VALLEY HEALTH SYSTEM, LLC, a Nevada Limited Liability Company, dba CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; and UNIVERSAL HEALTH SERVICES, INC., a Delaware Corporation, Appellants, *v.* ESTATE OF JANE DOE, By and Through Its Special Administrator, MISTY PETERSON, Respondent.

No. 70083

HALL PRANGLE & SCHOONVELD, LLC; MICHAEL PRANGLE, ESQ.; KENNETH M. WEBSTER, ESQ.; and JOHN F. BEMIS, ESQ., Petitioners, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE RICHARD SCOTTI, District Judge, Respondents, and MISTY PETERSON, as Special Administrator of the ESTATE OF JANE DOE, Real Party in Interest.

No. 71045

September 27, 2018 427 P.3d 1021

Consolidated appeal from a district court order of dismissal and original petition for a writ of mandamus challenging a district court order finding that petitioners violated RPC 3.3. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appeal affirmed in Docket No. 70083; petition denied in Docket No. 71045.

[Rehearing denied November 9, 2018]

Bailey Kennedy and *Dennis L. Kennedy, Joseph A. Liebman*, and *Joshua P. Gilmore*, Las Vegas; *Hall Prangle & Schoonveld, LLC*, and *Michael E. Prangle, Kenneth M. Webster*, and *John F. Bemis*, Las Vegas, for Appellants/Petitioners.

Murdock & Associates, Chtd., and *Robert E. Murdock*, Las Vegas; *Eckley M. Keach, Chtd.*, and *Eckley M. Keach*, Las Vegas, for Respondent Estate of Jane Doe and Real Party in Interest Misty Peterson, Special Administrator.

Adam Paul Laxalt, Attorney General, *Ketan D. Bhirud*, General Counsel, *Gregory L. Zunino*, Bureau Chief of Business and State Services, and *Jordan T. Smith*, Assistant Solicitor General, Carson City, for Respondents the Eighth Judicial District Court and The Honorable Richard Scotti, District Judge.

Before the Supreme Court, En Banc.

OPINION

By the Court, Hardesty, J.:

In this consolidated direct appeal and original petition for a writ of mandamus, we consider an order in which the district court sanctioned a party for discovery violations and found that the party's attorneys violated Nevada Rule of Professional Conduct 3.3(a)(1) by making a false statement of fact or law to the district court.

First, we conclude that the district court acted within its discretion when it sanctioned the party. Second, we are asked to decide whether a district court's citation to the RPC in support of a determination of attorney misconduct causes reputational harm that amounts to a sanction. Because we hold that it does, we entertain the writ but conclude that the district court correctly determined that the attorneys violated RPC 3.3(a)(1). We thus affirm the district court order and deny the writ petition.

FACTS AND PROCEDURAL HISTORY

In May 2008, appellants Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center, and Universal Health Services, Inc. (collectively, Centennial) hired Steven Farmer as a certified nurses' assistant (CNA). Centennial had a contractual agreement with American Nursing Services to provide hospital staff, including CNAs, to Centennial. Jane Doe was a patient at Centennial during the time Farmer was employed there. On May 14, 2008, Farmer sexually assaulted Doe in her hospital room.

On May 15 and 16, 2008, Farmer sexually assaulted another patient, R.C., at Centennial. The assault was reported to Centennial, and Centennial began an internal investigation, hiring petitioners (collectively, Hall Prangle) as part of the investigation. While investigating the assault involving R.C., the attorneys from Hall Prangle interviewed several nurses employed at Centennial, including Margaret Wolfe in June 2008, Christine Murray in July 2008, and Ray Sumera in August 2008. Nurses Wolfe and Murray each gave statements to the Las Vegas Metropolitan Police Department (LVMPD) regarding the R.C. incident in May and June 2008, respectively. In their police statements, the nurses explained that they had raised concerns about Farmer before his assault on Doe because (1) he was overly attentive to female patients, (2) Farmer was anxious to perform procedures where female breasts would be exposed and possibly touched, and (3) Farmer was involved in an incident wherein an elderly woman Farmer was attending to yelled, "Get outta here! I don't want you by me!" During the course of the investigation of

the R.C. incident, several of Centennial's supervisory employees revealed that they had knowledge of the police reports and the nursing staff's concerns about Farmer.

R.C. filed a complaint against Centennial and Farmer in September 2008 alleging claims of sexual assault, negligence, intentional infliction of emotional distress, negligent misrepresentation, and false imprisonment. After the R.C. incident became public, Doe reported Farmer's sexual assault against her. Doe filed a lawsuit against Centennial in July 2009 for negligent failure to maintain the premises in a safe manner and vicarious liability for Farmer's actions. Centennial retained Hall Prangle to represent it in the Doe case in August 2009.

Prior to the early case conference that was held in November 2009, Centennial filed an initial list of witnesses and documents pursuant to NRCP 16.1. The initial disclosures did not identify nurses Wolfe, Murray, or Sumera as persons with knowledge of relevant facts and did not disclose the existence of the police statements.

In September 2014, Doe filed a motion for summary judgment regarding liability, arguing that Centennial was strictly liable for Farmer's assault. Centennial, through Hall Prangle, filed an opposition to Doe's motion for summary judgment, arguing that strict liability did not apply because "Farmer's actions weren't reasonably foreseeable under the facts and circumstances of th[is] case." As part of their foreseeability argument, Centennial cited to and summarized our decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), stating that "the Nevada Supreme Court concluded that . . . because the assailant had no prior criminal record in the United States or Mexico, and because there w[ere] no prior complaints against the assailant for sexual harassment, that it was not reasonably foreseeable that the assailant would sexually assault a Safeway employee." Based on its interpretation of *Wood*, Centennial argued that "[i]n the instant situation, there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial Hills on notice that Mr. Farmer would assault a patient." The district court denied Doe's motion, finding that there was a genuine issue of material fact regarding liability, especially whether Farmer's misconduct was reasonably foreseeable.

In April 2015, Centennial, through Hall Prangle, filed a writ petition in this court challenging the district court's order granting in part a motion for summary judgment. In explaining the factual and procedural history of this case, Centennial again explained that it "relied upon this [c]ourt's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 737, 121 P.3d 1026, 1035 (2005), and urged that there were no known prior acts or any other circumstances that could have put Centennial Hills on notice that Farmer would sexually assault Ms. Doe." We denied the writ petition, determining that Centenni-

al's right to appeal following trial precluded extraordinary intervention. *See Valley Health System, LLC v. Eighth Judicial Dist. Court*, Docket No. 67886 (Order Denying Petition for Writ of Mandamus or Prohibition, May 20, 2015).

In October 2014, the discovery commissioner ordered Hall Prangle to produce a file provided to them by the LVMPD concerning the Farmer investigation. Doe learned of the nurses' police statements through the LVMPD file provided to them in 2015.

Doe filed a motion for NRCP 37 sanctions related to Centennial's nondisclosure of the three nurses who had been interviewed during the internal investigation as well as their statements to police, seeking to establish that Farmer's misconduct was reasonably foreseeable to Centennial as a matter of law. After briefing and oral argument, the discovery commissioner recommended full admission of the nurses' police statements, that Centennial pay a monetary sanction, and that the district court conduct an evidentiary hearing to determine whether (1) case-terminating sanctions were appropriate based on Centennial's failure to disclose witnesses, (2) it was Centennial's intention to thwart the discovery process and hinder Doe from discovering the relevant facts, and (3) Centennial misled the court. The discovery commissioner also recommended that the sanctions be reduced if Centennial could prove with a degree of probability that they had no knowledge of the witnesses until recently.

In its order setting the evidentiary hearing, the district court informed Hall Prangle and Centennial of the scope and purpose of the hearing, stating that it was considering case-terminating sanctions, whether there was intent to thwart the discovery process, and whether the defendants misled the court. Following the evidentiary hearing, the district court found the following:

> based on evidence that this [c]ourt considers to be clear and convincing, Centennial intentionally and willfully (a) violated its discovery obligations under NRCP 16.1 in failing to timely disclose that nurses Murray, Wolfe, and Sumera possessed relevant and material evidence relating to the central issue in this case—whether it was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault on a patient; and (b) violated its duty under NRCP 16.1 to timely disclose the [p]olice [s]tatements which also contained relevant and material evidence relating to the same central issue.

The district court sanctioned Centennial pursuant to NRCP 37 by striking its answer, thereby establishing liability against Centennial, allowing it only to litigate the damages, and ordering Centennial to pay $9,000 to Doe's counsel and $9,000 to Legal Aid of Southern Nevada. As part of its finding that Centennial willfully violated its disclosure obligations, the district court also determined that Hall

Prangle violated Rule 3.3 of the Nevada Rules of Professional Conduct by incorrectly representing that it had not withheld any relevant evidence.

Hall Prangle and Centennial filed a motion for reconsideration of the sanction order, arguing that the district court erred by not providing Hall Prangle with the requisite notice that Hall Prangle's conduct was under consideration and finding that Hall Prangle violated RPC 3.3(a)(1) by making a false statement of fact. The district court denied Centennial's motion for reconsideration and clarified that, while it took Hall Prangle's conduct into consideration, it did not sanction Hall Prangle and the sanction order was based on Centennial's misconduct. Subsequently, the parties entered into a settlement agreement with Centennial reserving the right to challenge the sanction order. However, a successful appeal would not alter the terms of the settlement agreement.

Centennial appeals the district court's sanction order, and Hall Prangle filed an original petition for a writ of mandamus challenging the district court's findings of professional rule violations. These cases were consolidated for disposition.

DISCUSSION

In the appeal, we consider Centennial's argument that the district court abused its discretion when it found that Centennial willfully and intentionally concealed relevant, discoverable information in violation of NRCP 16.1. Next, we must determine whether to entertain a writ petition seeking review of a reputational, rather than a monetary, sanction of an attorney. Because we conclude that a reputational sanction of an attorney is reviewable by writ, we address Hall Prangle's claim that it did not violate RPC 3.3(a)(1).

