


IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT P. HYATT,
Appellant,
vs.
FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,
Respondent.

No. 88406
FILED
JUN 06 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

**ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING**

This is an appeal from a post-judgment order awarding costs. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In 1998, Gilbert Hyatt initiated litigation against the Franchise Tax Board of the State of California in Nevada alleging the Tax Board committed intentional torts during a tax audit of Hyatt. Following three appeals to the United States Supreme Court, the Nevada district court ultimately found in favor of the Tax Board and awarded it \$2,262,815.56 in costs. Hyatt appealed the cost award to this court. We vacated the cost awards for expert witness fees and travel expenses, remanding the matter with instructions for the district court to make further findings related to those expenditures. *Hyatt v. Franchise Tax Bd. of State of Cal.*, Docket No. 84707, 2023 WL 4362562, at *2 (Nev. July 5, 2023)(Order Affirming in Part, Reversing in Part and Remanding) (*Hyatt IV*).

On remand, the Tax Board submitted a supplemental brief and supporting appendix detailing the costs incurred for experts and discovery-related travel. The district court then entered a more detailed order granting the Tax Board costs. Hyatt appealed again. This court reviews a district court's decisions awarding costs for an abuse of discretion. *Nevins v. Martyn*, 140 Nev., Adv. Op. 66, 557 P.3d 965, 977 (2024).

The district court did not abuse its discretion by awarding the Tax Board expert witness fees

Under Nevada law, a prevailing party may recover reasonable fees for five experts not to exceed a presumptive statutory cap, unless the court allows for a larger fee because the expert's testimony was "of such necessity as to require the larger fee." NRS 18.005(5). While the parties contest whether the 1989 or 2023 version of NRS 18.005(5) applies, we need not address that issue. Under either version of the statute, we conclude the district court did not abuse its discretion in finding the circumstances "were of such necessity as to require the larger fee." NRS 18.005(5).

The district court made findings to support the award of costs for expert witnesses in excess of the presumptive amount by concluding the expert witness's work was critical to the Tax Board's arguments. The district court found each of the three experts' work was "responsive to critical issues of liability and damages that Hyatt raised throughout his various tort claims." The district court then considered other factors like "the extent of the expert's work, the amount of time in court, preparing a report, and preparing for trial, the expert's area of expertise, and the expert's education and training." The district court concluded each of the experts "engaged in extensive work . . . including review[ing] voluminous documentation provided by the parties during discovery[,]". producing reports, sitting for depositions and conducting substantial pre-trial work to prepare for trial.

The district court also examined several other factors, including "the importance of the expert's testimony to the party's case, the extent of the expert's work, and whether the expert had to conduct independent investigations or testing." The district court did not abuse its discretion by declining, as Hyatt suggests should be required under these circumstances,

to weigh the importance of the expert's testimony to the outcome of the case more heavily than other factors. Further, the district court properly provided a detailed written explanation for its award, stating a basis for its decision. *See Khoury v. Seastrand*, 132 Nev. 520, 541, 377 P.3d 81, 95 (2016) (requiring a district court to state the basis for fees in excess of the statutory limit). Thus, we conclude the district court did not abuse its discretion in awarding the enhanced expert witness costs.

The district court abused its discretion by awarding the Tax Board costs for taking depositions and conducting further discovery without a sufficient description of the conducted activities

Hyatt argues the district court abused its discretion in awarding the Tax Board costs under NRS 18.005(15) for travel and lodging expenses. Under NRS 18.005(15) a party is entitled to “[r]easonable costs for travel and lodging incurred taking depositions and conducting discovery.” The costs recovered must be “actual and reasonable, ‘rather than a reasonable estimate or calculation of such costs.’” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (quoting *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994)).

A court abuses its discretion awarding travel costs under NRS 18.005 if the costs are not properly documented, not actually incurred, or unnecessary for taking depositions and conducting discovery. *Berosini*, 114 Nev. at 1352, 971 P.2d at 385-86; *Village Builders 96 v. U.S. Laboratories, Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005); and *Hyatt*, 2023 WL 4362562 at *5.

