

IN THE SUPREME COURT OF THE STATE OF NEVADA

ETHEL POPOWITZ, AN INDIVIDUAL
AND AS TRUSTEE OF THE ETHEL
POPOWITZ TRUST; AND MARILYN
POPOWITZ, AN INDIVIDUAL,
Appellants,

vs.

RAYMOND J. SHAPIRO, AN
INDIVIDUAL; B.A. SUNDOWN, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; MOUNTAIN VISTA, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; BAYSIDE DERIVATIVES,
LP, A NEVADA LIMITED
PARTNERSHIP; AND HENRYMAX,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,
Respondents.

No. 59806

FILED

FEB 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART,
AFFIRMING IN PART, AND VACATING IN PART*

This is an appeal from a final district court judgment on a jury verdict in a contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Because the parties are familiar with the facts, this court will provide only those necessary for its disposition. In their third amended complaint, appellants asserted alter ego claims against respondents Shapiro, Bayside Derivatives, and Henrymax, and breach of contract and elder abuse claims against all respondents. While respondents B.A. Sundown and Mountain Vista filed answers to the third amended complaint, Shapiro, Bayside Derivatives, and Henrymax filed a motion to dismiss appellants' alter ego claims.

On October 12, 2009, after filing their motion to dismiss, respondents sent appellants a letter threatening to file a motion for sanctions under NRCP 11(c)(1)(A) if appellants did not dismiss their alter ego claims within 21 days from the letter's date. On November 2, 2009, before the expiration of NRCP 11(c)(1)(A)'s 21-day safe harbor period, the district court held a hearing and orally granted respondents' motion to dismiss. Hours after the hearing, however, appellants informed respondents of their intent to withdraw their alter ego claims pursuant to respondents' NRCP 11 request. Shortly thereafter, appellants filed a voluntary dismissal of their alter ego claims against Shapiro and all of their claims against Bayside Derivatives and Henrymax without prejudice, pursuant to NRCP 41(a)(1)(i). Nevertheless, respondents filed a motion for sanctions under NRCP 11, and the district court imposed sanctions against appellants and their attorneys.¹ Additionally, the district court issued a written order dismissing with prejudice appellants' third amended complaint in its entirety as to Shapiro, Bayside Derivatives, and Henrymax.²

Appellants filed a motion for reconsideration of the portion of the district court's order dismissing their alter ego claims with prejudice

¹Appellants' attorneys filed a petition for extraordinary writ relief, separately challenging the order imposing sanctions against them. See Docket No. 58305.

²This court must treat the district court's order as a valid final order as to the claims not voluntarily dismissed by appellants because appellants took no action to correct or vacate the order based on its breadth in relation to respondents' original motion. See *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 252 P.3d 676, 679 (2011) (stating that an issue not raised in district court is generally deemed waived and will not be considered upon appeal).

and a motion for leave to amend to, in part, reassert their alter ego claims against Shapiro, Bayside Derivatives, and Henrymax. During the hearing addressing these motions, appellants withdrew the portion of their motion for leave to amend seeking to reassert the alter ego claims. After the hearing, the district court issued its order denying appellants' motion for reconsideration.

Appellants challenge only the portion of the district court's order granting respondents' motion to dismiss their alter ego claims and the district court's denial of appellants' motion for leave to amend their complaint. Additionally, appellants challenge the district court's order granting respondents' motion for sanctions against them under NRCP 11.

"An oral pronouncement of judgment is not valid for any purpose." *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (citing NRCP 58(c)). Additionally, a plaintiff may dismiss an action by filing a notice of voluntary dismissal at any time before service of an answer or a motion for summary judgment by the adverse party. NRCP 41(a)(1)(i). Because there was no written order dismissing appellants' claims and no answer or summary judgment motion had been filed by Shapiro, Bayside Derivatives, or Henrymax, appellants properly voluntarily dismissed their alter ego claim against Shapiro and claims for alter ego, breach of contract, and elder abuse against Bayside Derivatives and Henrymax without prejudice. See NRCP 41(a)(1) (explaining that "[u]nless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice"); see also *Gallen v. Eighth Judicial Dist. Court*, 112 Nev. 209, 212, 911 P.2d 858, 860 (1996) (holding that a motion to dismiss does not terminate the right of dismissal pursuant to NRCP 41).

Appellants are not aggrieved by the district court orders dismissing their alter ego claims and denying their motion to amend as to additional alter ego claims because appellants voluntarily dismissed their alter ego claims and withdrew their motion to amend to add alter ego claims. NRAP 3A(a) ("A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order"). We therefore lack jurisdiction over these portions of appellants' appeal. Accordingly, we dismiss this appeal in part as to appellants' arguments regarding their alter ego claims.

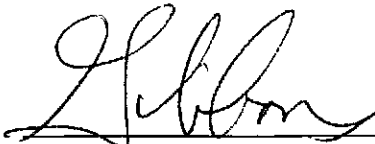
Finally, we conclude that the district court abused its discretion in awarding sanctions against appellants because appellants withdrew their alter ego claims within NRCP 11's 21-day safe harbor period and before the district court entered its written order dismissing the claims. NRCP 11(c)(1)(A); *Office of the Washoe Cnty. Dist. Attorney v. Second Judicial Dist. Court*, 116 Nev. 629, 636, 5 P.3d 562, 566 (2000) (stating that orders imposing NRCP 11 sanctions are reviewed for abuse of discretion on direct appeal). Therefore, the district court's order imposing NRCP 11 sanctions against appellants is hereby vacated.³

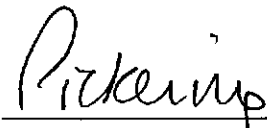
For the reasons discussed above, we

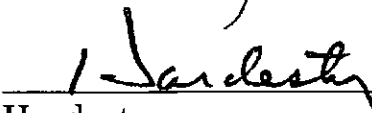
ORDER this appeal DISMISSED IN PART as to appellants' challenges to the district court orders dismissing their alter ego claims and

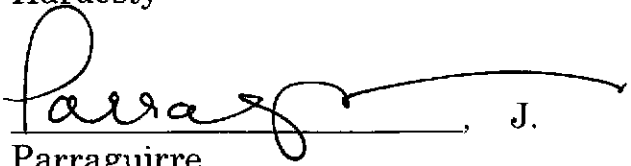
³We have considered all of appellants' other arguments and conclude that they lack merit, and thus, we affirm the district court's judgment as to appellants' remaining issues.


denying them leave to amend their complaint to add alter ego claims AND ORDER the judgment of the district court, AFFIRMED IN PART, AND VACATED IN PART as to the district court's imposition of NRCP 11 sanctions against appellants.

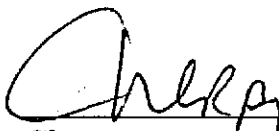

_____, C.J.
Gibbons

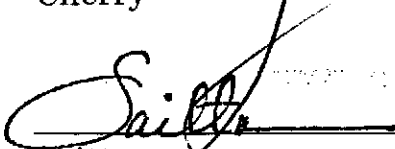

_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Michelle Leavitt, District Judge
Stephen E. Haberfeld, Settlement Judge
Marquis Aurbach Coffing
McDonald Carano Wilson LLP/Las Vegas
McDonald Carano Wilson LLP/Reno
Erickson Thorpe & Swainston, Ltd.
Eighth District Court Clerk