IN THE MATTER OF THE APPLICATION OF BRECK WARDEN SMITH FOR A WRIT OF HABEAS CORPUS.

THE STATE OF NEVADA, APPELLANT, *v.* BRECK WARDEN SMITH, RESPONDENT.

No. 82696

March 24, 2022 506 P.3d 325

Appeal from a district court order granting a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Affirmed.

Aaron D. Ford, Attorney General, and *Katrina A. Samuels*, Deputy Attorney General, Carson City, for Appellant.

McAvoy Amaya & Revero Attorneys and *Michael J. McAvoy-Amaya* and *Timothy E. Revero*, Las Vegas, for Respondent.

Claggett & Sykes Law Firm and *Micah S. Echols*, Las Vegas; *Sharp Law Center* and *A.J. Sharp*, Las Vegas; *The Powell Law Firm* and *Tom W. Stewart*, Las Vegas, for Amicus Curiae Nevada Justice Association.

Before the Supreme Court, SILVER, CADISH, and PICKERING, JJ.

OPINION

By the Court, SILVER, J.:

When a parolee is detained for a parole violation and returned to the custody of the Nevada Department of Corrections (NDOC), NRS 213.1517(3) requires the Nevada Board of Parole Commissioners (the Parole Board) to hold a hearing on the matter within 60 days. NRS 213.1517(4) sets out an exception to this 60-day rule when the parolee is detained on a new criminal charge but not returned to NDOC until after the final adjudication of that new charge. At issue in this appeal is whether subsection 4's exception applies where the Parole Board executes a warrant to return the parolee to NDOC *before* the final adjudication on the new criminal charge. We conclude that the parolee's return to NDOC pursuant to a warrant triggers subsection 3's 60-day hearing requirement. We therefore determine that the district court here correctly applied NRS 213.1517 and ordered the Parole Board to credit respondent for the time he spent incarcerated pending adjudication on his new criminal charges.

FACTS

In 2008, respondent Breck Smith was adjudicated as a habitual criminal and sentenced to serve a prison term of ten years to life. He was released on parole in March 2017. One year later, in March 2018, he was arrested on new criminal charges of attempted burglary and possession of burglary tools and remanded into the custody of the Clark County Sheriff. As a result of his new arrest, he was incarcerated at the Clark County Detention Center.

Soon after, the Division of Parole and Probation issued parole violation reports based on the new criminal charges. Based on the new arrest report, the Division found probable cause for the parole violation. On April 11, 2018, the Parole Board issued a retake warrant that resulted in Smith being remanded back into the custody of NDOC. Although Smith was remanded into NDOC's custody and physically incarcerated in the prison, Smith's parole revocation hearing was continued for over a year, until June 25, 2019, the day after Smith entered an *Alford*[1] plea to the new attempted burglary charge. On that date, the Parole Board revoked Smith's parole for one year, until July 1, 2020. Because Smith received a consecutive sentence on his new charge, he did not begin serving his new sentence until July 2, 2020, after he was paroled on the previous charges.

In January 2021, Smith filed an emergency petition for a writ of habeas corpus, arguing that under NRS 213.1517, the Parole Board exceeded its authority by immediately returning Smith to NDOC's custody but deferring the parole revocation hearing until he pleaded guilty on the new criminal charges—far beyond the 60 days allowed by that statute. Because he was not given proper credit for any time served after the 60-day statutory period, he claimed that he effectively lost over a year of credit for time served due to him on his parole violation case. The district court agreed and ordered NDOC to ensure Smith was awarded flat time and statutory credit from June 12, 2018, to June 17, 2019—the dates by which his parole revocation hearing should have been held and his one-year parole revocation penalty would have expired, respectively. The State appeals, arguing that NRS 213.1517(4) creates an exception to the 60-day statutory rule that allowed the Parole Board to defer the parole revocation hearing to after Smith entered his *Alford* plea on the new criminal charges.

DISCUSSION

We review questions of statutory interpretation de novo, giving the statute its plain meaning unless doing so would create an unreasonable result. *Moore v. State*, 136 Nev. 620, 622-23, 475 P.3d 33, 36 (2020); *Lofthouse v. State*, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020). We will avoid interpretations that would render words or

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

phrases superfluous or nugatory. *Harvey v. State*, 136 Nev. 539, 543, 473 P.3d 1015, 1019 (2020).

Before the Parole Board may revoke parole, a parolee is entitled to a parole revocation hearing. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972). Minimal due process requires that this hearing "be tendered within a reasonable time after the parolee is taken into custody." *Id.* at 488; *see also Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 124, 206 P.3d 975, 979 (2009) (explaining the due process protections of the United States and Nevada Constitutions require an opportunity to be heard where a liberty interest is at stake). This is so because the execution of a parole violation warrant, and custody under that warrant, together are "the operative event triggering any loss of liberty attendant upon parole revocation." *Moody v. Daggett*, 429 U.S. 78, 87 (1976).

To this end, the Legislature established that where probable cause exists for a parolee's detention, the Parole Board must conduct the parole revocation hearing within 60 days after a parolee is returned to NDOC's custody. NRS 213.1517(3). NRS 213.1517(4) provides an exception to that rule:

> If probable cause for continued detention of a paroled prisoner is based on conduct which is the subject of a new criminal charge, the Board may consider the prisoner's case under the provisions of subsection 3 or defer consideration until not more than 60 days after his or her return to the custody of the Department of Corrections following the final adjudication of the new criminal charge.

The State argues that under subsection 4, where a parolee is detained on new criminal charges, the Parole Board may defer the parole revocation hearing up to 60 days after the final adjudication on the new criminal charges, even where, as here, the parolee is in NDOC's custody pending the adjudication. Smith counters that subsection 4's exception to the 60-day requirement applies only where the parolee remains in local custody pending adjudication on the new charges and returns to NDOC after that adjudication.

We read NRS 213.1517 with a due process overlay and are persuaded by Smith's arguments. NRS 213.1517(4) provides that where the probable cause for the parolee's continued detention is based on conduct underlying a new criminal charge, the Parole Board may either conduct the revocation hearing in accordance with subsection 3—return the parolee to NDOC's custody and hold the hearing within 60 days—*or* defer the revocation hearing until no later than 60 days after the parolee's return to NDOC's custody following final adjudication of the new charge. The phrase "following the final adjudication of the new criminal charge" in subsection 4 attaches to the phrase "after [the parolee's] return to the custody of the Department of Corrections," creating separate and sequential requirements

here: final adjudication on the new charges, followed by a return to NDOC's custody. And because each of these conditions must be met to defer consideration under subsection 4, it follows that subsection 4's exception will not apply where the Parole Board executes a warrant and returns the parolee to NDOC's custody *before* adjudication on the new charges. This interpretation avoids rendering the phrase "after [the parolee's] return to the custody of the Department of Corrections" superfluous. It also comports with due process considerations, as a parolee loses liberty once the parolee is taken into custody under the warrant and this loss triggers due process protections. *See Moody*, 429 U.S. at 87 (explaining that the trigger for the parolee's loss of liberty is the execution of the warrant and the return to custody); *Morrissey*, 408 U.S. at 487-88 (explaining that once a parolee is taken into custody, due process requires the Parole Board hold a hearing within a reasonable time).[2]

Here, the Parole Board issued a retake warrant in April 2018, at which point Smith was immediately remanded back into the custody of NDOC and returned to incarceration at the prison. His parole revocation hearing was continued until after adjudication on his new criminal charges in June 2019—well in excess of the 60 days allowed by NRS 213.1517. We therefore conclude that the Parole Board exceeded its authority under that statute and that the district court properly ordered NDOC to reflect a parole revocation date of June 12, 2018, and to ensure that any credits, expiration date of his parole revocation case, and start date of the sentence for his new case reflect the June 12, 2018, parole revocation date.[3]

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[2]Although the State argued below that Smith requested the continuances of his parole revocation hearing and thus created the complained-of error, the State does not renew these arguments in its opening brief on appeal and, moreover, the State failed to provide us with a sufficient record to review that point. *See Cooper v. State*, 134 Nev. 860, 861 n.2, 432 P.3d 202, 204 n.2 (2018) (declining to consider an argument raised for the first time in the reply brief); *Johnson v. State*, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997) ("It is appellant's responsibility to make an adequate appellate record. We cannot properly consider matters not appearing in that record." (citation omitted)). We note, however, that a petitioner may not leverage an error he or she invited or waived. *See Jeremias v. State*, 134 Nev. 46, 52-53, 412 P.3d 43, 50 (2018). Thus, where a parolee delays the revocation hearing by requesting continuances pending the outcome of the parolee's new criminal charges, neither due process nor NRS 213.1517 will require the Parole Board to hold the revocation hearing within 60 days of the parolee's return to NDOC.

[3]We do not reach the State's arguments against the district court's remedy of ordering the recalculation of Smith's time, as the State neither raised its arguments below nor supports them with adequate authority on appeal. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48 ("The failure to preserve an error, even an error that has been deemed structural, forfeits the right to assert it on appeal."); *Mazzan v. Warden*, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000) ("Contentions unsupported by specific argument or authority should be summarily rejected on appeal.").

CONCLUSION

When probable cause exists to detain a parolee, NRS 213.1517(3) requires the Board of Parole Commissioners to consider the parolee's case within 60 days of the date the parolee returns to the custody of the Department of Corrections. NRS 213.1517(4) provides an exception to the 60-day rule and allows the Parole Board to defer consideration until the parolee is adjudicated on the new criminal charge and subsequently returned to NDOC. Each of the conditions set forth in NRS 213.1517(4) must be met to defer consideration beyond 60 days from the date the parolee is returned to the custody of NDOC. Because, here, the Parole Board executed a retake warrant and returned Smith to the custody of NDOC before Smith's new criminal charges were adjudicated, this exception did not apply and the Parole Board exceeded its authority by deferring the revocation hearing beyond 60 days after Smith's return to the custody of NDOC. Accordingly, we affirm the district court order granting Smith's postconviction petition for a writ of habeas corpus.

Cadish and Pickering, JJ., concur.

BARRY JAMES RIVES, M.D.; AND LAPAROSCOPIC SURGERY OF NEVADA, LLC, APPELLANTS/CROSS-RESPONDENTS, *v.* TITINA FARRIS; AND PATRICK FARRIS, RESPONDENTS/CROSS-APPELLANTS.

