IN THE SUPREME COURT OF THE STATE OF NEVADA

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

RURAL REMEDIES LLC,
Appellant,
vs.
WELLNESS CONNECTION OF NEVADA, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent,

CLARK NATURAL MEDICINAL SOLUTIONS LLC; NYE NATURAL MEDICINAL SOLUTIONS LLC; CLARK NMSD, LLC; AND INYO FINE CANNABIS DISPENSARY L.L.C.,
Appellant/Cross-Respondents,
vs.
WELLNESS CONNECTION OF NEVADA, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent,
and
DEEP ROOTS HARVEST, INC.,
Respondent/Cross-Appellant.

No. 86151

FILED

MAY 29 2025

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 district court orders awarding costs. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

25-238391

The primary issue in this case is whether the district court properly awarded costs under NRS 18.020. These costs were awarded after the close of consolidated lawsuits challenging the issuance of recreational use cannabis licenses.[1]

Clark Natural Medicinal Solutions (Clark Natural) and Rural Remedies (Rural) unsuccessfully applied for licenses and sued the Nevada Department of Taxation (DOT), the entity responsible for issuing these licenses at the time. Wellness Connection of Nevada (Wellness) and Deep Roots Harvest, Inc. (Deep Roots) are successful applicants that were named as defendants in the underlying lawsuit. After the close of litigation, the district court granted costs to all of the defendants, including Wellness and Deep Roots, and against all of the plaintiffs, including Clark Natural and Rural.

The district court did not abuse its discretion in determining that costs for judicial review are recoverable under NRS 18.020

We review a district court's decision regarding 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). Wellness and Deep Roots sought costs pursuant to NRS 18.020(4), which provides that a prevailing party may be awarded costs in special proceedings. Clark Natural argues that the district court erred by awarding costs pursuant to NRS 18.020(4) because Clark Natural only asserted claims for judicial review, which, it argues, is not a special proceeding. We disagree.

We previously determined that a judicial review claim is a special proceeding for the purposes of NRS 18.020(4) in a related case, *In re*

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

DOT, No. 86071, 2024 WL 4907111 (Nev. Nov. 27, 2024) (Order Affirming in Part, Reversing in Part and Remanding). There, we 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." *Id.* at *2 (quoting *Foley v. Kennedy*, 110 Nev. 1295, 1304, 885 P.2d 583, 588 (1994)). Here, too, Clark Natural's action was based on Nevada's Administrative Procedure Act, specifically NRS 233B.130, and therefore would not have been available at common law. We therefore determine that this statutory action falls within the parameters of NRS 18.020(4) as a special proceeding from which costs can be awarded.

Rural failed to preserve the argument that Wellness could not recover costs against it

Rural contends that it argued below that Wellness was not a prevailing party against it because Rural filed an independent memorandum on September 23, 2020, objecting to *any* award of costs as to DOT, and also joined another plaintiff's motion to retax and settle costs against Wellness in August 2022. We disagree and hold that Rural did not preserve its argument below.

Rural's 2020 memorandum of points and authorities was filed two years before Wellness filed its memorandum of costs and argued specifically that costs could not be awarded against Rural in favor of DOT. The memorandum did not address any potential award of costs to Wellness. In addition to not mentioning Wellness, Rural's 2022 memorandum was not a proper nor timely challenge to a memorandum of costs, which requires filing or properly joining a motion to retax *after* the memoranda is filed, not two years beforehand. *See* NRS 18.110(4).

While Rural filed a joinder to another plaintiff's motion to retax, Rural did not file a separate memorandum of points and authorities

addressing Rural's main argument, namely, that it had been severed from a phase of the trial and costs incurred in that phase could therefore not be recovered against it. *See* EDCR 2.20(d) ("Within 7 days after service of the motion, a nonmoving party may file written joinder thereto, *together with a memorandum of points and authorities and any supporting affidavits.*") (emphasis added). We therefore conclude that Rural did not preserve its argument and we decline to consider it.

As to Rural's argument in the alternative that this court should limit costs to those that were incurred after Wellness filed its answer to the amended complaint and became a party to the action, the district court has already concluded that costs against Rural began accruing on that date. Therefore, we conclude that Rural is not an aggrieved party and we decline to address this issue. *See In re Ray's Est.*, 68 Nev. 492, 495, 236 P.2d 300, 301 (1951) (stating that a party that is not aggrieved lacks standing to appeal).

The district court did not err in failing to apportion costs

In the underlying action, both Clark Natural and Rural petitioned the district court for judicial review of DOT's decision to deny them licenses, a review which was performed in Phase 1 of the trial. *In re DOT*, No. 82014, 2023 WL 5838141 (Nev. Sept. 8, 2023) (Order of Affirmance). They now both argue, albeit slightly differently, that they should not be responsible for costs, all of which, they assert, were incurred as a result of Phase 2 of the trial. They both argue that the district court should have apportioned costs between Phase 1 and Phase 2, and since neither of them participated in Phase 2, they contend they should not be responsible for any costs.

Clark Natural did not preserve its argument that the district court should have apportioned costs

Clark Natural raised the issue of apportionment for the first time at the hearing on the motion to retax, after the court had already begun making its rulings, and did not otherwise raise the argument by way of any prior motion. In general, the doctrine of party presentation dictates that issues not briefed by the parties may not be considered by the court. *Nev. Pol'y Rsch. Inst., Inc. v. Miller*, 140 Nev., Adv. Op. 69, 558 P.3d 319, 331 (2024) ("The principle of party presentation sets forth that courts rely on the parties to frame the issues of a given matter."). Because the district court declined to consider the issue, there is no decision or determination for this court to review on appeal and the issue is deemed waived. *See 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.").

Rural did not preserve its argument that the district court should have apportioned costs

Rural argues that it should not have to pay costs associated with Phase 2 of the trial because it had been severed from this phase. Despite Rural's severance, it was a named party on the memorandum of costs and did not file a motion to retax and settle costs as required by NRS 18.110(4). For the same reasons explained above, this argument has not been preserved. Rural made its severance argument in its 2020 memorandum and at the hearing for the motion to retax costs, neither of which were proper ways to challenge the award of costs. Rural did not argue severance in a separate memorandum to its joinder to the motion to retax. *See* EDCR 2.20(d). Therefore, we conclude that the argument was not preserved and is deemed waived.

The award of costs to Deep Roots should be calculated starting on the date that Deep Roots was first named in the complaint

On cross appeal, Deep Roots argues that the district court erred by awarding costs to Deep Roots only from "the date of the filing of the answer by the party seeking costs." Previously, in case no. 86071, we considered how to calculate the date from which costs begin to accrue. *In re DOT*, 2024 WL 4907111, at *2. We determined that a defendant becomes a party when a lawsuit is brought against it, *id.* (relying on *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011)), and that costs to Deep Roots should be awarded dating back to the operative complaint. In the instant matter, Deep Roots became a party to this lawsuit on January 4, 2019, when it was first named in the operative complaint. On remand, the district court is instructed to recalculate the award of Deep Roots' costs beginning from the date of the operative complaint. Accordingly, we

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.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Joanna Kishner, District Judge
Eleissa C. Lavelle, Settlement Judge
Ramos Law
Luh & Associates
Howard & Howard Attorneys PLLC/Las Vegas
Robertson, Johnson, Miller & Williamson
Eighth District Court Clerk