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RC. WALKER DEPUTY

Case No. 2023-CV-00162

Dept. No. 2

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Douglas County
District Court Clerk

BY:.....

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

RICKY DEAN MILLER, an
individual, MARTIN SWISHER,
JR., an individual, JOSEPH
GIRDNER, an individual, and
ROBBE LEHMANN, an individual,

Petitioners,

vs.

ORDER REGARDING INDEMNIFICATION
(NRS 41.0349(2))

DOUGLAS COUNTY SCHOOL DISTRICT,
SUSAN JANSEN, Trustee, Douglas
County School District, TRUSTEE
DAVID BURNS, Trustee, Douglas
County School District, TRUSTEE
KATHERINE DICKERSON, Trustee,
Douglas County School District,
and TRUSTEE DOUG ENGLEKIRK,
Trustee, Douglas County School
District,

Respondents.

THIS MATTER comes before the Court on Respondents' Joint
Request for Entry of Ruling Pursuant to NRS 41.0349(2) Without
Further Briefing. Good cause appearing, the Court finds and
orders as follows:

PROCEDURAL BACKGROUND

The Court entered its Second Order Regarding Petitioners'
Attorney's Fees and Costs on February 21, 2025, holding Douglas
County School District ("DCSD") and Susan Jansen, David Burns,

1 Katherine Dickerson and Doug Englekirk ("Trustees") jointly and
2 severally liable for a portion of Petitioners' attorney's fees and
3 costs pursuant to NRS 239.011(2). *Judgment* entered on March 21,
4 2025. The Court offered to rule on DCSD's obligation to indemnify
5 Trustees, with or without further briefing, if requested by DCSD
6 and Trustees. *Order Regarding Petitioners' Attorney's Fees and*
7 *Costs; Civil Penalties*, p. 39. On April 22, 2025, DCSD and
8 Trustees filed a stipulation requesting, "[T]he Court enter its
9 ruling on the question of [whether] the Trustees failed to
10 cooperate in good faith in the defense of the action pursuant to
11 NRS 41.0349(2), based on the evidence already presented to the
12 Court during the evidentiary phase of the Writ proceedings. The
13 Respondents jointly request the Court enter those evidentiary
14 findings without further briefing." Respondents' *Joint Request*
15 *for Entry of Ruling Pursuant to NRS 41.0349(2) Without Further*
16 *Briefing*, p. 2.

17 *FINDINGS OF FACT AND CONCLUSIONS OF LAW*

18 **Question Presented:** Did Trustees fail "to cooperate in good faith
19 in the defense of the action" as per NRS 41.0349(2)?

20 The Court's analysis of the question is constrained and
21 limited by the context in which the question is posed. The answer
22 drives whether Trustees are entitled to indemnification from DCSD
23 relative to the *Judgment*. Critically, at no time during the
24 litigation, including the present, has DCSD taken a position
25 contrary to Trustees; argued that DCSD does not have to indemnify
26 Trustees; or that Trustees failed to cooperate in good faith in
27 defense of the action. Pre-evidentiary hearing, the parties
28 requested and were extended an opportunity to brief whether

1 elected trustees can be held liable for attorney's fees and costs
2 pursuant to NRS 239.011(2). Trustees filed two briefs touching
3 upon the issue of indemnification. See, Trustees' *Pre-Hearing*
4 *Brief RE: Individual Liability*, August 8, 2024; Trustees'
5 *Response to Petitioners' Brief in Support of Individual Trustee*
6 *Liability in Accordance with NRS 239*, August 15, 2024. DCSD did
7 not file a single brief addressing the issue. At the conclusion
8 of the September 17, 2024 evidentiary hearing, DCSD took no
9 position regarding Trustees' good faith/bad faith, stating the
10 issue was for the Court to decide. The same goes for the pending
11 *Joint Request for Entry of Ruling Pursuant to NRS 41.0349(2)*
12 *Without Further Briefing*, p. 2.

13 DCSD, as the only party with standing to contest Trustees'
14 request for indemnification, has never promulgated an argument or
15 presented evidence that Trustees, or any one of them, failed to
16 cooperate in good faith in defense of the action and/or that DCSD
17 is not obligated to indemnify Trustees. Additionally, in framing
18 the question presented, DCSD presupposes NRS 41.0349 applies to
19 attorney fees awarded pursuant to NRS 239.011; Trustees acted
20 within the scope of their public duty; and Trustees' acts or
21 omissions were not wanton or malicious. NRS 41.03475; 41.0348.
22 The Court finds that DCSD waived any claim that Trustees failed to
23 cooperate in good faith and/or are not entitled to
24 indemnification.

25 Alternatively, the Court analyzes and answers the question
26 presented. The Court makes assumptions due to DCSD's failure to
27 take a position or otherwise raise issues for court determination.
28 The Court assumes, without deciding, that Trustees acted within

1 the scope of their public duty, were not wanton or malicious and
2 that NRS 41.0349 applies to the attorney fees awards pursuant to
3 NRS 239.011.

4 NRS 41.0349 interposes a general rule requiring
5 indemnification in the absence of an enumerated exception. DCSD
6 and Trustees concede applicability of the general rule and point
7 to a single enumerated exception, i.e., whether Trustees "failed
8 to cooperate in good faith in the defense of the action." NRS
9 41.0349(2). The exception draws focus on Trustees' post-case
10 inception conduct and whether Trustees cooperated in good faith
11 with the defense. The exception tests the relationship between
12 Trustees and DCSD related to defense of the action, as opposed to
13 the relationship between Trustees and Petitioners related to
14 Trustees' response to Petitioner's public records requests.

15 At case inception, Joey Gilbert Law represented DCSD. DCSD
16 and Joey Gilbert Law took on the defense of Trustees, filing a
17 joint Answer. DCSD and Trustees presented a unified front until
18 DCSD's rejection of the proposed settlement.¹ DCSD did not
19 present a stich of evidence indicating that Trustees, or any one
20 of them, did not cooperate in good faith with the defense. To the
21 contrary, Trustees each testified to having followed and relied
22 upon Joey Gilbert Law's advice and guidance. This evidence was
23 not controverted. DCSD never, including now, claimed that
24 Trustees did not cooperate in good faith with the defense. DCSD
25 did not reach its burden of proving applicability of the NRS
26 41.0349(2) exception to indemnification.

27 ¹ Trustees' conduct after the attempted settlement is irrelevant since the
28 Court did not order Trustees to pay attorney fees accrued after the failed
settlement. See, *Second Order Regarding Petitioners' Attorney's Fees and
Costs*, February 21, 2025.

1 Whether by waiver or failed proof, the answer to the question
2 of whether Trustees failed "to cooperate in good faith in the
3 defense of the action" as per NRS 41.0349(2), is no. DCSD must
4 indemnify Trustees.

5 IT IS SO ORDERED.

6 DATED this 27th day of May, 2025.

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THOMAS W. GREGORY
DISTRICT JUDGE

10 Copies served by mail on May 27th 2025, addressed to:

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