The district court acted within its discretion when it struck Centennial's answer as a sanction for violating NRCP 16.1[1]

Standard of review

"This court generally reviews a district court's imposition of a discovery sanction for abuse of discretion." *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010). When a district court imposes case-ending sanctions, we apply "a somewhat heightened

[1]As a threshold question, we must determine whether this matter is moot since the underlying case has settled. Because Centennial incurred both a monetary (for which they seek recovery) and reputational sanction, we conclude that the sanction order is justiciable notwithstanding the settlement. *See Grider v. Keystone Health Plan Cent., Inc.*, 580 F.3d 119, 133 (3d Cir. 2009) ("Appellants respond that the settlements did not moot the appeals because the Appellants experienced (and continue to experience) reputational harm. This court's precedent supports Appellants' position.").

standard of review." *Id*. However, sanctions are not considered case ending when, as here, the district court strikes a party's answer thereby establishing liability, but allows the party to defend on the amount of damages. *Bahena v. Goodyear Tire & Rubber Co*., 126 Nev. 243, 249, 235 P.3d 592, 596 (2010).

Noncase-concluding sanctions will be upheld if the district court's sanction order is supported by substantial evidence. *Id*. at 254, 235 P.3d at 599. Furthermore, a district court's "findings of fact shall not be set aside unless they are clearly erroneous and not supported by substantial evidence." *Id*. When a district court adopts the factual findings of a discovery commissioner, they are "considered the findings of the [district] court." *Id*. Finally, "[e]ven if we would not have imposed such sanctions in the first instance, we will not substitute our judgment for that of the district court." *Young v. Johnny Ribeiro Bldg., Inc*., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

NRCP 37 sanctions

Under NRCP 37(b)(2)(C), when a party fails to make a discovery disclosure pursuant to NRCP 16.1, the district court may make "[a]n order striking out pleadings or parts thereof . . . or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." In *Young*, we articulated the abuse-of-discretion standard with regard to discovery sanctions:

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

106 Nev. at 93, 787 P.2d at 780.

In its order striking Centennial's answer and establishing liability on Doe's negligence and respondeat superior claims, the district court addressed each *Young* factor. Centennial argues primarily that the district court abused its discretion in its determination of the first *Young* factor—that Centennial willfully and intentionally concealed relevant, discoverable information in violation of NRCP 16.1. Specifically, Centennial argues that the district court misapplied the

"collective knowledge doctrine" in reaching its conclusion, and that the district court's finding of willful misconduct is not supported by substantial evidence. We disagree.

Centennial's misconduct was willful

In considering the *Young* factors, the district court determined that clear and convincing evidence demonstrated "that Centennial willfully and intentionally concealed the relevance of nurses Murray, Wolfe, and Sumera, and the existence of the [p]olice [s]tatements with an intent to harm and unfairly prejudice [Doe]." In its order denying Centennial's motion for reconsideration, the district court explicitly stated that it did not use or apply the collective knowledge doctrine in reaching its conclusion that Centennial willfully concealed relevant information. In explaining its reasoning, the district court stated: "Simply put, Centennial's management was aware of the knowledge of numerous Centennial staff of various stations, and exhibited an unlawful pattern of suppression and denial over the course of years to [Doe's] detriment."

Centennial acknowledges that the collective knowledge doctrine was not explicitly used or applied by the district court. Nonetheless, Centennial argues that the district court used the doctrine to aggregate the employees' knowledge in order to conclude that Centennial willfully and intentionally concealed information with the intent to harm Doe. Centennial contends that a court cannot find that a corporation acted willfully or intentionally unless at least one employee has a culpable mental state. In support of its argument, Centennial cites to several cases for the proposition that the collective knowledge doctrine cannot be used to impute a culpable state of mind to an employer. Primarily, Centennial relies on *Ginena v. Alaska Airlines, Inc.*, No. 2:04-CV-01304-MMD-CWH, 2013 WL 3155306 (D. Nev. June 19, 2013), which held that the collective knowledge doctrine cannot be used to show that an employer acted with actual malice unless "someone in the corporation had the required culpability." *Id*. at *8. Thus, Centennial argues, the district court erred as a matter of law because it did not identify, by name, an employee who acted with a culpable state of mind.

We conclude that Centennial's reliance on the collective knowledge doctrine is misplaced. First, we have never applied the collective knowledge doctrine when reviewing discovery sanction orders. Second, Centennial's reliance on *Ginena* is unpersuasive. *Ginena* involved a defamation claim where, in order to recover, the plaintiffs had to show that the defendants acted with actual malice. *Id.* at *6. Thus, the court was considering the collective knowledge doctrine in the context of establishing the required state of mind for intentional tort liability. *Id*. at *7. Here, the district court was considering whether Centennial willfully chose not to comply with NRCP 16.1 disclosure requirements. Thus, Centennial has not put

forth a persuasive argument that the district court applied, or we should consider, the collective knowledge doctrine in this case.[2]

We further conclude that substantial evidence supports the district court's finding that Centennial willfully concealed relevant evidence. The district court listed a 17-point overview of the evidence it found to amount to clear and convincing proof that Centennial willfully withheld evidence from its NRCP 16.1 discovery disclosure. We conclude that the evidence is supported by the record. For example, Hall Prangle and Centennial conducted the investigation of the R.C. incident well before Doe filed her complaint yet Centennial failed to disclose nurses Wolfe, Murray, and Sumera in its initial NRCP 16.1 disclosures in the Doe case. Thus, we conclude that the district court did not abuse its discretion in making the factual determination that Centennial had knowledge of the relevant evidence and willfully concealed it during discovery.

The district court did not penalize Centennial for its attorneys' conduct

Centennial argues that the district court abused its discretion in striking its answer based on Centennial's attorneys' misconduct. Specifically, Centennial argues that, because it is an attorney's responsibility to comply with NRCP 16.1, it is unfair to sanction a client for its attorney's failure to comply. We disagree.

As noted above, when considering discovery sanctions, a district court should consider "whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney." *Young*, 106 Nev. at 93, 787 P.2d at 780. The district court took that factor into consideration. Specifically, the district court stated that "[t]he misconduct in this case is clearly that of Centennial, to an equal or greater extent tha[n] its lawyers." The district court went on to explain that Centennial knew about the relevant, concealed evidence, "yet allowed their attorneys to submit no less than [e]ight (8) NRCP 16.1 disclosures that omitted any reference to" the evidence. Finally, the district court pointed out that Centennial provided verifications for all of the false discovery disclosures. Accordingly, the district court did not unfairly penalize Centennial.

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[2]The other cases Centennial cites to in support of its reliance on the collective knowledge doctrine are similarly unpersuasive. *See Lind v. Jones, Lang LaSalle Ams., Inc*., 135 F. Supp. 2d 616, 622 n.6 (E.D. Pa. 2001) (explaining that the collective knowledge doctrine cannot be used to aggregate intent in claims for fraudulent misrepresentation and intentional nondisclosure); *First Equity Corp. of Fla. v. Standard & Poor's Corp*., 690 F. Supp. 256, 259-60 (S.D.N.Y. 1988) (stating that in a claim for fraud, the collective knowledge doctrine cannot be used to establish intent when a specific employee with the requisite state of mind is not identified); *Reed v. Nw. Publ'g Co.*, 530 N.E.2d 474, 484 (Ill. 1988) (stating that the collective knowledge doctrine cannot be used to establish actual malice in an action for libel).

The other Young factors support the district court's decision

Centennial argues that the sanction the district court imposed was extreme when considering the other *Young* factors. First, Centennial argues that the sanction violates Nevada's public policy of deciding cases on the merits. Second, Centennial argues that the sanction was unnecessary because Centennial was unlikely to engage in future misconduct. Finally, Centennial argues that the district court's finding that Doe was prejudiced by the NRCP 16.1 violation was speculative.

As with the other *Young* factors, the district court considered Centennial's arguments and explained, in detail, why they fail. With regard to Nevada's policy of deciding cases on the merits, the district court decided that the only way to undo the prejudice created by Centennial was to strike Centennial's answer. Furthermore, the district court correctly pointed out that striking Centennial's answer was not a case-concluding sanction. Indeed, Centennial was still able to litigate the measure of damages. Therefore, with respect to this *Young* factor, the district court did not abuse its discretion.

Similarly, the district court acted within its discretion when it decided that striking Centennial's answer would effectively deter future sanctionable conduct. Centennial argues that it is unlikely to repeat its misconduct, but the *Young* court explicitly stated that a court should consider "the need to deter both the parties *and future litigants* from similar abuses." *Young*, 106 Nev. at 93, 787 P.2d at 780 (emphasis added). The district court stated that it intended to "deter future misconduct by Centennial." But the district court also considered its order's effect on future litigants by stating that "[n]o party should be allowed to conceal evidence, and then suffer merely a monetary sanction, while being allowed to reap the tactical benefit of the loss of that evidence. Litigants should be entitled to have their cases adjudicated on the merits."

Finally, the district court considered the prejudice that had already materialized as a result of Centennial's NRCP 16.1 violation. Specifically, the court stated that the prejudice to Doe was that "memories . . . fade[ ] over time" and that any lesser sanction would not mitigate that prejudice. The court also noted that because the lost evidence potentially went to a central issue in the case, substantial prejudice would linger if the court imposed any alternative sanction. Thus, the district court did not abuse its discretion in striking Centennial's answer.