No. 80271

BARRY JAMES RIVES, M.D.; AND LAPAROSCOPIC SURGERY OF NEVADA, LLC, APPELLANTS, *v.* TITINA FARRIS; AND PATRICK FARRIS, RESPONDENTS.

No. 81052

March 31, 2022 506 P.3d 1064

Consolidated appeals and a cross-appeal from a district court judgment in a medical malpractice action and a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Reversed in part, vacated in part, and remanded.

Lemons, Grundy & Eisenberg and *Robert L. Eisenberg*, Reno, for Appellants/Cross-Respondents.

Claggett & Sykes Law Firm and *Micah S. Echols*, Las Vegas; *Hand & Sullivan, LLC*, and *George F. Hand*, Las Vegas; *Bighorn Law* and *Kimball J. Jones* and *Jacob G. Leavitt*, Las Vegas, for Respondents/Cross-Appellants.

Before the Supreme Court, EN BANC.

OPINION

By the Court, CADISH, J.:

Appellants appeal from a $6 million judgment, challenging several evidentiary rulings they claim warrant reversal and remand for a new trial. Respondents assert that because appellants did not move for a new trial in district court, they waived the issues, such that their assignments of error on appeal cannot provide the basis for a new trial. Respondents fail to present a convincing argument that the procedural bars they claim prohibit our review on the merits apply here. The plain language of our jurisdictional rules confirms that appellants are not required to file a motion for a new trial in district court to preserve their ability to request a new trial on appeal. As to the merits of appellants' claims, we conclude that the district court abused its discretion by admitting evidence of another medical malpractice case against appellant Barry James Rives, M.D., as that evidence was not relevant for an admissible purpose, and any potential relevance was substantially outweighed by the evi-

dence's fairly obvious prejudicial effect. As this evidentiary ruling was harmful, we reverse the judgment, vacate the attorney fees and costs order, and remand for a new trial.

FACTS AND PROCEDURAL HISTORY

Respondent Titina Farris suffered from back pain with pain and burning in her feet. She was diagnosed with uncontrolled diabetes causing neuropathy. In 2014, Farris was referred to appellant Barry James Rives, M.D., for swelling in her upper abdomen. Rives diagnosed Farris with a hernia, which he surgically repaired on two occasions, first in 2014 and second in 2015. During the second surgery, Rives noticed that part of Farris's colon was stuck in the mesh from the 2014 surgery. Rives freed the colon from the mesh; however, he caused two small holes in the colon, which he repaired with a stapling device. Farris had several problems following the 2015 surgery, including sepsis. Although a CT scan on July 5 and an x-ray on July 12 showed no signs of a leak in Farris's colon, a CT scan on July 15 showed a leak, which another surgeon corrected. But Farris's sepsis continued, and she eventually developed drop foot in both feet, hindering her ability to walk unassisted. Farris and her husband, respondent Patrick Farris (collectively "respondents"), filed this medical malpractice lawsuit against Rives and appellant Laparoscopic Surgery of Nevada LLC (collectively "appellants"), alleging that Rives fell below the standard of care in performing the surgery and monitoring Farris after, that Laparoscopic Surgery of Nevada LLC was vicariously liable for Rives's actions, and for loss of consortium.

In an unrelated matter, another patient, Vickie Center, sued Rives for malpractice related to her hernia surgery, which took place five months before Farris's surgery. The same defense firm represented Rives in both the *Farris* and *Center* cases. In the *Center* case, Rives responded to an interrogatory that asked him to provide information concerning other lawsuits in which he was involved. One month later, Rives responded to a similar interrogatory request in the *Farris* case, and his attorney copied the interrogatory responses from the *Center* case without adding the *Center* case to the list of other suits.

Respondents' counsel deposed Rives. At the deposition, counsel asked questions regarding the other cases Rives disclosed in his interrogatory response. Rives's responses did not mention the *Center* case, but defense counsel interjected with information about that case. Rives was then asked several questions regarding the *Center* case, and respondents' counsel discussed the *Center* case with Center's counsel "weeks to months before the trial in" the *Center* case started.

Before the trial in this matter, respondents filed a pretrial motion for sanctions, contending that Rives intentionally concealed the

Center case. Respondents asserted that they "had no reasonable opportunity to further investigate this critical and admissible information" and requested that the district court strike appellants' answer. Appellants opposed, arguing that the omission was accidental and there was no prejudice to respondents. They also argued that the *Center* case was not admissible, as it was irrelevant, unduly prejudicial, misleading to the jury, and improper character evidence.

The district court held an evidentiary hearing on the motion, at which Rives testified that he relied on his counsel to prepare the interrogatory responses in the *Farris* case and conceded that he did not read them. The district court concluded that Rives "relied on counsel" to prepare the interrogatory responses and, thus, had "an intent not to read the interrogatories," which the court considered "intentional conduct" warranting an adverse-inference instruction.[1] While the district court permitted respondents to introduce evidence of the *Center* case, it did not make an express ruling on its admissibility until trial.

At trial, respondents mentioned the *Center* case roughly 180 times in front of the jury. Appellants objected several times, on various grounds, including that the evidence was irrelevant and that the danger of unfair prejudice, confusion of the issues, or misleading the jury substantially outweighed the probative value of the *Center* case. While the district court sustained some objections, it often allowed respondents to point to the *Center* case in making arguments or questioning witnesses. Respondents used the *Center* case to imply that Rives should have known his behavior was negligent and hinted that Rives had a propensity to commit malpractice. Respondents elicited that Vickie Center lost her legs because of Rives's actions. The district court allowed an extended examination of Rives regarding whether he informed Center's counsel of the specifics of the *Farris* case and the extent of Vickie Center's similar injuries. Respondents also mentioned the *Center* case in their closing argument.

The jury returned its verdict, concluding that Rives negligently treated Farris, causing her injuries, and awarding respondents $13,640,479.90 in total damages. The district court reduced the jury's award of noneconomic damages to $350,000 pursuant to

[1]Ultimately, the district court read the following adverse-inference instruction before the opening statements and at the end of trial:

> Members of the jury, Dr. Barry Rives was sued in a medical malpractice case in case *Vickie Center v. Barry James Rives, M.D., et al.* Dr. Barry Rives was asked about the *Vickie Center* case under oath, and he did not disclose the case in his interrogatories or at his deposition. You may infer that the failure to timely disclose evidence of a prior medical malpractice lawsuit against Dr. Barry Rives is unfavorable to him. You may infer that the evidence of the other medical malpractice lawsuit would be adverse to him in this lawsuit had he disclosed it. This instruction is given pursuant to a prior [c]ourt ruling.

NRS 41A.035 and entered a judgment for a total of $6,367,805.52. The district court granted in part respondents' motion for attorney fees and costs, awarding $821,468.66 consistent with NRCP 68 and NRS 7.095, or alternatively, as a sanction for Rives's discovery behavior. Appellants appeal from the judgment and the attorney fees and costs award, while respondents cross-appeal from the judgment to contest the district court's application of NRS 41A.035.

DISCUSSION

Appellants did not waive their right to seek reversal and remand for a new trial on appeal by not filing a motion for a new trial in district court

Appellants assert that the district court committed evidentiary errors warranting reversal and remand for a new trial. Respondents argue that by failing to file a motion for a new trial in district court, appellants waived their ability to request a new trial on appeal. Respondents contend that the failure to seek a new trial in district court deprives the court of the chance to consider and correct any errors and prevents this court from "conduct[ing] a proper review of whether the [d]istrict [c]ourt properly or improperly granted a new trial because there is no appealable order to review." They further argue that appellants "ask this Court to review, in the first instance, their arguments for a new trial, which contain factual issues and would convert this Court into a factfinder." We disagree.[2]

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[2]Relying on *Rust v. Clark County School District*, 103 Nev. 686, 747 P.2d 1380 (1987), respondents also argue that we lack jurisdiction to consider appellants' challenges to the district court's oral evidentiary rulings made at trial. In *Rust*, we held the following:

> An oral pronouncement of judgment is not valid for any purpose, therefore, only a written judgment has any effect, and only a written judgment may be appealed. The district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose and cannot be appealed.

Id. at 689, 747 P.2d at 1382 (internal citations omitted). However, *Rust* dealt with a premature notice of appeal filed prior to the district court entering a written, final judgment and is plainly inapplicable here, where appellants are appealing from a final, written judgment. *Cf. Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (explaining that this court will review interlocutory decisions that "are not independently appealable" in an appeal from a final judgment). Moreover, NRS 47.040 provides both the authority and framework for addressing alleged error in evidentiary rulings, depending on whether a party preserved error through objection, as we have recognized in various cases. *See, e.g.*, *Rimer v. State*, 131 Nev. 307, 332, 351 P.3d 697, 715 (2015) (explaining that a party preserves a claim of error by objecting and stating the grounds for the objection at trial); *In re J.D.N.*, 128 Nev. 462, 468-69, 283 P.3d 842, 846-47 (2012) (observing that the scope of review depends on whether a party preserved error by objecting to the admission of evidence). Thus, we have the ability to review appellants' evidentiary challenges, and nothing in *Rust* precludes our review.

While we have not explicitly addressed whether a party must both object to trial rulings and file a motion for a new trial to preserve the party's ability to request a new trial on appeal, the plain language of our jurisdictional rule and the preserved error rule make it clear that a party is not required to file a motion for a new trial to preserve the party's ability to request such a remedy on appeal for harmful error to which the party objected. First, NRAP 3A(a) expressly provides that "[a] party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial." The rule thus contemplates this very situation. Second, it is well-established that a timely objection alone is sufficient to raise and preserve an issue for appellate review. *See Thomas v. Hardwick*, 126 Nev. 142, 155, 231 P.3d 1111, 1120 (2010) (concluding that when a trial court properly declines to give a definitive ruling on a pretrial motion, the contemporaneous objection rule requires the party to object at trial in order to preserve its argument on appeal); *Landmark Hotel & Casino, Inc. v. Moore*, 104 Nev. 297, 299, 757 P.2d 361, 362 (1988) ("[F]ailure to object to a ruling or order of the court results in waiver of the objection and such objection may not be considered on appeal."); *see also* NRS 47.040(1)(a) (requiring "a timely objection or motion to strike . . . stating the specific ground of objection" to preserve the issue for appeal); *cf. In re J.D.N.*, 128 Nev. 462, 468, 283 P.3d 842, 846 (2012) (explaining that a party preserves a claim of error by objecting and stating the grounds for the objection at trial). Taken together, these authorities make clear that a party need not file a motion for a new trial to raise a preserved issue on appeal or request a new trial as a remedy for alleged errors below. Such a holding is consistent with both the federal approach and our past decisions considering a preserved error without the appellant having moved for a new trial below.[3] *See, e.g.*, *Richardson v. Oldham*, 12 F.3d 1373, 1377 (5th Cir. 1994) ("Filing a Rule 59 motion is not a prerequisite to taking an appeal . . . ."); *Floyd v. Laws*, 929 F.2d 1390, 1400-01 (9th Cir. 1991) ("A question raised and ruled upon need not be raised again on a motion for a new trial to preserve it for review."); *LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 398, 422 P.3d 138, 142 (2018) (concluding the district court abused its discretion by excluding certain pieces of evidence and remanding for a new trial without mentioning whether the appellant filed a motion for a new trial before pursuing the appeal).

