

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER FALCONI,
Appellant,
vs.
THE STATE OF NEVADA SECRETARY
OF STATE; AND MONICA ANN
FARRAR,
Respondents.

No. 65289

FILED

MAR 03 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a pro se appeal from a district court post-judgment order denying costs in a writ proceeding. Second Judicial District Court, Family Court Division, Washoe County; Chuck Weller, Judge.

In the district court, appellant Alexander Falconi was granted a writ of mandamus directing respondent the State of Nevada Secretary of State to disclose the confidential address of respondent Monica Ann Farrar, who was a participant in Nevada's fictitious address program.¹ See NRS 217.462 (setting forth the procedure for obtaining a fictitious address under the program). After the writ petition was granted, Falconi moved for costs to be imposed against Farrar under NRS 18.020(4), which

¹The record indicates that Farrar was served with the writ petition and with all subsequent filings, but that she failed to appear or otherwise oppose the orders sought by Falconi in the district court. In light of her failure to appear and oppose the petition, the district court concluded that Farrar had failed to meet her burden of demonstrating that her actual address should not be disclosed to Falconi, and therefore, granted writ relief. See *Falconi v. Sec'y of State*, 129 Nev. ___, ___, 299 P.3d 378, 387 (2013).

requires an award of costs “to the prevailing party against any adverse party against whom judgment is rendered” in a “special proceeding.” In the motion, Falconi waived any right to seek costs against the Secretary of State. The district court agreed that costs were required to be awarded under the statute, but concluded that there was no basis to find that Farrar was an adverse party within the meaning of NRS 18.020(4). Thus, because Falconi had waived his right to recover costs from the Secretary of State, the district court denied the motion for costs.²

In a legal proceeding, an “adverse party” is one “whose interests are opposed to the interests of another party to the action.” *Black’s Law Dictionary* 1154 (8th ed. 2004); see *In re Resort at Summerlin Litig.*, 122 Nev. 177, 182, 127 P.3d 1076, 1079 (2006) (explaining that when a statute does not define a phrase, that phrase is construed “according to its plain and ordinary meaning”). Here, Falconi’s interest in seeking writ relief was to have Farrar’s address disclosed to him. While the Secretary of State was the party that was actually required to disclose Farrar’s address through the writ of mandamus issued by the district court, it was Farrar, rather than the Secretary of State, who had an interest in maintaining the confidentiality of her address. See *Falconi v. Sec’y of State*, 129 Nev. ___, ___, 299 P.3d 378, 387 (2013) (providing that a

²On appeal, Falconi argues that the district court improperly found that he had waived his right to costs and to appeal the denial of costs. While Falconi did waive the right to require Farrar to pay the filing fee for the underlying action—a conclusion he does not dispute on appeal—we agree with Falconi that his right to recover costs other than the filing fee and his right to appeal the denial of any such costs have not been waived. See *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007) (“Waiver requires the intentional relinquishment of a known right.”).

party seeking to maintain confidentiality of an address is the real party in interest in an action to compel disclosure of a confidential address). As Farrar's interest was opposed to that of Falconi and judgment was entered in Falconi's favor, we conclude that the district court erred in finding that Farrar was not an "adverse party against whom judgment [was] rendered." See NRS 18.020(4); *In re Resort at Summerlin Litig.*, 122 Nev. at 182, 127 P.3d at 1079 ("Statutory interpretation is a question of law reviewed de novo." (internal quotation marks omitted)).


In denying Falconi's motion for costs, the district court also found that Falconi's motion was not properly supported insofar as he had not submitted a receipt for payment of the specific amounts that he requested. Falconi, however, filed a verified memorandum of costs that declared, under penalty of perjury, that the requested costs were actually and necessarily incurred in the case and that explained the grounds for the requested costs. See NRS 18.110 (requiring a party seeking to recover costs to file a memorandum, verified by the party's oath, stating that the items are correct "and that the costs have been necessarily incurred in the action or proceeding"). He also filed supporting documents that further demonstrated the grounds for the costs that he was requesting. Under the circumstances presented in this case, we conclude that the documentation filed by Falconi was sufficient to demonstrate that the costs were actually incurred and to permit the district court to determine whether the amount of costs incurred was reasonable. See *Village Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005) (explaining that a party must provide documentation to "ensure that the costs awarded are only those costs actually incurred" and reversing the district court's award of costs because the party seeking costs had failed to provide

a verified memorandum of costs to demonstrate that the costs were actually incurred).

Thus, for the reasons discussed herein, we conclude that the district court erred by denying Falconi's motion for costs, *see* NRS 18.020(4) (providing that "[c]osts *must* be allowed" in a special proceeding (emphasis added)); *see also* NRS 0.025(1)(c)(1) (explaining that "'must' expresses a requirement when . . . [t]he subject is a thing, whether the verb is active or passive"), and we therefore

ORDER the district court's denial of the motion for costs REVERSED AND REMAND this matter to the district court for further proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Chuck Weller, District Judge, Family Court Division
Alexander Falconi
Attorney General/Carson City
Monica Ann Farrar
Washoe District Court Clerk

³In light of our resolution of this matter, we need not address Falconi's remaining arguments.