

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 Zyppah, Inc.,

5 Petitioner

6 v.

7 Daniel Allemeier, Jr.,

8 Respondent

Case No.: 2:17-cv-02840-JAD-PAL

**Order Denying Motion for Attorney’s Fees**

[ECF Nos. 28, 35, 37]

9 Petitioner Zyppah, Inc. employed respondent Daniel Allemeier, Jr., as the president of its  
10 Professional Division in January 2017, but terminated him five months later based on alleged  
11 fiduciary-duty breaches, work-performance issues, and failures to comply with the terms of the  
12 employment contract. Soon after, Allemeier filed a demand for arbitration with the American  
13 Arbitration Association (AAA) and requested a Los Angeles, California venue. Zyppah  
14 responded that the employment contract required the parties to arbitrate their disputes in Nevada.

15 Neither party would budge on the arbitral-venue issue, so Zyppah brought this action to  
16 compel Allemeier to arbitrate in Nevada and to enjoin the California arbitration. Eventually I  
17 granted Allemeier’s motion to dismiss Zyppah’s petition because Zyppah was not an aggrieved  
18 party under the Federal Arbitration Act (FAA), and the question of arbitral venue was one for the  
19 arbitrator to decide.<sup>1</sup> Allemeier now submits a bill of costs<sup>2</sup> and moves to have Zyppah pay his  
20 attorney’s fees.<sup>3</sup> I find that Allemeier’s requests are premature, so I deny them without prejudice  
21 to his ability to renew them before the arbitrator.

22 **Discussion**

23 Zyppah opposes Allemeier’s separate requests for fees and costs because, among other  
24 bases, he is not yet a prevailing party within the meaning of NRS § 18.010(2)(b) because the

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26 <sup>1</sup> ECF No. 26.

27 <sup>2</sup> ECF No. 29.

28 <sup>3</sup> ECF No. 28.

1 underlying unlawful-termination issues are still unresolved. I agree. None of the parties' cited,  
2 binding authority addresses whether a party who successfully defends against a motion to  
3 compel arbitration is a prevailing party. But Zyppah cites to *Perry v. NorthCentral University,*  
4 *Inc.*,<sup>4</sup> for the proposition that this dismissal stage is merely a procedural transfer of venue within  
5 the overarching employment-litigation and not a victory on a significant issue.<sup>5</sup> I recently  
6 adopted the *Perry* reasoning in another, materially similar case:

7           In *Perry* . . . Judge Rosenblatt declined to award the defendant  
8 attorney's fees because it was not yet a prevailing party: "[A]n  
9 order compelling arbitration, being merely a preliminary  
10 procedural order that is not on the merits and does not materially  
11 alter the legal relationship of the parties, does not make the litigant  
12 obtaining the order a prevailing party for purposes of a fee award."  
13 He went on to reason "that the defendants should not . . . be  
14 awarded their attorneys' fees for succeeding . . . on nothing more  
15 than effecting a change in the forum charged with deciding the  
16 merits of the plaintiff's claims." And because the arbitrator had  
17 not yet resolved the plaintiff's claims in the defendants' favor,  
18 "there would be no justification for awarding the defendants  
19 attorneys' fees for simply obtaining their preferred choice of  
20 forum" because "it would be a completely hollow victory for the  
21 defendants to have procured arbitration, if the arbitrator rules  
22 against them."<sup>6</sup>

23           The procedural posture in *Perry* is different than the one here, but the end result is the  
24 same. *Perry* filed a civil action, and NorthCentral University moved to compel *Perry* to arbitrate  
25 his disputes. *Allemeier*, by contrast, first filed a demand to arbitrate in Los Angeles, then  
26 Zyppah brought this petition to compel arbitration in Nevada, and *Allemeier* moved to dismiss  
27 Zyppah's compelled-arbitration-venue petition. When NorthCentral University's motion was  
28 granted, the parties went to arbitration. Similarly, when I granted *Allemeier*'s dismissal motion,  
the parties went to arbitration. So, the *Perry* reasoning is just as applicable here, regardless of  
the nuanced procedural differences.

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<sup>4</sup> *Perry v. NorthCentral University, Inc.*, 2012 WL 1753014, at \*1 (D. Ariz. May 16, 2012).

<sup>5</sup> ECF No. 34 at 5.

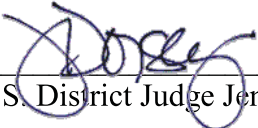
<sup>6</sup> *Bailey v. AffinityLifestyles.com, Inc.*, 2:16-cv-02684-JAD-VCF, ECF No. 38 (order) (internal citations omitted).

1 Because the parties have submitted their disputes to arbitration, it is the province of the  
2 arbitrator to decide who the prevailing party will be and whether to award that party reasonable  
3 attorney’s fees and costs.

4 **Conclusion**

5 Accordingly, IT IS HEREBY ORDERED that Allemeier’s motion for attorney’s fees  
6 [ECF No. 28] is **DENIED**, Allemeier’s supplemental motion for attorney’s fees [ECF No. 35] is  
7 **DENIED as moot**, and Zyppah’s motion to strike Allemeier’s supplemental motion for  
8 attorney’s fees [ECF No. 37] is also **DENIED as moot**.

9 Dated: June 7, 2018

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12 U.S. District Judge Jennifer A. Dorsey  
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