Hall Prangle's writ petition is denied because the district court's sanction was a fair comment on the attorneys' conduct

Hall Prangle filed an original petition for a writ of mandamus in this court, arguing that the district court improperly sanctioned

Hall Prangle for violating RPC 3.3(a)(1).[3] Hall Prangle also argues that the district court's sanction was an abuse of discretion because (1) Hall Prangle did not receive the required notice that the district court was considering attorney sanctions, and (2) Hall Prangle did not violate RPC 3.3(a)(1). Doe, the Eighth Judicial District Court, and The Honorable Richard Scotti (collectively, the District Court Judge) filed answers to Hall Prangle's petition.

Petition for writ relief should be entertained

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. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "This court has discretion to entertain a petition for extraordinary writ relief." *Bradford v. Eighth Judicial Dist. Court*, 129 Nev. 584, 586, 308 P.3d 122, 123 (2013). However, we will exercise that discretion "only when there is no plain, speedy and adequate remedy in the ordinary course of law or there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration." *State v. Eighth Judicial Dist. Court (Logan D.)*, 129 Nev. 492, 497, 306 P.3d 369, 373 (2013) (internal quotation marks omitted). It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 804, 312 P.3d 491, 495 (2013).

We have consistently held that an appeal is generally an adequate legal remedy precluding writ relief. *Bradford*, 129 Nev. at 586, 308 P.3d at 123. However, "[s]anctioned attorneys do not have standing to appeal because they are not parties in the underlying action; therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions." *Watson Rounds, P.C. v. Eighth Judicial Dist. Ct.*, 131 Nev. 783, 786-87, 358 P.3d 228, 231 (2015).

Although the district court did not impose monetary sanctions against Hall Prangle, the court did find that Hall Prangle twice violated RPC 3.3(a)(1). As discussed below, we conclude that this amounts to a reputational sanction and provides a basis to entertain

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[3]Specifically, the district court stated in its order:

> Rule 3.3 of the Nevada Rules of Professional Conduct states "(a) A lawyer shall not knowingly: (1) Make a false statement of fact or law . . . to [a] tribunal by the lawyer." Centennial's lawyers violated this Rule.
>
> Centennial incorrectly represented to the Nevada Supreme Court that it had not withheld any relevant evidence. Centennial stated: "there were no known prior acts or any other circumstances that could have put Centennial on notice that Farmer would sexually assault Ms. Doe." Again, Centennial's lawyers violated Rule 3.3.

(Citation omitted.)

Hall Prangle's petition. *See Martinez v. City of Chi.*, 823 F.3d 1050, 1053 (7th Cir. 2016) ("[A] finding of attorney misconduct in a sanctions order can seriously impair an attorney's professional standing, reputation, and earning possibilities. . . . Such an injury, inflicted in a formal judicial order, can be serious enough to make the order appealable.") We find *Martinez* persuasive and conclude that the importance of an attorney's reputation alone provides a basis for justiciability where the district court made a finding that the attorney violated the rules of professional conduct.

In *United States v. Talao*, 222 F.3d 1133, 1135 (9th Cir. 2000), the United States Court of Appeals for the Ninth Circuit considered an appeal by an assistant United States attorney challenging a finding by the federal district court that she violated the California Rules of Professional Conduct. The court first addressed the issue of whether the district court's finding provided a basis for an appeal. *Id*. at 1137. In concluding that it did, *id*. at 1138, the Ninth Circuit distinguished the district court's finding of ethical misconduct from "mere judicial criticism," *id*. at 1137, explaining:

> The district court in the present case . . . did more than use "words alone" or render "routine judicial commentary." Rather, the district court made a finding and reached a legal conclusion that [the attorney] knowingly and wilfully violated a specific rule of ethical conduct. Such a finding, *per se*, constitutes a sanction.

Id. at 1138.

This approach is followed in the majority of federal circuits and has support in other state courts. *See, e.g.*, *Butler v. Biocore Med. Techs., Inc.*, 348 F.3d 1163, 1168 (10th Cir. 2003) (stating that "damage to an attorney's professional reputation is a cognizable and legally sufficient injury"); *Walker v. Mesquite, Tex.*, 129 F.3d 831, 832-33 (5th Cir. 1997) (holding "that the importance of an attorney's professional reputation, and the imperative to defend it when necessary, obviates the need for a finding of monetary liability or other punishment as a requisite for the appeal of a court order finding professional misconduct"); *Sullivan v. Comm. on Admissions & Grievances*, 395 F.2d 954, 956 (D.C. Cir. 1967) (holding that a finding of professional misconduct not accompanied by other sanctions is analogous to a defendant found guilty but given a suspended sentence and is appealable); *State v. Perez*, 885 A.2d 178, 187 (Conn. 2005) ("[A] judicial finding of professional misconduct is tantamount to an official sanction, irrespective of whether the finding is made in the context of a formal grievance proceeding.").

The vast majority of courts that have considered the issue have held that a finding that an attorney has violated a specific rule of professional conduct is tantamount to a sanction. Additionally, several states have commented on a trial court's inherent authority to

sanction an attorney for improper conduct due to violation of the rules of professional conduct. *See Wong v. Luu*, 34 N.E.3d 35, 48 (Mass. 2015) (upholding a lower court's determination that an attorney had violated a rule of professional conduct because "it is plain that the inherent powers of the court include the authority to sanction an attorney for such misconduct, regardless of the adjudication of any complaint before the board for violation of this rule"); *Westview Drive Invs., LLC v. Landmark Am. Ins. Co.*, 522 S.W.3d 583, 616 (Tex. App. 2017) ("Courts have the inherent power to discipline attorneys, and the Texas Supreme Court has addressed some violations of the disciplinary rules under both the State Bar's disciplinary system and its own inherent powers."); *Featherstone v. Schaerrer*, 34 P.3d 194, 200 (Utah 2001) (holding that the trial court did not exceed its authority in finding a violation of the rules of professional conduct, because holding otherwise "would bind the 'inherent powers' of judicial regulation by allowing attorneys who have violated the ethics code to hide behind the guise that only the state bar association may enforce the rules"). We are persuaded by the reasoning of these federal and state courts finding that a reputational sanction is reviewable and conclude that a district court has inherent authority to cite to the rules of professional conduct as part of its authority to regulate attorney misconduct in the courtroom:

> [T]he power to sanction defense counsel in the instant case derived from the inherent powers of a trial court to control proceedings before it. It has been cogently stated that [a] trial judge is under a duty, in order to protect the integrity of the trial, to take prompt and affirmative action to stop . . . professional misconduct.

Young v. Ninth Judicial Dist. Court, 107 Nev. 642, 646, 818 P.2d 844, 846 (1991) (second alteration in original) (internal quotation marks omitted). We, therefore, entertain Hall Prangle's writ petition and consider whether the reputational sanction was warranted considering Hall Prangle's conduct.

The district court properly found that Hall Prangle violated RPC 3.3

RPC 3.3 provides in relevant part: "(a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal." As noted above, the district court found that Hall Prangle twice violated RPC 3.3(a)(1). The district court found that Hall Prangle first violated RPC 3.3(a)(1) when, in its opposition to summary judgment, it stated: "In the instant situation, there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient." The district court found another RPC 3.3(a)(1) violation when Hall Prangle, in its first writ

petition in this court, stated: "there were no known prior acts or any other circumstances that could have put Centennial on notice that Farmer would sexually assault Ms. Doe." The district court found that each of these statements constituted violations of RPC 3.3(a)(1) because they were false statements of facts made by a lawyer to a tribunal.

Hall Prangle argues that its statement to the district court could not have constituted a rule violation because it was not a purely factual statement, but rather, argument intertwined with opinion regarding the evidence relating to reasonable foreseeability. Hall Prangle further argues that its use of the statement in its writ petition was appropriate because it was used in the context of explaining what arguments they made in the district court and was thus a factually accurate statement.

The district court concluded that the statement in Centennial's opposition violated the rule because it falsely represented that Centennial had no notice of prior behavior indicating that Farmer might assault a patient in the future. Specifically, the district court found that Centennial hired Hall Prangle to investigate Farmer's assault, which included the nurses' previous concerns about Farmer's behavior with patients. Thus, Centennial and Hall Prangle had knowledge of Farmer's conduct that would put them on notice that a sexual assault was foreseeable. The district court's finding in that regard is supported by the record. Thus, the district court acted well within its discretion in finding that Hall Prangle violated RPC 3.3(a)(1) in its statement to the district court. However, we note that the false statement as used in Hall Prangle's writ petition was included in the petition's procedural history to explain what Hall Prangle argued in the district court. Thus, it was an accurate statement in that it correctly represented the false statement Hall Prangle argued in the district court. Nonetheless, we hold that the record supports the district court's sanction because, at least in the district court, Hall Prangle knowingly made a false statement in violation of RPC 3.3(a)(1).

The district court's sanction complied with due process

Hall Prangle argues that it was deprived of due process because the district court did not give it notice that it was considering attorney sanctions. The parties agree that when a district court is considering attorney sanctions, the attorney is entitled to notice that his or her conduct is at issue. The parties disagree, however, about what satisfies the notice requirement. The District Court Judge argues that the notice requirement was satisfied here because Hall Prangle knew that the district court would consider its conduct in its *Young* analysis and Doe accused Hall Prangle of violating RPC 3.3(a)(1) during litigation. Hall Prangle argues that it is the tribunal considering sanctions, not opposing counsel, that is required to give particularized notice that it is considering sanctions.

Due process principles require that an attorney accused of professional misconduct receive notice of the charges levied against him or her. *See Lioce v. Cohen*, 124 Nev. 1, 26, 174 P.3d 970, 986 (2008) ("[T]he district court may, on a party's motion or sua sponte, impose sanctions for professional misconduct at trial, after providing the offending party with notice and an opportunity to respond."); *see also Randolph v. State*, 117 Nev. 970, 982 n.16, 36 P.3d 424, 432 n.16 (2001) (issuing a contemporaneous order to show cause to the attorney so he could explain why sanctions should not be imposed). Here, the district court entered an order setting the evidentiary hearing based on the discovery commissioner's report and recommendations. In that order, the district court informed the parties of the hearing's scope and purpose:

> The purpose of the evidentiary [h]earing shall be to determine (1) if case terminating sanctions are appropriate based on the conduct of failing to disclose witnesses; (2) whether or not th[ere] was intention to thwart the discovery process in this case, and hinder [p]laintiff to discover[ ] the relevant facts[;] and (3) a failure to let the [c]ourt know what was going on in the case and whether the . . . [d]efendants misled the [c]ourt.