[3]While NRAP 3A(a) does not require a party move for a new trial prior to bringing an appeal, we note that there are several practical benefits to doing so. First, it allows the district court to correct alleged errors, which allows for the prompt resolution of a case without potentially unnecessary appellate litigation. Second, it develops a better record for appellate review as the parties crystalize their arguments while giving the district court an opportunity to fully articulate the reasoning for its evidentiary rulings. Thus, while not required, moving for a new trial prior to pursuing an appeal provides distinct benefits that litigants should consider prior to bringing an appeal.

Respondents' contrary arguments are not persuasive, as the Nevada cases on which they rely are either inapposite or distinguishable. Neither *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 623 P.2d 981 (1981), nor *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 245 P.3d 542 (2010), require a motion for a new trial as a prerequisite to filing an appeal regarding an otherwise preserved error. In *Old Aztec*, this court declined to consider the appellant's argument regarding its counterclaim because it failed "to direct the trial court's attention to its asserted omission to mention the counterclaim expressly in its judgment." 97 Nev. at 52-53, 623 P.2d at 983-84. It thus determined that the waiver doctrine rendered the claim of unpreserved error unreviewable. In *Schuck*, the appellant challenged summary judgment by raising several new legal arguments, which this court refused to consider for the first time on appeal. 126 Nev. at 436-38, 245 P.3d at 544-45. Neither case addressed whether a motion for a new trial is required to preserve a claim of error for appellate review. Further, the cases from other jurisdictions to which respondents point are factually dissimilar in that the appellants either failed to preserve their appellate arguments with timely objections at trial or the jurisdictions, unlike Nevada, have procedural rules requiring a new trial motion before appealing. *See, e.g.*, *State v. Davis*, 250 P.2d 548, 549 (Wash. 1952) (concluding that the appellant, who failed to object at the time the prejudicial conduct occurred or to preserve the issue raised on appeal in any way, waived his argument, while observing that a new trial motion gives "the trial court an opportunity to pass upon questions not before submitted for its ruling" without addressing whether the appellant would be required to seek a new trial if he had objected to the prejudicial conduct during trial); *Spotts v. Spotts*, 55 S.W.2d 977, 980 (Mo. 1932) (applying a Missouri statute in concluding that appellant must object and file a new trial motion to preserve a "writ of error" challenge to a jury verdict). Accordingly, appellants did not need to move for a new trial below to raise preserved issues on appeal or to request a new trial as an appellate remedy for those alleged errors.[4]

[4]Respondents' remaining arguments on this issue are without merit. They conflate the abuse-of-discretion standard of review that applies to an order granting or denying a motion for a new trial with the appellate remedy of a new trial for harmful error. *See* NRCP 61 (addressing correction of errors that affect the party's substantial rights at all stages of the proceeding). Although they point out that there is no "order to review," appellants did not file a motion for a new trial, and thus, this court is not tasked with determining whether the district court abused its discretion by denying a motion for a new trial. Instead, appellants seek our review in evaluating whether the district court erred by admitting or excluding several pieces of evidence and whether those errors, preserved by timely objections, are harmful. Similarly, respondents' argument that appellants seek to "convert this Court into a factfinder" is misplaced, as this court is merely conducting routine error analysis of several evidentiary rulings.

The district court abused its discretion by allowing evidence of the Center *malpractice case, and the error is not harmless*

Appellants argue that the district court abused its discretion in admitting evidence of the *Center* case because that evidence is irrelevant, since an unrelated, prior medical malpractice suit does not address whether Rives's conduct in this specific case fell below the applicable standard of care. They further contend that the *Center* case evidence, even if relevant, is inadmissible because the danger of unfair prejudice, confusing the issues, or misleading the jury substantially outweighs its probative value. We agree.

Generally, relevant evidence is admissible, while irrelevant evidence is not admissible. NRS 48.025. Evidence is relevant if it "ha[s] any tendency to make the existence of any fact . . . of consequence . . . more or less probable than it would be without the evidence." NRS 48.015. However, relevant "evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035(1). While evidence of a doctor's other acts is inadmissible to show propensity, such evidence "may . . . be admissible for other purposes," such as to show "absence of mistake or accident." NRS 48.045(2).

Reviewing for an abuse of discretion, *Hansen v. Universal Health Servs. of Nev., Inc.*, 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999), we conclude that respondents did not present evidence regarding the *Center* case for an admissible, relevant purpose, and thus it should have been excluded. While respondents argue that the case is relevant to establish that Rives's actions would cause foreseeable harm, the fact that Rives was sued or acted inconsistently with the standard of care in a prior case does not make it more or less probable that he acted below the standard of care in *this* case. *See Stottlemyer v. Ghramm*, 597 S.E.2d 191, 194 (Va. 2004) (affirming district court's exclusion of evidence of the doctor-defendant's past medical malpractice suits because "[e]vidence that a defendant was negligent on a prior occasion simply has no relevance or bearing upon whether the defendant was negligent during the occasion that is the subject of the litigation"); *cf. Mitchell v. Eighth Judicial Dist. Court*, 131 Nev. 163, 174-75, 359 P.3d 1096, 1103-04 (2015) ("Of legal consequence to a medical malpractice claim is whether the practitioner's conduct fell below the standard of care, not why. Put another way, [plaintiff] wins if she shows that [the practitioner's] misadministration of the anesthetic fell below the standard of care and caused [the victim's] injuries; legally, [the practitioner's] diminished capacity doesn't matter." (emphases and citation omitted)). Thus, the alleged foreseeability of the harm is not relevant in this kind of case, aside from the establishment of the standard of care through experts. *See Rees v. Roderiques*, 101 Nev. 302, 304, 701 P.2d 1017, 1019 (1985)

("The standard of care to be applied in a medical malpractice case is to be established by the testimony of expert witnesses with knowledge of the prevailing standards.").

Even if the *Center* case evidence had been offered for an admissible purpose, we conclude the district court abused its discretion in admitting the evidence and allowing it to be presented so extensively because the danger of unfair prejudice, confusing the issues, or misleading the jury substantially outweighed the probative value of that evidence. The *Center* case is somewhat factually similar to this case, but it arises from a different surgery on a different patient on a different day with different consequences. Introduction of such evidence injects a collateral matter into appellants' trial that would likely confuse the jury. *See Hansen*, 115 Nev. at 27-28, 974 P.2d at 1160 (affirming a district court's exclusion of a report containing brief descriptions of medical complications experienced by the doctor-defendant's patients who underwent the same surgery as the plaintiff because "injecting these other cases into [the plaintiff's] trial would prolong the trial, confuse the issues and divert the jury from [the plaintiff's] case to collateral matters"); *see also Kunnanz v. Edge*, 515 N.W.2d 167, 171 (N.D. 1994) ("The purpose of [plaintiffs'] proffered evidence was to show that [defendant] was negligent in treating [a third party]. However, that evidence was not admissible to show that [defendant] was negligent in treating [plaintiff], and its introduction would have injected a collateral matter into this trial and confused the jury."). Further, in addressing whether appellants should be sanctioned for intentional concealment of the *Center* case, respondents acknowledged that they thought the case was useful to show propensity when they stated that appellants "didn't want us to know what [Rives] knew, what his knowledge level was. [Appellants] didn't want us to know that he had gone through this exact same thing, had the same opportunity to make good decisions and protect this patient but failed to do so." Nevada law precludes admitting evidence for propensity purposes.[5] NRS 48.045(2) (prohibiting use of other wrongs or acts to prove a person's character or to show the person acted in conformity therewith); *Bongiovi v. Sullivan*, 122 Nev. 556, 574, 138 P.3d 433, 447 (2006) (holding that prior bad-acts evidence is inadmissible to prove propensity); *see also Bair v. Callahan*, 664 F.3d 1225, 1229 (8th Cir. 2012) (concluding that evidence of prior malpractice is inadmissible under Federal Rule of Evidence (FRE) 404, which prohibits evidence of a person's character to prove that on a particular occasion the person acted in

[5]This opinion does not concern the exception to this rule in NRS 48.045(3), which "permits the district court to admit evidence of a separate sexual offense for purposes of proving propensity in a sexual offense prosecution" so long as that evidence is relevant, proven by a preponderance of the evidence, and the danger of unfair prejudice does not substantially outweigh the probative value of the evidence. *Franks v. State*, 135 Nev. 1, 2, 432 P.3d 752, 754 (2019).

accordance therewith, because it allows the jury to infer the doctor has a propensity for negligence); *Lai v. Sagle*, 818 A.2d 237, 247 (Md. 2003) ("[S]imilar acts of prior malpractice litigation should be excluded to prevent a jury from concluding that a doctor has a propensity to commit medical malpractice.").

