FILED
11/20/2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

SONG SPENCER, AN INDIVIDUAL; AND JAMES SPENCER, AN INDIVIDUAL, Appellants, vs. CITY OF HENDERSON, A MUNICIPAL CORPORATION AND A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent.	No. 88629
SONG SPENCER, Appellant, vs. CITY OF HENDERSON, A MUNICIPAL CORPORATION AND A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent.	No. 89007

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court dismissal order and a post-judgment order denying attorney fees in a civil forfeiture proceeding. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Respondent City of Henderson filed a civil forfeiture complaint against $21,563 seized from appellants James and Song Spencer's home pursuant to a search warrant. In that complaint, the City named and served James as a claimant. James and Song filed answers and asserted counterclaims against the City, alleging the seized money lawfully belonged to Song and contesting the constitutionality of Nevada's civil forfeiture

scheme. About a month later, the City returned the money plus interest to Song, and the district court thereafter dismissed the civil forfeiture complaint as moot. It also dismissed the Spencers' counterclaims after concluding counterclaims are not cognizable in an in rem forfeiture action. Song moved for attorney fees as sanctions under NRS 18.010 and NRS 7.085, and the district court denied that motion.[1]

The district court properly dismissed the Spencers' counterclaims

On appeal, the Spencers first argue that counterclaims are permitted in Nevada civil forfeiture actions and that the district court erred in dismissing them. We review this statutory interpretation question de novo. *See Slade v. Caesars Ent. Corp.*, 132 Nev. 374, 376, 373 P.3d 74, 75 (2016).

Nevada's civil forfeiture scheme is found in NRS 179.1156–.121. NRS 179.1156. Civil forfeiture falls within NRS Chapter 179, "Special Proceedings of a Criminal Nature," despite being a civil action. *See State v. Clark*, 114 Nev. 319, 321, 956 P.2d 83, 84 (1998) (noting forfeiture proceedings against a vehicle were civil in rem proceedings). Special proceedings are governed by the statutes that create them and are strictly limited to the procedures those statutes provide. *See, e.g.*, *Preferred Equities Corp. v. State Eng'r*, 119 Nev. 384, 388, 75 P.3d 380, 383 (2003) (explaining water law proceedings "are special in character" and "strictly

[1]We note Song did not properly move to intervene. *See* NRCP 24; *Aetna Life & Cas. Ins. Co. v. Rowan*, 107 Nev. 362, 363, 812 P.2d 350, 350 (1991) ("[A] proposed intervenor does not become a party to a lawsuit unless and until the district court grants a motion to intervene."). However, the City did not protest Song's participation below, and the district court treated her as a participant, so we treat the issue as waived. *Cf. Pelletier v. Pelletier*, 103 Nev. 408, 410-11, 742 P.2d 1027, 1028 (1987) (addressing the merits where the nonparty proceeded in the case below with the "apparent consent of the parties")

limit[ed]" to the method of procedure provided by statute (internal quotations omitted)); 1A C.J.S. *Actions* § 283 (addressing special proceedings); *see also Leigh-Pink v. Rio Props., LLC*, 138 Nev. 530, 536, 512 P.3d 322, 327 (2022) (explaining a statute's plain language controls). Though NRS 179.1171(1) incorporates the Nevada Rules of Civil Procedure as the rules of practice in a forfeiture action, those "rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statutes." NRCP 81(a); *see* NRS 179.1171(1) (stating that the NRCP apply "except as otherwise provided in NRS 179.1156 to 179.1205, inclusive).

The civil forfeiture statutes establish a special statutory proceeding that, by its terms, is purely in rem. *See United States v. Obaid*, 971 F.3d 1095, 1099 (9th Cir. 2020) (recognizing civil forfeitures are in rem proceedings). NRS 179.1171(4) expressly declares: "A proceeding for forfeiture is in rem." Consistent therewith, both NRS 179.1171(3)(a) and NRS 179.1171(4) require the seizing agency to file its forfeiture complaint in the district court in the county where the property is located. And, collectively, the forfeiture statutes demonstrate civil forfeiture proceedings are narrowly anchored to the disposition of the res. *See, e.g.*, *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013) (explaining an in rem proceeding "is one taken directly against the property, and has for its object the disposition of the property" (internal quotations omitted)). For example, NRS 179.1164 and NRS 179.1165 describe the property subject to forfeiture and address its seizure. NRS 179.1173 governs court proceedings for the property's forfeiture, and NRS 179.1175 and NRS 179.118 regulate the disposition and distribution of property declared forfeited. Civil forfeitures take priority over other civil actions and

require the property's return within seven business days if a court determines it is not subject to forfeiture. NRS 179.1173(1), (8).

The only parties to a forfeiture proceeding are "the plaintiff" and "any claimant"—defendants and counterclaimants are not contemplated. NRS 179.1171(7). The statutes give claimants the right to answer the complaint and serve objections to written interrogatories, but say nothing of other actions. NRS 179.1171(6). Significantly, nothing in the statutes contemplates action or relief in the civil forfeiture itself beyond the disposition of the res. *See, e.g.*, *Obaid*, 971 F.3d at 1098 (explaining in rem jurisdiction). And though NRS 179.1171 provides that a forfeiture complaint should be treated as a counterclaim to a first-filed claim for delivery action, it does not contemplate the converse—the filing of counterclaims for damages or affirmative relief requiring in personam jurisdiction in a first-filed forfeiture action. NRS 179.1171(2). Instead, consistent with the pure in rem nature of the action, the only relief afforded a successful claimant is the return of the property plus interest. NRS 179.1173(8). *Cf. UMLIC VP LLC v. Matthias*, 364 F.3d 125, 134 (3d Cir. 2004) (addressing mortgage foreclosure actions and explaining that "money damages are not acquired through *in rem* proceedings").