The order did not mention that the district court would be considering sanctions against Hall Prangle and specifically indicated that the court would only be considering whether the defendants, not Hall Prangle, misled the court. Thus, this notice was deficient under due process principles.

The District Court Judge argues that, even if Hall Prangle did not receive the required notice that the district court was considering attorney sanctions, any deficiency was cured through Hall Prangle's motion for reconsideration. In support of its argument, the District Court Judge cites to *Sun River Energy, Inc. v. Nelson*, 800 F.3d 1219 (10th Cir. 2015). In *Sun River*, the United States Court of Appeals for the Tenth Circuit determined that an order sanctioning an attorney was procedurally defective because the attorney was not afforded the proper notice. *Id*. at 1230. The court acknowledged that "[a]dvance notice that the court is considering sanctions and an opportunity to respond in opposition is, of course, required." *Id*. However, the court concluded that the procedural defect was cured because the attorney "had a full opportunity to brief his various objections to imposition of the . . . sanction in conjunction with [a] motion for reconsideration." *Id*. at 1231. Thus, the court concluded that the motion for reconsideration cured any defect in connection with the initial imposition of sanctions because "the opportunity to fully brief the issue is sufficient to satisfy due process requirements." *Id*. at 1230 (internal quotation marks omitted).

Here, Hall Prangle filed a motion for reconsideration of the district court's sanction order in which it extensively briefed the due

process issues it now raises before this court. Furthermore, Hall Prangle argued in its motion for reconsideration that it did not engage in intentional misconduct and did not violate RPC 3.3(a)(1). Consistent with the Tenth Circuit, we conclude that a subsequent opportunity to fully brief the issue of imposition of attorney sanctions is sufficient to cure any initial due process violation, and any notice deficiency was similarly cured in this case.

CONCLUSION

We hold that the district court acted within its discretion when it struck Centennial's answer as a sanction for its violation of NRCP 16.1. First, district courts are afforded discretion when imposing sanctions and those determinations will generally be upheld even if we would not have imposed such sanctions in the first instance. *See Young v. Johnny Ribeiro Bldg., Inc*., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Second, even though it did not impose case-concluding sanctions, the district court conducted a thorough analysis of each *Young* factor in its 38-page sanction order. Third, Centennial's reliance on the collective knowledge doctrine is misplaced because we have not applied the doctrine to court-imposed sanctions, and the cases Centennial cites to only address the application of the doctrine in intentional tort actions. Finally, in its order denying Centennial's motion for reconsideration, the district court expressly considered, and rejected, Centennial's assertion that the court either misapplied the collective knowledge doctrine or sanctioned Centennial for its attorneys' conduct. Thus, we hold that the district court did not abuse its discretion and we affirm its order striking Centennial's answer.

We further conclude that a district court finding that an attorney violated a specific rule of professional conduct is a reputational sanction, and that the district court properly found that Hall Prangle violated RPC 3.3(a)(1). Finally, we conclude that, although Hall Prangle was not provided sufficient notice that its conduct was under review, any initial notice deficiencies were subsequently cured by Hall Prangle's motion for reconsideration. We therefore deny Hall Prangle's petition for a writ of mandamus.

Douglas, C.J., and Cherry, Gibbons, Pickering, Parraguirre, and Stiglich, JJ., concur.

JOSEPH WARREN, JR., Petitioner, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE RICHARD SCOTTI, District Judge, Respondents, and THE STATE OF NEVADA, Real Party in Interest.

No. 73963

September 27, 2018 427 P.3d 1033

Original petition for a writ of certiorari, mandamus, or prohibition challenging the district court's decision to entertain an appeal from a justice court order dismissing a criminal complaint.

Petition denied.

Cherry, J., with whom Pickering, J., agreed, dissented.

JoNell Thomas, Special Public Defender, and *Melinda Simpkins*, Chief Deputy Special Public Defender, Clark County, for Petitioner.

Adam Paul Laxalt, Attorney General, Carson City; *Steven B. Wolfson*, District Attorney, and *Krista D. Barrie* and *Steven S. Owens*, Chief Deputy District Attorneys, Clark County, for Real Party in Interest.

Before the Supreme Court, En Banc.

OPINION

By the Court, Hardesty, J.:

In this original proceeding, we consider whether NRS 178.562(2) limits the State's options after the justice court dismisses a criminal complaint that charges felony and/or gross misdemeanor offenses such that the State can only file a motion for leave to file an information by affidavit or obtain a grand jury indictment and cannot appeal the justice court's decision to the district court. We conclude that in addition to the remedies set forth in NRS 178.562(2), NRS 177.015(1)(a) authorizes the State to appeal from a justice court decision dismissing a criminal complaint charging felony and gross misdemeanor offenses because such a decision is a final judgment. Therefore, the district court had jurisdiction over the State's appeal in this case.

PROCEDURAL HISTORY

The State filed a criminal complaint charging petitioner Joseph Warren, Jr., with four felony offenses and two gross misdemeanor offenses. After the preliminary hearing, the justice court dismissed

the criminal complaint, determining that the State's evidence was based upon inadmissible hearsay and, as a result, the State had not demonstrated probable cause. The State then filed a motion for leave to file an information by affidavit, which was denied because the State had not met the requirements of NRS 173.035. At the same time, the State filed an appeal to the district court from the dismissal of the criminal complaint. Warren filed a motion to dismiss the State's appeal, arguing that the district court lacked jurisdiction because the only remedies available to the State upon dismissal of the charges were a motion for leave to file an information by affidavit or a grand jury indictment and that no statute allowed for the State's appeal. Determining that it had jurisdiction over the appeal pursuant to NRS 177.015(1)(a), the district court denied Warren's motion. On the merits of the appeal, the district court determined that the justice court erroneously dismissed the complaint and remanded the case.

Warren then filed this original petition for a writ of certiorari, mandamus, or prohibition challenging, among other things, the district court's jurisdiction over the appeal. This court transferred the petition to the court of appeals. *See* NRAP 17(b). A majority of the court of appeals determined that the district court had jurisdiction over the appeal pursuant to NRS 177.015(1)(a) and denied the petition. The dissent disagreed, observing that this court's case law had only recognized the remedies set forth in NRS 178.562(2). Warren sought this court's review of the jurisdictional issue, and we granted Warren's petition for review.[1] *See* NRAP 40B.

DISCUSSION

"A writ of certiorari is an extraordinary remedy and the decision to entertain a petition for a writ of certiorari lies within the discretion of this court." *Zamarripa v. First Judicial Dist. Court*, 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987). A writ of certiorari may be granted when a lower court has exceeded its jurisdiction and there is no appeal or any plain, speedy, and adequate remedy. NRS 34.020(2) (recognizing that a writ of certiorari may be granted "when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy"). We conclude that Warren's petition for a writ of certiorari is appropriately before this court because his argument that the district court exceeded its jurisdiction presents an important issue relating to the district courts' appellate jurisdiction

[1]In his petition for review, Warren stated that he was not seeking review as to the other arguments raised in his writ petition and his requests for a writ of mandamus and/or prohibition. Consequently, we have limited our review in this matter to the request for a writ of certiorari challenging the district court's jurisdiction to consider the State's appeal.

and there is no appeal or other remedy available to Warren as the district court has final appellate jurisdiction over a case arising in the justice court. Nev. Const. art. 6, § 6; *Waugh v. Casazza*, 85 Nev. 520, 521, 458 P.2d 359, 360 (1969).

Warren argues that no statute or court rule authorizes an appeal from the justice court's decision dismissing the criminal complaint. Further, relying upon NRS 178.562(2) and *State v. Sixth Judicial Dist. Court (Warren)*, 114 Nev. 739, 964 P.2d 48 (1998) (discussing NRS 178.562(2)), Warren argues that the only remedies available to the State upon dismissal of the charges in this case were a motion for leave to file an information by affidavit or a grand jury indictment. We disagree.

NRS 177.015(1)(a) provides that the party aggrieved, whether the State or the defendant, may appeal "[t]o the district court of the county from a final judgment of the justice court." Thus, the plain language of NRS 177.015(1)(a) vests appellate jurisdiction in the district court over a final judgment of the justice court. *See Walker v. Eighth Judicial Dist. Court*, 120 Nev. 815, 819, 101 P.3d 787, 790 (2004) (recognizing that when interpreting a statute, we look to the statute's plain language). The question then is whether the justice court's dismissal of a criminal complaint constitutes a final judgment. We conclude that it does.

A final judgment is an order that "disposes of all issues and leaves nothing for future consideration." *Sandstrom v. Second Judicial Dist. Court*, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005). In *Sandstrom*, this court concluded that NRS 177.015(1)(a) authorized the State's appeal from a justice court order dismissing a misdemeanor criminal complaint because the order "finally resolved the criminal prosecution" and left nothing for the justice court's future consideration. *Id*. at 659-60, 119 P.3d at 1252. Because *Sandstrom* involved a misdemeanor complaint, Warren tries to limit its interpretation of NRS 177.015(1)(a) as allowing the State to appeal only when the justice court dismisses a misdemeanor criminal complaint. The reasoning in *Sandstrom*, however, does not turn on the nature of the charges (misdemeanor vs. felony); rather, it turns on the nature of the justice court's decision, analyzing whether it is a "final judgment." Similarly, NRS 177.015(1)(a) draws no distinction between misdemeanor and felony cases; it is concerned only with whether the justice court's decision is a "final judgment." Consistent with *Sandstrom* and the definition of "final judgment" reiterated in that case, we conclude that a justice court order dismissing a felony/gross misdemeanor criminal complaint is a final judgment because it leaves nothing for the justice court to consider; the case is closed, and the State may not proceed on the dismissed complaint.