Respondents' arguments to the contrary are unpersuasive. First, they argue "that bias is a relevant inquiry into the *Center* case" but fail to explain—here or below—how a prior medical malpractice case shows that the doctor-defendant is biased. Thus, we need not consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court will not consider claims unsupported by cogent argument and relevant authority). Second, they argue that the *Center* case is admissible under NRS 48.045(2) as modus operandi evidence. However, modus operandi is a narrow exception typically applied in criminal cases when there is a question regarding the defendant's identity and a defendant has committed prior offenses in the same unique way that would establish he is the offender in the present case. *See Rosky v. State*, 121 Nev. 184, 197, 111 P.3d 690, 698 (2005) (holding that the district court abused its discretion by admitting evidence of the defendant's prior bad acts as modus operandi evidence because the defendant's identity was not at issue during the trial). Here, it appears respondents argue that the modus operandi exception applies to show Rives's negligent surgical techniques, which is an inadmissible propensity use of the evidence, as it encourages the jury to infer from Rives's prior act that Rives has a propensity to commit medical malpractice; clearly, there was no question about Rives's identity here.[6]

Further, respondents' arguments to the contrary notwithstanding, the *Center* case evidence is not admissible to show knowledge. The knowledge exception is typically applied to refute, among other things, a defendant's claim that he was unaware of the illegality of his conduct, not that he was aware his professional actions were negligent on an earlier occasion, and thus, he knew he could potentially injure another party in rendering similar professional services. *See, e.g.*, *Fields v. State*, 125 Nev. 785, 792, 220 P.3d 709, 714 (2009) (explaining that a defendant's "knowing participation in prior bad acts with" coconspirators may be used to refute the

[6]At oral argument before this court, respondents asserted that the evidence of the *Center* case was admissible for impeachment purposes. But we need not consider this argument, as it was raised for the first time at oral argument. *See State ex rel. Dep't of Highways v. Pinson*, 65 Nev. 510, 530, 199 P.2d 631, 641 (1948) ("The parties, in oral arguments, are confined to issues or matters properly before the court, and we can consider nothing else . . . ."). Even if we consider this argument, however, the numerous times respondents mentioned the *Center* case and the scope of what was mentioned far exceeded what would have been permissible for impeachment purposes.

defendant's claim that he was an unwitting or innocent bystander to the crime); *Cirillo v. State*, 96 Nev. 489, 492, 611 P.2d 1093, 1095 (1980) (concluding that "evidence of previous instances of [drug] possession may be used to show the defendant's knowledge of the controlled nature of a substance, when such knowledge is an element of the offense charged"); *see also United States v. Vo*, 413 F.3d 1010, 1019 (9th Cir. 2005) (concluding that the defendant's prior conviction for drug trafficking was admissible under FRE 404(b) because it "was evidence of his knowledge of drug trafficking and distribution in general" and "tended to show that [the defendant] was familiar with distribution of illegal drugs and that his actions in this case were not an accident or a mistake"). Moreover, other jurisdictions that addressed this issue have concluded that prior medical malpractice suits do not fall within the knowledge exception, and we find their reasoning persuasive. *See, e.g.*, *Bair*, 664 F.3d at 1229 (rejecting the appellant's argument that the doctor's past treatment of other patients is admissible to show the doctor did not know how to properly carry out the surgery because that "is not the kind of 'knowledge' Rule 404(b) contemplates," as the doctor "had the knowledge to perform the surgery" due to his training and the appellant's evidence allows the jury to infer the defendant "had a propensity to commit malpractice" (internal quotation marks omitted)).

Because the *Center* case was mentioned over 180 times during trial, including details of how the patient went septic and her legs were amputated, similar to—but worse than—the injuries suffered by Farris, the error in admitting it was not harmless. Rather, the evidence had no probative value, drew the jury's attention to a collateral matter, and likely led to the jury drawing improper conclusions about Rives's propensity to commit malpractice, unfairly prejudicing him.[7] *See Bongiovi*, 122 Nev. at 575, 138 P.3d at 447 (explaining that evidence is inadmissible if the danger of unfair prejudice substantially outweighs the evidence's probative value). Thus, we reverse the district court's judgment and remand for a new

[7]While the district court may have correctly determined that Rives's discovery behavior warranted sanctions, it nonetheless abused its discretion by giving an adverse-inference instruction. *See Bass-Davis v. Davis*, 122 Nev. 442, 447-48, 134 P.3d 103, 106 (2006) (reviewing a district court's decision to give an adverse-inference instruction for an abuse of discretion). As discussed above, the *Center* case evidence was inadmissible, and a district court may not admit otherwise inadmissible evidence as a discovery sanction. *See* NRS 48.025(2) ("Evidence which is not relevant is not admissible."); NRS 48.035(1) (providing that otherwise relevant evidence is not admissible if the danger of unfair prejudice substantially outweighs the evidence's probative value). Further, an adverse-inference instruction is appropriate when evidence is lost or destroyed. *See Bass-Davis*, 122 Nev. at 448-49, 134 P.3d at 106-07. Here, the evidence was not lost or destroyed, and Farris presented details regarding the *Center* case at trial. Accordingly, the adverse-inference instruction was improper.

trial.[8] *See Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) (concluding that an error is prejudicial, and thus reversible, when it affects the party's substantial rights).

CONCLUSION

An appellant who made an evidentiary objection during trial need not move for a new trial in the district court before filing an appeal to preserve the appellate remedy of reversal and remand for a new trial. Further, an appellate court has jurisdiction to review a district court's oral evidentiary rulings made during the course of trial on appeal from a final judgment. Additionally, evidence of a doctor's prior medical malpractice suits is generally not relevant to whether the doctor met the standard of care in the current malpractice lawsuit. On this record, we conclude the district court abused its discretion by admitting evidence of the *Center* case and that the error was not harmless due to the evidence's tendency to encourage the jury to reach an improper propensity conclusion, as well as to cause unfair prejudice to Rives due to the severe injuries suffered by that patient. Accordingly, we reverse the district court's judgment, vacate the corresponding fees and costs order, and remand for a new trial.

Parraguirre, C.J., and Hardesty, Stiglich, Silver, Pickering, and Herndon, JJ., concur.

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[8]In light of our conclusion, we need not address appellants' remaining arguments. Similarly, we vacate the district court's order awarding attorney fees and costs. As we are remanding for a new trial, the cross-appeal regarding the district court's reduction of the noneconomic damages awarded is similarly moot.

RUTH L. COHEN, an Individual, Appellant, *v.* PAUL S. PADDA, an Individual; and PAUL PADDA LAW, PLLC, a Nevada Professional Limited Liability Company, Respondents.

No. 81018

PAUL S. PADDA, an Individual; and PAUL PADDA LAW, PLLC, a Nevada Professional Limited Liability Company, Appellants, *v.* RUTH L. COHEN, an Individual, Respondent.

No. 81172

March 31, 2022 507 P.3d 187

Consolidated appeals from a district court summary judgment and order denying attorney fees. Eighth Judicial District Court, Clark County; Elizabeth Gonzalez, Judge.

Reversed in part, vacated in part, and remanded.

Campbell & Williams and *Philip R. Erwin, Donald J. Campbell*, and *Molly M. Higgins*, Las Vegas; *Hayes Wakayama* and *Liane K. Wakayama, Dale A. Hayes, Jr.*, and *Jeremy D. Holmes*, Las Vegas, for Appellant/Respondent Ruth L. Cohen.

Lewis Roca Rothgerber Christie LLP and *Daniel F. Polsenberg, Joel D. Henriod*, and *Abraham G. Smith*, Las Vegas; *Paul Padda Law, PLLC*, and *Paul S. Padda*, Las Vegas; *Donald L. Fuller, Attorney at Law, LLC*, and *Ryan A. Semerad*, Casper, Wyoming, for Respondents/Appellants Paul S. Padda and Paul Padda Law, PLLC.

Milan Chatterjee, Las Vegas, for Amici Curiae Jay Bloom, South Asian Bar Association of Las Vegas, and Veterans in Politics International, Inc.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Stiglich, J.:

Just like other businesses, law firms routinely merge and disband. In this case, we are asked whether an attorney who enters into a fee-sharing agreement with a member of her law firm, departs from the firm, and is later suspended from the practice of law may receive legal fees recovered by the firm during her suspension.

We hold that she can, so long as she completed her work on the cases subject to the agreement prior to her suspension and given that her suspension was unrelated to her conduct in those cases.

[1]The Honorable Elissa F. Cadish and the Honorable Abbi Silver, Justices, voluntarily recused themselves and took no part in the consideration of this appeal.

Those requirements were met here. We therefore reverse the district court's order and remand for further proceedings consistent with this opinion.

BACKGROUND

Ruth Cohen and Paul Padda formed a law practice in 2011. In 2014, Padda and Cohen entered into a fee-sharing agreement (Dissolution Agreement) dissolving their law practice. The Dissolution Agreement entitled Cohen to a 33.333% share of attorney fees (Expectancy Interest) recovered in all contingency cases for which the law practice had a signed retainer agreement prior to December 31, 2014, the date of the Dissolution Agreement. The parties identify three cases that were subject to the Dissolution Agreement.[2]

In 2016, Cohen and Padda entered into a Business Expectancy Interest Resolution Agreement (Buyout Agreement), in which Cohen exchanged her Expectancy Interest for $50,000. Cohen now maintains that Padda and his new law firm (collectively, the Padda Parties) misrepresented the status and number of cases in which she had an Expectancy Interest before they signed the Buyout Agreement, that the Padda Parties were only paying her 30% of the attorney fees instead of 33.333% as required per the Dissolution Agreement, and that Padda had instructed employees to not disclose any documents to Cohen that reflected settlement figures and attorney fees collected.

In April 2017, Cohen's law license was suspended for failing to complete the 2016 continuing legal education requirements required per SCR 210. Cohen refused to pay the fee required to be reinstated out of "protest," and her license remained suspended until December 2019. Prior to her suspension, one of the three cases in which Cohen had enjoyed an Expectancy Interest was resolved. The remaining two cases covered by the Dissolution Agreement were resolved during Cohen's suspension. It is undisputed that Cohen did not work on these two cases while her law license was suspended.

While her suspension was still in effect, Cohen sent the Padda Parties a letter demanding payment of attorney fees subject to the Expectancy Interest in the Dissolution Agreement. Cohen argued the Buyout Agreement should be rescinded due to the Padda Parties' fraudulent acts, misrepresentations, and omissions. The Padda Parties refused, and Cohen sued the Padda Parties, claiming fraud, breach of fiduciary duty, and breach of contract, among other things. Cohen sought more than $3,000,000 in damages that she alleged represented the amount of her Expectancy Interest in

[2]Cohen appears to contend that there were other cases subject to the Dissolution Agreement but does not identify the names of those cases or when they were resolved in her briefing. We therefore focus our discussion on the three cases identified by the parties.

the pending cases. The Padda Parties made an offer of judgment pursuant to NRCP 68 for $150,000. Cohen did not accept the offer.

The Padda Parties moved for summary judgment, asserting that Cohen's suspended law license made her a "nonlawyer" and determining that fee-sharing with her was prohibited under RPC 5.4(a). The district court granted summary judgment on that basis and dismissed Cohen's tort claims.

