides that if [a party] is the prevailing requester, it has met the sole legal requirement which qualifies it for, or makes it 'entitled to,' reasonable attorney fees and costs." *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-J.*, 136 Nev. 44, 60, 458 P.3d 1048, 1061 (2020). In contrast, whether a party prevails when public records are ultimately produced after a lawsuit is filed but prior to any court order is determined by application of the catalyst theory. *Las Vegas Rev.-J.*, 137 Nev. at 769, 500 P.3d at 1276.

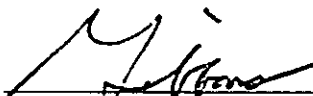
Here, the matter proceeded to a final judgment, and consequently, the catalyst theory was not applicable to determine whether or not Schmidt was a prevailing party. *Las Vegas Metro. Police Dep't*, 136 Nev. at 126, 460 P.3d at 956. Specifically, Schmidt was the prevailing party


in the underlying action because GGID produced certain records only after the district court issued an order partially granting the petition for writ ordering respondents to provide Schmidt with the names and mailing addresses of its water customers. *See Blackjack Bonding*, 131 Nev. at 90, 343 P.3d at 615. Thus, pursuant to NRS 239.011(2)'s plain language, Schmidt was the prevailing party and entitled to an award of reasonable attorney fees and costs. *Clark Cty. Office of Corner/Med. Exam'r*, 136 Nev. at 60, 458 P.3d at 1061; *see also, e.g., Las Vegas Metro. Police Dept. v. Las Vegas Review-J.*, Nos. 82867, 83430, 84308, 2023 WL 5341113, at *4 (Nev. Aug. 18, 2023) (Order Affirming in Part, Reversing in Part, and Remanding) (declining to address the appellant's argument that the district court erred in failing to address the factors of the catalyst theory because the requester "was the prevailing party and, thus, entitled to attorney fees under NRS 239.011(2)"). Therefore, the district court erred in denying Schmidt's motion for attorney fees and costs on the basis that he was not the prevailing party pursuant to the catalyst theory. Thus, we reverse the district court's order denying Schmidt's motion for attorney fees and costs and remand for the court to evaluate the reasonable amount of attorney fees and costs Schmidt is entitled to.¹

¹To the extent respondents argue the district court did not abuse its discretion in denying Schmidt's motion for attorney fees and costs based on its analysis of the catalyst theory factors because the factors were relevant to determining reasonableness under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), we are not persuaded, as they did not argue for this application below and the court did not undertake

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Debbie Leonard, Settlement Judge
Luke A. Busby
Schroeder Law Offices, P.C.
Washoe District Court Clerk

such an analysis. As noted above, the district court considered the catalyst theory factors to find that Schmidt was not the prevailing party. In light of the failure to argue for such an analysis below, and because the district court did not undertake this proposed analysis, we do not consider in the first instance on appeal any potential application of the catalyst factors by the district court when determining the reasonable amount to award pursuant to *Brunzell*. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are “deemed to have been waived and will not be considered on appeal”).