Notwithstanding the plain language of NRS 177.015(1)(a), Warren argues that the dismissal of a felony/gross misdemeanor criminal complaint is not final because another statute, NRS 178.562(2),

affords the State two options to remedy the justice court's dismissal of charges. We disagree.

NRS 178.562(2) provides that "[t]he discharge of a person accused upon preliminary examination is a bar to another complaint against the person for the same offense, but does not bar the finding of an indictment or filing of an information." This provision limits the means by which the State may institute a new prosecution for the same offense after a justice court finds no probable cause to support the charge. To institute a new prosecution for the same offense, the State may not file a second criminal complaint alleging the same offense but may institute a new case by filing a motion for information by affidavit or seeking a grand jury indictment. These options start a *new* case. They do not alter the finality of the justice court's decision to dismiss the criminal complaint because they do not contemplate further action by the justice court on the dismissed complaint. Nothing in the plain language of NRS 178.562(2) speaks to the finality of a justice court's decision to dismiss a criminal complaint or precludes the State from seeking relief from such a decision by way of an appeal to the district court.[2]

CONCLUSION

We conclude that NRS 177.015(1)(a) authorizes the State to file an appeal to the district court from a justice court decision dismissing a criminal complaint that charged felony and/or gross misdemeanor offenses. Therefore, the district court did not exceed its jurisdiction in entertaining the State's appeal. Accordingly, we deny the petition.

Douglas, C.J., and Gibbons, Parraguirre, and Stiglich, JJ., concur.

Cherry, J., with whom Pickering, J., agrees, dissenting:

I respectfully dissent from the majority's decision to allow the State to appeal from a justice court order dismissing charges for insufficient evidence because it contravenes the exclusive remedies set forth in NRS 178.562(2). NRS 178.562(2) provides that "[t]he discharge of a person accused upon preliminary examination is a bar to another complaint against the person for the same offense, but does not bar the finding of an indictment or filing of an information." Notably absent from this provision is any mention of an

[2]The fact that cases interpreting NRS 178.562(2), such as *Warren*, have not mentioned an appellate remedy does not eliminate the right to an appeal provided in NRS 177.015(1)(a); those cases addressed only whether the State could initiate a new prosecution after the justice court dismissed a complaint, an issue that is governed by NRS 178.562, not whether the State could have appealed from the justice court decision.

appeal from a justice court order dismissing charges. Consequently, this court has long recognized that the State's remedy for the dismissal of felony charges in justice court is either an information by affidavit pursuant to NRS 173.035(2) or a grand jury indictment. *See State v. Sixth Judicial Dist. Court* (*Warren*), 114 Nev. 739, 743, 964 P.2d 48, 50 (1998) ("Pursuant to NRS 178.562(2), if a defendant is not bound over, the state may: (1) seek leave to file an information by affidavit in the district court, pursuant to NRS 173.035(2); or (2) seek an indictment by a grand jury.").

The majority mistakenly relies upon NRS 177.015(1)(a) in allowing for an appeal from the dismissal of felony charges. NRS 177.015(1)(a) allows the State to appeal from a *final* order of the justice court. As the majority recognized, this court has defined a final judgment as one that "disposes of all issues and leaves nothing for future consideration." *Sandstrom v. Second Judicial Dist. Court*, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005). However, the decision to dismiss felony charges is not final because the very fact that the State may pursue charges either in an information by affidavit or in a grand jury indictment means that there is "future consideration" of the charges. The decision in *Sandstrom* recognizing the State's right to appeal from the dismissal of misdemeanor charges, 121 Nev. at 659-60, 119 P.3d at 1252, is distinguishable because NRS 178.562(2) does not apply to misdemeanor charges. Thus, a decision dismissing misdemeanor charges is final in all respects.

The State's potential remedies from the dismissal of felony charges are purposefully narrow in recognition that the government should not be permitted multiple bites at the same apple. For example, in the case of a motion for information by affidavit, this court has recognized that this device is available only to correct egregious error by the justice court. *See Cranford v. Smart*, 92 Nev. 89, 91, 545 P.2d 1162, 1163 (1976) (recognizing that NRS 173.035(2) "contemplates a safeguard against egregious error by a magistrate in determining probable cause, not a device to be used by a prosecutor to satisfy deficiencies in evidence at a preliminary examination, through affidavit"). This court has further recognized that the State may not seek relief from the dismissal of a felony complaint when that dismissal was due to the prosecutor's willful failure to comply with important procedural rules. *See Maes v. Sheriff*, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970) ("A new proceeding for the same offense (whether by complaint, indictment or information) is not allowable when the original proceeding has been dismissed due to the willful failure of the prosecutor to comply with important procedural rules.").

The majority's decision leaves unanswered what will happen when there is a justice court decision binding over some charges but

dismissing others. Is this a final decision? It does not seem to make much sense from the point of judicial economy to have one case pending in the district court on the charges as bound over and yet another case pending in front of another district court judge on the State's appeal from the dismissal of charges.

If the Legislature wishes to allow the State to appeal a justice court order dismissing felony charges for lack of probable cause, let the Legislature do so plainly and unambiguously. Until that occurs, I believe that the State is limited to those remedies set out in NRS 178.562(2).

ENRIQUE RODRIGUEZ, an Individual, Appellant, *v.* FIESTA PALMS, LLC, a Nevada Limited Liability Company, dba PALMS CASINO RESORT, nka FCH1, LLC, a Nevada Limited Liability Company, Respondent.

No. 72098

October 4, 2018 428 P.3d 255

Appeal from a district court order denying a motion to set aside the judgment under NRCP 60(b). Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Affirmed.

Marquis Aurbach Coffing and *Micah S. Echols* and *Adele V. Karoum*, Las Vegas, for Appellant.

Lemons, Grundy & Eisenberg and *Robert L. Eisenberg*, Reno, for Respondent.

Before the Supreme Court, Cherry, Parraguirre and Stiglich, JJ.

OPINION

By the Court, Stiglich, J.:

This appeal requires us to consider two fundamental interests of our justice system: the importance of deciding cases on the merits and the need to swiftly administer justice. Deciding cases on the merits sometimes requires courts to accommodate the needs of litigants—especially unrepresented litigants like the appellant in this case. Swiftly administering justice requires courts to enforce procedural requirements, even when the result is dismissal of a plaintiff's case. We afford broad discretion to district courts to balance these

interests within the context of an NRCP 60(b)(1) motion for relief. In this case, a district court denied a pro se plaintiff's NRCP 60(b) motion for relief that was filed five months and three weeks after the court dismissed his case because he did not comply with procedural requirements. That decision was not an abuse of discretion. Accordingly, we affirm.

BACKGROUND

In 2006, appellant Enrique Rodriguez sued Fiesta Palms, LLC, for injuries he sustained at the Fiesta Palms sportsbook. Those injuries occurred when a Fiesta Palms employee threw merchandise into a crowd, causing an unknown customer to dive into Rodriguez's knee. Rodriguez won a judgment for $6,051,589.38.

Fiesta Palms appealed to this court. Identifying numerous evidentiary errors, this court reversed the judgment and remanded for a new trial. *FCH1, LLC v. Rodriguez*, 130 Nev. 425, 435, 335 P.3d 183, 190 (2014). Following remittitur on November 4, 2014, Rodriguez's counsel moved to withdraw from representing Rodriguez. The district court granted that motion and subsequently granted two continuances to allow Rodriguez to secure counsel.

Rodriguez eventually secured new counsel. The district court proceeded to grant two more continuances of the trial, one to accommodate Rodriguez and one to accommodate Fiesta Palms. Approximately one month before trial, Rodriguez's new counsel moved to withdraw from the case. The court held a pretrial conference, at which neither Rodriguez nor his counsel appeared. Fiesta Palms consented to the proposed withdrawal, which the district court granted. The district court pushed the trial date to May 2, 2016, to allow Rodriguez to again secure new counsel.

Fiesta Palms timely filed numerous pretrial motions: a motion to dismiss, a motion for partial summary judgment, and 16 motions in limine. Rodriguez filed nothing in response and appeared pro se at the hearing on the motions in limine on April 7, 2016. He intimated that he was struggling to find counsel to represent him and requested a six-month continuance. The court denied that request and then granted the motions in limine as unopposed pursuant to EDCR 2.20(e). The court then warned him, "Mr. Rodriguez, if you want to pursue this case, you have to do something." The court then informed him of the pending April 14 hearing on Fiesta Palms' motion to dismiss. The court reiterated, "If you can't find an attorney, you have to do it yourself. It's your claim. You are the plaintiff. If you want to pursue it, you have to follow the rules like anyone else."

Rodriguez filed nothing before the April 14 hearing and appeared without legal representation. Rodriguez stated that he had contacted a local attorney who agreed to appear at the hearing, but no attorney showed up. Rodriguez requested a continuance, which the court

denied. The court explained that he had a duty to respond to Fiesta Palms' motions and told him, "[W]hile we are to accord some accommodations and deference to self-represented litigants, you still have to follow the rules." On April 20, 2016, the district court entered an order granting Fiesta Palms' motion to dismiss. That order stated: "Defendant's Motion was unopposed and therefore deemed meritorious pursuant to EDCR 2.20(e)."

Five months and three weeks later, on October 14, 2016, Rodriguez moved to set aside the district court's order of dismissal pursuant to NRCP 60(b). As good cause for his delay, Rodriguez alleged various medical issues and recounted his efforts to obtain legal representation. He provided affidavits from his girlfriend and medical provider in support of his claim that he was in poor health.