Cohen thereafter filed a motion for reconsideration, in which she submitted legal authority from other jurisdictions that permit fee-sharing agreements with suspended or disbarred lawyers so long as they transfer their cases before suspension or disbarment and are no longer involved in those matters. The district court denied Cohen's motion, determining that the legal authority Cohen referenced did not render the district court's summary judgment clearly erroneous.

The Padda Parties moved for attorney fees under NRCP 68 due to Cohen's rejection of the offer of judgment. Cohen contended that her rejection of the offer was reasonable given the strength of her case and the amount of damages she was seeking. The district court denied the Padda Parties' motion, applying the *Beattie*[3] factors and finding that although the timing of the offer was reasonable, Cohen's decision to reject the offer was not grossly unreasonable or in bad faith.

Cohen appeals, challenging the district court's orders granting summary judgment and denying the motion for reconsideration. The Padda Parties appeal the district court's order denying attorney fees. Amici curiae, South Asian Bar Association of Las Vegas, Veterans in Politics International, Inc., and Jay Bloom, filed a brief in support of the district court's summary judgment in favor of the Padda Parties. This court has consolidated the appeals in the interest of judicial economy. *See* NRAP 3(b).

DISCUSSION

Cohen did not waive her legal arguments by raising them in the motion for reconsideration

As a preliminary issue, the Padda Parties contend that Cohen waived her legal arguments presented in this appeal because she raised them for the first time in her motion for reconsideration below and argue that the district court did not engage with these arguments on the merits. In response, Cohen maintains that this court may consider her arguments because the reconsideration briefing and order are part of the record and because the district court elected to entertain the motion for reconsideration on the merits.

In *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007), this court established a two-part test to determine whether a motion for reconsideration preserves arguments for appeal. First, the order denying

[3]*Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

reconsideration must have been entered before the notice of appeal was filed, such that the reconsideration motion and order are part of the record on appeal. *Id.* at 416-17, 168 P.3d at 1054. Second, the district court must have entertained the motion on its merits. *Id.* at 417, 168 P.3d at 1054. Should these two elements be met, this court "may consider the arguments asserted in the reconsideration motion in deciding an appeal from the final judgment." *Id.*

The *Arnold* test has been met here. First, the order denying reconsideration was entered prior to the date when the notice of appeal was filed. Thus, both the motion for reconsideration and the order denying it are properly part of the record on appeal. *Cf. id.* at 416-17, 168 P.3d at 1054. Second, we conclude that the district court entertained the motion to reconsider on its merits. The district court determined that its summary judgment order was not clearly erroneous or subject to reconsideration based on the new authorities and arguments Cohen presented in her motion for reconsideration. Further, the district court thereafter engaged with Cohen's legal arguments, stating that "the authorities Ms. Cohen cites in her Motion do not apply" and explaining its reasoning. The district court's analysis entertaining Cohen's arguments on the merits is sufficient to meet the second prong outlined in *Arnold*. Therefore, we determine that Cohen did not waive the legal arguments she presents on appeal and address the merits of those arguments.

The Dissolution Agreement was enforceable because Cohen's suspension was unrelated to the cases in which she enjoyed an Expectancy Interest

Cohen contends that the Expectancy Interest provision of the Dissolution Agreement is enforceable notwithstanding her suspended law license because the parties entered into the Dissolution Agreement before her suspension and because the Dissolution Agreement did not require her to work on the cases in which she enjoyed an Expectancy Interest. The Padda Parties argue that Cohen's suspension from the practice of law prohibits her from receiving any legal fees earned during her suspension, and thus the district court's summary judgment in favor of the Padda Parties was proper. We review the district court's summary judgment order de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

RPC 5.4(a) provides that a "lawyer or law firm shall not share legal fees with a nonlawyer." Whether a suspended attorney may receive compensation for work completed prior to and unrelated to her suspension is an issue of first impression in Nevada. We therefore examine the approaches taken by other jurisdictions in cases with similar facts to inform our own.

In *Lee v. Cherry*, the Texas Court of Appeals considered whether an attorney was entitled to a referral fee for a case that settled after

he resigned his law license. 812 S.W.2d 361, 361 (Tex. App. 1991). When the referring lawyer requested his referral fee, the other attorney refused on the grounds that the referral agreement was void because Texas rules of professional conduct prohibit sharing legal fees with a nonlawyer. *Id*. at 362. It was undisputed that the referring lawyer had no further duties after the contract was fully executed (i.e., when he referred the case) and that the lawyer's resignation was unrelated to the referral fee case. *Id*. The court held that the referring lawyer could receive attorney fees because he had completed all his contractual duties prior to surrendering his law license and because the client approved of the referral fee contract. *Id.* at 363. A contrary holding "would do serious damage to legitimate contract rights." *Id.* at 364.

The Supreme Court of Iowa considered a similar situation. *West v. Jayne*, 484 N.W.2d 186 (Iowa 1992). An attorney, George West, entered into a contingency-fee agreement with an associate at West's firm. *Id*. at 188. A few years later, West was disbarred for conduct unrelated to the cases covered under the agreement. *Id*. In relevant part, the dispute in this case was whether West was prohibited from earning legal fees after he was disbarred. *Id*. at 190. The *West* court noted,

> It is a common practice for attorneys who work together as associates to afford the attorney who secures business, or clients, a percentage of the eventual fee, regardless of whether that attorney performed the legal services or whether other members of the association completed the work. Except for possibly overseeing the work, the attorney securing the client completes his portion of the work and is entitled to a percentage of the eventual fee at the time he turns the client's work over to another member of the association.

Id. Therefore, the court held that West was entitled to the legal fees notwithstanding his disbarment because he completed his services before disbarment. *Id*. However, the court limited its holding to cases in which legal fees were divided amongst lawyers who were associates at the same firm. *Id*.

In reaching its conclusion, the *West* court relied on *Sympson v. Rogers*, 406 S.W.2d 26 (Mo. 1966), for support. *West*, 484 N.W.2d at 190-91. In that case, the parties entered into a fee-sharing agreement with the knowledge that one attorney to the agreement was about to surrender his law license.[4] 406 S.W.2d at 32. The court ruled that this contract was enforceable because it was an agreement between licensed attorneys for legal services already rendered at the time at which it was entered. *Id*.

[4]The record in *Sympson* was unclear as to whether the disbarment had any connection with the attorney's conduct in the cases covered by the fee-sharing agreement. *Sympson*, 406 S.W.2d at 27.

Several state bar ethics opinions are in accord. For example, while the Connecticut Bar Association's Committee on Professional Ethics noted that, on its face, Connecticut's analog to RPC 5.4 strictly prohibits fee-sharing with a suspended lawyer, "such a strict construction" would not advance the policy rationale behind the rule, which is "to protect the lawyer's professional independence of judgment." *Conn. Bar Ass'n Comm. on Prof'l Ethics*, Informal Op. 2013-01 (2013) (internal quotation marks omitted). Therefore, the Committee decided that the rule does not issue such a blanket prohibition where: (1) a right to receive the fee existed and accrued before the suspension; (2) the suspension was unrelated to the client or case that generated the fee; and (3) the payment is made in a manner consistent with applicable rules and statutes. *Id.* So too did the New York State Bar Association's Committee on Professional Ethics determine that a disbarred attorney may share in fees for work performed before disbarment, so long as the disbarment was unrelated to the matter in which the fees were earned. *N.Y. State Bar Ass'n Comm. on Prof'l Ethics*, Op. 609 (1990).

These authorities are instructive. It is true that Cohen's suspended law license made her a nonlawyer per RPC 5.4(a) from April 6, 2017, to December 19, 2019. *Cf.* NRS 7.285(1)(b) (prohibiting a person with a suspended law license from practicing law); SCR 77 (requiring every practicing attorney to be an active member of the state bar). Similarly, the Nevada State Bar has determined that "an attorney's fee in a contingent fee case has not been earned until there is a recovery," and the record reflects that recovery in two of the three cases in which Cohen enjoyed an Expectancy Interest occurred while her law license was suspended. *State Bar of Nev. Standing Comm. on Ethics & Prof'l Responsibility*, Formal Op. 18 (April 29, 1994). However, Cohen completed her work on these cases before she was suspended, and her suspension was unrelated to her professional conduct in these cases.[5] *Cf. Lee*, 812 S.W.2d at 363 (noting that the referring attorney had no further duties after entering into the referral fee contract); *West*, 484 N.W.2d at 190 (determining that the disbarred attorney was entitled to compensation because he completed his work on the cases encompassed by the fee-sharing agreement prior to disbarment and observing that his disbarment was unrelated to his work on those cases). Furthermore, Cohen and Padda were members of the same firm, and both held valid law licenses, at the time they entered into the Dissolution Agreement. *See West*, 484 N.W.2d at 190 (concluding that a fee-sharing agreement between attorneys at the same firm is enforceable even though one attorney is later disbarred); *Sympson*, 406 S.W.2d at 32 (enforcing a fee-sharing agreement that

[5]As the Padda Parties concede in their answering brief, Cohen stopped working on these two cases before her law license was suspended in 2017.

was entered into while all parties had valid law licenses); *see also Eichen, Levinson & Crutchlow, LLP v. Weiner*, 938 A.2d 947, 951 (N.J. Super. Ct. App. Div. 2008) (concluding that a disbarred attorney's interest in referral fees vested at the moment the contracts were entered into, at which time his license was valid). Preventing Cohen from receiving her Expectancy Interest would not advance RPC 5.4(a)'s policy objective of protecting attorneys' professional judgment. *Conn. Bar Ass'n Comm. on Prof'l Ethics*, Informal Op. 2013-01 (2013). Indeed, such a narrow construction of RPC 5.4(a) "would do serious damage to legitimate contract rights" by rendering unenforceable a contract that was valid at the time it was fully executed due to a party's unrelated conduct. *Lee*, 812 S.W.2d at 364; *Eichen*, 938 A.2d at 951.

The Padda Parties present several cases they claim favor their position, but only one of which arguably does. In *Lessoff v. Berger*, a New York appellate court determined in a slip opinion that a suspended attorney is not permitted "to share in fees during the period of his suspension." 767 N.Y.S.2d 605, 606 (App. Div. 2003). However, *Lessoff*'s applicability to the case at bar is limited, as it does not mention whether the suspended attorney entered into a fee-sharing agreement prior to his suspension or whether he had further responsibilities "with respect to the cases that were open at the time of his suspension." *Id.* Therefore, we conclude that the Padda Parties' citation to *Lessoff* is unavailing.

