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### Patterson v. Las Vegas Mun. Ct., 139 Nev. Adv. Rep. 35 (Sept. 21, 2023)

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*Patterson v. Las Vegas Mun. Ct.*, 139 Nev. Adv. Rep. 35 (Sept. 21, 2023)<sup>1</sup>

## NEVADA MUNICIPAL COURTS LACK AUTHORITY TO AWARD ATTORNEY FEES AND LITIGATION EXPENSES.

### Summary

The Court gave two holding in their opinion. First, judicial economy supported consideration of a petition for a writ of mandamus where the issue raised was one of first impression. Here, that issues was whether municipal courts could award fees and expenses under Nev. Rev. Stat. § 41.0393. Second, Nev. Rev. Stat. § 41.0393(8) specifically defined the courts that may award attorney fees and litigation expenses as district courts and justice courts. As a result, the municipal court correctly concluded that it lacked authority to award such fees and expenses to the petitioner. Accordingly, a writ of mandamus petition challenging the municipal court’s decision was denied.

### Background

Petitioner Kelly Patterson runs a website that posts videos of Las Vegas police officers performing their duties. While filming a police officer, Patterson was arrested and charged with obstructing a police officer and a traffic violation. Patterson successfully moved to dismiss the obstruction charge, and as a result, the City of Las Vegas (“the City”) withdrew the traffic violation charge.

Patterson then filed an application for attorney fees and litigation expenses under Nev. Rev. Stat. § 41.0393, which the City opposed. The municipal court denied Patterson’s request, and in doing so, concluded that municipal courts lack authority to award fees and expenses under Nev. Rev. Stat. § 41.0393. Patterson appealed to the district court, which agreed with the municipal court and denied Patterson’s appeal. Patterson filed a writ of mandamus to the Nevada Supreme Court, and the City filed an answer in opposition. Also, the American Civil Liberties Union of Nevada and Nevada Attorneys for Criminal Justice were permitted to brief the issues as amici curiae. The Nevada Supreme Court used the aforementioned briefs in resolving the matter only to the extent of addressing issues raised in Patterson’s writ petition.

### Discussion

#### ***We Exercise Our Discretion to Entertain the Writ Petition***

This court has original jurisdiction to issue writs of mandamus.<sup>2</sup> Further, a writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion.<sup>3</sup> Additionally, “writ relief is an extraordinary remedy that is only available if a petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law.”<sup>4</sup> “This court has considered writ petitions when doing so will

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<sup>2</sup> *Gardner v. Eight Judicial Dist. Ct.*, 133 Nev. 730, 732, 405 P.3d 651, 653 (2017).

<sup>3</sup> *Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (Nev. 2008); N.R.S. 34.160

<sup>4</sup> *In re William J. Raggio Fam. Tr.*, 136 Nev. 172, 175, 460 P.3d 969, 972 (2020); *see also* N.R.S. § 34.170.

clarify a substantial issue of public policy or precedential value, and where the petition presents a matter of first impression, and considerations of judicial economy support its review.”<sup>5</sup>

Here, Patterson availed himself of an available alternative remedy—an appeal to the district court. The Court stated that it generally declines a writ petition so as to not undermine the district court’s appellate jurisdiction.<sup>6</sup> Conversely, the Court will entertain a writ petition in limited circumstances, particularly when a significant issue otherwise would evade the Court’s review.<sup>7</sup> Since Patterson raised an issue of first impression to the Court—whether municipal courts can award fees and expenses under Nev. Rev. Stat. § 41.0393— the Court was correct in taking up the petition.

The first step in interpreting a statute is to look to its plain language.<sup>8</sup> In doing so, “[i]t is well settled that where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction.”<sup>9</sup> Nev. Rev. Stat. § 41.0393(1) provides that “[a] court may, in a criminal action, award to a prevailing party, other than the State, reasonable attorney’s fees and litigation expenses incurred by the party in the criminal action if the court finds that the position of the State was vexatious, frivolous, or in bad faith.” Specifically, Nev. Rev. Stat. § 41.0393(8) provides that, as used in the statute, “court” means “a district court or justice court.” Accordingly, because of plain language of Nev. Rev. Stat. § 41.0393, it’s clear and unmistakable interpretation gives the authority to award attorney fees and litigation expenses to the prevailing party in a criminal action is specifically limited to district courts and justice courts.

Patterson argued that other statutes compel a different result. Patterson pointed to Nev. Rev. Stat. § 5.073 and Nev. Rev. Stat. § 266.50. Nev. Rev. Stat. § 5.073(1) provides that “[t]he practice and proceedings in the municipal court must conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases. The municipal court must be treated and considered as a justice court whenever the proceedings thereof are called into question.” Nev. Rev. Stat. § 266.550(1) states that “[t]he municipal court shall have such powers and jurisdiction in the city as are now provided by law for justice courts . . .”

Nev. Rev. Stat. § 41.0393 governs this particular issue because it is more specific than Nev. Rev. Stat. § 5.073(1) and Nev. Rev. Stat. § 266.550(1). Both statutes Patterson raised do not control because although they generally treat municipal courts the same as justice courts, but they do not control whether municipal courts have authority to award attorney fees and costs to the prevailing party in a criminal action.

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<sup>5</sup> Washoe Cty. Human Servs. Agency v. Second Jud. Dist. Ct., 138 Nev. Adv. Op. 87, 521 P.3d 1199, 1203 (2022).

<sup>6</sup> See State v. Eight Judicial Dist. Ct, 116 Nev. 127, 134, 994 P.2d 692, 696 (2000).

<sup>7</sup> See Hildt v. Eight Jud. Dist. Ct., 137 Nev. 121, 123, 483 P.3d 526, 529 (2021).

<sup>8</sup> Smith v. Zilverberg, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021).

<sup>9</sup> State Local Gov’t Emp. Mgmt. Relations Bd. v. Educ. Support Emps. Ass’n, 134 Nev. 716, 721, 429 P.3d 658, 662-63 (2018).

### **Conclusion**

The plain language of Nev. Rev. Stat. § 41.0393 limits the courts that may award attorney fees and litigation expenses in a criminal action to district courts and justice courts. Municipal courts were not included in Nev. Rev. Stat. § 41.0393(8)'s definition of the term "court." Therefore, municipal courts lack authority under Nev. Rev. Stat. § 41.0393 to award attorney fees and litigation expenses to the prevailing party in a criminal action. As a result, the municipal court correctly denied Patterson's request for fees and expenses, and the district court properly denied Patterson's appeal. The Court then denied Patterson's petition for a writ of mandamus.