When this issue was first presented to this court in 2022, we remanded the case back to the district court to analyze travel and lodging costs between the different sections of NRS 18.005. *Hyatt IV*, Docket No.

84707, 2023 WL 4362562, at *2. After the Tax Board provided a supplemental brief identifying which of the costs were incurred for discovery related travel, the district court issued a new order granting the requested costs. The cost award totaled \$110,599.17 based on the description of expenses under NRS 18.005(15) provided by the Tax Board.

On remand, the Tax Board separated the information further than it had originally under appropriate NRS 18.005 categories, and also provided an exhibit of all its deposition-related travel. Despite the additional information, portions of travel continue to lack sufficient ties to identified discovery events. The Tax Board failed to specify the discovery related events taking place between June 22, 2000, to November 3, 2003, and October 1, 2004, to June 30, 2005. In total, during these time periods, the Tax Board requested \$26,499.60 of travel not tied to specific discovery.

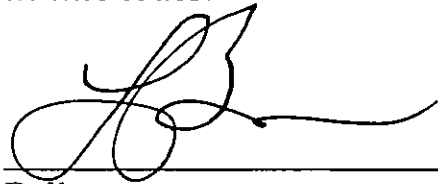
Hyatt specifically disputes the Tax Board's request for travel costs for two attorneys to Washington, D.C., from January to March 2003, totaling \$5,687.68. Though the Tax Board contends its supplemental documentation demonstrates its request for travel costs for two attorneys to Washington, D.C., from January to March 2003, was for discovery purposes, we disagree. The exhibit from the Tax Board fails to identify any deposition or specific discovery produced during the January to March 2003 period. In fact, the affidavit mentions Washington, D.C., only twice: first, indicating the attorney had "[a]ppear[ed] at depositions throughout Nevada . . . [and] Washington, D.C." and then indicating "depositions occurred outside of Nevada in . . . Washington, D.C." Importantly, the Tax Board's exhibit does not indicate a deposition or other discovery during the January to March 2003 period. The receipts provided also do not indicate with any specificity what discovery-related events occurred during this

time, only reflecting various travel, lodging, and food expenses. The Tax Board does not sufficiently describe how these costs relate to NRS 18.005(15).

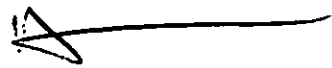
We similarly conclude the remaining awards for travel costs are unsupported for June 22, 2000 to November 3, 2003 (totaling \$20,328.15) and October 1, 2004 to June 30, 2005 (totaling \$6,171.45). According to the exhibit provided by the Tax Board, no depositions were taken during these time periods. While the declaration provided by counsel indicates that discovery tasks were taking place, no specific discovery-related events were tied to specific costs.


Because the documentation for these time periods lacked the required specificity, the district court abused its discretion in awarding these travel and lodging costs. Accordingly, we reverse the cost award in part, to eliminate the costs lacking a sufficient showing of being discovery-related, which equates to a reduction of \$26,499.60 from the \$110,599.17 awarded by the court but leaves in place \$84,099.57 for travel and lodging related to discovery.

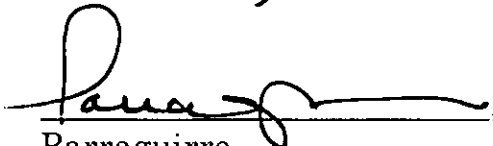
We ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, and REMAND this matter to the district court for proceedings consistent with this order.

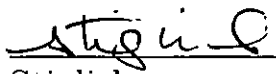

_____, J.
Bell

We concur:


_____, C.J.
Herndon


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Cadish

cc: Hon. Tierra Danielle Jones, District Judge
Perkins Coie, LLP/Los Angeles
Hutchison & Steffen, LLC/Las Vegas
Hutchison & Steffen, LLC/Reno
PB Consulting, LLC
McDonald Carano LLP/Las Vegas
Lemons, Grundy & Eisenberg
Eighth Judicial District Court Clerk