Amici rely on a Nevada State Bar Ethics Opinion to support their claim that Cohen is entitled, at most, to recover in quantum meruit the reasonable value of services she rendered in the cases in which she enjoyed an Expectancy Interest.[6] *Cf. State Bar of Nev. Standing Comm. on Ethics & Prof'l Responsibility*, Formal Op. 18 (April 29, 1994). Their reliance on the ethics opinion is misplaced, as it addressed the portion of a contingency fee to which a discharged attorney was entitled. There is no client discharge at issue in this case, as Cohen and Padda were members of the same firm at the time that they entered into the Dissolution Agreement. Therefore, amici's citation to this ethics opinion as support for their claim that "long-standing authority in Nevada" has already addressed this issue is inapposite. Furthermore, while state bar opinions are persuasive authority, they are not binding. *See* SCR 225(5) (determining that these opinions are "advisory only" and are "not binding upon the courts"); *see also Evans & Luptak, PLC v. Lizza*, 650 N.W.2d 364, 373 (Mich. Ct. App. 2002) (noting that state bar ethics opinions are persuasive but not binding). So even if the formal opinion was on point, it would not necessarily be outcome-determinative in this case.

[6]A party that pleads quantum meruit seeks recovery of the reasonable value for services rendered. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 379, 283 P.3d 250, 256 (2012).

We are unconvinced by the parade of horribles amici predict will occur as a result of today's holding. They contend that our judgment will (1) "perversely incentivize" attorneys facing suspension or disbarment to enter into contingency-fee agreements and collect those fees after they ultimately are suspended or disbarred, (2) reward attorneys who voluntarily abandon their clients, and (3) injure the public's confidence in the legal profession.

These claims are unfounded. Our ruling today permits attorneys to collect contingency fees in matters *unrelated to* their suspension or disbarment. An attorney who attempts to game her way into an award of attorney fees in a matter *related* to her suspension or disbarment will find no solace in this opinion. And the facts of this case are categorically different to the doomsday scenario presented by amici. Cohen did not enter into the Dissolution Agreement on the eve of her suspension—she did so years prior. Likewise, it is unclear how today's judgment will have a deleterious effect on the public's perception of attorneys. Cohen did not abandon her clients, as amici and the Padda Parties purport; rather, Cohen completed her work on these cases prior to her suspension.[7] *Cf. Eichen*, 938 A.2d at 951 (determining that the disbarred attorney was entitled to his referral fee pursuant to a fee-sharing agreement that did not require him to perform any additional legal work). Thus, Cohen owed no duty to clients in the three cases covered in the Dissolution Agreement while her law license was suspended. *See Lee*, 812 S.W.2d at 363. Finally, Nevadans of all vocational backgrounds regularly join and leave their places of employment, and it is unclear why today's judgment would invite "public cynicism and criticism" when it merely permits attorneys to engage in this common practice. Again, it bears repeating that a suspended or disbarred attorney may not receive compensation for work on a case that led to her suspension or disbarment. No public interest is served by denying an attorney the benefit of an agreement she reached while her law license was active.

In its summary judgment order, the district court determined that the Padda Parties' obligation to pay Cohen her Expectancy Interest was rendered unenforceable the moment Cohen's law license was suspended. Because we conclude otherwise, we reverse the district court's judgment and direct it to address the merits of Cohen's claims. Likewise, we vacate the district court's order denying the Padda Parties' motion for attorney fees under NRCP 68 because that decision was predicated on the district court's summary judgment order. *See* NRCP 68(f); *Pope Invs., LLC v. China Yida Holding, Co.*, 137 Nev. 335, 344, 490 P.3d 1282, 1290 (2021) (reversing an NRCP 68 judgment after the underlying decision was reversed).

[7]In fact, as the district court noted, "Nothing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised of her Expectancy Interest."

CONCLUSION

Attorneys regularly leave law practices, often signing fee-sharing agreements as they depart. In this case, we hold that a fee-sharing agreement between attorneys with valid law licenses at the time of the agreement is enforceable even when one attorney is subsequently suspended or disbarred, so long as the suspension or disbarment was unrelated to the cases subject to the agreement and the attorney completed her work on those cases prior to her suspension or disbarment. As these requirements were met here, we reverse the district court's summary judgment order in favor of the Padda Parties, vacate its order denying the Padda Parties attorney fees under NRCP 68, and remand for further proceedings consistent with this opinion.

Parraguirre, C.J., and Hardesty, Pickering, and Herndon, JJ., concur.

MARSHAL S. WILLICK; AND WILLICK LAW GROUP, PETITIONERS, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE NANCY A. BECKER, SENIOR JUDGE, RESPONDENTS, AND STEVE W. SANSON; AND VETERANS IN POLITICS INTERNATIONAL, INC., REAL PARTIES IN INTEREST.

No. 82524

March 31, 2022 506 P.3d 1059

Original petition for a writ of mandamus and prohibition challenging a district court order vacating a notice of voluntary dismissal.

Petition denied.

Brownstein Hyatt Farber Schreck, LLP, and *Mitchell J. Langberg*, Las Vegas; *Abrams & Mayo Law Firm* and *Jennifer V. Abrams*, Las Vegas, for Petitioners.

McLetchie Law and *Margaret A. McLetchie*, Las Vegas, for Real Parties in Interest.

Before the Supreme Court, EN BANC.[1]

OPINION

By the Court, HARDESTY, J.:

In this opinion, we address as a matter of first impression whether district courts in Nevada have jurisdiction to vacate a plaintiff's notice of voluntary dismissal in a defamation action in which an anti-SLAPP motion has been filed, denied, appealed, and remanded back to the district court. Without creating a rule that would determine this issue in all instances, we determine that the district court did not err in vacating petitioners' notice of voluntary dismissal in this instance because the litigation had reached an advanced stage.

FACTS AND PROCEDURAL HISTORY

Petitioners Marshal S. Willick and Willick Law Group (collectively, Willick) filed a complaint against respondents Steve Sanson and Veterans in Politics International, Inc. (collectively, Sanson), alleging that they made defamatory statements against Willick online. In response, Sanson filed a special motion to dismiss the action pursuant to Nevada's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute, NRS 41.660. The district

[1]The Honorable Elissa F. Cadish, the Honorable Abbi Silver, and the Honorable Kristina Pickering, Justices, did not participate in the decision of this matter.

court denied Sanson's motion on step one of Nevada's two-step anti-SLAPP analysis, determining that Sanson failed to meet his burden of demonstrating that the statements he published concerned an issue of public interest and were made in good faith. Sanson appealed. This court reversed the district court's order and remanded the matter, concluding that Sanson in fact had met his burden under step one of the anti-SLAPP analysis and directing the district court to consider whether Willick could meet his burden of demonstrating a probability of prevailing on his claims, which is step two of the court's analysis. *Veterans in Politics Int'l, Inc. v. Willick*, No. 72778, 2020 WL 891152 (Nev. Feb. 21, 2020) (Order Reversing and Remanding).

On remand to the district court, the parties entered mediation, stipulating that if mediation failed, the parties would submit briefing on step two of the anti-SLAPP analysis. Mediation failed, but soon thereafter and before the district court rendered a determination on step two of the anti-SLAPP motion, Willick filed a notice to voluntarily dismiss his complaint under NRCP 41(a)(1)(A)(i). The district court vacated the notice, reasoning that (1) an anti-SLAPP motion triggers the summary judgment exception to a plaintiff's right to voluntarily dismiss the case under NRCP 41(a)(1)(A)(i), and (2) a plaintiff cannot voluntarily dismiss the case after the proceedings reached an advanced stage. Willick filed this petition for a writ of mandamus and prohibition, asking us to vacate the district court's order.

DISCUSSION

We exercise our discretion to entertain Willick's petition

The decision to issue a writ of mandamus or prohibition is discretionary. *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. 369, 373, 399 P.3d 334, 340-41 (2017). "Writ relief is an extraordinary remedy that is only available if a petitioner does not have 'a plain, speedy and adequate remedy in the ordinary course of law.'" *In re Raggio Family Tr.*, 136 Nev. 172, 175, 460 P.3d 969, 972 (2020) (quoting NRS 34.330); *see* NRS 34.170. The right to an appeal is generally an adequate legal remedy, and where, as here, "an appeal is not immediately available because the challenged order is interlocutory in nature, the fact that the order may ultimately be challenged on appeal from the final judgment generally precludes writ relief." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004).

Nevertheless, we have elected to consider petitions challenging interlocutory orders where "the issue is not fact-bound and involves an unsettled and potentially significant, recurring question of law," *Buckwalter v. Eighth Judicial Dist. Court*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010), and "where the petition presents a matter of

first impression and considerations of judicial economy support its review," *Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Court*, 137 Nev. 525, 527, 495 P.3d 519, 522 (2021). Here, Willick's writ petition raises an important and unsettled issue of law—whether an anti-SLAPP motion is equivalent to a summary judgment motion within the meaning of NRCP 41(a)(1)(A)(i) so as to preclude the voluntary dismissal of a complaint. We therefore exercise our discretion to entertain Willick's petition.

The district court did not err in vacating Willick's notice to voluntarily dismiss his action at an advanced stage of litigation

"[W]e review questions of law . . . de novo, even in the context of writ petitions." *Helfstein v. Eighth Judicial Dist. Court*, 131 Nev. 909, 913, 362 P.3d 91, 94 (2015). Nevada Rule of Civil Procedure 41(a) governs voluntary dismissals. It provides that a "plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." NRCP 41(a)(1)(A)(i). At the outset, we are not persuaded by the district court's reasoning, nor by Sanson's arguments in support of the district court's reasoning, that an anti-SLAPP motion is the functional equivalent of a motion for summary judgment under NRCP 41(a)(1)(A)(i). This court has never recognized such an interpretation, and we decline to do so now.[2] *See Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020) ("When reviewing de novo, we will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous, the plain meaning would provide an absurd result, or the interpretation clearly was not intended." (citations and internal quotation marks omitted)).

