

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKI C. WALTERS AND JERRY L.  
WALTERS,  
Appellants,  
vs.  
SHARA LYNN MEEKS,  
Respondent.

No. 53856

**FILED**

SEP 29 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Lindeman*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a personal injury action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In the underlying proceedings, the district court dismissed appellants' case as a contempt sanction based on, among other things, their failure to comply with an earlier order directing their compliance with NRCP 16.1(a)(1)(C)'s computation of damages requirement. Absent circumstances not relevant here, NRCP 16.1(a)(1)(C) requires

[a] computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

This computation of damages requirement applies only to special damages, not general or other intangible damages. See NRCP 16.1(a)(1)(C) drafter's note. Special damages are those damages that can be assigned an exact dollar amount or can be established with reasonable mathematical certainty, which in the context of a tort action, such as the

one presently before us, generally includes medical expenses and/or lost wages. 25 C.J.S Damages § 3 (2011).

Here, appellants' complaint seeks special damages in the form of medical expenses and lost wages. Our review of the record on appeal reveals that appellants never provided respondent with a document setting forth a mathematical computation totaling up their damages for each category of special damages claimed. Despite this failure, appellants nonetheless contend that they have fully complied with NRCP 16.1(a)(1)(C)'s requirements, essentially arguing that they were not required to provide respondent with calculations totaling their claimed special damages. We conclude that this argument lacks merit.

In rejecting a similar argument made under the largely identical federal analogue<sup>1</sup> to NRCP 16.1(a)(1)(C), the Second Circuit Court of Appeals held that "by its very terms [the rule] requires more than providing—without any explanation—undifferentiated financial statements; it requires a 'computation,' supported by documents." Design Strategy, Inc. v. Davis, 469 F.3d 284, 295 (2d Cir. 2006); see also Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules"). This interpretation is consistent with the plain language of NRCP 16.1(a)(1)(C), which anticipates both a computation of the total amount sought for each

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<sup>1</sup>At the time the Second Circuit issued its decision, the federal computation of damages requirement was set forth in FRCP 26(a)(1)(c). In 2007, FRCP 26 was amended, and the computation of damages requirement was relocated, with minor modifications, to FRCP 26(a)(1)(A)(iii).

category of special damages and the provision of documents to support these claimed damages. Here, appellants provided individual documents, but never provided respondent with a document containing calculations computing the total damages claimed for each category of special damages, as required by NRC 16.1(a)(1)(C), even when ordered to do so by the district court. As a result, the district court's interlocutory order properly directed them to comply with the requirements of this rule, and when they still failed to do so, the district court properly found them to be in contempt of its earlier order.<sup>2</sup> Under these circumstances, the imposition of sanctions based on appellants' failure to comply with the court's prior order was proper and appropriate.

Although we find the imposition of sanctions warranted, we nonetheless conclude that the sanction imposed by the district court was too severe. As previously noted, the sanction imposed by the district court was the dismissal of appellants' entire complaint. While we recognize the seriousness of appellants' failure to comply with NRC 16.1(a)(1)(C) and the district court's order specifically directing them to do so, we cannot conclude that under the circumstances of this case the dismissal of appellants' entire complaint was warranted given that appellants' discovery failures pertained only to their claimed special damages.<sup>3</sup>

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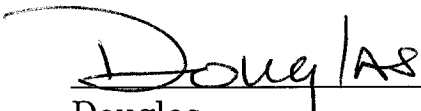
<sup>2</sup>Because appellants failed to provide respondent with any computation of damages, the district court's confusion over what types of damages were subject to NRC 16.1(a)(1)(C) does not excuse their noncompliance.

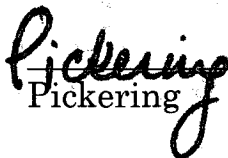
<sup>3</sup>While the district court's order sets forth a list of additional transgressions as further providing grounds for dismissal, we conclude  
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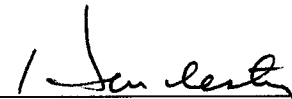
Instead, we conclude that, as an appropriate sanction, appellants shall be precluded from offering any evidence in support of their medical expenses and lost wages claims. Cf. Design Strategy, 469 F.3d at 294-99 (affirming a trial court decision to bar evidence of lost profits when the appellant had failed to provide the required computation and supporting documents for that category of damages and failed to disclose lost profits as a category of damages in its initial disclosures); NRCP 16.1(e)(3)(A) (providing, as available sanctions for failing to comply with NRCP 16.1, any sanctions set forth in NRCP 37(b)(2)); NRCP 37(b)(2)(B) (authorizing the entry of an order refusing to allow a disobedient party to support designated claims or from introducing designated matters into evidence as a discovery sanction).

Accordingly, for the reasons set forth above, we reverse the district court's order dismissing this action and remand the matter to the district court for further proceedings consistent with this order.

It is so ORDERED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Pickering

 \_\_\_\_\_, J.  
Hardesty

\_\_\_\_\_  
*... continued*

that none of these other violations supports the sanction imposed by the district court in this case.

cc: Hon. Elissa F. Cadish, District Judge  
William C. Turner, Settlement Judge  
Ralph A. Schwartz  
Law Offices of Douglas R. Johnson  
Eighth District Court Clerk