After full briefing and oral argument, the district court denied Rodriguez's motion for NRCP 60 relief. In its written order, the district court considered the factors set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), and concluded that they favored denial of Rodriguez's NRCP 60 motion. Rodriguez appeals that order.

DISCUSSION

Rodriguez's primary argument on appeal is that the district court abused its discretion when it denied his motion to set aside the judgment under NRCP 60(b).[1] "The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b). Its determination will not be disturbed on appeal absent an abuse of discretion." *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

In general, the rules of civil procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." NRCP 1. "The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987). NRCP 60(b)(1) provides that a district court "may relieve a party or a party's legal representative from a final judgment, order,

[1]We reject Rodriguez's additional arguments. First, our disposition renders moot his appeal from the district court's order denying his request to set aside the order granting Fiesta Palms' motions in limine. Second, we decline to address Rodriguez's argument relating to the judge's law clerk's alleged conflict of interest. Rodriguez was represented when the district court informed the parties of the potential conflict and failed to pursue this issue below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Finally, we decline to consider whether dismissal was an appropriate discovery sanction, since the district court granted Fiesta Palms' motion to dismiss because it was unopposed, not as a discovery sanction. *See* EDCR 2.20(e).

or proceeding" on grounds of "mistake, inadvertence, surprise, or excusable neglect." In *Yochum v. Davis*, this court established four factors that indicate whether NRCP 60(b)(1) relief is appropriate: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith."[2] 98 Nev. at 486, 653 P.2d at 1216. Finally, when evaluating an NRCP 60(b)(1) motion, "the district court must consider the state's underlying basic policy of deciding a case on the merits whenever possible." *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

Whether Rodriguez acted promptly

Beginning with the first *Yochum* factor, a motion for NRCP 60(b)(1) relief must be filed "within a reasonable time" and "not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served." NRCP 60(b). The six-month period "represents the extreme limit of reasonableness." *Union Petrochemical Corp. of Nev. v. Scott*, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (internal quotation marks omitted).

As the district court noted, Rodriguez filed his request for NRCP 60 relief "approximately five months and three weeks after" the order was entered dismissing his case. That is, his motion was filed just before "the extreme limit of reasonableness." *Union Petrochemical*, 96 Nev. at 339, 609 P.2d at 324. Rodriguez argues that this delay was excusable in light of his circumstances, namely, that he was living outside of Nevada, that he was struggling to find counsel, and that he was in poor physical and mental health.

While this case had a voluminous record and Rodriguez evidently struggled to find counsel, the facts relevant to an NRCP 60 motion would not have been overly burdensome for an attorney to review. Indeed, the motion that Rodriguez ultimately filed was not complex, but mostly consisted of allegations of personal hardship. Those allegations are partially rebutted by the fact that he was personally present when the district court granted Fiesta Palms' motion to dismiss, and therefore evidently capable of acting on his behalf.

Ultimately, the district court was in a better position than we are to determine whether Rodriguez's nearly six-month delay was excusable. The record supports the district court's determination that it was not. *See Kahn v. Orme*, 108 Nev. 510, 514, 835 P.2d 790, 793 (1992), *overruled in part on other grounds by Epstein*, 113 Nev. at 1404, 950 P.2d at 772 (affirming a district court's finding that an unrepresented litigant was not prompt in filing an NRCP 60(b) motion "nearly six months" after entry of a default judgment). This factor

[2]*Yochum* additionally required the moving party to "tender a 'meritorious defense' to the claim for relief." 98 Nev. at 487, 653 P.2d 1215. We overruled that requirement in *Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 772 (1997).

weighs heavily in favor of affirmance. *See Union Petrochemical*, 96 Nev. at 339, 609 P.2d at 324 ("[W]ant of diligence in seeking to set aside a judgment is ground enough for denial of such a motion.").

Whether Rodriguez intended to delay the proceedings

Turning to the second *Yochum* factor—whether the party seeking NRCP 60(b)(1) relief exhibited "an intent to delay the proceedings," 98 Nev. at 486, 653 P.2d at 1216—the district court noted that "[t]here have been numerous continuances of the trial date at [Rodriguez]'s request." However, the district court did not make a specific finding as to Rodriguez's intent.

The facts of this case support an inference of an intent to delay. That is, Rodriguez exhibited a pattern of repeatedly requesting continuances and filed his NRCP 60(b)(1) motion just before the six-month outer limit. His conduct differed markedly from that of a litigant who wishes to swiftly move toward trial. *Cf. Stoecklein*, 109 Nev. at 272, 849 P.2d at 308 (wherein a litigant "retained new local counsel promptly after learning of the judgment" and "timely filed his motion for relief"). His conduct indicates that he intended to delay trial until he secured new counsel, rather than proceeding without representation. Thus, this factor favors affirmance.

Whether Rodriguez lacked knowledge of the procedural requirements

Regarding the third *Yochum* factor, Rodriguez argues that he was not aware of the procedural requirements because he lacked representation at the time that the motion to dismiss was filed. The district court rejected this argument upon finding that Rodriguez "had actual knowledge of the mandatory procedural requirements imposed upon him."

Fiesta Palms argues that Rodriguez was on legal notice as to the procedural requirements because the district court and Fiesta Palms mailed notices to his home address. Fiesta Palms further argues that Rodriguez was put on actual notice at the April 7 hearing, when the court informed him of the upcoming hearing and warned him, "Mr. Rodriguez, if you want to pursue this case, you have to do something."

Rodriguez counters that he did not receive the notices that were mailed to his house and he misunderstood the court's warning at the April 7 hearing. That is, he claims to have understood that warning to mean that he must appear at the hearing on Fiesta Palms' motion to dismiss; he did not realize he was required to file a written opposition. This claim is unpersuasive because Rodriguez personally witnessed the court grant Fiesta Palms' motions in limine because he did not file a written opposition. Rodriguez should have inferred the consequences of not opposing the motion to dismiss, especially in light of the court's express warning to take action. Moreover, Rodriguez had previously filed a motion to recuse a prior judge

on this case without the assistance of counsel, so he was evidently capable of filing motions on his own. Lastly, in general, the rules of civil procedure "cannot be applied differently merely because a party not learned in the law is acting pro se." *Bonnell v. Lawrence*, 128 Nev. 394, 404, 282 P.3d 712, 718 (2012). While district courts should assist pro se litigants as much as reasonably possible, a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements. *See Kahn*, 108 Nev. at 515, 835 P.2d at 793 (concluding that an unrepresented party's "failure to obtain new representation or otherwise act on his own behalf is inexcusable").

In short, the record supports the district court's finding that Rodriguez was aware of the procedural requirements imposed upon him. This factor favors affirmance.

Whether Rodriguez acted in good faith

The district court considered but made no finding regarding the fourth *Yochum* factor—whether Rodriguez acted in "good faith." 98 Nev. at 486, 653 P.2d at 1216. "Good faith is an intangible and abstract quality with no technical meaning or definition and encompasses, among other things, an honest belief, the absence of malice, and absence of design to defraud." *Stoecklein*, 109 Nev. at 273, 849 P.2d at 309. Because the district court made no finding as to this fourth *Yochum* factor, we decline to consider it further. Even assuming Rodriguez acted in good faith, we affirm the district court's decision based on the first three *Yochum* factors, all of which favor denial of Rodriguez's NRCP 60(b)(1) motion.

CONCLUSION

The decision to grant or deny an NRCP 60(b)(1) motion for relief requires a district court to balance the preference for resolving cases on the merits with the importance of enforcing procedural requirements. When finding that balance, a district court must carefully consider all of the relevant facts, including the difficulties faced by pro se litigants such as Rodriguez. The record in this case indicates that the district court carefully considered Rodriguez's unique circumstances when it denied his NRCP 60(b)(1) motion. We afford "wide discretion" to district court determinations within this realm, *Stoecklein*, 109 Nev. at 271, 849 P.2d at 307, and we conclude that there was no abuse of discretion in denying NRCP 60(b)(1) relief to an unrepresented litigant who knowingly neglected procedural requirements and then failed to promptly move for relief. Accordingly, we affirm.

Cherry and Parraguirre, JJ., concur.

SUSAN DOLORFINO, Appellant, *v.* UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA; and ROBERT HARPER ODELL, JR., Respondents.

No. 72443

October 4, 2018 427 P.3d 1039

Appeal from a district court order dismissing a medical malpractice suit. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Reversed and remanded.

[Rehearing denied November 30, 2018]

[En banc reconsideration granted May 10, 2019]

Terry Law Group, PC, and *Zoe K. Terry*, Las Vegas, for Appellant.

John H. Cotton & Associates, Ltd., and *John H. Cotton, Michael D. Navratil*, and *Vincent J. Vitatoe*, Las Vegas, for Respondent Robert Harper Odell, Jr.

Pitegoff Law Office and *Jeffrey I. Pitegoff*, Las Vegas, for Respondent University Medical Center of Southern Nevada.

Before the Supreme Court, Cherry, Parraguirre and Stiglich, JJ.

OPINION

By the Court, Stiglich, J.:

This medical malpractice suit requires us to determine whether a tooth injury is "directly involved" or "proximate" to a hysterectomy that required an endotracheal intubation to safely anesthetize the patient. NRS 41A.100(1)(d). We hold that it is not. Therefore, the patient was not required to attach a medical expert's affidavit to her complaint, so the district court erred in dismissing her suit. Accordingly, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

This case stems from a tooth injury sustained by appellant Susan Dolorfino during an emergency hysterectomy she underwent at University Medical Center (UMC). That injury was allegedly caused by the actions of respondent Dr. Robert Harper Odell, Jr., an anesthesiologist, who performed an endotracheal intubation on Dolorfino. That procedure involves passing a plastic tube through the patient's mouth and trachea to maintain an open airway while the patient is under general anesthesia. Dolorfino claims that her injury occurred

during a power outage and subsequent blackout, during which Dr. Odell dropped a medical instrument onto Dolorfino's tooth. Prior to surgery, Dolorfino had signed a consent form acknowledging that "injury to teeth/dental appliances" was a risk associated with general anesthesia.