This court has, however, on one occasion, determined that a notice of voluntary dismissal was ineffective "because it was filed at an advanced stage of the proceedings." *In re Petition of Phillip A.C.*, 122 Nev. 1284, 1290, 149 P.3d 51, 55 (2006). Recognizing that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules," we looked at the United States Court of Appeals for the Second Circuit's application of the advanced-stage exception to FRCP 41(a), the federal counterpart to NRCP 41(a). *Id.* (internal quotation marks

[2]Although Sanson also argues waiver, Willick argues that he did not waive his right to voluntarily dismiss his action by stipulation. We agree. "Stipulations should . . . generally be read according to their plain words unless those words are ambiguous, in which case the task becomes to identify and effectuate the objective intention of the parties." *DeChambeau v. Balkenbush*, 134 Nev. 625, 628, 431 P.3d 359, 361-62 (Ct. App. 2018). Here, the stipulation is clear. The parties agreed to mediation and, in the event the case was not resolved, to submit briefing on the second prong of the anti-SLAPP motion. The stipulation contains no reference to NRCP 41(a)(1)(A)(i), and nowhere did Willick waive his right to voluntarily dismiss under it.

omitted); *see also Harvey Aluminum*, *Inc. v. Am. Cyanamid Co.*, 203 F.2d 105, 107-08 (2d Cir. 1953). Persuaded by the Second Circuit's reasoning, we applied it to NRCP 41(a) and the facts presented to us and concluded that the voluntary dismissal was ineffective. *Phillip A.C.*, 122 Nev. at 1290-91, 149 P.3d at 55-56. Specifically, a petitioner attempted to voluntarily dismiss a petition to invalidate an adoption pursuant to NRCP 41(a)(1)(A)(i) "three months after the district court had already held a hearing on the [petitioner]'s motion to intervene and to invalidate the adoption. . . . [T]he merits of the [petitioner]'s motion were raised by the parties and addressed and decided by the district court." *Id*. at 1290-91, 149 P.3d at 56.

Similarly, in *Harvey Aluminum*, the Second Circuit reversed a lower court's refusal to vacate a voluntary dismissal pursuant to FRCP 41(a)(1). 203 F.2d at 108. The court found that because the lower court had conducted a hearing on the controversy that "required several days of argument and testimony" and "the merits of the controversy [had been] squarely raised," voluntarily dismissing the controversy pursuant to FRCP 41(a)(1) "would not be in accord with its essential purpose of preventing arbitrary dismissals after an advanced stage of a suit has been reached." *Id*. at 107-08.

Harvey Aluminum has since engendered controversy in other federal circuit courts and has for the most part been limited to its "extreme" facts. *Thorp v. Scarne*, 599 F.2d 1169, 1176 (2d Cir. 1979) (holding "that at least in cases falling short of the extreme exemplified by *Harvey Aluminum*, notices of dismissal filed in conformance with the explicit requirements of [former] Rule 41(a)(1)(i) are not subject to vacatur"); *accord In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d 161, 166 n.10 (3d Cir. 2008) (declining to reach the issue but acknowledging that circumstances sometimes "warrant[ ] a departure from the literal text" of FRCP 41(a)(1)(A)(i)); *Safeguard Bus. Sys., Inc. v. Hoeffel*, 907 F.2d 861, 864 (8th Cir. 1990) ("There may be rare cases with extreme circumstances in which a district court enters a judgment on the merits at an early stage of the proceedings . . . in which the use of Rule 41(a)(1) is foreclosed."); *Univ. Cent. del Caribe, Inc. v. Liaison Comm. on Med. Educ.*, 760 F.2d 14, 19 (1st Cir. 1985) ("[T]he facts of this case clearly fall short of *Harvey Aluminum*."). The United States Court of Appeals for the Ninth Circuit has explicitly determined that FRCP 41(a)(1)(A)(i) "does not authorize a court to make a case-by-case evaluation of how far a lawsuit has advanced to decide whether to vacate a plaintiff's voluntary dismissal." *Am. Soccer Co. v. Score First Enters.*, 187 F.3d 1108, 1112 (9th Cir. 1999).

However, even the more skeptical of federal circuits have acknowledged that "[a]dmittedly, one can question the wisdom of allowing a party, through adroit lawyering, to dismiss a case in order to avoid an unfavorable decision on the merits after the court has considered the evidence," and many circuits view the advanced-

stage exception as a form of equitable remedy. *Marex Titanic, Inc. v. Wrecked & Abandoned Vessel*, 2 F.3d 544, 547 (4th Cir. 1993); *see Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, 143 (7th Cir. 1978) (finding no "exceptional equitable considerations" to warrant reversal of FRCP 41(a)(1) voluntary dismissal); *Pilot Freight Carriers, Inc. v. Int'l Bhd. of Teamsters*, 506 F.2d 914, 916 (5th Cir. 1975) (same). For its part, the Second Circuit, though critical of its previous ruling in *Harvey Aluminum*, allows its district courts to apply the exception in limited circumstances. *See, e.g.*, *Century Sur. Co. v. Vas & Sons Corp.*, No. 17-CV-5392 (DLI) (RLM), 2018 WL 4804656, at *3-4 (E.D.N.Y. Sept. 30, 2018); *Poparic v. Jugo Shop*, No. 08-CV-2081 (KAM) (JO), 2010 WL 1260598, at *6 (E.D.N.Y. Mar. 31, 2010); *Grass v. Citibank, N.A.*, 90 F.R.D. 79, 80 (S.D.N.Y. 1981) (considering, in addition to the length of the underlying hearing and the prior consideration of the case's merits, the extensive effort expended by the defendant and the conduct of the plaintiff).

In sum, a close reading of *Harvey Aluminum*'s treatment in the federal circuits that have addressed it reveals a long-running tension between an unwillingness to weaken the rule with exceptions, while protecting the rule's purpose "to limit the right of dismissal to an early stage of the proceedings, thereby curbing the abuse of the right [to voluntarily dismiss]." *Littman v. Bache & Co.*, 252 F.2d 479, 480 (2d Cir. 1958). Or in other words, "to preserve the plaintiff's right to take a voluntary nonsuit and start over so long as the defendant is not hurt." *McCall-Bey v. Franzen*, 777 F.2d 1178, 1184 (7th Cir. 1985).[3]

Our purpose here is not to weaken the analogous NRCP 41(a)(1)(A)(i). Rather, in carefully weighing the factors considered in *Phillip A.C.*, and in comparing factual circumstances in similar cases from other courts, we have determined that estopping Willick from voluntarily dismissing his case serves NRCP 41(a)(1)(A)(i)'s essential purpose in this instance. Like the plaintiffs in *Phillip A.C.*, Willick waited a long time—four years—before filing his notice of

[3]This tension is vivid within the Second Circuit itself, which, perhaps in overcorrecting its earlier emphasis on the defendant's interests in *Harvey Aluminum*, ruled that a plaintiff's right under FRCP 41(a)(1) was so absolute that district courts could not even retain jurisdiction for the collateral, nonmerits issue of FRCP 11 sanctions. *See Johnson Chem. Co. v. Home Care Prods., Inc.*, 823 F.2d 28, 30 (2d Cir. 1987) (noting the circuit's "cool reception" to *Harvey Aluminum* (internal quotation marks omitted)), *abrogated by Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990). The United States Supreme Court overruled the Second Circuit's narrow, pro-plaintiff interpretation, reminding courts that the rule was intended to restrict plaintiffs' traditionally "expansive control over their suits [by] . . . allow[ing] a plaintiff to dismiss an action without" court order and without prejudice "only during the brief period before the defendant had made a significant commitment of time and money." *Cooter*, 496 U.S. at 394-95, 397. Implicitly then, the Supreme Court noted a positive correlation between the length of a case measured in time and the aspect of FRCP 41(a)(1)(A)(i)'s purpose that seeks to protect defendants. *See id*.

voluntary dismissal. Further, he filed this notice only after this court reversed a district court order favorable to his case, and one day after a failed mediation attempt. These events themselves happened after a hearing on the anti-SLAPP motion. By now, the merits of the anti-SLAPP motion's first prong have been thoroughly raised, determined, appealed, reviewed de novo, and remanded. Now, Willick and Sanson await the district court's determination on the motion's second prong.[4]

"Nevada's anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss 'meritless lawsuit[s] that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights' before incurring the costs of litigation." *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748 (2019) (alteration in original) (quoting *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013)); *Stubbs*, 129 Nev. at 151, 297 P.3d at 329 (explaining that an anti-SLAPP motion "allows the district court to evaluate the merits of the alleged SLAPP claim"). Here, at this point in the proceedings, Sanson has no doubt incurred litigation costs. Given these unique and extreme circumstances, we conclude that Willick is estopped from dismissing his action with no consequences, as the litigation has reached an advanced stage after four years and a prior de novo appeal. Therefore, we conclude that the district court did not manifestly abuse its discretion by, or lack jurisdiction when, vacating petitioners' notice of voluntary dismissal. For these reasons, we deny Willick's petition for a writ of mandamus and prohibition.

Parraguirre, C.J., and Stiglich and Herndon, JJ., concur.

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[4]Given the scarcity of petitioners' appendix, we focus our determination on the unique posture of this case's length as well as the appeal. However, this court recognizes that other factors, such as the length of discovery, length of hearings on substantive issues, and the extent to which the merits of a case have been raised, are all important in considering this rare equitable advanced stage exception to the strict application of NRCP 41(a)(1)(A)(i).

NEVADA GAMING COMMISSION, a Political Subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a Political Subdivision of the State of Nevada, Appellants, *v.* STEPHEN A. WYNN, an Individual, Respondent.

No. 82263

March 31, 2022 507 P.3d 183

Appeal from a district court order granting a petition for judicial review of, or a writ of prohibition concerning, a gaming commission proceeding. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Reversed and remanded.

Aaron D. Ford, Attorney General, *Darlene S. Caruso*, Chief Deputy Attorney General, *Kiel B. Ireland*, Deputy Attorney General, and *Steven G. Shevorski*, Chief Litigation Counsel, Carson City, for Appellants.

Campbell & Williams and *Donald J. Campbell* and *J. Colby Williams*, Las Vegas, for Respondent.

Before the Supreme Court, En Banc.

OPINION

By the Court, Silver, J.:

NRS 463.315(1) entitles a person subject to disciplinary proceedings by the Nevada Gaming Commission to judicial review of the Commission's *final* order in district court. NRS 463.318(2) states that this judicial review "is the exclusive method of review of the Commission's actions, decisions and orders in disciplinary hearings." NRS 463.318(2) also precludes extraordinary common-law writs or equitable proceedings "where statutory judicial review is made exclusive." In this appeal, we consider for the first time whether NRS 463.318(2) precludes a petition for a writ of prohibition challenging the jurisdiction of the Commission and the Nevada Gaming Control Board (collectively, when possible, the Agencies) over a party in disciplinary proceedings *before* the Commission enters a final decision. We also consider whether an order by the Commission denying a motion to dismiss is "final" under NRS 463.315(1).