Here, the City's civil forfeiture action against the $21,563 became moot when the City returned that money plus interest to Song. *See Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 158, 460 P.3d 976, 981 (2020) (explaining an action is moot once there is no longer a live controversy that a judgment can redress). The Spencers nevertheless sought to pursue special and punitive damages through their constitutional and tort counterclaims based on alleged violations that, if resolved, would require the district court to move beyond its statutory authority to adjudicate the rights to the property to the vindication of personal rights.

See NRS 179.1171(4). Even Song's claim for delivery counterclaim[2] is not a pure in rem claim but rather a mixed action in which she seeks special damages of attorney fees. *See Fredericks v. Tracy*, 33 P. 750, 751 (Cal. 1893) (describing a claim and delivery action as a mixed action: in rem as to the wrongfully taken property, and in personam as to the damages); *Preston A. Blair Co. v. Rose*, 51 P.2d 209, 211 (Idaho 1935) (same); 77 C.J.S. *Replevin* § 5 (same). As such, it too sought relief beyond that which the civil forfeiture statutes permit.

The district court therefore did not err by dismissing the counterclaims, nor by dismissing the civil forfeiture action as moot. In view of the foregoing, we need not reach the Spencers' additional arguments regarding Song's entitlement to seek special damages of attorney fees on her claim for delivery counterclaim or the constitutionality of Nevada's forfeiture scheme. Nor need we reach the Spencers' argument in their reply brief regarding mootness exceptions. *See, e.g.*, *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (noting we need not address appellate arguments asserted for the first time on reply). We note, however, that nothing in this order bars claimants from pursuing their tort and constitutional claims in a separate action.[3]

The district court properly denied Song's request for attorney fees

---

[2]While we do not resolve this issue, we also note that this counterclaim may be statutorily barred, as the City brought its forfeiture complaint within 60 days. *See* NRS 179.1171(2) (explaining the property is subject to a claim for delivery action "only if" the government does not file the forfeiture complaint within 60 days); NRS 31.840 (allowing a claim for delivery "[e]xcept as provided in NRS 179.1171").

[3]The parties represented at oral argument that a separate action has been filed but stayed pending resolution of this appeal.

Song also challenges the denial of her request for attorney fees as statutory sanctions under NRS 18.010(2)(b) and NRS 7.085. The district court's decision is reviewed for an abuse of discretion. *Stubbs v. Strickland*, 129 Nev. 146, 152, 297 P.3d 326, 330 (2013). NRS 18.010(2)(b) allows the district court to award attorney fees to a prevailing party where the complaint "was brought or maintained without reasonable ground or to harass the prevailing party." Similarly, NRS 7.085 permits an attorney fees award against counsel who either files or maintains an action that is "not well-grounded in fact[,] not warranted by existing law," or who "[u]nreasonably and vexatiously" extends that litigation in court. The purpose of these statutes is to punish and deter claims that "overburden limited juridical resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 7.085(2); NRS 18.010(2)(b). These sanctions "target[ ] only how the litigation itself is conducted, not what the parties did before the litigation commenced." *In re Execution of Search Warrants for: 12067 Oakland Hills, Las Vegas, Nev. 89141*, 134 Nev. 799, 803, 435 P.3d 672, 676 (Ct. App. 2018) (addressing NRS 18.010(2)(b)). Further, a claim is only frivolous or groundless if there is no credible evidence to support it. *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018).

The district court found, among other things, that the forfeiture action was grounded in fact and warranted under existing law, that the City reasonably relied on the result of the police investigation conducted pursuant to a search warrant issued upon a finding of probable cause, that Song was not prejudiced by the City's failure to name her as a claimant or serve her personally, and that the City's post-filing actions were not frivolous. The record supports the district court's findings and weighs

against the Spencers' arguments. Further, many of the Spencers' arguments go to the Henderson Police Department's pre-litigation conduct rather than the City's litigation decisions. Some arguments—such as that the City threatened criminal contempt—are simply belied by the record. And though the Spencers speculate about the officers' motives and knowledge, and fault the City for not naming Song as a claimant initially, the record does not support that the City's decision to file a forfeiture complaint against the seized cash was not based on credible evidence at the time, or that the forfeiture complaint was unreasonably or vexatiously maintained during the three months it was pending.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Herndon, C.J.

Pickering, J.

Parraguirre, J.

Bell, J.

Stiglich, J.

Cadish, J.

Lee, J.

cc: Hon. Nadia Krall, District Judge
Thomas J. Tanksley, Settlement Judge
Spartacus Law Firm
McDonald Carano LLP/Las Vegas
McDonald Carano LLP/Reno
Henderson City Attorney

Institute for Justice/Arlington VA
American Civil Liberties Union of Nevada/Las Vegas
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Federal Public Defender/Las Vegas
Eighth District Court Clerk