Dolorfino sued Dr. Odell and UMC to recover for damages to her tooth. Dr. Odell and UMC moved for summary judgment, arguing that Dolorfino's complaint must be dismissed pursuant to NRS 41A.071 because it was not accompanied by a supporting affidavit from a medical expert. Treating those motions as motions to dismiss, the district court held that the NRS 41A.071 affidavit requirement applied to all of Dolorfino's claims. Because Dolorfino's complaint lacked such an affidavit, the court dismissed her case.

Dolorfino appeals.

DISCUSSION

This appeal presents a single issue: Whether Dolorfino's failure to attach a medical expert's affidavit to her complaint required dismissal of the entirety of her suit pursuant to NRS 41A.071. We review that legal issue de novo while "recogniz[ing] all factual allegations in [the] complaint as true and draw[ing] all inferences in [the plaintiff's] favor." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (describing the standard of review following a district court's dismissal).

NRS 41A.071 requires medical malpractice suits to be dismissed if the complaint is filed without a supporting affidavit from a medical expert. "[T]he legislative history of NRS 41A.071 demonstrates that it was enacted to deter baseless medical malpractice litigation, fast track medical malpractice cases, and encourage doctors to practice in Nevada while also respecting the injured plaintiff's right to litigate his or her case and receive full compensation for his or her injuries." *Zohar v. Zbiegien*, 130 Nev. 733, 738, 334 P.3d 402, 405-06 (2014). "NRS 41A.071's affidavit requirement was implemented to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice actions are filed in good faith based upon competent expert medical opinion." *Id*. at 738, 334 P.3d at 405 (internal quotation marks omitted).

However, NRS 41A.071's affidavit requirement does not apply "in a res ipsa case under NRS 41A.100(1)." *Szydel v. Markman*, 121 Nev. 453, 459, 117 P.3d 200, 204 (2005). "Res ipsa" is short for "res ipsa loquitur," meaning "the [thing] speaks for itself," a common law doctrine that applies when "the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference, of negligence on the part of the defendant." *Las Vegas Hosp. Ass'n v. Gaffney*, 64 Nev. 225, 233, 180 P.2d 594, 598 (1947) (internal quotation marks omitted). Within the medical mal-

practice context, our Legislature has replaced common law res ipsa with NRS 41A.100, which enumerates certain "factual circumstances" as those that "do not occur in the absence of negligence." *Johnson v. Egtedar*, 112 Nev. 428, 433-34, 915 P.2d 271, 274 (1996). The factual predicate relevant to this case is NRS 41A.100(1)(d): "An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto."

Dolorfino presents a straightforward argument: Her tooth was not "directly involved" or "proximate" to her hysterectomy, so her case qualifies as a res ipsa case under NRS 41A.100(1)(d) and is, therefore, exempt from the NRS 41A.071 affidavit requirement.[1]

UMC attempts to reframe the issue. While Dolorfino's tooth was not "directly involved" or "proximate" to her hysterectomy, UMC argues that the tooth was "proximate" to her endotracheal intubation, which necessarily accompanied her hysterectomy. Along similar lines, Dr. Odell warns that accepting Dolorfino's position would mean that anesthesiologists will seldom be protected by the NRS 41A.071 affidavit requirement.

This court has addressed the scope of NRS 41A.100(1)(d) on several occasions. In *Johnson v. Egtedar*, this court held that injuries to the colon and ureter during a spinal laminectomy "fit the factual predicates enumerated in NRS 41A.100(1)(d)." 112 Nev. 428, 434, 915 P.2d 271, 275 (1996). In *Born v. Eisenman*, this court applied res ipsa to two scenarios, one involving a ligation to the ureter during surgery to a patient's ovary and uterus, and another involving a bowel injury that occurred during surgery upon a patient's ureter and ovary. 114 Nev. 854, 855, 859, 962 P.2d 1227, 1228, 1230 (1998). Although in *Born* this court applied NRS 41A.100(1)(*e*) to both scenarios, *id.* at 858-59, 962 P.2d at 1230, this court reexamined *Born* in a subsequent opinion and noted that NRS 41A.100(1)(*d*) could also have applied in those situations. *Banks v. Sunrise Hosp.*, 120 Nev. 822, 833, 102 P.3d 52, 60 (2004).

This court has also specifically addressed a scenario wherein a patient sought to recover under NRS 41A.100(1)(d) for an injury caused by anesthesia. *Id.* In *Banks*, a patient suffered permanent brain damage during a rotator cuff surgery. *Id.* at 827-28, 102 P.3d at 56-57. The brain damage resulted from a drop in the patient's blood pressure, which was caused by an error during anesthesia. *Id*. at 828, 102 P.3d at 57. The legal issue was whether this scenario merited a res ipsa jury instruction pursuant to NRS 41A.100(1)(d). *Id*. at 832, 102 P.3d at 59. A five-justice majority reasoned that "[t]he brain is not directly or proximately related to the rotator cuff surgery,"

[1]We decline to address Dolorfino's additional arguments on appeal because this issue is dispositive. *See First Nat'l Bank of Nev. v. Ron Rudin Realty Co.*, 97 Nev. 20, 24, 623 P.2d 558, 560 (1981) ("In that our determination of the first issue is dispositive of this case, we do not reach the second issue . . . .").

so an NRS 41A.100(1)(d) instruction was appropriate. *Id*. at 833, 102 P.3d at 60. In so holding, the majority rejected the position of two dissenting justices that general anesthesia was "part and parcel of the surgical treatment of the patient" and sedation "constitutes treatment directly involving the brain." *Id*. at 850, 102 P.3d at 71 (Maupin, J., dissenting).[2]

The foregoing cases demonstrate that this court has interpreted the phrase "directly involved in the treatment or proximate thereto" in NRS 41A.100(1)(d) quite narrowly. Moreover, in holding that a brain injury is not "directly or proximately related to [a] rotator cuff surgery," *Banks*, 120 Nev. at 833, 102 P.3d at 60, this court indicated that parts of the body targeted by anesthesia are not "directly involved" with or "proximate" to surgery upon an unrelated part of the body.

We are unpersuaded by Dr. Odell's argument that anesthesiologists will suffer dire consequences if we apply NRS 41A.100(1)(d) to this scenario. The law in this area has been settled for decades. For over 20 years, this court has interpreted "directly involved" and "proximate thereto" narrowly within the context of NRS 41A.100(1)(d). *Johnson*, 112 Nev. at 434, 915 P.2d at 275. In 2004, we applied NRS 41A.100(1)(d) to injuries resulting from anesthesia by concluding that such injuries are "not directly or proximately related" to the underlying surgery. *Banks*, 120 Nev. at 833, 102 P.3d at 60. We will not overturn these precedents unless "compelling reasons" require us to do so. *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008). We see no such reasons here. Thus, in accordance with *Banks*, we hold that Dolorfino's tooth injury was not "directly involved" or "proximate" to her hysterectomy, so the district court erred in dismissing her complaint for lack of a medical expert's supporting affidavit. *Szydel*, 121 Nev. at 459, 117 P.3d at 204.

CONCLUSION

For purposes of NRS 41A.100(1)(d), a tooth injury is not "directly involved" or "proximate" to a hysterectomy. Therefore, Dolorfino was not required to attach to her complaint a supporting affidavit from a medical expert, so dismissal of her suit was unwarranted. Accordingly, we reverse and remand for further proceedings.

Cherry and Parraguirre, JJ., concur.

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[2]UMC and Dr. Odell attempt to distinguish *Banks* in that the plaintiff in *Banks* submitted an affidavit of a medical expert with his complaint, whereas Dolorfino did not. That distinction is inconsequential in light of *Szydel*, wherein this court held that the affidavit requirement does not apply to "a res ipsa case under NRS 41A.100(1)." 121 Nev. at 459, 117 P.3d at 204.

ELIZABETH C. HOWARD, AN INDIVIDUAL, APPELLANT, *v.* SHAUGHNAN L. HUGHES, RESPONDENT.

No. 72685

October 4, 2018 427 P.3d 1045

Appeal from a district court order in an action to partition real property. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Affirmed.

Kozak & Associates, LLC, and *Charles R. Kozak*, Reno, for Appellant.

Allison MacKenzie, Ltd., and *Justin M. Townsend*, Carson City, for Respondent.

Before the Supreme Court, PICKERING, GIBBONS and HARDESTY, JJ.

OPINION

By the Court, GIBBONS, J.:

In this proceeding, we are asked to clarify the property interest presumptions outlined in *Sack v. Tomlin*, 110 Nev. 204, 871 P.2d 298 (1994), and *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995). Under *Sack*, cotenants are presumed to equally share property, "unless circumstances indicate otherwise." *Sack*, 110 Nev. at 213, 871 P.2d at 304. Additionally, the presumption of equal shares may be rebutted through unequal contributions to property by unrelated cotenants who lack donative intent. *Id.* If successfully rebutted, fractional shares are based on the amount contributed by each party. *Id. Langevin* purportedly applied the *Sack* presumptions to joint tenants, but it divided property in proportion to the amount contributed by each party without clearly rebutting the presumption of equal ownership. *Langevin*, 111 Nev. at 1485-86, 907 P.2d at 984. We take this opportunity to clarify that the presumptions from *Sack* concerning tenants in common apply to joint tenants. As such, prior to dividing fractional shares held by cotenants, the initial presumption of equal ownership must be successfully rebutted. We therefore hold that because Hughes rebutted the secondary presumption by presenting substantial evidence of Howard's donative intent, Howard and Hughes were joint tenants with equal ownership interests in the property. Accordingly, we affirm the decision of the district court.