In the underlying disciplinary action before the Commission, respondent moved to dismiss on the ground that the Agencies lacked jurisdiction over him. The Commission denied the motion, and respondent filed a petition for judicial review or, in the alter-

native, a writ of prohibition in the district court. The court found that judicial review was unavailable because the Commission had not entered a final decision. The court consequently found, however, that respondent lacked an adequate legal remedy to challenge the Commission's jurisdiction and that it could therefore entertain respondent's petition to the extent that he alternatively sought a writ of prohibition. Ultimately, the court granted writ relief, determining that the Agencies exceeded their jurisdiction in the disciplinary action against respondent.

We conclude that, pursuant to NRS 463.318(2), the district court lacked jurisdiction to entertain respondent's petition for a writ of prohibition to arrest the disciplinary proceedings against him. The district court also lacked jurisdiction to consider the petition for judicial review pursuant to NRS 463.315(1) because an order denying a motion to dismiss for lack of jurisdiction is not a final order. Therefore, we conclude that the district court erred by entertaining and granting respondent's petition, whether viewed as a petition for judicial review or as a petition for a writ of prohibition. Accordingly, we reverse.

FACTS AND PROCEDURAL HISTORY

From 2005 to 2018, respondent Stephen A. Wynn was the Chief Executive Officer, Chairman of the Board of Directors, and controlling shareholder of nonparty Wynn Las Vegas, LLC, dba Wynn Las Vegas and Wynn Resorts, Ltd. (Wynn Resorts). In accord with his involvement with Wynn Resorts, Wynn obtained a finding of suitability from the Commission, which allowed him to serve in his various capacities with the gaming establishment. In January 2018, *The Wall Street Journal* published an article in which several Wynn Resorts employees alleged that Wynn had engaged in sexual misconduct since 2005. Following this publication, the Board began to investigate these allegations. A few weeks after the Board started its investigation, Wynn resigned as CEO and Chairman of Wynn Resorts and signed a separation agreement. In that agreement, Wynn agreed to forgo any severance payment from Wynn Resorts for his services as CEO and Chairman and agreed to sell his stock shares of Wynn Resorts. Wynn sold his shares in Wynn Resorts shortly thereafter.

Months later, as a part of its investigation, the Board sent Wynn notice of its intent to require Wynn to testify at an investigative hearing. Wynn did not appear at that hearing. Instead, Wynn's attorneys met with the Agencies and requested that Wynn's cooperation with the investigation be limited to answering written inquiries due to pending lawsuits by the Wynn Resorts employees regarding Wynn's alleged sexual misconduct. The Agencies rejected the request. Wynn's attorneys responded with a letter reiterating the

request and arguing that Wynn should not have to testify because he was no longer involved with Wynn Resorts. The Agencies did not respond to this letter.

In January 2019, the Board filed a complaint seeking monetary fines against Wynn Resorts, but not Wynn individually, for violations of the Nevada Gaming Control Act and gaming regulations stemming from Wynn's alleged sexual misconduct. The Board and Wynn Resorts settled that action a month later, with Wynn Resorts agreeing to pay a fine of $20 million. The Board then filed a complaint before the Commission to revoke the finding of suitability regarding Wynn. The Board asserted that Wynn's alleged sexual misconduct constituted four violations of Nevada gaming statutes and regulations and that his failure to appear and testify at the investigative hearing constituted a fifth violation. Wynn moved to dismiss, arguing that the Agencies lacked jurisdiction over him because he had resigned as CEO of Wynn Resorts, had moved from his residence in the property, had sold his stock in Wynn Resorts, and was no longer involved with gaming licenses at the time the Board filed its complaint against him. The Commission denied the motion, and Wynn filed a petition for judicial review or, in the alternative, for a writ of prohibition in the district court.

The district court denied Wynn's request for judicial review, finding that such review was not available because the Commission had not entered a final decision. However, the district court concluded that it could entertain Wynn's request for a writ of prohibition. The court reasoned that because it lacked jurisdiction to consider Wynn's petition for judicial review, Wynn lacked an adequate legal remedy. As a result, the court found, a writ of prohibition was available if the Agencies had exceeded their jurisdiction in the disciplinary action against Wynn. Ultimately, the district court agreed with Wynn that, because he was no longer involved with Wynn Resorts, the Agencies lacked jurisdiction over Wynn. Accordingly, the court granted Wynn's petition to the extent that he sought a writ of prohibition.[1] The Agencies now appeal.

DISCUSSION

The Agencies argue that the district court lacked jurisdiction to review the Commission's order denying Wynn's motion to dismiss. The Agencies contend that Wynn is not entitled to writ relief because judicial review under NRS 463.318 is the exclusive method of court intervention regarding the Commission's disciplinary decisions and that writ relief is explicitly excluded. They further assert that judi-

[1]The district court's order stated that it granted Wynn's petition for judicial review. However, a careful reading of the reasoning in that order evinces that the district court intended to grant Wynn's petition for a writ of prohibition, not his petition for judicial review. Accordingly, we treat the appealed order as one granting a petition for a writ of prohibition.

cial review is precluded because only final orders may be reviewed, and the district court properly found that the Commission's order is not final. We agree.

The district court lacked jurisdiction to entertain Wynn's petition for writ relief

Generally, we review a district court's decision to grant or deny a writ petition for an abuse of discretion. *DR Partners v. Bd. of Cty. Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). However, we review questions of statutory interpretation de novo. *Pawlik v. Deng*, 134 Nev. 83, 85, 412 P.3d 68, 70-71 (2018). Because this case requires us to interpret whether the relevant statutory scheme allowed the district court to entertain or grant Wynn's writ petition, we review the district court's decision de novo.

A person subject to disciplinary proceedings before the Commission is entitled to judicial review of the Commission's *final order* in district court. NRS 463.315(1). "[J]udicial review by the district court and the appellate court of competent jurisdiction afforded in this chapter is the *exclusive method of review* of the Commission's actions, decisions and orders in disciplinary hearings held pursuant to NRS 463.310 to 463.3145, inclusive." NRS 463.318(2) (emphasis added). Under NRS 463.318(2), writ relief is not available "where statutory judicial review is made exclusive or is precluded, or the use of those writs or proceedings is precluded by specific statute."

We will give effect to a statute's plain language and will not go beyond it to determine legislative intent. *See Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 707 (2009). A fundamental axiom of statutory interpretation is that related statutes must be read together. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008) ("Statutes are to be read in the context of the act and the subject matter as a whole . . . ."). Crucially, a specific statute controls over a general statute. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015).

We are not persuaded by Wynn's contention that the district court had jurisdiction to grant writ relief because NRS 34.320, which defines the general function of a writ of prohibition, permits district courts to issue such relief when a tribunal or board acts without or in excess of its jurisdiction. Even if we were to credit Wynn's argument that the Agencies lacked jurisdiction over Wynn—which we need not resolve in this appeal—we conclude that NRS 463.318(2) bars the district court from granting writ relief in this specific case.[2]

[2]We do not address whether the Agencies lacked jurisdiction over Wynn because we determine that the district court did not have jurisdiction to entertain either Wynn's petition for judicial review or his petition for writ relief.

By its plain language, NRS 463.318(2) provides that a district court may review the Commission's disciplinary decisions only after the Commission issues a final order and the petitioner files a petition for judicial review under NRS 463.315(1). During its review, the court may consider whether the Commission exceeded its statutory authority and jurisdiction. NRS 463.317(3)(b). NRS 463.318(2), in turn, expressly precludes writ relief by providing that judicial review under NRS 463.315(1) is the exclusive method of obtaining review of the Commission's disciplinary actions. *See generally Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) ("When the legislature creates a specific procedure for review of administrative agency decisions, such procedure is controlling."). Our interpretation of NRS 463.318(2) is consistent with the principle that a specific statute controls over a general statute, *see Piroozi*, 131 Nev. at 1009, 363 P.3d at 1172, and our precedent limiting judicial intervention into the Commission's disciplinary proceedings. *See State v. Eighth Judicial Dist. Court*, 111 Nev. 1023, 1025, 899 P.2d 1121, 1122 (1995) (explaining that the jurisdiction afforded to Nevada's district courts under the Nevada Constitution "does not authorize court intrusion into the administration, licensing, control, supervision and discipline of gaming"). Accordingly, we hold that NRS 463.318(2) precludes writ relief in this case arising from Commission proceedings.

The district court lacked jurisdiction to entertain Wynn's petition for judicial review under NRS 463.315(1)

Because we conclude that Wynn was not entitled to writ relief, the district court could only properly entertain Wynn's petition as one for judicial review, and even then, only if the Commission's order denying Wynn's motion to dismiss was a *final* order under NRS 463.315(1). We determine that the district court properly found that the Commission's order denying Wynn's motion to dismiss was not final. For an order to be final, it must dispose of all the issues presented in a case. *Cf. Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (explaining that a judgment is final for purposes of appealability under the Nevada Rules of Appellate Procedure when it disposes of all issues and leaves only post-judgment issues, such as attorney fees and costs, for future consideration). Here, the Commission denied Wynn's motion to dismiss for lack of jurisdiction and, therefore, did not dispose of all of the issues presented. As a result, the Commission's order was clearly not final, *see Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 63, 752 P.2d 229, 231 (1988) ("The legislature did not intend, by using the words 'final decision or order,' that an interlocutory Commission determination . . . would be immediately subject to judicial scrutiny." (quoting NRS 463.315(1))), and the district court therefore lacked jurisdiction to entertain Wynn's petition for judicial review.

CONCLUSION

NRS 463.318(2) precludes writ relief in this circumstance and limits judicial review to petitions filed under NRS 463.315(1) challenging the Commission's final order on disciplinary matters. Based on our interpretation of NRS 463.318(2), we conclude that the district court lacked jurisdiction to entertain Wynn's petition for writ of prohibition. We further conclude that the district court properly determined that the Commission's order denying Wynn's motion to dismiss is not a final order. As the order was not final, the district court also lacked jurisdiction to consider Wynn's petition as one for judicial review under NRS 463.315(1). Therefore, we determine that the district court erred by granting Wynn's petition. Accordingly, we reverse the district court's order granting Wynn's petition and remand this matter to the district court with instructions to dismiss the petition for lack of jurisdiction.

Parraguirre, C.J., and Hardesty, Stiglich, Cadish, Pickering, and Herndon, JJ., concur.