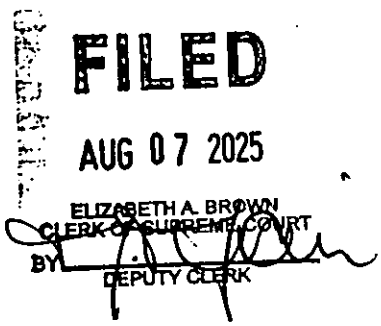
IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB SERIES LLC, F/K/A A CAB, LLC,
Appellant,
vs.
MICHAEL MURRAY; AND MICHAEL RENO, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,
Respondents.

No. 85850



ORDER OF AFFIRMANCE

This is an appeal from district court post-judgment orders in a minimum wage class action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

Michael Murray and Michael Reno (collectively Murray) filed a class action lawsuit on behalf of taxi drivers against A Cab Taxi and A Cab LLC (collectively A Cab) in 2012, asserting Minimum Wage Act (MWA) violations. The district court granted summary judgment in Murray's favor in 2018, awarding damages and later ordering attorney fees in the amount of roughly $568,000. On appeal, we affirmed the grant of summary judgment but concluded the district court had improperly tolled the statute of limitations. *A Cab, LLC v. Murray* (*Murray I*), 137 Nev. 805, 812-13, 501 P.3d 961, 970-71 (2021). As relevant here, we reversed in part and remanded for the district court to recalculate the attorney fees to which Murray was entitled under the shorter time period. *Id.* at 812-13, 823-24, 501 P.3d at 970-71, 978-79.

Murray on remand sought a modified judgment recalculating the attorney-fee award under the correct statute of limitations. Over A Cab's objections, the district court entered an order awarding Murray

$541,271 in attorney fees. A Cab appeals, challenging the attorney-fee award.[1]

Murray remains the prevailing party even after our remand in Murray I

A Cab first and primarily argues that Murray is no longer a prevailing party in light of our decision in *Murray I*, such that the district court's renewed award of attorney fees on remand from *Murray I* was improper. It has long been understood that where a judgment in a first appeal settles issues raised in that appeal, the litigation is terminated as to those decided issues once remittitur issues, and the parties cannot attack those issues on remand. *Budget Fin. Corp. v. Sys. Inv. Corp.*, 89 Nev. 306, 307, 511 P.2d 1047, 1047-48 (1973) ("As to all matters encompassed by the judgment concerned in the first appeal, the action was terminated when remittitur was issued."); *see also State Eng'r v. Eureka Cnty.*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (the district court must adhere to the appellate court's decision on any legal issue and its subsequent decision cannot contradict the remand order); *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 263-64, 71 P.3d 1258, 1260 (2003) (on remand the trial court must carry out the instructions as ordered).

The *Murray I* opinion upheld Murray's success on the merits and right to attorney fees, less those fees for work that fell outside the proper statute of limitations. It did not remand for the district court to reconsider the propriety of summary judgment or the entitlement to attorney fees. Much of A Cab's argument here, however, hangs on the settlement it reached in a second-filed competing class action, *Dubric v.*

[1]Though A Cab named multiple orders as the subject of its appeal, its appellate arguments concern only the attorney-fee award.

A Cab,[2] and the idea that the *Dubric* settlement can affect the summary judgment and consequent attorney fee award in Murray's case by so reducing Murray's class as to now require class decertification. But *Murray I* did not mention *Dubric*. This stands to reason, as A Cab failed to argue there that *Dubric*'s settlement required Murray's class to be decertified. Thus, *Murray I* settled that Murray prevailed on summary judgment and is entitled to its attorney fees, and it remanded for a recalculation of the awards under the narrowed limitations period. The district court carried out those instructions. Distasteful though it may have been at the time, A Cab could have cooperated with Murray to coordinate the *Murray I* and *Dubric* cases had it wanted to avoid complications arising from the competing class actions. *See Mesi v. Mesi*, 136 Nev. 748, 752-54, 478 P.3d 366, 370-71 (2020) (addressing the first-to-file rule); Rhonda Wasserman, *Dueling Class Actions*, 80 B.U.L. Rev. 461, 462-64 (2000) (addressing competing class actions). But A Cab did not, and it cannot now leverage *Dubric* to move the analysis here outside the parameters of the remand mandate.

A Cab alternatively argues that because *Murray I* reversed and remanded for an evidentiary hearing on another issue, and the hearing has not yet been held, there is no final judgment under which Murray can receive attorney fees as a prevailing party. This argument similarly fails because, again, *Murray I* did not reverse the summary judgment—it remanded for further consideration of a post-judgment issue (who would be subject to the writ of execution) and that remand did not affect the finality of the judgment or Murray's right to the attorney fees tied to that judgment.

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[2]*See* district court case number A-15-721063-C.

