

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY CREDIT UNION, A
DOMESTIC NON-PROFIT
COOPERATIVE CORPORATION,
Appellant,
vs.
YVONNE SAUNDERS, M.D., AN
INDIVIDUAL; AND YVONNE
SAUNDERS, M.D., LTD., A NEVADA
CORPORATION,
Respondents.

No. 69744

FILED

MAR 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from an order dismissing a breach of contract case and an order denying modification or reconsideration. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.¹

This appeal arises from two district court orders dated January 6 and February 19, 2016, which dismissed the entire action below. The orders were prompted by a motion titled “motion in limine,” which sought discovery sanctions under NRCP 16 and 37.

We review an order granting a pre-trial motion in limine for an abuse of discretion. *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005). A district court may abuse its discretion when it fails to apply the applicable governing law. *See Allianz Insurance Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 722–23 (1993) (“where a district court exercises its discretion in clear disregard of the guiding legal principles, this action may constitute an abuse of discretion”); *Bergmann v. Boyce*,

¹We do not recount the facts except as necessary to our disposition.

109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (same). Further, although courts can grant relief not specifically requested in the pleadings, see NRCP 54(c), a district court is jurisdictionally limited to rule on only the legal issues properly before it. See *Idaho Resources, Inc. v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 461–62, 874 P.2d 742, 743–44 (1994) (vacating a judgment on these grounds; noting “Although Rule 54(c) permits relief on grounds not pleaded, that rule does not go so far as to authorize the granting of relief on issues neither raised nor tried.” (quoting *Combe v. Warren’s Family Drive-Inns, Inc.*, 680 P.2d 733, 735–36 (Utah 1984) (brackets omitted))).

Though nominally (and confusingly) titled a “motion in limine,” the motion that was presented to the district court requested only one form of judicial relief: an “order precluding Plaintiff [CCCU] from presenting any evidence of damages at trial” as a discovery “sanction” under NRCP 16 and 37.² Because the only relief requested from the

²Respondents’ motion argued that exclusion of evidence of damages is the “only appropriate *sanction* for failure to disclose a computation of damages,” discussed when a “*sanction* is appropriate under NRCP 16.1,” and argued that its request was the “appropriate *sanction* for CCCU’s inexcusable failure to comply with Rule 16.1” (emphasis added). Respondents also argued, in only one sentence, “Independent of the issue of sanctions under NRCP 16.1, district courts have broad discretion to determine whether evidence is admissible at trial,” but provided no further argument on the admissibility of this evidence, and returned to discussing “[s]anctions awarded under NRCP 16.1” (emphasis added). This passing mention of the admissibility of evidence was not enough to raise an independent legal issue upon which the court could exclude this evidence: under NRS 48.025, “All relevant is admissible” except as otherwise governed by Title 4, the federal and state constitutions, and “where a statute limits the review of an administrative determination to the record made or evidence offered before that tribunal,” and
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district court was in the form of potentially case-dispositive discovery sanctions, the standards of *Young v. Johnny Ribeiro Building, Inc.* should have governed the motion. See 106 Nev. 88, 92–93, 787 P.2d 777, 779–80 (1990) (articulating the standard for dispositive sanctions). Furthermore, in the Eighth Judicial District Court, “[u]nless otherwise ordered, all discovery disputes (except disputes presented at a pretrial conference or at trial) must first be heard by the discovery commissioner.” EDCR 2.34(a). Any issue that was “presentable” to the discovery commissioner but was not first raised to the discovery commissioner is waived and cannot thereafter be raised in district court. *Valley Health System, L.L.C. v. Eighth Judicial Dist. Ct.*, 127 Nev. 167, 173, 252 P.3d 676, 680 (2011).

However, despite the fact that the motion expressly sought the imposition of sanctions under NRCP 37, the district court’s February 19 order specifically stated that its January 6 order had *not* applied *Young* in deciding the motion and had *not* imposed a sanction under NRCP 37. Moreover, the district court’s orders went beyond imposing any sanction or excluding any particular evidence from being admitted at trial, but rather dismissed the entire case, without identifying any legal ground for dismissal and even though neither party’s briefing had requested that kind of sweeping relief.

By doing so, the district court exceeded its jurisdiction by ruling on issues not properly before it. See *Idaho Resources, Inc.*, 110 Nev.

...continued

respondents’ challenged evidence—literally “any evidence of damages”—is relevant to appellants’ claims *by definition*. Thus, to raise the issue of this evidence’s inadmissibility below, respondents needed to raise some exception to NRS 48.025’s broad rule of admissibility, which they did not.

at 461–62, 874 P.2d at 743–44. It also abused its discretion by failing to apply the applicable governing law on the sole issue that was properly before it. *See Bergmann*, 109 Nev. at 674, 856 P.2d at 563. Furthermore, any request for discovery sanctions might have been waived if the parties failed to first raise the matter before the discovery commissioner,³ although based upon the existing record we are unable to determine if the discovery commissioner had considered the request first. *See Valley Health System*, 127 Nev. at 173, 252 P.3d at 680.⁴

Therefore, we vacate both the January 6, 2016 and February 19, 2016 orders and remand to the district court for reconsideration the motion in limine under the correct legal standard. On remand, the district court must first consider whether EDCR 2.34(a) allows it to rule on these

³In the appellants' opening brief, they note that "The Defendants never filed any Motions to Compel with the Discovery Commissioner," and "The Court improperly dismissed the Plaintiff's entire case based upon an alleged failure to disclose evidence that had never been addressed by the discovery commissioner"


⁴In *Valley Health Systems*, the supreme court held, using broad language, that any issue "presentable" to the discovery commissioner is "waived" if not presented to the commissioner first for resolution before seeking relief from the district court. Here, the deposition of the "person most knowledgeable" was conducted one day before the official close of discovery, so it is unclear whether sanctions could have been sought from the discovery commissioner before the original cut-off date. However, one question that the supreme court has not yet answered is whether, if the nature of any matter is such that it was once presentable to the discovery commissioner but discovery has now closed, a party has waived the right to seek relief from the district court if it does not first attempt to re-open discovery first, at least for the limited purposes of resolving that question. We take no position on that issue here as it has not been properly argued by the parties.

discovery issues or whether they have been waived, and if the matter has not been waived, it must apply the standards of *Young*, 106 Nev. at 92–93, 787 P.2d at 779–80 to the requested sanctions if imposing them would be dispositive of the case.⁵

Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Nathaniel J. Reed, Settlement Judge
Bowen Law Offices
Greene Infuso, LLP
Eighth District Court Clerk

⁵In their appellate brief, respondents assert that the appellant lacks standing to pursue this action because the appellants had no rights under the contract and no longer own the property. In denying respondents' prior motion for summary judgment, the district court concluded that genuine issues of material fact exist regarding appellants' standing. Although this order is not on appeal, we agree with the district court that there are outstanding factual issues that require resolution before the issue of standing can be determined, and we decline to rule on the issue in the first instance now.