FACTS AND PROCEDURAL HISTORY

Appellant Elizabeth Howard and respondent Shaughnan Hughes engaged in a romantic relationship for many years, but were never married. Approximately one year into the relationship, they relocated to Fallon, Nevada, with Hughes' two daughters. After leasing property in Fallon for a few years, the couple jointly applied for credit in anticipation of purchasing a home. However, in late 2011 or early 2012, Howard obtained a third-party settlement award and used the proceeds from the settlement to purchase the property subject to this dispute. Three days after the purchase, Howard executed a quitclaim deed naming herself and Hughes as joint tenants. Howard paid the entire $67,000 purchase price of the property, but Hughes paid the transfer property taxes.

Howard, Hughes, and Hughes' daughters moved into the property in late 2012. The property is approximately 11.09 acres and, at the time of purchase, consisted of a single-family residence and an airplane hangar. Prior to their purchase, the former owners used the property as a ranch and to store disabled cars. At trial, Hughes testified that he removed substantial debris from the property prior to the move in. Moreover, trial testimony revealed that over the course of three years, Hughes' labor contributions included, but are not limited to: erecting a fence around 4.5 acres of the property, moving the driveway, installing a new entrance and hang gate, reinforcing the hangar, installing a chicken coop and poultry house, excavation, and grading. Much of this work included excavation by hand and preventative installations and maintenance to reinforce dilapidated areas. Hughes also leveled and graded the property with a tractor purchased by his father, and when the tractor became overburdened, Hughes hired a third-party contractor to complete the remaining work. Additionally, the couple erected a mother-in-law quarters for Howard's mother and a detached garage as a work space for Hughes. The district court found that throughout the three years, Howard contributed in excess of $100,000 to the property, while Hughes contributed approximately $20,000. Additionally, the value of the property increased from $67,000 to $225,000 during that time.

In March 2015, Howard locked Hughes out of the property, leading Hughes to file a complaint to partition the property under NRS Chapter 39. A bench trial was conducted in February 2017, wherein Hughes, Hughes' father, and one of Hughes' daughters testified for Hughes, while Howard alone testified on her behalf. Neither party was able to articulate, with any degree of certainty, how much time or money they had spent on the property. Additionally, Howard's only defense as to the execution and recording of the quitclaim deed was that she did not remember any of it and had "blank spots" in her

memory. The district court concluded that Howard and Hughes were joint tenants with equal ownership interests in the property and ordered Howard to either buy out Hughes' interest, or sell the property and equally share in the proceeds.

DISCUSSION

Howard and Hughes are entitled to equal shares of the property

This case concerns the partition of real property under NRS Chapter 39. NRS 39.010 provides that any person holding title to real property as a joint tenant may bring an action for partition of said real property according to the rights of the persons holding title. It is undisputed that Howard and Hughes hold title to the property as joint tenants. This court is asked whether Howard and Hughes, as joint tenants, own the property equally, or whether the circumstances indicate that equal ownership is inappropriate. The district court, applying *Sack v. Tomlin*, 110 Nev. 204, 871 P.2d 298 (1994), and *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995), held that the parties were entitled to equal shares of the property based on substantial evidence of Howard's donative intent. Howard appeals, arguing that because *Langevin* made no mention of donative intent, this step was dispelled from our analysis.[1]

Standard of review

This court reviews a district court's interpretation of caselaw de novo. *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 85, 343 P.3d 608, 612 (2015). However, "where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence." *Trident Constr. Corp. v. W. Elec. Inc.*, 105 Nev. 423, 427, 776 P.2d 1239, 1242 (1989) (internal quotation marks omitted). "Substantial evidence is that which a reasonable mind [can] accept as [sufficient] to support a conclusion." *Dynamic Transit Co. v. Trans Pac. Ventures Inc.*, 128 Nev. 755, 761, 291 P.3d 114, 118 (2012) (internal quotation marks omitted).

Langevin did not alter the Sack presumptions

Sack v. Tomlin concerned unmarried tenants in common who unequally contributed to the purchase price of real property. 110 Nev. at 208, 871 P.2d at 301. Following separation and sale of the property, the parties disputed how to distribute the proceeds. *Id.* The *Sack* court held that "[t]he fractional shares held by tenants in common are usually equal and are presumed to be equal unless circumstances indicate otherwise." *Id.* at 213, 871 P.2d at 304. However,

[1]Howard also argues that Hughes failed to present substantial evidence of his contributions to the property. However, following a review of the record, we find this argument lacks merit.

the court further held that this presumption can be rebutted where cotenants "are not related and show no donative intent." *Id.* Where the presumption is successfully rebutted, the proceeds upon sale are to be divided "in proportion to the amount contributed by each to the purchase price." *Id.* at 210, 871 P.2d at 303 (quoting *Williams v. Monzingo*, 16 N.W.2d 619, 622-23 (Iowa 1944)). Accordingly, under *Sack*, it is presumed tenants in common own property equally, unless successfully rebutted through lack of familial relationship or lack of donative intent, and if successfully rebutted, ownership interest is based on the amount contributed by each party. *See id.* at 210, 213, 871 P.2d at 303, 304.

Langevin v. York, issued one year after *Sack*, concerned joint tenants rather than tenants in common. 111 Nev. at 1485, 907 P.2d at 983. However, the court found this distinction inconsequential and considered *Sack* to be controlling law, thus extending the *Sack* presumptions to joint tenants. *Id. Langevin* concerned four properties held by unmarried joint tenants, Norman and Laurie. *Id.* at 1481-82, 907 P.2d at 981-82. This court noted that the relationship between Norman and Laurie was unclear, "Norman paid for all the property acquired during the relationship and paid all the bills," and "Norman presented substantial, unrefuted evidence regarding his contribution." *Id.* at 1482, 1484, 907 P.2d at 981-82, 983. The court also noted, "Laurie presented no evidence concerning the issue of contribution." *Id.* at 1484, 907 P.2d at 983. Ultimately, the *Langevin* court divided the property in proportion to each party's contributions to the purchase price, thereby awarding Norman two of the parcels in full as the sole purchaser and remanding for the remaining two parcels to be divided based on Norman and Laurie's respective contributions. *Id.* at 1485-86, 907 P.2d at 984.

Howard asserts that under *Langevin*, unmarried joint tenants share ownership in real property in proportion to the amount each contributed to the purchase price of the property, and thus, she should be awarded the property in full. We disagree and conclude that *Langevin* did not overrule *Sack*, particularly because *Langevin* noted that *Sack* was controlling law. *Langevin*, 111 Nev. at 1485, 907 P.2d at 983. As such, the initial presumption that cotenants share equally must first be successfully rebutted through evidence of lack of relatedness or donative intent, prior to the court dividing the property or proceeds in proportion to each party's contributions. *See id.*; *Sack*, 110 Nev. at 213, 871 P.2d at 304.

Hughes presented overwhelming evidence of Howard's donative intent, thereby demonstrating that the parties intended to share the property equally

The district court properly applied the presumptions laid out in *Sack* and *Langevin*. First, because Howard and Hughes own the property as joint tenants, the district court began with the presump-

tion that they share the property equally. The district court then found that Howard rebutted the initial presumption of equal ownership when she paid the entire purchase price of the property. Having rebutted the first presumption, Howard was presumed to be the full owner, and the burden shifted to Hughes to prove either that he and Howard are related, or that Howard possessed sufficient donative intent. In that vein, the district court went on to conclude that Hughes provided "clear and convincing evidence of Ms. Howard's donative intent at the time of the transfer—thereby rebutting the secondary presumption." Specifically, the district court found that Howard intended to gift Hughes an equal share as a joint tenant when she executed the quitclaim deed.

"Determining a donor's donative intent and beliefs is a question for the fact-finder . . . ." *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 608, 331 P.3d 881, 888 (2014). "In Nevada, a valid . . . donative transfer requires a donor's intent to voluntarily make a present transfer of property to a donee without consideration, the donor's actual or constructive delivery of the gift to the donee, and the donee's acceptance of the gift." *Id.* at 603, 331 P.3d at 885. Further, "[w]here an individual obtains possession of property pursuant to a written agreement establishing a joint tenancy, the law generally presumes that such agreement is conclusive, and a donative intent is presumed on the part of the predeceasing tenant." 48A C.J.S. *Joint Tenancy* § 10 n.8 (2014).

Hughes testified that he and Howard jointly searched for property in Fallon and that both sought financing for said property, but they altered their plan when Howard obtained a third-party settlement award. Additionally, at trial it was revealed that the parties frequently discussed putting both of their names on the deed and that they "ultimately went to the County Recorder's office together to execute the quitclaim deed." Furthermore, Hughes testified that when they executed the quitclaim deed, Howard stated that Hughes had to pay the $237 transfer tax because she had "already paid . . . her half." Hughes also testified that Howard joked, "when was the last time you paid $274 for a $35,000 coin." Moreover, Hughes and his three witnesses testified as to the relationship between Howard and Hughes and Hughes' contributions to the property, while Howard alone testified on her own behalf and stated merely that she had "a lot of blank spots" concerning the execution of the quitclaim deed and the house itself. The district court found Howard's testimony not credible and stated that "Mr. Hughes presented overwhelming and largely uncontroverted evidence regarding Ms. Howard's donative intent." We agree and conclude that nothing in Howard's briefs, nor the record, indicate otherwise. We therefore hold that the district court correctly interpreted and applied the presumptions from *Sack* and *Langevin*, and that Hughes presented sufficient evidence

of Howard's donative intent at trial, thereby rebutting the secondary presumption that the parties did not own the property equally. Accordingly, we affirm the judgment of the district court.

PICKERING and HARDESTY, JJ., concur.