Cf. Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment as one that "leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs"). Because our decision in *Murray I* upheld Murray's status as the prevailing party and entitlement to attorney fees, the evidentiary hearing on the other post-judgment issue was not a barrier to the district court entering a new attorney fee order on remand. *State Eng'r v. Eureka Cnty.*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (explaining that questions of law, including whether the district court complied with a remand order, are reviewed de novo).

The district court did not commit reversible error in declining to reduce Murray's attorney-fee award

Apart from *Murray I* and *Dubric*, A Cab argues that the attorney fee award should have been reduced on remand and it advances two reasons for this argument. First, it contends that Murray is not entitled to attorney fees incurred on appeal, as under NRAP 38 only this court can award those fees and that the MWA does not provide for an appellate fees award. Next, it argues the district court erred by denying Rule 11 sanctions after Murray repeatedly violated a stay order, and that this court should impose them by reducing the attorney fees.

NRAP 38 is silent on whether a district court can award appellate fees under some other rule, and the MWA states that an employee who prevails under the MWA shall be awarded reasonable attorney fees and costs. Nev. Const. art. 15 § 16(B) (currently located at Nev. Const. art. 15 § 16(7)). The MWA does not expressly bar appellate attorney fees from the equation, and its plain text—which uses broad language like "any" and "action"—opens the door for the district court to award appellate attorney

fees pursuant to the MWA.[3] *See Legislature v. Settlemeyer*, 137 Nev. 231, 235-36, 486 P.3d 1276, 1280-81 (2021) (addressing the word "any"); *Action, Black's Law Dictionary* (12th ed. 2024) (defining "action" broadly as "[a] civil or criminal judicial proceeding"). Because Murray prevailed in an action to enforce the MWA against A Cab and successfully defended that victory on appeal, the district court did not err in awarding appellate attorney fees. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006) (recognizing that attorney fees decisions are reviewed for an abuse of discretion, but to the extent the lower court's decision implicates a question of law, that portion of the decision is reviewed de novo).

As to whether the district court should have sanctioned Murray for violating a stay order imposed while the *Dubric* appeal was pending, the record shows this issue was mired in varied and competing facts. This litigation was drawn out and unusually contentious, both sides viewed the other as improperly obstructive, and neither seemed inclined toward civility or cooperation. Murray's intent and justifiability in filing several motions during the stay was a question of fact for the district court judge, who ultimately rejected A Cab's argument that Murray's filings were frivolous or for an improper purpose in violation of NRCP 11. We cannot say that decision was an abuse of discretion on this record.[4] *Cf. Capriati Constr.*

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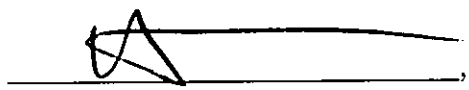
[3]Murray previously asked us to award appellate attorney fees and we declined to do so on grounds that the district court was better positioned to undertake that assessment. *See* Docket No. 77050 (Order Denying Motion, Feb. 3, 2022).

[4]We reject A Cab's remaining arguments as either unsupported or without merit. *Cf. Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting we need not consider issues

Corp, Inc. v. Yahyavi, 137 Nev. 675, 676, 498 P.3d 226, 229 (2021) (reviewing a sanction decision for an abuse of discretion).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]



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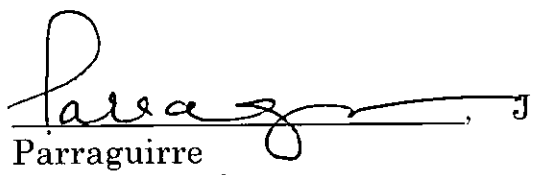
Herndon



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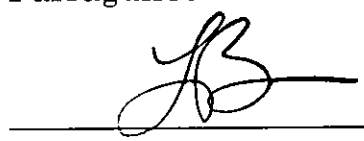
Parraguirre



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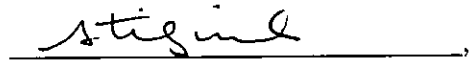
Bell



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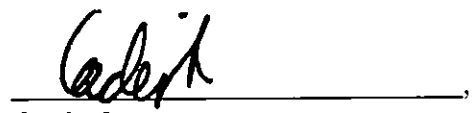

_____, J.
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not adequately briefed, not supported by relevant authority, or not cogently argued).

[5]The Honorable Kristina Pickering and Honorable Patricia Lee, Justices, being disqualified, did not participate in this matter.

cc: Hon. Maria A. Gall, District Judge
Stephen E. Haberfeld, Settlement Judge
Womble Bond Dickinson (US) LLP/Las Vegas
Rodriguez Law Offices, P.C.
Cory Reade Dows & Shafer
Gabroy | Messer
Leon Greenberg Professional Corporation
Eighth District Court Clerk